1-1-2021

9th Annual Reality CLE

Indiana Continuing Legal Education Forum (ICLEF)

9th Annual Reality CLE
October 28-29, 2021
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Feature Release 4.1
August 2020

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REALITY CLE 2021

October 28 - 29, 2021

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REALITY CLE 2021

Agenda – Day 1

8:00 A.M. Registration and Coffee

8:25 A.M. Welcome & Introduction
- Rebecca W. Geyer

8:30 A.M. Technology, Time Management Strategies, Paperless Practice and Confidentiality Control
- Paul J. Unger

10:00 A.M. Coffee Break

10:15 A.M. Technology, Time Management Strategies, Paperless Practice and Confidentiality Control …Continued

11:45 A.M. Lunch Break (Provided on Day 1!)

1:00 P.M. Break Out Sessions
Criminal Law - *Mark E. Kamish & Kathie A. Perry*
Estate Planning/Elder Law – *Keith P. Huffman & Michael J. Huffman*
Family Law – *Elizabeth Eichholtz Walker*

2:00 P.M. Transition to Next Break Out

2:10 P.M. Break Out Sessions II
Criminal Law - *Mark E. Kamish & Kathie A. Perry*
Estate Planning/Elder Law – *Keith P. Huffman & Michael J. Huffman*
Family Law – *Elizabeth Eichholtz Walker*

3:10 P.M. Refreshment Break

3:20 P.M. Insurance Needs for Your Practice, Including Cyber Security Coverage and Best Practice
- Eric C. Redman

4:05 P.M. Creating Systems to Run Your Law Practice Successfully
- F. Anthony Paganelli, Rebecca W. Geyer, Reid F. Trautz

4:50 P.M. Adjournment

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Agenda – Day 2

8:25 A.M. Welcome & Introduction
- *Rebecca W. Geyer*

8:30 A.M. Client-Focused Business Development
- *Rebecca W. Geyer, F. Anthony Paganelli, Reid F. Trautz*

9:15 A.M. Employee Personnel Issues
- *Jeffrey B. Halbert*

10:00 A.M. Coffee Break

10:15 A.M. Mediation Panel
- *Brian C. Hewitt, F. Anthony Paganelli, Christopher J. Mueller*

11:45 A.M. Lunch Break

1:00 P.M. Break Out Sessions
Trial Advocacy – *Hon. Robert R. Altice Jr., Hon. Melissa S. May*
Real Estate/Landlord Tenant – *Michael R. Limrick*
Bankruptcy – *Mark S. Zuckerberg*

2:00 P.M. Transition to Next Break Out

2:10 P.M. Break Out Sessions II
Trial Advocacy – *Hon. Robert R. Altice Jr., Hon. Melissa S. May*
Real Estate/Landlord Tenant – *Michael R. Limrick*
Bankruptcy – *Mark S. Zuckerberg*

3:10 P.M. Coffee Break

3:20 P.M. Student Loan Panel
- *Mark S. Zuckerberg, John R. Schaaf, Amanda Fishman*

4:05 P.M. Ethics
- *James J. Bell*

4:50 P.M. Adjournment

October 28 - 29, 2021

REALITY CLE 2021

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REALITY CLE 2021

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Day 2

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Rebecca W. Geyer
Rebecca W. Geyer & Associates, PC, Indianapolis

Rebecca W. Geyer is the founder of Rebecca W. Geyer & Associates, PC where her practice concentrates in estate planning, estate and trust administration, elder law, tax planning, and business services. A board certified Indiana trust and estate specialist* and a Fellow of the American College of Trust and Estate Counsel, Rebecca is also an adjunct professor of elder law at the Indiana University Robert H. McKinney School of Law.

Rebecca completed her undergraduate degree at Indiana University, majoring in Political Science. She went on to earn her Juris Doctor in 1998 at the Indiana University Maurer School of Law. An avid volunteer in both the legal community and the Indianapolis community at large, Rebecca often speaks and writes on estate planning and elder law topics, and annually provides pro bono legal services to individuals through her work with the Indianapolis Bar Association and the Albert and Sara Reuben Senior Resource and Community Center.

As a frequent lecturer and seminar presenter, Rebecca has authored numerous seminars with ICLEF, ISBA, IBA, and National Business Institute. Her recent presentations include “Alternatives to Guardianship,” “Elder Law Update,” “Estate Planning Under Our Guardianship Statutes,” “Estate Planning with Retirement Assets” and “Estate Planning for Same-Sex Couples in Light of Obergefell.”

Rebecca is Secretary of the Indianapolis Bar Association, Past President of the Indianapolis Bar Foundation, a former Chair of the Elder Law Section of the Indiana State Bar Association, and a Past President of the Indiana Section of the National Academy of Elder Law Attorneys (NAELA). She served on the Board of Governors of the Indiana State Bar Association from 2016-2018. Since 2014, Rebecca has been named to the prestigious list of Super Lawyers® for estate planning, and has been designated as one of the top 50 attorneys in Indiana and one of the top 25 women lawyers in Indiana in since 2016 by Law & Politics Magazine and Indianapolis Monthly. She was also named to the Indianapolis Business Journal’s 2014 40 Under 40 Class, which recognizes individuals making a difference in their professions and communities prior to the age of 40. In 2018, Rebecca was recognized by the Indianapolis Bar Association for service to the profession, and was awarded the Indianapolis Bar Association’s Dr. John Morton Finney Award for Excellence in Legal Education in 2013. Rebecca also volunteers in the community where she serves as Past President of Congregation Beth-El Zedeck, and Treasurer of the Indianapolis Section of the National Council of Jewish Women.

Rebecca is chair of the Indianapolis Bar Association's Estate Planning and Administration Section, and a member of its Women and the Law Division. Her professional memberships also include the Probate, Trust and Real Property Section and the Elder Law Section of the Indiana State Bar Association, the Indiana Probate Review Committee, Estate Planning Council of Indiana, and the National Academy of Elder Law Attorneys. Rebecca was recognized as a distinguished fellow by the Indianapolis Bar Foundation in 2010.

*Certified by the Indiana Trust and Estate Specialty Board

Hon. Robert R. Altice, Jr.
Judge, Indiana Court of Appeals, Indianapolis

Judge Altice was appointed to the Court of Appeals by Governor Mike Pence and began his service on Sept. 2, 2015.

Judge Altice earned his undergraduate degree from Miami University, Oxford, OH. Subsequently, he obtained a master's degree in criminal justice administration from the University of Central Missouri, where he was honored as "Graduate Student of the Year" in his department. He received his law degree from the University of Missouri-Kansas City School of Law.

Judge Altice's legal career began in Jackson County, MO, handling felony cases as a deputy prosecutor before being promoted to Chief Deputy Prosecutor for the Drug Unit. He then practiced with a Kansas City civil law firm, focusing on medical malpractice defense. After moving to Indianapolis, he joined the law firm of Wooden McLaughlin & Sterner, concentrating on insurance defense.

In 1994, Judge Altice returned to prosecution, handling a major felony caseload as a deputy prosecutor for the Marion County Prosecutor's Office. He served as Chief of the Felony Division from 1997 to 2000, prosecuting a number of high-profile felonies while also providing management support to 35 deputy prosecutors. Judge Altice briefly served as the Office's Chief Counsel, working with the Indiana General Assembly to amend laws on domestic battery and possession of firearms by violent felons. As a prosecutor, he tried more than 100 major felony jury trials, including 25 murder cases and countless bench trials.

Judge Altice was elected to the Marion County bench in 2000 and presided over both criminal and civil dockets. As judge of Marion Superior Court, Criminal Division 2 from 2001 to 2012, he presided at 250 major felony jury trials, including 75 murder trials (seven death penalty cases).

While presiding over some of the most serious criminal matters in the state, Judge Altice also served as chair of the Marion Superior Court Criminal Term from 2005 to 2007, as a member of the Executive Committee for the Marion Superior Court from 2007 to 2009, and as Presiding Judge of the Marion Superior Court from 2009 to 2011. As the Presiding Judge, he was responsible for the administration of the Marion Superior Court, with an annual budget of $50 million, and managed a court staff of more than 850 employees. He also hosted a TV show on the government access channel, titled "Off the Bench," in which other civic leaders appeared as guests to discuss public affairs.

Judge Altice moved to the civil division of the Marion Superior Court in 2013, where he officiated at 15 civil jury trials in Superior Court 5. Judge Altice was appointed chair of the Marion Superior Court Civil Term in January 2015.
Throughout his judicial career, Judge Altice has held leadership roles in organizations that improve the administration of justice. He accepted special assignments from the Indiana Supreme Court on the Judicial Performance Task Force, which examined whether judicial evaluations might be useful in Indiana, and the Cameras in the Courtroom project, which allowed cameras in certain courtrooms under limited conditions. During Judge Altice's tenure on the Marion County Community Corrections Advisory Board, the Duval Work Release Center in Marion County was built and opened.

Judge Altice is a member of the Indiana Judges Association, the Indiana State Bar Association, and the Indianapolis Bar Association. He served on the Board of Directors of the Judicial Conference of Indiana, is a member and past president of the Sagamore American Inn of Court, was a member from 2010 to 2015 of the Indiana Judicial Conference Civil Bench Book Committee, and was a member and former chair of the Indiana Judicial Conference Community Relations Committee. In April 2015, Judge Altice was appointed to serve on an ad hoc Indiana Tax Court Advisory Task Force. He currently serves on the Tax Court Advisory Committee. Judge Altice is President of the Board of Directors for the Heartland Pro Bono District.

His community activities include prior service on the Board of Directors of these organizations: Indianapolis Police Athletic League; the Martin Luther King Community Development Corp.; and Coburn Place Safe Haven, a transitional housing facility for domestic abuse victims. Judge Altice also participated on the Super Bowl Legal Subcommittee. He is on the board of the Benjamin Harrison Presidential Site. He has presented on legal and ethical issues for the Indiana Continuing Legal Education Forum, the Indiana Judicial Center, and various Indiana bar associations. In his spare time, he enjoys gardening, golf and reading.

He and his wife, Kris, an attorney who is General Counsel for Shiel Sexton, have two adult children.

Hon. Melissa S. May
Judge, Indiana Court of Appeals, Indianapolis

Judge May was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon in April of 1998. She was born in Elkhart, Indiana. She earned a B.S. in criminal justice from Indiana University-South Bend in 1980, a J.D. from Indiana University School of Law-Indianapolis in 1984. She is also a graduate of the Graduate Program for Indiana Judges. Judge May is currently the Presiding Judge of the Fourth District.

Prior to her appointment to the Court, Judge May practiced law for fourteen years in Evansville, Indiana, where she focused on insurance defense and personal injury litigation.

Judge May has been active in local, state, and national bar associations and bar foundations. She served the Indiana Bar Association on the Board of Managers from 1992-1994, as Chair of the Litigation Section from 1998-1999, as Counsel to the President from 2000-2001, as Chair of the Appellate Practice Section from 2007-2008, and as Secretary to the Board of Governors in 2008-2009. She is also a member of the Indianapolis Bar Association and the Evansville Bar Association. In addition, she was a member of the Board of Directors of the Indiana Continuing Legal Education Forum from 1994-1999 and has been a co-chair of ICLEF's Indiana Trial Advocacy College from 2001 to present. She is a fellow of the Indiana Bar Foundation, as well as for the American Bar Association, and she is a Master Fellow of the Indianapolis Bar Association.

From 1999 until December 2004, Judge May was a member of Indiana's Continuing Legal Education Commission, where she chaired the Specialization Committee. She is currently on an Advisory Panel to the Specialization Committee. In 2005, she was named to the Indiana Pro Bono Commission and in July 2008, she was named as Chair of that Commission. While chair, she worked with the fourteen pro bono d istricts to train lawyers and mediators on how to assist homeowners who are facing foreclosure. Judge May also serves on the Civil Instruction Committee, an Indiana Judicial Conference Committee, which has been working to translate all of the civil jury instructions into "plain English." She frequently speaks on legal topics to attorneys, other judges, schools, and other professional and community organizations.

In 2003, Judge May was named to the American Bar Association's Standing Committee on Attorney Specialization. She is now special counsel to that committee. In the spring of 2004, Judge May became adjunct faculty at Indiana University School of Law-Indianapolis, where she teaches a trial advocacy course.

Also in the spring of 2004, she was awarded an Honorary Doctor of Civil Law from the University of Southern Indiana.

James J. Bell
Paganelli Law Group LLC, Indianapolis

LIFE AT PLG
- 2018 President of the Indianapolis Bar Association.
- Leads PLG's criminal defense and professional discipline team, using nearly 20 years of experience to help his clients.
- Recognized as one of the top 50 lawyers in Indiana by "SuperLawyers" in 2015, 2016, 2018 and 2019; listed in "The Best Lawyers in America."

LIFE BEFORE PLG
- Former partner at Bingham Greenebaum Doll, a large midwestern law firm, where he practiced white-collar criminal defense and professional ethics defense.
- Former major felony public defender.
- Served as an adjunct professor of legal ethics at the Indiana University McKinney School of Law.
- Past chair of the Indiana State Bar Association's Criminal Justice Section, the Indianapolis Bar Association's Criminal Justice Section, and the Indiana State Bar Association's Legal Ethics Committee.
- Graduated from DePauw University (B.A. 1996) and the Indiana University McKinney School of Law (J.D. 1999).

LIFE BEYOND PLG
- One of the most sought-after speakers on legal ethics and criminal practice issues in Indiana.
- Host of the popular "Amateur Lifecoach" series of online video presentations on professional ethics.
- Lives in Indianapolis with his wife and their three small children.

Amanda Fishman
IUPUI Office of Student Financial Services, Indianapolis

Amanda Fishman is the Assistant Director for the IUPUI Office of Student Financial Services at the IU McKinney School of Law. Amanda has worked at IUPUI for the past nine years and most recently as an Assistant Director in Client Services. Previously, Amanda worked with students in managing numerous financial aid regulation changes, and she helped to streamline student services and strengthen collaborations with campus partners. Her abilities to advocate and determine the best solutions for students has proven beneficial to supporting student success.

Jeffrey B. Halbert
Bose McKinney & Evans LLP, Indianapolis

Jeff Halbert is a partner in the Labor and Employment, Automotive, and Business Groups of Bose McKinney & Evans. Jeff has extensive experience litigating all forms of labor and employment matters throughout Indiana and surrounding states. He also practices before numerous state and federal agencies, including but not limited to the U.S. Equal Employment Opportunity Commission, the Indiana Civil Rights Commission, the National Labor Relations Board, the United States Department of Labor, and the Indiana Department of Labor.

His practice covers the spectrum of employment litigation, including both state and federal claims, and individual and class action suits. He has handled cases involving claims of race, age, disability, national origin, religious and sex discrimination, as well as sexual harassment, retaliatory discharge, wage and hour, FMLA, ERISA, and non-compete/restrictive covenant issues. Jeff's practice covers several different industries and sectors with a focus on automobile and RV dealerships.

Jeff has published numerous articles on various employment-related topics over the course of his career. In addition to his litigation practice, he also routinely counsels management on a variety of employment issues including issue avoidance, employee handbooks and policies, employment contracts, and employee discipline. He also routinely conducts employee and management training seminars for clients and human resources professionals including the following topics:

- Employee Restrictive Covenants
- Social Media in the Workplace
- Wage and Hour Compliance
- Recruiting/Hiring
- Maintaining a Harassment-Free Workplace
- EEOC Investigations
- Harassment and Non-Discrimination
- The Family and Medical Leave Act
- The Americans with Disabilities Act
- Maintaining a Union Free Workplace

Brian C. Hewitt
Hewitt Law & Mediation LLC, Indianapolis

Brian Hewitt is a highly respected trust and estate litigator who has practiced in Indiana for more than three decades, describing himself as a "specialized generalist" because of his diverse areas of expertise. Named to the distinguished list of Indiana Super Lawyers every year since 2009, Brian has represented financial institutions and other fiduciaries in some of the state's most high-profile cases, including the estates of Indianapolis Colts owner Robert Irsay and commercial property mogul Melvin Simon.

Brian is an accomplished litigator, but his first and greatest love is mediation. He relishes the opportunity to resolve a complex legal situation in just a single day—and to help the people involved avoid expensive, messy, and emotionally draining litigation. Brian's colleagues will tell you that he has an unbelievable gift for understanding people's needs and charting a course that allows both sides to leave mediation feeling satisfied. His track record will tell you the same: he has settled nearly 1,000 trust and estate cases and hundreds of real estate, commercial, and professional malpractice cases, with a success rate of more than 90 percent.

Brian is a frequent speaker and author on important topics related to trust and estate mediation and litigation, giving regular presentations to the American College of Trust and Estate Counsel (ACTEC), the Indiana State Bar Association, and the Indiana Continuing Legal Education Forum. As a recognized expert in the field of trust and estate law, he is regularly asked to consult or testify as an expert witness in cases involving trusts, estates, commercial law, malpractice, and civil procedure.

Outside the office, Brian writes music for voice and guitar and is an avid supporter of the Indianapolis Children's Choir, where two of his children sang for many years. He and his wife, Veronica, are active members of Resurrection Lutheran Church.

Keith P. Huffman
Dale, Huffman & Babcock, Bluffton

Keith P. Huffman was born in Toledo, Ohio, on July 20, 1951. Mr. Huffman received his undergraduate education from Adrian College and his legal education from Indiana University and was admitted to the Bar in 1980. Mr. Huffman is a member of the National Academy of Elder Law Attorneys and served as the President of the Indiana Chapter of the National Academy of Elder Law Attorneys. Mr. Huffman is a Past Chairperson-Elect for the Elder Law Section of the Indiana Bar Association. Mr. Huffman is a member of the Ethics Committee at Bluffton Regional Medical Center, Chairperson of the Aging & In-Home Services Board of Directors, and a member of the Fort Wayne Lutheran Hospital Institutional Review Committee. Keith Huffman was named the Citizen of the Year by the Wells County Chamber in 2003 and was named as the outstanding member of the Indiana National Academy of Elder Law Attorneys in 2009. Mr. Huffman was named the Powley Award winner for 2016. This national award is given to a National Academy of Elder Law member who has demonstrated a commitment to promote in the minds of the general public, a general understanding of the rights and needs of the elderly and disabled.

Michael J. Huffman

Michael J. Huffman received his undergraduate degree in Political Science from Indiana University, where he was a member of the Phi Beta Kappa Honor Fraternity. He received his legal education from the Indiana University Maurer School of Law in Bloomington. Michael was admitted to the Indiana Bar in October 2013, and practices in the areas of trust and estate planning, estate administration, and elder law.

Law School: Indiana University School of Law

Undergraduate: Indiana University

Practice Areas: Asset Preservation Planning | Estate Planning | Corporate Formation | Long-term Care Planning | Annual Redetermination of Medicaid Benefits | Annual Redetermination of Medicaid Benefits | Real Estate

Mark E. Kamish
Baldwin Perry & Kamish, PC, Indianapolis

For two decades *Mark Kamish* has concentrated his efforts exclusively on defending people accused of committing crime (a partial listing includes two capital murder cases in which the death penalty was sought, other charges of murder, felony murder, manslaughter, attempted murder, reckless homicide, child molesting, rape, criminal deviate conduct, sexual misconduct with a minor, possession and dissemination of child pornography, child exploitation, sexual battery, neglect of a dependent, gun charges, drug offenses, arson, armed robbery, criminal confinement, burglary, forgery, fraud, theft, auto theft, battery, domestic battery, stalking, escape, promoting prostitution, felony driving while intoxicated and felony driving while intoxicated causing death).

In doing so, Mark has tried 60 jury trials, including 47 felony jury trials to verdict. At the appellate level, he has successfully argued before the Indiana Supreme Court. Mark is a graduate of the National Criminal Defense College (NCDC) in Macon, Georgia and has received hundreds of hours of trial advocacy training. In 2009, Mark became only the fourth lawyer ever in the state of Indiana to be a Board Certified Criminal Law Specialist by the National Board of Trial Advocacy, joining his partner Andy Baldwin, who became the third. Additionally, Mark has been a frequent faculty member for the Indiana Public Defender Council (IPDC) Trial Practice Institute (a 4-day “boot camp” for **lawyers wanting to improve their trial skills). He is also a member of the National** College for DUI Defense (NCDD).

Mark received his undergraduate degree in Engineering from the United States Military Academy at West Point in 1983. Following Ranger School and a tour of duty with the 82nd Airborne Division, Mark graduated from the Field Artillery Officer Advanced Course and the Defense Language Institute (German), Presidio of Monterey, California. He commanded a nuclear weapons unit in Germany from 1988 to 1990. Following military service, Mark served for 10 years in a variety of managerial and engineering positions with Fortune 1000 companies. After 3½ years at Newell in Rockford, Illinois, Mark accepted an operations manager position at Harman-Motive, a division of Harman International, located in Martinsville, Indiana. He also served as a supplier engineer at that company.

After graduating from the Indiana University School of Law - Indianapolis’ evening

program, Mark was a full-time public defender at the Marion County Public Defender Agency from 2000 to 2004, a part-time major felony PD from 2005 to 2006 and a conflict D felony PD from 2006 to 2009. In the past 10 years, Mark has continued to accept pauper counsel appointments in Hamilton, Hendricks and Monroe counties.

In 2018, Mark was appointed Criminal-Rule-24-qualified co-counsel on a death penalty case remanded from the 7th Circuit Court of Appeals after his client had been on death row for 22 years. He helped negotiate a 110-year sentence in that case by way of a plea agreement (the lowest recorded sentence in Indiana history for a person convicted of triple homicide). In 2019, Mark was lead counsel for another death row inmate whose sentence was remanded after 15 years by the 7th Circuit. That client is now also off death row and serving a sentence of life without possibility of parole.

Michael R. Limrick
Hoover Hull Turner LLP, Indianapolis

Mike Limrick is a founding partner of Hoover Hull Turner LLP. His practice spans a broad range of litigation, including supply chain, contract, commercial tort, municipal, professional liability, and appellate matters.

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- B.A., Marietta College

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- *Indiana Super Lawyers*® (2016-19)
- *Benchmark Litigation*

Christopher J. Mueller
Attorney

Chris Mueller spends his day representing clients in legal matters related to trusts and estates, real estate, business law, tax planning, and general/commercial litigation. He represents clients in complex litigation but also helps businesses and individuals plan wisely for the future. As a registered civil mediator sharing Brian Hewitt's passion for mediation, Chris relishes the opportunity to settle cases to the satisfaction of everyone involved.

Chris brings an innate curiosity to every case he tackles. He has earned multiple degrees in different fields, including chemistry and music—he has a scientist's love of rigorous process and an artist's ability to find creative solutions. This dual perspective serves his clients well, as the cases he handles are often multifaceted and require not just deep knowledge of multiple legal areas, but also an ability to see hidden connections and solve problems in unexpected ways.

Chris is a native of Cedarburg, Wisconsin, who moved to Indianapolis after he met his wife, Laura. They and their son enjoy hiking, biking, and cooking; Chris particularly loves long, involved cooking projects that require managing multiple processes at once. (No surprise there.) He and his wife are enthusiastic supporters of the Indianapolis Symphony Orchestra and the Indianapolis Symphonic Choir, and Chris spent many years actively involved on the Advisory Board of Indiana YMCA Youth and Government.

F. Anthony Paganelli
Paganelli Law Group LLC, Indianapolis

LIFE AT PLG
- Founder and principal of PLG, leading our team and managing all business functions for the firm.
- Concentrates his practice in commercial litigation, mediation, and business strategy.
- Recognized in 2009 and 2010 as an “Indiana Rising Star” (the top 5% of Indiana lawyers under 40), and as an “Indiana SuperLawyer” (the top 5% of all Indiana lawyers) every year since 2010; included in every edition of “The Best Lawyers in America” since 2013.

LIFE BEFORE PLG
- Litigation partner with Taft, Stettinius & Hollister, one of the largest law firms in the United States, where he developed a national business litigation and trial practice.
- Served as the 2012 Chair of the Litigation Section of the Indianapolis Bar Association.
- Graduated from the University of Notre Dame (B.A. 1992) and Indiana University School of Law—Bloomington (J.D. *Cum Laude* 1995).

LIFE BEYOND PLG
- Instructor and program chair for the annual Indiana Trial Advocacy College, and frequent speaker on legal and business issues.
- Chairman Emeritus of the Children’s Organ Transplant Association, a national charity that raises over $5 million per year for children who need life-saving organ transplants.
- Lives in Indianapolis with his wife and their two teenage children.

Kathie A. Perry
Baldwin Perry & Kamish, PC, Indianapolis

Kathie Perry: My entire career has been spent exclusively defending the accused, except for a 9 month period in 2014 when I briefly ventured into other areas of law. It was a miserable 9 months, but it helped me realize a very basic fact about myself: I am a criminal defense attorney. Period. Joining The Criminal Defense Team of Baldwin Perry & Kamish, PC with our exciting style of aggressive, creative and strategic defense and dedication to the criminally accused was a perfect fit. For those who are dedicated to criminal defense, like all of the lawyers in our firm, dealing with the hectic pace and constant pressures of representing clients accused of committing a variety of crimes is simply a way of life. I realized very quickly upon joining the firm that my history as a criminal defense attorney mirrored the experiences of all of our firm's lawyers.

1 of only 6 Board Certified Criminal Law Specialists in Indiana

AREAS OF PRACTICE

- 100% criminally related law, primarily all phases related to criminal defense, including pre-arrest advocacy, trial, appellate and post-conviction relief work.

CRIMINAL DEFENSE EXPERIENCE

- Monroe County Public Defender Agency, 1999-2001, Certified Legal Intern
- Marion County Public Defender Agency, 2001-2014, Deputy Public Defender
- Baldwin Perry & Kamish, P.C., 2015 – present, Partner

EDUCATION

- Maurer School of Law - Indiana University- (Juris Doctorate, 2001) Bloomington, Indiana

Merit Scholarship Award Winner

Eric C. Redman
Ritman & Associates, Inc., Noblesville

Eric Redman is a Producer with RITMAN and joined the company in 2009. His primary lines of business include all classes of Professional Liability with an emphasis on Lawyers and Title Agents. Eric holds licenses in IN, OH, IL and KY.
Eric is passionate about working for RITMAN which serves a niche in the legal profession. He enjoys the family feel of RITMAN.

He was born and raises in Indianapolis, Indiana. He graduated from North Central High School and and holds bachelor degrees from Indiana University in both Political Science and Economics.

Eric currently resides in Indianapolis with his wife Laura and son Patrick. Eric enjoys exploring local restaurants and bars with character. He also enjoys music, traveling, and attending Pacers and Colts games.

John Schaaf
Owner/Partner, Schaaf CPA Group, LLC, Westfield

John Schaaf, Owner/Partner, After graduating from Indiana University with bachelor of science degrees in Accounting and in Finance, John joined the Indianapolis office of Deloitte & Touche, one of the largest tax and accounting firms in the world, as a tax consultant. While there, he worked closely with Deloitte's tax experts in serving the tax consulting and preparation needs of some of Indiana's largest closely-held and publicly-traded businesses. He also assisted in the development and implementation of the tax preparation software that Deloitte uses in all of its United States offices. In 2005, John left Deloitte and joined the Indianapolis office of Alerding & Co, LLC, a top 25, by size, CPA firm in Indianapolis. While at that firm, he served somewhat smaller businesses and their owners in their tax consulting, tax preparation, bookkeeping, and other accounting needs. In October 2007, John founded Schaaf CPA Group in downtown Westfield.

Along with his wife, Lisa, and three children, John is a resident of Westfield, Indiana. John is a member of the Indiana CPA Society, the founding chair of the Westfield Farmers Market Committee and was recently named Westfield's outstanding volunteer of the year by the Westfield Chamber of Commerce for that work.

In addition, John is the Past-Treasurer of the Downtown Westfield Association – a non-profit association of Westfield residents and businesses committed to bringing vitality and growth to downtown Westfield, and the Past-Treasurer of The Heart & Soul Clinic – a not-for-profit dedicated to providing free medical and dental care.

Reid F. Trautz
Practice and Professionalism Center, Annandale, VA

Reid Trautz is Director of the Practice and Professionalism Center at the American Immigration Lawyers Association. He is a past Chair of ABA TECHSHOW and a Fellow of the College of Law Practice Management. A highly regarded speaker and author, Reid is co-author of the ABA book "The Busy Lawyer's Guide to Success: Essential Tips to Power Your Practice." He blogs on innovation in management and ethics for lawyers at Reid My Blog! Follow him @RTrautz.

After practicing law in a small firm for ten years, I sought a different path that would merge my training in the law with my passion for business. I now advise and counsel lawyers who seek excellence in the practice by providing superior legal and customer service to their clients, while maintaining a balanced quality of life. I am pleased to contribute to the discourse in the legal profession on the issues of business process improvement, technology, legal ethics, financial management, attorney-client communications, and risk management. In addition to the information and commentary on this blog, I am co-author of The Busy Lawyer's Guide to Success: Essential Tips to Power Your Practice, published by the ABA and available through on-line bookstores. I am also the author of numerous practice management articles and publications on these topics. (See my Digital Ink for a sampling of articles on-line.) In addition, I have had the honor of being invited to speak and present on these issues at legal conferences across North America, including the Missouri Bar Solo & Small Firm Conference; Atlantic Provinces Trial Lawyers Association; Oklahoma Solo & Small Firm Conference; ABA TECHSHOW; Arizona Bar Annual Meeting; Virginia Trial Lawyers Solo & Small Firm Conference; Law Society of Upper Canada/Ontario Bar Association Solo & Small Firm Conference; American Academy of Adoption Attorneys Annual Conference; Pacific Legal Technology Conference; National Solo and Small Firm Conference (sponsored by the ABA GP Solo Division); and numerous conferences sponsored by other ABA Sections. I am proud to be an active member of the ABA Law Practice Management Section, currently serving as Chair of the 2012 ABA TECHSHOW, as well as on the LPM Section governing council. In 2008, I was honored to be inducted into the College of Law Practice Management. I am admitted to the bars of Minnesota, Virginia, and the District of Columbia. I lead an active family life with my wife and our three teenage sons, who keep us running between school and sporting events. When not at home in Virginia, we like to travel the US, discover local diners, drive-ins and dives, and ride roller coasters until we can't anymore.

Paul J. Unger
Affinity Consulting Group, LLC, Columbus, OH

Paul J. Unger is a nationally recognized speaker, author and thought-leader in the legal technology industry. He is an attorney and founding principal of Affinity Consulting Group, a nationwide consulting company providing legal technology consulting, continuing legal education, and training.

He is the author of dozens legal technology manuals and publications, including recent published books, *Tame the Digital Chaos – A Lawyer's Guide to Distraction, Time, Task & Email Management* (2017) and *PowerPoint in an Hour for Lawyers* (2014). He served as Chair of the ABA Legal Technology Resource Center (2012-13, 2013-14)(www.lawtechnology.org/), Chair of ABA TECHSHOW (2011)(www.techshow.com), and served as Planning Chair for the 2016 ACLEA Mid-Year Conference in Savannah, GA. He is a member of the American Bar Association, Columbus Bar Association, Ohio State Bar Association, Ohio Association for Justice, and New York State Bar Association, and specializes in document and case management, paperless office strategies, trial presentation and litigation technology, and legal-specific software training and professional development for law firms and legal departments throughout the United States, Canada and Australia. Mr. Unger has provided trial presentation consultation for over 400 cases. In his spare time, he likes to run and restore historic homes.

Elizabeth Eichholtz Walker
Becker Bouwkamp Walker, P.C., Indianapolis

Elizabeth Eichholtz Walker is a partner in the firm of Becker Bouwkamp Walker, PC in Indianapolis, Indiana. Elizabeth has focused her practice on exclusively family law matters since graduation from law school. Elizabeth represents clients in relationship transitions of all types, including contested and uncontested divorce, child custody, child support, modification actions, contempt proceedings, relocations, and parenting time issues. Her practice is full-service which includes prenuptial and postnuptial agreements, guardianship or third party custody, adoption, juvenile paternity actions, grandparent visitation rights, family law appeals, and other family law issues. Elizabeth received her B.A. from Purdue University in Political Science and her J.D. at Indiana University Robert McKinney School of Law. She is a member of the Indianapolis Bar Association, Hamilton County Bar Association, and the Boone County Bar Association. Elizabeth is a Distinguished Fellow of the Indianapolis Bar Foundation, has been recognized as an Indiana Super Lawyer Rising Star in 2015- 2020 and as a “Leadership in Law Up & Coming Lawyer” in the Indiana Lawyer newspaper in 2016. She also serves as the secretary to the Board of the Indianapolis Bar Foundation and is a Board Member of the Central Indiana Association of Collaborative Professionals (CIACP). Elizabeth is an experienced trial lawyer who works hard both in the courtroom and in mediation to advance her clients’ interests. Elizabeth serves as a private and volunteer court-appointed Guardian Ad Litem in the Hamilton County and Boone County Courts on behalf of children.Elizabeth is married to her husband, Aaron and enjoys spending quality time with Aaron and their two fur babies, Gus & Tuck. Her hobbies includes reading, fishing, being outdoors and cooking.

MARK S. ZUCKERBERG OF THE BANKRUPTCY LAW OFFICE OF MARK S. ZUCKERBERG, P.C.

Mark S. Zuckerberg is one of only ten Board Certified Consumer Bankruptcy Specialists in the entire State of Indiana and has filed over fifty-thousand (50,000) bankruptcy cases in his thirty-five (35) year career. Mark Zuckerberg is an adjunct professor teaching secured transactions at The McKinney School of Law. He frequently lectures both locally and nationally to lawyers and various groups on the topic of consumer bankruptcy law. Mr. Zuckerberg has spoken at the National level at the American Bankruptcy Institute, the National Association of Consumer Bankruptcy Attorneys, the National Conference of Bankruptcy Judges Annual Conference and the Southeastern Bankruptcy Institute. He has been quoted on several occasions in the New York Times, Indianapolis Star, The Indianapolis News, and several other news publications. Mr. Zuckerberg has been interviewed by NBC Evening news, Business Week, and People Magazine. Mr. Zuckerberg formerly served on the board of the American Board of Certification. Mr. Zuckerberg is a past Chairman of the Bankruptcy and Creditors Right's Section of the Indiana State Bar Association. He was the only consumer bankruptcy attorney to debate Senator Grassley on the merits of bankruptcy reform on National Public Radio's *Morning Edition*. Mr. Zuckerberg has been recognized by Who's Who in American Law and the Best Lawyers in America Consumer Guide. Mr. Zuckerberg was selected as one of Indiana's top 50 lawyers by Law and Politics as printed in Indiana Monthly Magazine and also helped author Indiana's newly enacted Exemption Law. Mr. Zuckerberg was awarded Master Distinguished Fellow by the Indianapolis Bar Association. Mr. Zuckerberg received his BA from Indiana University and his JD degree from Capital University.

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Technology, Time Management Strategies, Paperless Practice & Confidentiality Control

Paul J. Unger
Affinity Consulting Group, LLC
Columbus, Ohio

Section One

Technology, Time Management Strategies, Paperless Practice & Confidentiality Control…….Paul J. Unger

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TAME THE DIGITAL CHAOS FOR LEGAL PROFESSIONALS

HOW TO MANAGE YOUR WORKLOAD DISTRACTION, TIME, TASK & EMAIL MANAGEMENT

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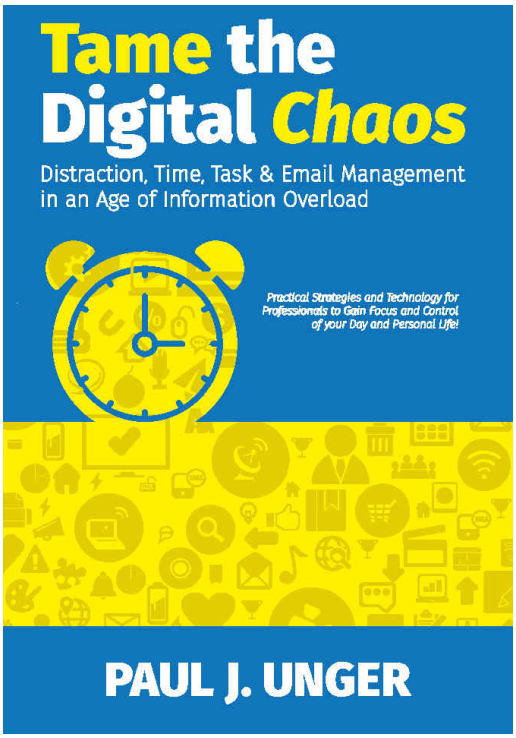
EXCERPTS FROM TAME THE DIGITAL CHAOS ®



Materials contained below are excerpts from the full book, *Tame the Digital Chaos – Distraction, Time, Task & Email Management in an Age of Information Overload*.

How to Order Copies of the TDC Book or the TDC Daily/Weekly Planner:

- Amazon
- www.pauljunger.com
- www.affinityconsulting.com
- 1-877-676-5492 (9 am – 5 pm EST)

MEET THE AUTHOR

PAUL J. UNGER, ESQ.

Paul J. Unger is a nationally-recognized speaker, author, and thought-leader in the legal technology industry. He is an attorney and founding principal of Affinity Consulting Group, a nationwide consulting company providing legal technology consulting, continuing legal education, and training. He is the author of dozens legal technology manuals and publications, including recently published books *Fight the Paper* (2019) and *PowerPoint in an Hour for Lawyers* (2014). He served as Chair of the ABA Legal Technology Resource Center (2012-13, 2013-14) (www.lawtechnology.org) and Chair of ABA TECHSHOW (2011) (www.techshow.com). Mr. Unger now spends most of his time speaking, coaching, leading professional development programs for lawyers, and conducting technology and practice management assessments.

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TDC DAILY PLANNER

INTRODUCTION

THE PROBLEM WITH TIME IN THE AGE OF "INFOMANIA"

The goal of this program is simple—to teach you time and task management skills and to help you cultivate the habits you need to make technology your servant so that you can regain control of your workday and personal life.

Technology is supposed to be our servant. However, for most of us, we have become a servant to technology. We need to turn that scenario around, and make technology work for us, not against us. Technology is supposed to be helping us do more in less time, but instead, it is controlling us in a very negative way. You've heard it—do more in less time and go home early, right? What happened to that? In my humble opinion, we have done the opposite. We have all become so dazzled by technology that we have lost all common sense. I hear comments all the time like:

"I can't get anything done because I get so many emails every day!"

"My work piles up because of all my interruptions."

"I do better with good old-fashioned paper."

"I can't keep track of my tasks . . . I constantly let things slip between the cracks."

Managing tasks and time is a problem that has been around for centuries. Most of us wish that we had another few hours a day to get things done. For most of us, technology has hurt us almost as much as it has helped us. With all the emails, instant messages, smartphones, social media posts, laptop computers, and tablets, we cannot escape the endless number of interruptions that prevent us from focusing and "being present" to tackle all that we must do every single day.

To compound the problem, most professionals are a digital mess! To achieve effective time, document, and email management, we must "get organized." To be organized today, we absolutely must figure out how to manage digital information. According to one study, we receive via digital delivery (email, text, and social media on our phones, computers, etc.), the equivalent of 140 newspapers of information per day. This can be overwhelming, especially if you do not have a system in place to process that digital information.

As one example, approximately 1 attorney in 10 have eliminated over 90% of paper files. In other words, only 1 in 10 have stopped maintaining a paper file and rely solely on a digital file. Quite frankly, this is terrible.

The good news is that the tools necessary to eliminate paper are available, easy to use, and inexpensive. Of course, this hasn't always been the case. Back in the '90s, scanners were very expensive and relatively slow. Document management systems weren't very easy to use, and they were also expensive and made primarily for large organizations. Electronic storage space on servers was also expensive. Since that time, the tools have steadily improved as their costs have declined. Secure cloud storage is a highly competitive market, and therefore, there are many solutions available at a reasonable cost. As a result, the benefits of paper reduction now far outweigh the costs of implementing such a system.

The methodologies outlined in this program combines distraction management skills, digital information strategies, with proven time management techniques utilizing technology tools for professionals in a practical and simple way. Many time management experts shy away from technology. I firmly believe this is a huge mistake. We must find a balance! Reverting to paper in today's modern world is a cop-out, especially in the age of technology and smartphones.

CHAPTER 1

DISTRACTION MANAGEMENT

PARDON THE INTERRUPTION

In an eight-hour workday, if we receive 100 emails, that equates to receiving one email every 4.8 minutes. Combine that with instant messages, phone calls, and email curiosity breaks, and that equates to an interruption about every 2–3 minutes! Sound familiar? Let's assess your situation.

Self-Assessment

Take the following quick survey (analyze your daily average). How many of the following do you receive on a daily basis?

- Emails: _____
- Instant messages: _____
- Phone calls: _____
- Internet curiosity breaks: _____
- Total Interruptions: _____
- Divide your total into 480:_____
  (interruption every this many minutes) _____

Other important questions:

- Identify the people (generally) you must respond to immediately. __
- Identify the people (generally) you must respond to within 2 hours.
- Identify the people (generally) you can respond to by the end of the day. ___
- Identify the people (generally) you can respond to within 1-2 days. _
- Do you and your team members give each other some uninterrupted time? _
- Has technology simplified your life? _____
- Do you feel technology is controlling you? _____
  _____

Information Overload—Distractions and the Cost of Task-Switching

150 emails, 50 instant messages, 20 telephone calls, 15 walk-in interruptions, 25 social media notifications, 50 email or internet curiosity breaks—that totals 310 digital interruptions. Divide that into 480 workday minutes and that is an interruption every 1.55 minutes.

Most studies indicate that the average professional is interrupted every 2–3 minutes. Now let's look specifically at just internal interruptions. The average worker checks Facebook 21 times per day, takes 74 email curiosity breaks, and switches tasks on a computer 564 times a day. With these numbers of external and internal interruptions, it is incredible that we get any deep level project work accomplished.

In a 2007 Microsoft study, researchers concluded that it takes 15-minutes to return to the work that computer programmers were performing at the time of an electronic-based interruption. If we get interrupted every 2–3 minutes and it takes 15 minutes to return to the work we were performing, how do we get anything done during the day? To make matters worse, most post-2015 studies indicate that it now takes 23 minutes to return to the task that we were performing before an interruption, and 40% never return to that task after dealing with the interruption. This is why we look at our timesheets somedays at 5 pm and see only 2 hours of billable time but it feels like we put in a 14-hour day.

Attention Deficit Trait

The reality is that we live in an age of information overload. We are constantly connected to the world and inundated with information. We sleep with our smartphones, we are surrounded by 24-hour news networks, add in social media and tablet computers—we can't escape. This is why very smart people underperform. Do you ever wonder why your head is in a constant cloud and you are unable to focus? It is called Attention Deficit Trait (ADT) and it is a world-wide epidemic.

ADT is a relative to Attention Deficit Disorder (ADD), but it is very different in that ADD has a genetic component; ADT does not. ADT is environmentally induced, and in today's age of information overload, those environmental factors are technology-based. In other words, ADT is a condition that is in large part caused by technology and the connectivity that we love so much. Yes, the very technology that we love so much is causing us to walk around like zombies. The scary part is that no one knows the long-term effects of information overload. However, some studies suggest that the problem is getting worse.

What can we do about it? We need to rethink and realign the way that our lives intersect with technology. Listen, I love technology. It is my life and passion, but sometimes it is frustrating, especially when it has a negative impact on productivity and my personal life. We combat ADT and overcome our inability to focus by attacking ADT on four fronts:

1. Enhancing our personal health,
2. Building our workplace health,
3. Learning a time, task, and email methodology, and
4. Acquiring attention and distraction management skills.

Personal Health

Personal health includes both physical and mental health. I am not an expert on this topic, and it is not the focus of this program, but it is important enough to mention when discussing gaining control over your workday. Physical and mental health are very important to every aspect of life. Physically, we know that when we are fit, well-rested, and healthy, we feel like we can conquer anything. When we overeat and when we are sleep-deprived, every situation seems to be doomed for failure. As an example, we know that when we eat a heavy meal for lunch, it is difficult to stay awake

and concentrate for the rest of the afternoon. From a mental health perspective, we also know how difficult it is to concentrate and be productive when we are depressed or anxious, or when we are focusing on a personal problem from which we are suffering. We can't ignore the importance of our physical and mental health on our work life. If these areas need improvement, work with professionals as needed to get your physical and mental health on track. There are hundreds of reputable fitness trainers online who can help you get on a regular exercise program, as well as hundreds of licensed online therapists or life coaches to help you work through issues. We all have our issues. Seeking outside help can be a real game-changer.

Workplace or Organizational Health

Organizational health is also very important. Again, I am not an expert on this topic, but it does have an impact on one's performance. We know how difficult it is sometimes to focus in an environment that is negative or unhealthy. We know how difficult it is to operate in an environment full of drama and distrust. As such, we need to examine ways to improve workplace health. I am not a subject matter expert on this, but a great starting point that I recommend is *Five Dysfunctions of a Team* by Patrick Lencioni and *The Infinite Game* by Simon Sinek. Both have multiple books in publication. I would also highly recommend Simon Sinek's talks on organizational health and leadership. Search Simon on YouTube to watch a few of his videos. He is fantastic, and an inspiration.

Learn a Time, Task, and Email Management Methodology

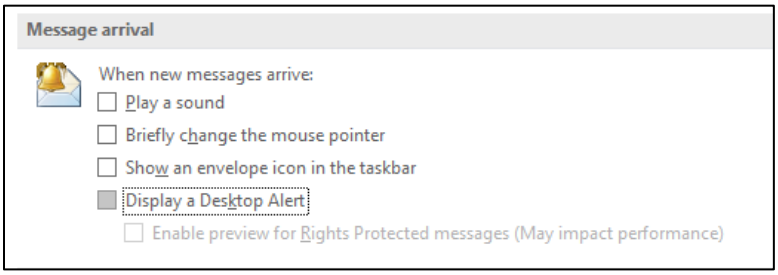
We need an effective way to (1) process the hundreds of digital and human interruptions/tasks that we receive during the course of a day, and (2) organize the tasks, digital information, and paper information that hits our desk. In other words, we need a digital methodology to get organized—and stay organized. If we don't have system in place, we will operate in state of chaos. Studies show that if we do not have an effective task management system to capture our tasks and file away that information, we continue to worry about those things, which has an enormous impact on our ability to focus. I am an advocate of using and customizing tools like Microsoft Outlook and our smartphones to process this information. For those of you in the legal profession handling enormous volumes of documents, I also think that legal document management systems can be extremely helpful to legal professionals. These are tools like Worldox, NetDocuments, or iManage. For other professionals, tools like Microsoft SharePoint, customized for your organization's document management would be invaluable.

Attention Management Strategies

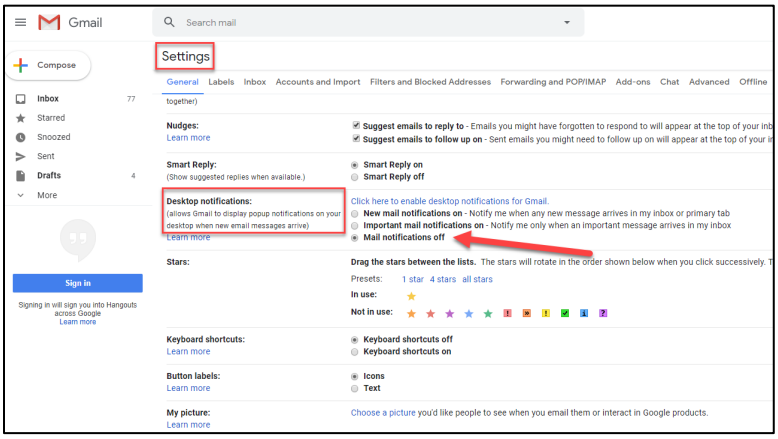
I want to share some essential attention management practices that are easy, practical, and will make an immediate impact on your ability to focus:

Turn Off ALL Digital Notifications.

We all should be aware of the perilous cost of task-switching. Notifications are invitations to task-switch. They are like a dozen little devils sitting on our shoulder, tempting us to do everything except what we are supposed to be doing, and those devils have a direct hotline to our brain. Why would we give the world a hotline to our brain? Turn all notifications off—and I mean ALL of them! In Outlook, email notifications can be turned off by navigating to **File** > **Options** > **Mail** and deselecting the four different methods of notifying you when a new message arrives.



In Gmail, navigate to **Settings** > **Desktop Notifications** and turn mail notifications off.



On an iPhone, go to **Settings** > **Notifications** and go through and turn off notifications by App. On an Android-based phone, go to **Settings** > **Notifications** > **Application Manager**, then turn off notifications by App.

Practice Single Tasking

It is not enough to say that multi-tasking is bad. We need to practice single tasking. We need to clear our desks AND our multiple monitors of information that is not directly relevant to the project that we are executing. For example, you should almost always minimize Outlook on your second monitor while you are working on projects unless you are using that information for the task that you are performing on your main monitor. Why would you leave up on your beautiful 21" screen the single most chaotic distraction known to man in the 21st century—email? That is insane if you think about it. Email fires distraction bombs at us every 30 seconds to 5 minutes. How can we possibly focus if we see those bombs land in our inbox? Just because we have 2 or 3 monitors doesn't mean that we need to have something displayed on them, especially if the information displayed on them derails our ability to focus on the task in front of us.

Pomodoro Technique ®

The Pomodoro Technique is a wonderful and easy technique that utilizes a 25-minute timer to maximize attention for a single task. Pomodoro involves single tasking for 25 minutes and then taking a break and doing something relaxing for 5 minutes. In other words, working in intervals. The human brain functions very well maintaining attention to a single task for 25 minutes. After 25 minutes, we begin to lose focus. By giving ourselves a 5-minute break, we can return to deep-thought work for another 25 minutes very easily.

After you get used to concentrating for 25 minutes, one can adjust the concentration interval to a longer time. Many people are able to work for 40 minutes or longer and take a 10-minute break. I often go 50-minutes now that I have expanded my initial non-existent attention span. The Pomodoro Technique makes a huge impact on productivity and also helps combat procrastination. Think about it, we can endure even the most tedious dreaded task for 25 minutes, right? Once we get a little momentum going and we get immersed in the project, it becomes a lot easier and you don't want to stop.

One important note: I recommend that you do not process emails during your break. Take a real break and do something relaxing, like getting some fresh air or water, or taking a 2-3 minute walk without your phone.

There are many other great time management techniques that are part of the Pomodoro way. To learn more, visit https://francescocirillo.com/pages/pomodoro-technique.

Tackle Deep-Thought Work Early in the Day (or when rested)

Dive into deep-thought work, like writing projects, early in the morning. There is little question about it—our brains function better following quiet time or sleep. We also know that we can be highly productive while the rest of the world is sleeping because there are far fewer interruptions. This can be one of the most productive times of the day.

Create Rituals

Rituals are short checklists designed to execute the same desired tasks during a set period of time—for example, a morning ritual. Rituals keep us on task. They are extremely helpful because they help us form positive habits and prevent us from getting distracted. As an example, I have a morning administrative ritual from 8 am to 10 am whenever I am in the office (when I am not traveling, speaking, or teaching). I avoid appointments with anyone during that time period unless it is urgent or extremely important. My morning ritual looks something like this:

- ✓ Review my Daily Plan that I created the day before (see below)
- ✓ Eat breakfast at my desk (oatmeal)
- ✓ Take my fish oil, garlic & vitamins
- ✓ 5-minute huddle with my team (as a group, or shorter with individuals)
- ✓ Reach out to one new organization for business development (speaking)
- ✓ Ask a potential client or existing client to grab coffee or virtual coffee via Zoom
- ✓ Review my potential new client report
- ✓ Reach out to past clients without active matters to check in
- ✓ Engage in business social media and send birthday wishes
- ✓ Check in with my leadership team members
- ✓ Check in with my partners

I don't get all these items finished each day, but I certainly do all of them at least twice a week. What I don't get completed today, I pick up where I left off tomorrow.

Rituals also remind us to do things that we frequently forget . . . things that we commit ourselves to do as New Year resolutions or annual goals. By adding rituals and checklists into your life, you can greatly enhance your ability to focus and do those things that seem to always fall off the radar.

Checklists can also be extremely helpful for enhancing our ability to focus. I discovered an awesome app for the iPhone/iPad called Simple Checklist to organize all my daily rituals and checklists. If you have an Android-based device, there is Chore Checklist or Habitica. One can use an app like this for other important checklists, like an Opening File Checklist, Closing File Checklist, Mergers & Acquisitions, Client Interviews, etc. I also use an app like this for personal things like "Winterize House Checklist" (turn off water spickets, clear garden, prep rose bushes, clean gutters, bring in ceramic pots, etc.) or "Monthly Home Tasks" (dog's heartworm, replace furnace filter, replace water filter, refrigerator filter, etc.).

Engage in Daily Planning

Daily planning is critical if you want to achieve focus and change your habits. If your current routine doesn't include daily planning, that routine must be broken and reconstructed. The reality is that very few people take the needed 5 to 10 minutes at beginning of the day or the end of the previous day that will save them hours, days, weeks, months, and years of waste and inefficiency. Most people just dive in or "show up." We jump right into email, where we become instantly derailed by fighting little fires instead of creating clear goals or a roadmap for the day. We need to sketch a daily plan, huddle with our team, adjust our daily plan if needed, and then use that daily plan as our roadmap to keep us focused. Without a roadmap, it is incredibly easy to allow distractions to control you. If you don't have a plan, you will quickly become part of someone else's plan.

Many people experience success by planning the next day's roadmap at the end of the day. We know where we left off with tasks and can plan where to begin again the following day. Others successfully engage in daily planning the morning before the day starts, when we are well rested and with a clear mind. If you engage in morning planning, I recommend coming in 10-15 minutes early to do so, before the day's fires have started. It is difficult to focus once the chaos begins, especially without a solid road map for the day.

Engage in Weekly Planning

A once-a-week "get organized" deep dive is essential to successful distraction and time management. This will help you frame realistic daily planning, catch things that "slip between the cracks," and keep you focused on the big picture goals that you want to achieve. It will help you stay driven and will give you the power of creativity and sense of control in your day and in your life. Do you want to move a mountain in your lifetime or just shift piles of dirt aimlessly? Without engaging in a weekly planning habit, you are just shifting around piles of dirt on the same mountainside.

As explained below in the chapter on weekly planning, I recommend this being a very disciplined practice that is rarely ever missed. Schedule everything around it as much as possible. Do it at the same time every week. For me, I do my weekly deep dive on Friday morning before the day starts.

Digital Detox—A Balanced Approach

Many people view digital detox as "going off the grid." While I love the idea of doing that a couple times a year for a few days, it isn't very realistic for many professionals, and it certainly isn't very practical on a day-to-day basis.

A better way of thinking about digital detox is setting healthy boundaries. You want to set boundaries that still give you some freedom and joy, but also set you up for personal and professional success.

Here are some *examples* of healthy boundaries. Adjust the values/times to fit *your* needs.

Screen Scheduling

- No devices after 9 pm
- No email after 7 pm
- Phone-free food
- Phone-free walks
- Phone-free gardening
- I will spend no more than a total of 30 minutes per day on social media
- Social media-free Sundays

Volunteer Work

- I will serve on no more than 1 board at any one time
- I will serve on no more than 1 association committee at any one time
- I will limit non-billable administrative tasks to 10 hours a week
- I will handle 1 new pro bono case every other month

Personal Relationships

While boundaries are usually articulated in the negative (i.e., "I will *not* spend more than 30 minutes a day on social media"), relationship boundaries sound a little better stated the other way around.

- I will have 1 date night per week with my significant other
- I will go running or exercise with my children 2 times per week

Dietary, Exercise, and Health

- I will not eat between the hours of 7 pm and 10 am
- I will eat no more than 250 calories a day of junk food (e.g., chips or sugary food)
- I will limit my animal protein intake to 5% of my total diet
- I will drink no more than 2 caffeinated drinks per day
- I will drink no more than 1 alcoholic drink per day (and I will not accumulate them until the end of the week and drink them all at once).
- I will not get less than 7 hours of sleep every night.
- I will not consume less than 1 gallon of filtered water per day.
- I will not neglect my mental health. I will meditate once a day.

CHAPTER 2

EMAIL MANAGEMENT

THE EMAIL PROBLEM

The typical professional today sends and receives between 100 and 200 messages daily. While we are discovering new ways to communicate via instant messaging and applications like Microsoft Teams, email is still one of the most important technological communication advancements of the past 100 years. It has fundamentally changed the way we communicate and do business.

For some professionals providing services like legal, accounting and consulting, emails present a wide array of issues that most of the business world will never face. In this chapter, we will discuss these issues and teach you how best to deal with them. These issues or problems range from ethical considerations to email overload and time-management. While there is no perfect solution, there are many methods to effectively handle large volumes of email.

The first step to solving any problem is understanding the problems that exist. We must get our arms around all the email issues that we face. The second step is to isolate each problem and tackle each one, without forgetting how that might impact other email problems. For instance, controlling spam email too militantly may prevent you from getting an important email from a client if your spam filter inadvertently catches an email from a client. In other words, when you solve one problem, it may open-up a different can or worms.

METHODOLOGY TO CONQUER EMAIL—YOUR GAME PLAN

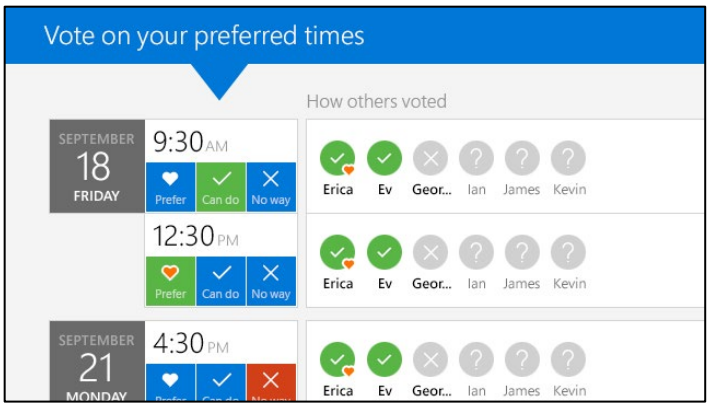
Most people do not have a methodology or a "plan" to process emails. Most people just blindly dive into email at the start of the day. However, developing a plan to process emails can vastly improve your workday efficiency. What follows is a logical game plan or methodology to process your emails. Adjust the items as needed.

Reduce the Number of Emails You Receive

We often focus on how to eat through all our emails, but we fail to think about ways to actually reduce email. Here are some practical ways to significantly reduce the amount of email that you receive.

1. Resolve email instead of kicking the can down the road. When we kick the can down the road, we often cause other problems and end up getting dozens more emails stemming from the original email.

2. Don't create 10 more emails from your response. As one example, when trying to schedule an appointment with someone or multiple people, use applications like Doodle or Microsoft FindTime. I like Microsoft FindTime because it is free with Microsoft 365 and it integrates directly with your calendar and contacts in Outlook. Too many people send an email like this: "How about setting up a meeting next week sometime?" If you sent that email to just 5 people, you are going to get 5-10 emails back with responses everywhere from "Sure" to "I have to take my pet to the vet" to "How about Tuesday at 4, or Wednesday at 3, 4 or 5, or Friday at 8, 9, 3, 3:30. . . ." In other words, it creates a total mess of emails that you have to piece together like a puzzle. It is like herding cats. Instead, send a quick, easy-to-create poll with FindTime or Doodle so that everyone can vote on their preferred times. These apps hold all proposed dates on your calendar as tentative until the poll is closed and you, as the organizer, pick the final time. Then it sends the invitation out to all participants. It makes herding cats as easy as pie and eliminates blowing up everyone's inbox.



3. Be specific, not vague, in your emails, so you don't get 10 more questions. If people don't understand your answer, they are going to email you or others, causing even more email traffic and potential drama. Be clear in your responses. If it is too much to type, consider picking up the phone, or having a Zoom or Microsoft Teams call with video and screen-sharing to offer more clarity to your response.

4. Dial down the number of people that you and people in your office CC, BCC, or send group emails. Copy only the people who need to read the message.

5. Give your staff permission to not say thank you. Getting 30 emails that just say "thanks" will clutter your inbox, increasing the likelihood that an important email gets sandwiched and lost in between all the "thank you" emails.

6. Get a spam filter or fine-tune your existing spam filter.

7. Pick up the phone or get out of your chair and have an in-person conversation rather than sending an email. This will avoid a great deal of misunderstandings that cause drama and a dozen more emails. Have the in-person or phone conversation, and then send the confirming email summarizing the solution.

8. Increase the use of Instant Messaging apps like Microsoft Teams or Slack.

9. Out of Office Notifications. Use them sparingly so people stop emailing you when you are out and avoid potential disasters. Don't overuse them. Don't rudely pepper other people's mailboxes with auto-responses. Finally, don't forget to turn them off when you return!

10. Use Outlook rules to auto-route emails from listservs and other similar senders into special inbox subfolders that you can visit when needed.

Process Emails Faster and More Efficiently with Templates or AutoText Entries

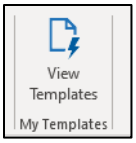
We all have email responses that are formulaic that we have to retype over and over again. Sometimes we spend several minutes looking for a similar email that we drafted recently to another person. Instead of wasting time retyping or looking for that similar email, we need to be able to process these emails more efficiently. We automate the creation of documents using forms, macros, precedents, or templates, so why wouldn't we automate the emails that we frequently draft? Instead of wasting time re-inventing the wheel or looking for older email responses, create an email template or an AutoText entry in Outlook to automate the response.

Email Templates

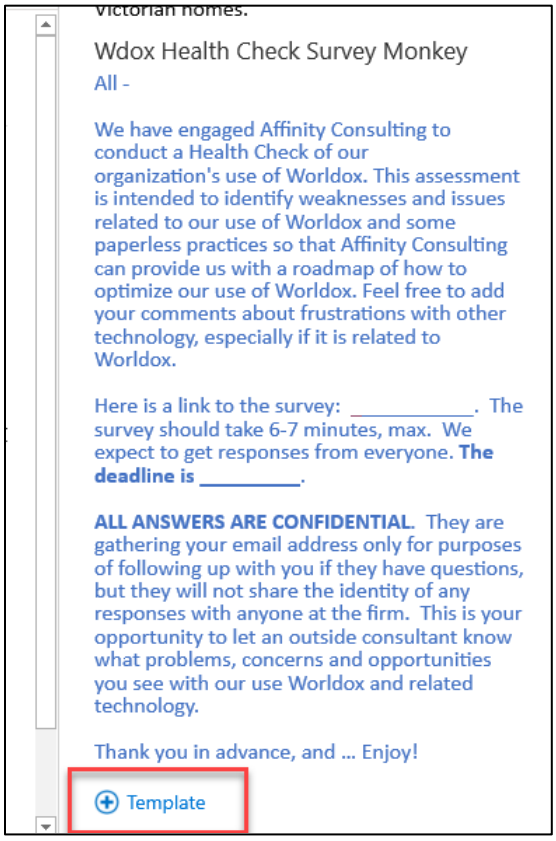
Email Templates are part of Microsoft 365. If you don't have a subscription to Microsoft 365, you will not have this feature available. Instead, use AutoText entries instead (instructions below).

1. Select **New Email** to create a new email.

2. Select **View Templates** from the Message ribbon. If you do not have this option, you need to download Microsoft 365 or update your version of Microsoft 365 for Outlook.



3. To create a new template, select the **+ Template** button located at the bottom of the My Templates pane.



Name your Template, insert the desired text and hit **Save**.

Batch Process Emails

Most professionals need to be more deliberate about when they check emails instead of checking email 70+ times a day or leaving their Outlook inbox maximized all day long. We need to reduce the number of interruptions (email and otherwise) so we can be more focused. After all, how on earth can anyone get anything done with an interruption every 2 to 3 minutes?

Ask yourself the following question: 10 or 20 years ago, would you have let someone walk in your office every 2 to 3 minutes offering to sell you a product or asking you for a favor? Of course, you wouldn't! So, why do you let it happen now with email? Why do you drop everything that you are doing to read and/or respond to an email that just arrived? You have invested thousands of dollars in technology that is supposed to make you more efficient, but instead it has created an interruption hotline to your brain.

Some time management experts suggest checking email twice a day. While this may sound like a good plan to some, it is completely unrealistic for most busy professionals. When email was just becoming popular, there wasn't an expectation that it would be dealt with immediately, so twice a day was probably okay. However, in today's age, checking email only twice a day is unrealistic and potentially irresponsible. Entire companies communicate via email. Email is a way of life and the way everyone communicates. Checking email twice a day isn't enough if you get 100+ emails—it would be overwhelming to sift through that many emails during two sessions. I think checking it throughout the day is more realistic, and just as important, will make it easier for you to prevent your inbox from getting out of control.

One way to handle this is to batch process emails at more planned or deliberate times. Some professionals simply cannot do this, since they live, breathe, and communicate via email instead of face-to-face or phone meetings. However, most professionals can engage in more batch processing at some level. Remember, we are talking about being more deliberate about when to check email instead of checking it 70+ times a day. If you can handle emails at more deliberate times, you could get more project work completed and follow your plan for the day.

Everyone's email batch processing schedule will be different, and it will probably change every day for most people. Some individuals must leave their email maximized on their screen all day or they will be fired! Others can get away with checking email just 2 to 3 times a day. I think most professionals fall somewhere in between those two extremes. It depends on your role and job description within the organization. Whatever the case, take a couple minutes at the beginning of the day to sketch a quick batch processing plan for your day. Here is an example:

Today's Batch Email Processing	
7:30 AM	15 minutes
10:00 AM	30 minutes
12 Noon	90 minutes
4:00 pm	30 minutes
5:00 pm	15 minutes

You will probably not stick to it 100%, but that is okay. Planning to check it 5 times and ending up checking it 7 or 8 times is still much better than checking it 70 times or leaving it maximized all day long on a second monitor. Also remember that every day will be different. Some days you will have no time to batch process emails. Other days, you may have the entire day.

Touch the Email One Time + 3-Minute Rule

Experts tell us it takes on average, 2-3 minutes to read and digest an email. Then we are forced to make a decision. What are you going to do with this email? Before you skip an email, or for that matter, any bit of information that comes across your desk (paper or digital), always stop and ask yourself, "What do I have to do to touch this just one time?" If you delay resolving it or acting on it, you are kicking the can down the road, and you are going to waste another 2-3 minutes the next time that you touch it. As such, always try to touch every email only once!

Delete, Do, Delegate, and Delay

When processing or attacking your email, and following the 3-minute rule, what should you do with the email after you initially review it? Here are your options: The 4 Ds. This is a slightly modified technique that I learned nearly two-decades ago from David Allen in his life-changing book *Getting Things Done*®. I have modified it to better fit the needs of professionals like attorneys, accountants, consultants, etc. who receive not just more email, but also more substantive and longer emails.

DELETE

DO

DELEGATE

DELAY

Remember, any email that can be responded to or dealt with within 3 minutes (saved in a client file, forwarded, deleted, etc.) should be dealt with immediately—the first time you lay eyes on it. This rule is based on the premise that the second time you have to deal with the email, it will again take you another 3 minutes to navigate to it, open it, read it, comprehend it, re-familiarize yourself with the topic and then handle it. So, why not just respond to it or delegate it immediately instead of wasting another 3 minutes at a later date? Stop procrastinating and re-wasting that 3 minutes over and over.

My 3-minute rule is a slight modification of David Allen's *Getting Things Done*® 2-minute rule in 2 important ways:

1. Most emails concerning matters in the legal community and many other professions take longer than 2 minutes, so I increased response time to 3-minutes. If you sell widgets, 1 or 2 minutes may be all you need to process most emails.

2. It usually takes much longer than 2 minutes to read and respond to emails in the legal world. Often, lawyers and other professionals research and carefully craft a response from well-chosen words. It could take 30 minutes, 2 hours, or even days! The critical question to ask is if you have time to resolve the email in the time that you have allocated to batch process, then you should just resolve it. For example, let's say you have 1 hour allocated to batch process emails, and you encounter one email that will take 30 minutes to read and resolve. In that case, you should probably do it, especially if it is an urgent or a high priority. If it is going to take close to an hour or longer, then you may delay it. If you delay it, you are going to process the email by following the procedure below about how to properly delay and get the email out of your inbox. Remember the key to the 3-minute rule is that you avoid or minimize having to process an email more than once.

Delete

Delete whatever you can immediately. Learn how to use the DELETE key.

That should be the first thing that you do before you start dealing with email, just like *not* bringing junk mail and annoying advertisements into your home. It is easier to work from shorter lists than long list, so if you can get your list of unread emails from 20 down to 12, do it! Skim your inbox and **delete** the following:

- All the spam email that gets past your spam filter.
- Interoffice spam that is irrelevant to you.
- CCs that you don't need to save.

- Annoying jokes from friends and coworkers.
- Email from people you don't like (unless it's important, of course).

Do—Just Resolve it!

This is easy to explain, but hard to execute. If you can answer the question, make the decision, provide the solution, and bring it to a resolution, then just do it! Do not forget that you *may* be able to deal with it more quickly by picking up the phone or walking around the corner and talking with someone. Remember, an email oftentimes invites another email.

The problem with DO is that you must be organized in order to "do the do." In other words, if you are disorganized and can't find the answer to a question, then you will never be able to efficiently "do the do!" If you struggle with organizing digital information, I recommend my digital book *Fight the Paper* (2019), available at pauljunger.com.

Finally, if it is an email that is going to take a while, you have to exercise discretion about resolving it now or delaying. If you have time within your allotted batch process period, then go ahead and do it. If not, think about disposing of it in under 3 minutes by Delaying (below). Add it to your task list and calendar *then* move/save the email into the appropriate client/matter file.

Delegate

Much of the email that we receive today should be delegated to someone else, or we need an answer from someone else before we can respond.

If someone else should be handling the task or issue in the email, hand it off appropriately. Don't let someone else put "the monkey" back on you, in the words of *The One Minute Manager Meets the Monkey* by Kenneth Blanchard. You can make these emails and tasks easy to track by setting up a Follow-Up Items Outlook rule described below or use a Quickstep. Be sure that you have a system in place to follow-up on everything that you delegate so you can hold people accountable and the tasks you have delegated get done.

If you delegate or forward an email to someone, or ask for an answer from someone else so you can respond, do you have a system in place to track so you can follow-up on the issue without leaving the email in your inbox? Do people neglect to respond to you on delegated items? Do you sometimes find yourself trying to figure out when and to whom you delegated an item? If so, you may be responsible for enabling this behavior because you do not have a system in place to hold people accountable for tasks that you have delegated. Have you become that "push-over" that everyone ignores and your emails land in world of Neverland?

Here is a rock-solid technology solution that will help you with delegated items or follow-up items that originate from an email.

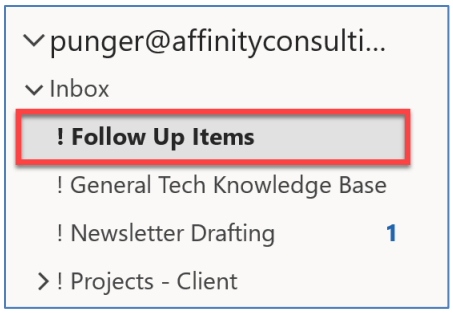
Follow-Up Items Rule

We delegate tasks to folks via email all day. We also ask people for information, but have a difficult time remembering to follow up on those items, resulting in things slipping between the cracks. One way to track those items is by creating an Outlook Rule to "capture" all those items that you are expecting others to do for you. Here is an Outlook Rule that will help.

This Rule looks for emails where you are the sender and where you copied yourself. It will automatically route those specific emails into a special folder called Follow-Up Items, so you have a dedicated folder with only delegated or follow-up tasks that you can review once a day. When I review those items, I usually forward those emails to people and politely ask them to update me on the status.

Here are the steps.

1. First, create a folder in Outlook called something like "!Follow-Up Items". Use an exclamation mark at the beginning of the name so it sorts alphabetically and displays at the top of your inbox subfolder list:



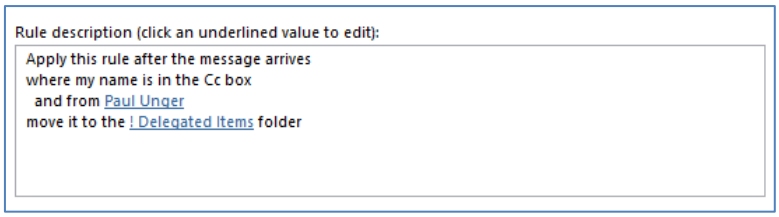
2. In Outlook, click on the **File** menu > **Manage Rules and Alerts** > **New Rule** button.

3. Choose **Apply rule on messages I receive** (that translates to "Apply this rule after the message arrives") and click **Next** at the bottom of the dialog.

4. Under **Select Conditions**, check BOTH **from people or public group** and **where my name is in the CC box**. At the bottom of the dialog, click the hyperlink for "people or public group" and add your email address. This basically creates a rule that will look for emails from you that are also copied to yourself. Click **Next**.

5. Under "Select Actions . . . What do you want to do with the message," choose **move it to the specified folder**. Select the folder that you created called "!Follow-Up Items." If you didn't create the folder yet, you can do it also at this stage. Click **Next** and add any exceptions (probably none). Click **Next**, and name it (something like "Follow-Up Items"), then click **Finish**.

Your final Rule should look something like this:



Visit your Follow-up Items folder regularly. I recommend once a day. Open the items and determine if they have been resolved. If they have not been resolved, forward the email to the person who owes you the information or task and ask for the status: "Hi _____, what is the status of the attached? Please advise. Thanks!"

Delay—If Necessary

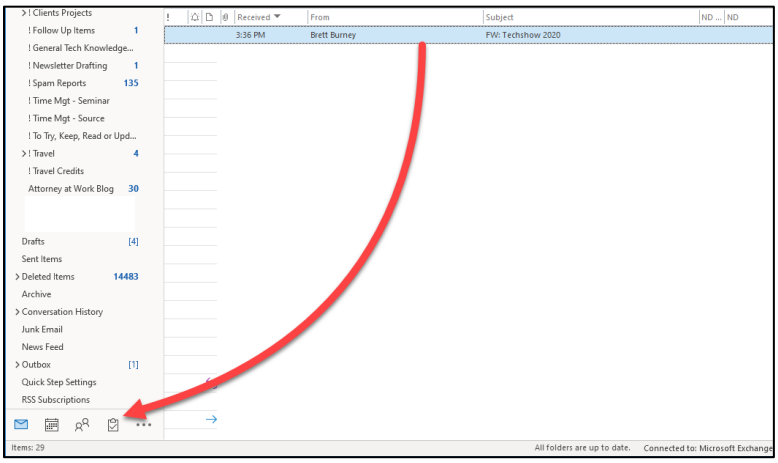
Oftentimes, we need delay a resolution until we have more time to research a topic or draft a longer mail. When we must delay, we should create a task, file the email in the appropriate matter or project folder, and then delete it from our inbox. If left in the inbox, it is likely to get buried by the avalanche of daily emails, and then forgotten until it is too late. We should not use our inbox as a task list.

Delayed emails generally fall into two categories: (1) a very temporary delay (meaning you can get to it in under a day); and (2) a delay of over a day or two. If the email requires only a very temporary delay, then just leave it in your inbox and process it later that day or the next morning. If the delay will be over a day or two, process it as follows.

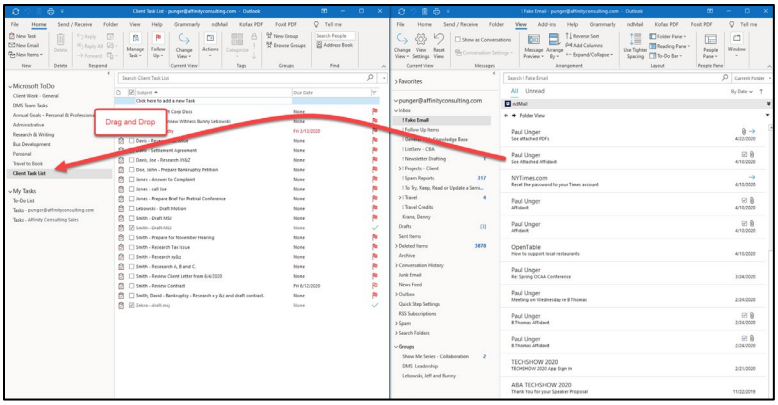
As stated above in the 3-minute rule, if it is an email that is going to take a while to get to or complete, you should simply dispose of it in under 3-minutes by adding it to your task list and then saving it into the appropriate matter file. Stop using your Outlook inbox as a Task List! Instead, do the following:

1. Create a Task from the Email:

Drag and drop the email on to the task module in Outlook. This will convert the email to a task. This function acts as a copy and will leave the email in the inbox for you to take further action, like create a calendar deadline or file it away.



If you have multiple task lists/folders, I recommend that you open your email on one monitor and your tasks on the other monitor, and simply drag and drop emails into the desired task list. Remember, this converts a copy of the email to a task, leaving the original email in your inbox to either file away or delete.



Other Guidelines on Delaying:

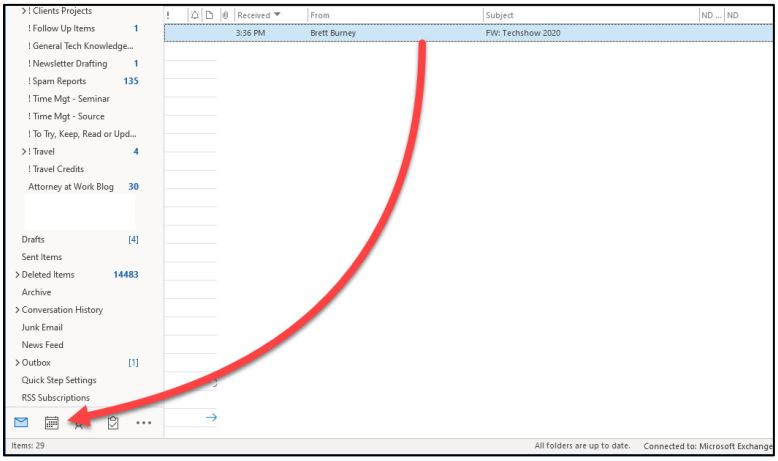
- If you still keep a paper-based task list (I hope not), simply write down the task associated with the email, and then save the email in the appropriate matter or project folder. If the appropriate place is still a paper file, print the email and place it in the paper file.

- In some circumstances, it is okay to set up subfolders under your inbox and place important emails there if you want to access them from your smartphone. For instance, if absolutely no one will ever need a copy of that email because you are a solo practitioner or business owner. Another example is when you want a copy of the email from your smartphone, and there is no other easy way to get it. If you save emails locally using this method, it is critical that you have a backup of your email data.

- If you only receive 10 to 20 emails a day, and you process your inbox down to zero (or close) every day, then it is probably okay to use your inbox as a task list. However, eventually, you will probably outgrow this, as your workload and email volume increases.

2. Record the Deadline on your Calendar:

After you have created a task, drag and drop the email onto the calendar module in Outlook. This will convert the email to an appointment. Again, this acts as a copy function and will leave the original email in the inbox for you to perform the next steps defined below.



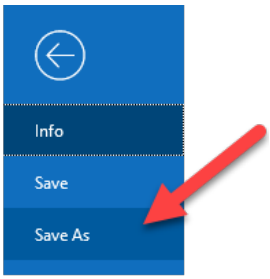
3. Schedule Time to Do It on your Calendar (Time Blocking):

Drag and drop the same email on the calendar one more time to create the appointment with yourself to do the work. If the response requires research and a block of time, schedule the time to do it. In other words, make an appointment with yourself. If you do not do this, you may find yourself up at 11 pm the night before it is due.

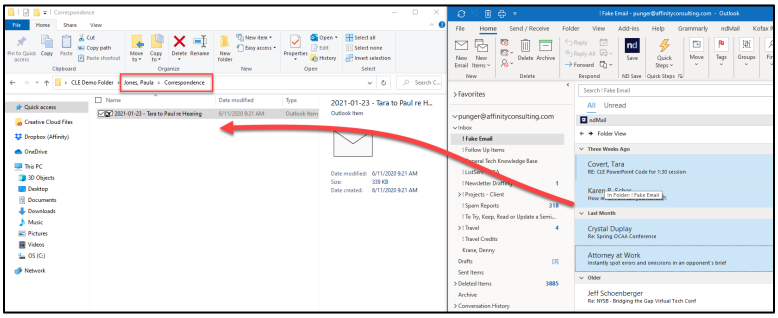
4. File/Move the Email from the Inbox:

File the email and delete it from your inbox. If your team needs access to the email, save it in a place where they can get to it. The correct place for this is within the digital matter or project folder located on your network in a Windows folder or in your electronic document management system. There are multiple ways of doing this, depending on the software that you have:

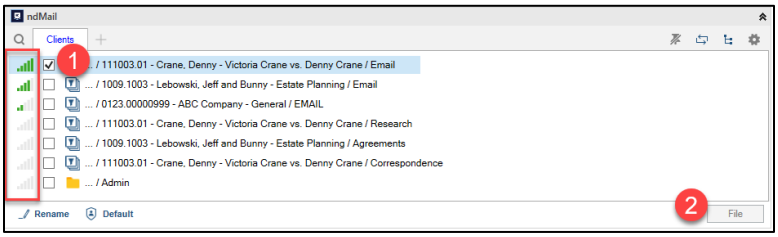
a. **I only have Outlook.** If you only have Outlook, open the email, and select **File** > **Save As**. Save the email like you would save a Word document or PDF. For instance, save it into the correspondence folder and utilize the naming scheme YYYY-MM-DD - Long Name Description.



b. **I only have Outlook, but I have dozens to move all at once.** In this case, open the desired folder through Windows Explorer on one monitor, and open your Outlook email list on another monitor. Next, select all the desired multiple emails and drag & drop them in bulk into the desired folder. Note that you may have to rename them because they will adopt the text in the Subject line as the file name. Alternatively, if you don't have a document management system or practice management system to extract these emails, there are some decent programs like SimplyFile / MessageSave by Tech Hit (www.techhit.com/messagesave) that can help you save emails out of your inbox and into shared folders on your network.



c. **I have a document management system like Worldox, NetDocuments or iManage, or a practice management system like Clio, Centerbase, PracticeMaster, etc.** If you have one of these systems, there are add-ins for Outlook that make it very easy to save emails. Below is a screen shot from NetDocuments (www.netdocuments.com), which demonstrates the simplicity of saving an email into a matter or project folder outside of your inbox. To save an email, simply select it and then select the desired matter from their prediction panel powered with AI/machine learning. This type of solution, by far, is the best and most ideal method for organizations that depend on heavy volumes of email. Many programs like these also offer "conversation thread filing" which can automatically save subsequent emails in the same thread to the matter.



Summary

In summary, remember to try to process emails at more deliberate times, and touch the email only one time. What should you do with it? The 4 Ds—Delete, Do, Delegate, or Delay.

Remember the endgame. Ideally, you want to get the email out of your inbox so that (1) your inbox is "getting to zero"(or close to zero) on a daily basis; (2) any tasks and deadlines get recorded in your task list and calendar; (3) you have scheduled time to perform that task; and finally, (4) you are saving the email into the case/matter file where everyone on your team or in your office has access to it.

CHAPTER 3

TASKS—THE RIGHT TOOL TO MANAGE TASKS

PAPER OR SOFTWARE?

It is critical that you have a tool to track tasks. To *not* have a tool is the biggest mistake. The human brain is incapable of memorizing so many tasks in today's age of information overload. It is best to use our brain on more important things like reading, writing, and analysis than to memorize hundreds of tasks and their deadlines.

I would rather someone have a paper task list than no task list at all. That said, I prefer the use of software for at least the Master Task List. Remember—keep things simple. I recommend the following:

1. A software-based task list for your Master Task List (*i.e.*, Microsoft ToDo, Outook, Gmail Tasks, Clio Tasks, etc.). Your Master Task List will likely store hundreds of tasks/items;

2. Paper for your daily road map/daily list of tasks. This list will have only 3 to 5 things and is kept next to your keyboard.

Why Digital Task Lists Failed You in the Past

Many people have tried using Outlook tasks in the past and failed miserably. There are two primary reasons for this. First, the interface for Outlook tasks is horrible. It is still horrible, to be honest. It looks like a cockpit of a 747. It just doesn't resonate with people. In large part, Outlook tasks have looked as ugly as they do now since Outlook became widely available in the early 1990s! Second, if you were out of the office and needed to create a task, it was impossible to create the task without going back to the office. As a result, tasks would instead get written down on sticky notes and napkins. Today, that problem is solved because we can now enter tasks directly on our smartphones, or simply tell Siri, Alexa, or Google (our virtual assistants) to create the task.

If Outlook or another digital task list failed you in the past, you need to give it another try because technology has improved immensely.

Why Software is Better than Paper for Your Master Task List

Keep in mind, that I do advocate the use of paper for **daily planning** (see below). That is primarily because (1) we need our computer monitors to display other important information, and (2) daily planning is extremely focused and contains a very short list of tasks (usually 3 to 5 items). We are always more focused on a daily basis when we operate from shorter lists. However, since the Master Task List usually contains 100+ items, software is definitely a better tool for the master task list.

Why software is better than paper for the master task list:

1. **One Centralized List**. With software, you have one centralized list, probably stored in the cloud and accessible from multiple devices.

2. **No Re-Writing.** With paper, you constantly have to re-write your lists. When you have 100+ items, that is a waste of time and opens the door for human error.

3. **Shareability and Collaboration.** Tasks maintained within software are sharable with internal and external users. One can have a project and assign tasks to multiple people. Best of all, you can track when those tasks are completed.

4. **Automatic digital reminders/notifications.** Software reminds you when tasks are due and will alert you ahead of time so you can plan to get them completed.

5. **Subtasks.** With software, you have the ability to create subtasks under a main task and track progress.

6. **Backup in Multiple Locations.** Software-based task lists provide data backup up in multiple locations, making tasks extremely difficult to lose, unlike a piece of paper.

7. **Capture and View from Any Device.** With software, you can enter tasks and view them from all your devices (computer, tablet, smartphone).

8. **Sortable Lists.** Software gives you the ability to sort your task list based on the due date, or the description, or the priority, etc. You can't sort anything on paper.

9. **Filterable Lists.** With a click of a button, software gives you the ability to display just the tasks assigned to me, or just the tasks due this week, etc. You can't filter anything on paper.

10. **Synchronization/Integration with other Programs.** Software typically provides the ability to synchronize between Outlook/smartphone/practice management software or contact management software, so all lists are synchronized and up-to-date in all programs and devices.

Outlook Tasks and Microsoft ToDo

The process of task management must be convenient and simple. Outlook isn't perfect. In fact, it is kind of ugly, but it works well with my rules because of its convenience, ease, versatility, and ability to integrate with smartphones. If you cannot easily capture and record a random neural firing, thought, or task quickly and in a central location, that task will either be lost or quickly forgotten. Outlook, along with your smartphone, is a viable solution. Before smartphones, maintaining a task list in Outlook was nearly impossible because you cannot carry your desktop computer around and you cannot wait 5 minutes for a laptop to boot up and start Outlook in order for you to record the task. Smartphones and tablets are instantly available. You can use Siri on an iPhone or iPad or voice commands on an Android device to create the reminder or task. There is no boot-up process. In fact, often times, it is faster than writing it on a random piece of paper. It is certainly better to record it on the smartphone because it can be instantly organized and, even more importantly, instantly backed up, thus far less likely to be lost like a piece of paper, sticky note, or a napkin.

Microsoft ToDo is a relatively new application that Microsoft developed after purchasing a wildly popular task list called Wunderlist. Microsoft finally sunset Wunderlist in 2020, forcing everyone into Microsoft ToDo. Based on everything that I have seen, Microsoft seems to have big plans for ToDo. In fact, if you log into Microsoft 365 today within your browser and open Tasks in Outlook, it is actually the Microsoft ToDo interface—not Outlook. That is great news.

The beauty behind all this is that Outlook synchronizes seamlessly with Microsoft ToDo. If you create a task in one, it shows up in the other instantly as long as you have Microsoft 365 with hosted Exchange (as most organizations do these days). If you don't have Microsoft 365 with hosted Exchange, I would recommend that you simply use Microsoft ToDo without Outlook, or Outlook (or another reliable tool) by itself.

Task Folders

I strongly recommend creating a small handful of necessary task folders (lists) to organize your tasks. Recall, we always focus and operate better from short lists. As indicated above regarding the process, I generally recommend four core task lists if you are an attorney in a law firm, an accountant serving clients from the general public, or someone in a similar profession. Create these four task folders (lists) in whatever system you are using:

1. Client—General

2. Administrative

3. Business Development

4. Home/Personal

For an attorney in a legal corporate department or college/university, or similar profession providing professional services, I usually recommend the following if you don't have to worry about business development:

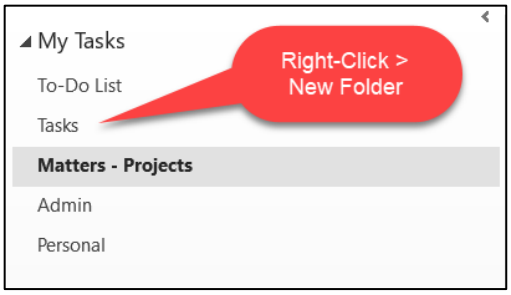
1. General Legal Work

2. Administrative

3. Research and Writing

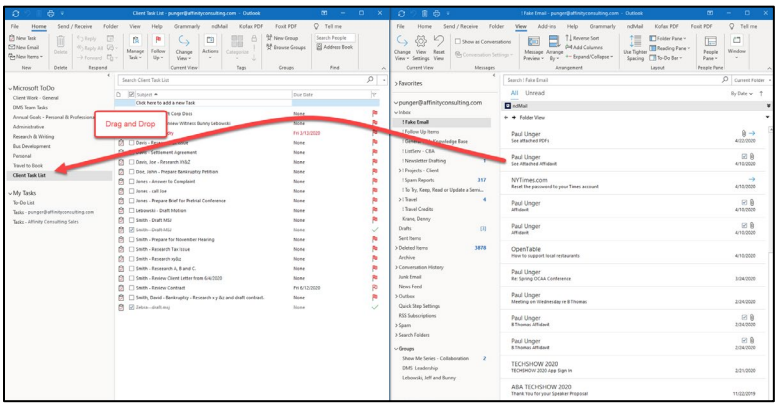
4. Home/Personal (although, you may want to manage a personal list in a separate personal system because of FOIA requests or computer corporate acceptable use policies)

To create a new Task Folder in Outlook, right click on **Tasks** and select **New Folder**.



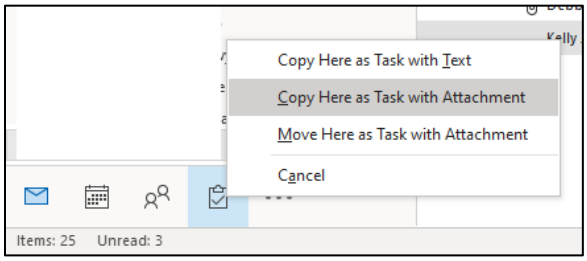
My recommendation to most people providing professional client services is to use Microsoft ToDo as the main task management tool, unless your organization has invested in a more specific software application. You should continue to use Outlook if you like to convert emails into Tasks. Recall they synchronize, so if you create a task in Outlook, it shows up immediately in ToDo. Also remember that a key part of email management is to stop using your inbox as a task list. Many emails remain in inboxes for the simple reason that they are really tasks. You must be able to convert them to tasks easily.

Recall also that within Outlook you can easily convert emails to tasks by simply dragging an email on to the task button. This is an important function.



Additionally, if the email has attachments, you can right click then drag and drop on to the task button or task folder. When you right click, drag and drop, the attachments are embedded within the task, making it very convenient

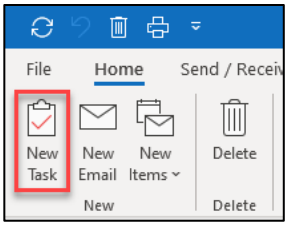
to start working on a particular document, or having all the reference material that you need at your fingertips in order to execute the task.



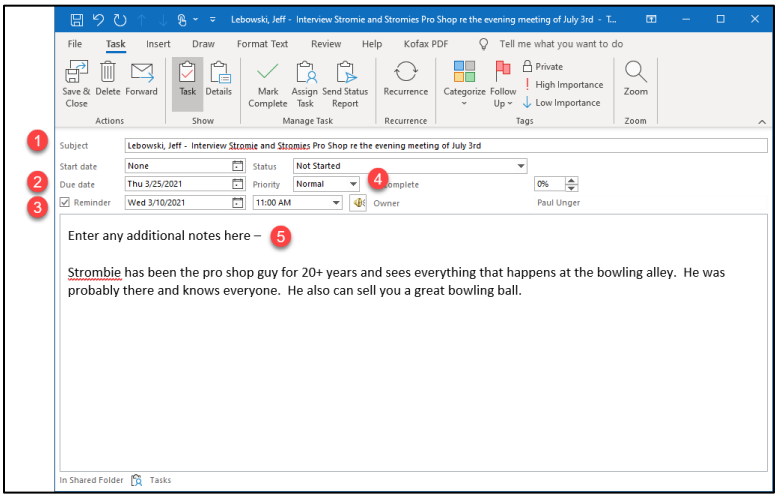
Once Microsoft creates an add-in to convert Outlook emails to a Microsoft ToDo task list item (which Wunderlist could do back in the day when it was widely used and available), then there will be no need to continue to use the older Outlook Task interface. As indicated previously, Microsoft knows how ugly and underutilized the Outlook task module is and will likely replace it completely with Microsoft ToDo. Hopefully, they will do this sooner rather than later.

Creating a Task in Outlook

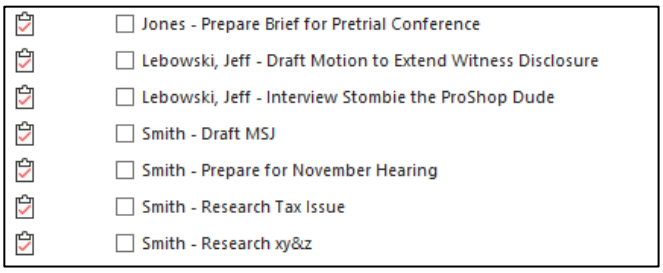
Click on the desired task list, and then, to create a task within that list, click the **New Task** button in the upper left-hand corner, or drag and drop an email on to the task button or a specific task folder.



A New Task form will appear:



1. Enter the Subject starting with the name of the client/matter, followed by a description of the action item. By using the matter name at the beginning, you can group all tasks for that matter together when you sort the subject alphabetically, as seen here:



2. (Optional) Enter a **Due Date** so that you can optionally view tasks with due dates and view those tasks in different colors.

3. (Optional) Add a **Reminder** if you so desire. I find these to be helpful for higher priority items.

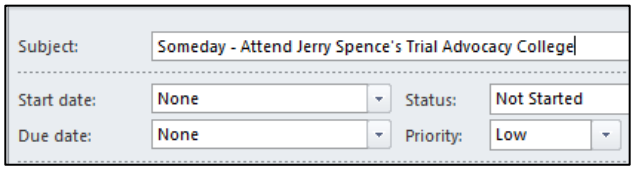
4. (Optional) Set a **Priority** (High, Normal, Low). Not everything is a high priority, despite your feeling of being overwhelmed. Should you believe everything is urgent, then pretend you are categorizing the level of urgency. As a result, your day will consist of the following:

a. High = Urgent

b. Normal = Less Urgent

c. Low = Even Less Urgent

d. Someday Items = These are items that are more akin to New Year's resolutions, goals, or bucket list items. Add "Someday" to the beginning of the Subject line so they can be grouped together when sorted:

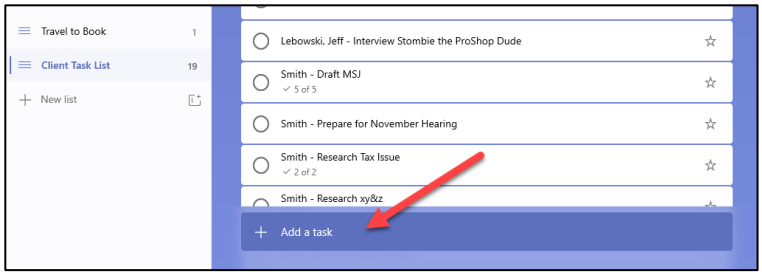


5. Enter any **Notes** in this area that you may find helpful or if you do not have enough room for a detailed description in the subject line.

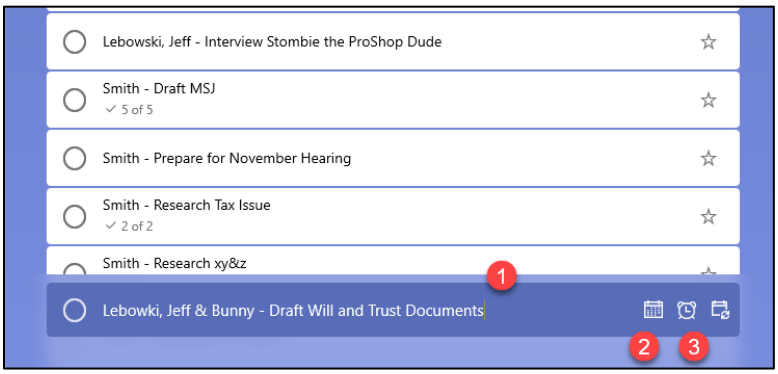
e. Use the Notes section in Outlook to add subtasks or steps to complete the task. Unfortunately, these are not separate trackable tasks, so most people turn on the bullet or numbered list and start typing the subtasks. When complete, you can use the strikethrough font to indicate they have been completed. Microsoft ToDo actually has real subtasks, yet another reason to use ToDo rather than Outlook.

Creating a Task in Microsoft ToDo

Click on the desired task list, and then start typing in the **+ Add a task** field located at the bottom of that list.



Complete the information needed to create the task:

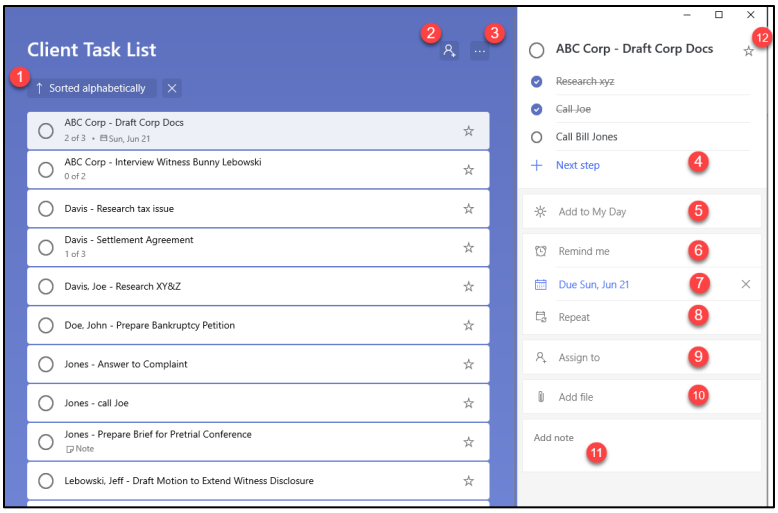


1. Enter description of the task. Just like with Outlook (or any digital task list), use the same naming scheme described above: **Client/Matter Name - hyphen - good description of next step**.

2. Add a Due Date, if desired.

3. Add a Reminder, if desired.

There are many other excellent features of Microsoft ToDo that are incredibly easy and intuitive.



1. Sorting order for your list (by importance, due date, my day, alphabetically, creation date).

2. Share your list with internal or external users.

3. Print, email list, pin to start, delete list, or change sort order.

4. Set up steps or subtasks.

5. Add task to My Day, which is a way to create a daily task list from items already in your Master Task List.

6. Add or change reminder, if desired.

7. Add or change due date, if desired.

8. Designate if the task is a repeating task.

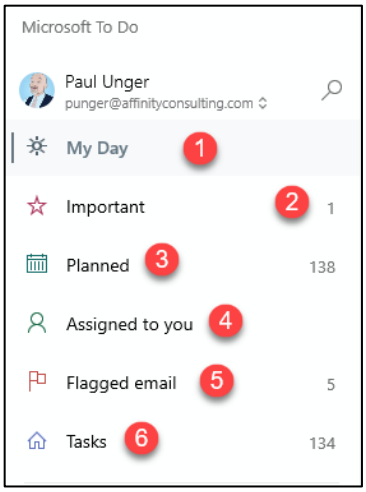
9. Assign the task to another person and still track it on your list.

10. Add documents/attachments.

11. Add any desired notes.

12. Tag a task as Important.

To access your lists and filtered lists, select the desired option along the left-hand side:



1. **My Day** is your daily task list if you want to use ToDo to create a daily task list.

2. **Important** is a filtered list that just shows tasks that you tagged as important (the star tag).

3. **Planned** will display those items with due dates.

4. **Assigned to You** will display any tasks that have been assigned to you.

5. **Flagged email** displays any email you have flagged.

6. **Tasks** show all tasks from all task lists in a combined listing.

Task Management—Daily Planning

Now that you have converted emails to tasks and you also have done your "Gathering and Get Organized" session to populate your Master Task List, you are ready to start executing—getting stuff done! For this, you need a game plan. That game plan consists of daily planning (a 5-minute commitment), which is covered in this chapter, and weekly planning, which is covered in the next chapter.

Recall, we always operate and focus better when working from shorter lists. You will always perform better *on a daily basis* if you have a list of 5 things vs. 100 things.

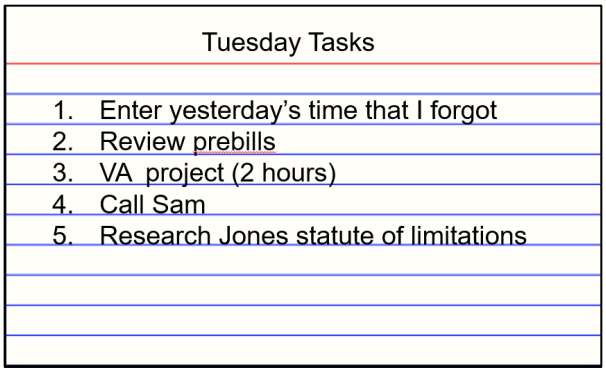
How to Create Your Daily Plan

As a lawyer and consultant who has been paperless for 20+ years, as much as I love technology, I am not ashamed to say that I am a big fan of using paper for daily planning. Take simple index cards as one example. A pack of 100 index cards will cost you less than $3. Use one card per day, writing 3 to 5 tasks that you want to accomplish that day. Another way of articulating this is "Today will be a success if I complete these 3 to 5 tasks." It is okay to re-write items

that are on your calendar, and if you get those 3 to 5 things completed, get another card out and write down 3 more tasks.

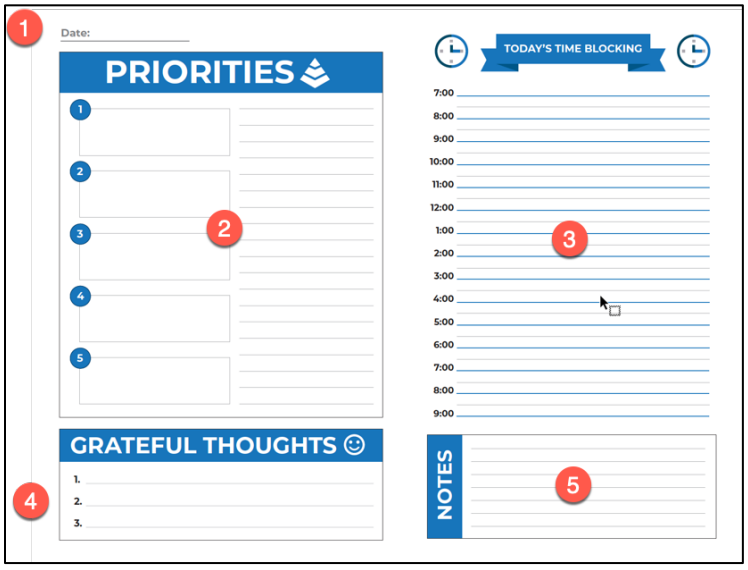
The Simple Index Card

Simply identify and write 3 to 5 things that you want to focus on and complete.



Tame the Digital Chaos Daily Planning Journal

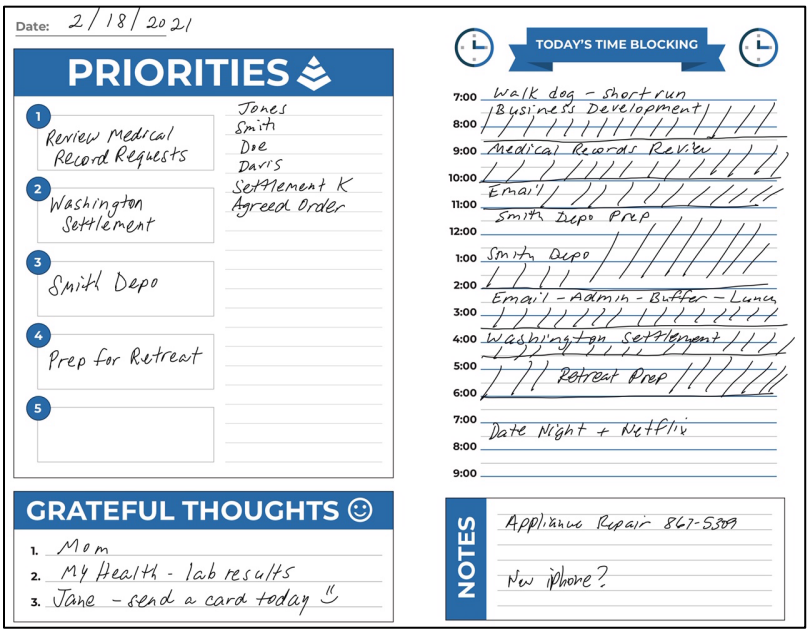
My favorite option for daily planning is a paper-based planning journal. Again, like index cards, you will keep the plan open and visible all day, probably near your keyboard. Here is an example of my TDC (Tame the Digital Chaos) Daily Planning Journal:



Directions

1. Enter today's date.
2. Identify 3 to 5 tasks that you want to focus on that day. If there are subtasks or notes, use the lines located to the right of the main tasks.
3. Time-block your entire day in 30-minute increments.
4. Enter 3 grateful thoughts.
5. Enter miscellaneous notes or life lessons that day.

Example of completed day:



Task Management—Weekly Planning

A once-a-week "get organized" deep dive is essential to successful time management and distraction control. This is a once weekly 60-minute commitment to help you frame realistic daily plans, review all tasks and deadlines on your plate, catch up on tasks that "slip between the cracks," and keep you focused on the big picture goals that you want to achieve. It will help you stay driven and will give you the power of creativity and a sense of control in your day and in your life.

How To Do a Weekly Deep Dive

1. **Do your weekly deep dive planning session on the same day and time each week.** Same time, same place, same channel! Plan 60 minutes for this session, one day per week. Performing this one-hour ritual on the same day and time each week will make it infinitely easier to develop a habit of engaging in this important planning. Moreover, it is proof to your team (and yourself) about how important and sacred this practice is to your organization.

2. **Think about using the "buddy system."** Learning new healthy time management habits is very much like learning new exercise habits. Team up with a colleague and do your own weekly deep-dive planning sessions at the same time. Let me be clear. You are not talking to each other or planning with each other. It is admittedly a little awkward, but just get on the phone or a web meeting and do your own planning in dead silence. In fact, commit *not* to disturb each other.

3. **The Weekly Deep Dive Checklist.** At each weekly planning session, these are all the planning tasks that you will perform:

Weekly Deep Dive Checklist

- ☐ **Review Calendar Two-Weeks Forward**. Open up your calendar and touch every single appointment on your calendar. Stop—pause—think about what you have to do to prepare for the appointment. Can you move forward with it? Do you have to do any research? Do you need to time-block (make an appointment with yourself on your calendar) to prepare? If so, block out your preparation time. If you need to look out

further than two weeks, adjust your look-forward time. For example, I look two weeks forward at every appointment, and then I look four additional weeks to find appointments that require travel arrangements, so I can make travel plans (book flights, hotels, rental cars, etc.) in time.

☐ **Review Calendar Two-Weeks Back.** Open your calendar and touch every single appointment on your calendar, going two weeks back. Stop—pause—think about whether you did everything that you promised people in those appointments. If not, schedule time to do those things and update your task list.

☐ **Review your Case/Matter/Project List.** Whether you work with cases, matters, projects, or all of the above, you'd better have a list of all your active cases, matters, and/or projects! If you don't, you absolutely should. Learn how to run reports from your software systems. Some people already do a weekly "case review" on their own or with their team. I used to do mine every Wednesday morning when I was in private practice. That is a different type of meeting than this weekly deep dive. It is an excellent practice and I highly encourage it! However, in that meeting, you *and your team* may dive into the nitty gritty of your cases to get a 500-foot view. In the Weekly Deep Dive, you are only spending about 10 minutes looking at the entire list from a 20,000- or 30,000-foot view. Review the list for the following:

- Does your list include all new cases, matters, or projects that landed on your plate this week?
- Can you remove any cases, matters, projects that closed this week?
- For each item on the list, ask yourself, "Am I on track or off track?" If you are off track, block off 15-30 or 60 minutes on your calendar to do a deep dive into that case, matter, or project. Do not stop your weekly deep dive into work on the project.

☐ **Review your Task List and Follow-Up Email Folder**. Review each and every item on your task list. Stop—pause—really think about each item. Just like with the calendar, above, you are *not* skimming. You are thinking about each item. Ask yourself:

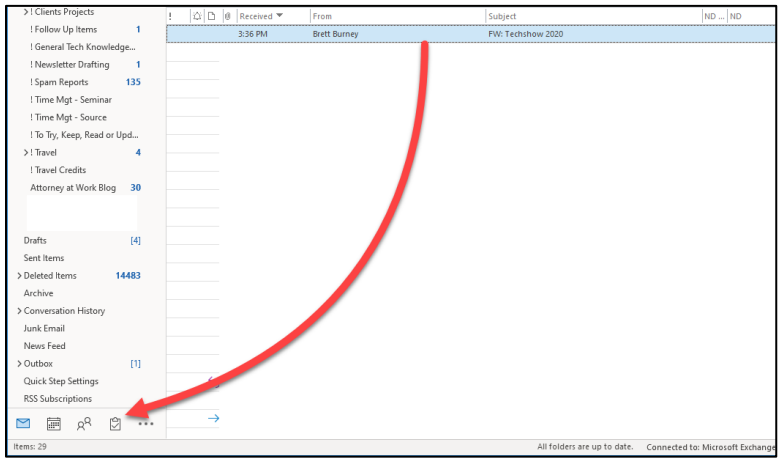
- Is the task complete? If so, mark it complete.
- Is the task still relevant? If not, delete it.
- Is the task overdue, urgent, or about to become urgent? If so, block off time on your calendar to get it done!

- Do you need to provide a status update to anyone?
- Do you need to follow-up with anyone in order for you to complete this task? Are you waiting on someone else?
- Finally, and this is important, remember to check all of your task lists, including any "Someday" or "Bucket" lists. We too often forget to check our strategic planning or quarterly or long-term lists and then these items never get done! It is vital that we have a routine/system in place that makes us review all items on all task lists.

☐ **Batch Process Email (Delete, Delegate, and Delay).** Process your inbox to **Delete** any emails that you can. Then, **Delegate** any emails you need to. Finally, if you need to **Delay** acting on an email, be sure to record it on your task list, create an appointment with yourself to do it (time block), and then save the email into the case/matter/project folder so you can delete it from your inbox. Remember, your inbox is a terrible task list. I know that I have already stated this, but I will say it again (and probably more)—stop using your inbox as a task list!

Note: You will note that I removed the **Do** from 4 D's during the weekly deep dive (you typically Delete, Do, Delegate, and Delay). This omission was intentional. If you do the "Do" during the weekly deep dive, it will not take you just 60 minutes to complete; it will take you all day. For the weekly deep dive, just focus on Delete, Delegate, and Delay.

Remember also, if you use Outlook, you can easily convert emails to tasks by dragging and dropping an email on to the Task icon in Outlook or use Quick Steps.



This function acts as a "copy" and will create a task, while still leaving the email in your inbox for you to take further action like creating a calendar event or filing it away. You can convert that same email to an appointment by dragging it on to your Calendar icon.

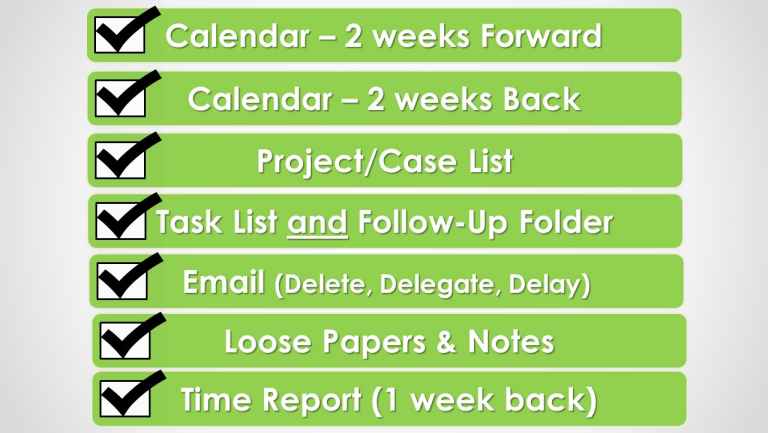
☐ **Clean your Desk, Piles, Stickies, and Notes**. During the week as life happens, it would be ideal to enter all tasks and do all your time blocking on your calendar immediately as tasks surface. We all know that this isn't the way it happens sometimes. You may be running out the door when the phone rings and someone asks you to do something. So, you quickly jot it down on a sticky note and slap it on your desk or computer monitor. Likewise, maybe someone dropped off a pile of paper that is sitting on your desk. All these things need processed or checked in. They are tasks and appointments that should be entered into your system and then you should scan and save those papers and throw away the sticky notes. The end result is that (1) you have a single place where you need to look & manage your tasks (not 10 or 20 notes, stickies, piles, etc.), and (2) you have a clean desk, which will help you focus.

- **Weekly Time Report.** Review your billable timesheets for the week. Learn how to run a report from your time billing and accounting system (or have someone run it for you). For this information, again, stop, pause, and think about each time entry and ask yourself:
  - Did I do everything that I promised relating to the activity that I performed for this time entry? If not, update your task list and/or schedule time on your calendar to do it.
  - Are there any follow-up items that I should pursue relating to this time entry?
  - Is there any potential new business or opportunities that I have overlooked? If so, add it to your task list and your calendar.

By performing this weekly ritual, you kill three birds with one stone:

1. You proof your time entries for typos, grammar, and accuracy, preventing you from having to do a massive review once a month.
2. You are reminded of tasks that you need to perform that you failed to do.
3. You will also stumble across time entries that you forgot to enter, thereby billing more time, and who doesn't want that?

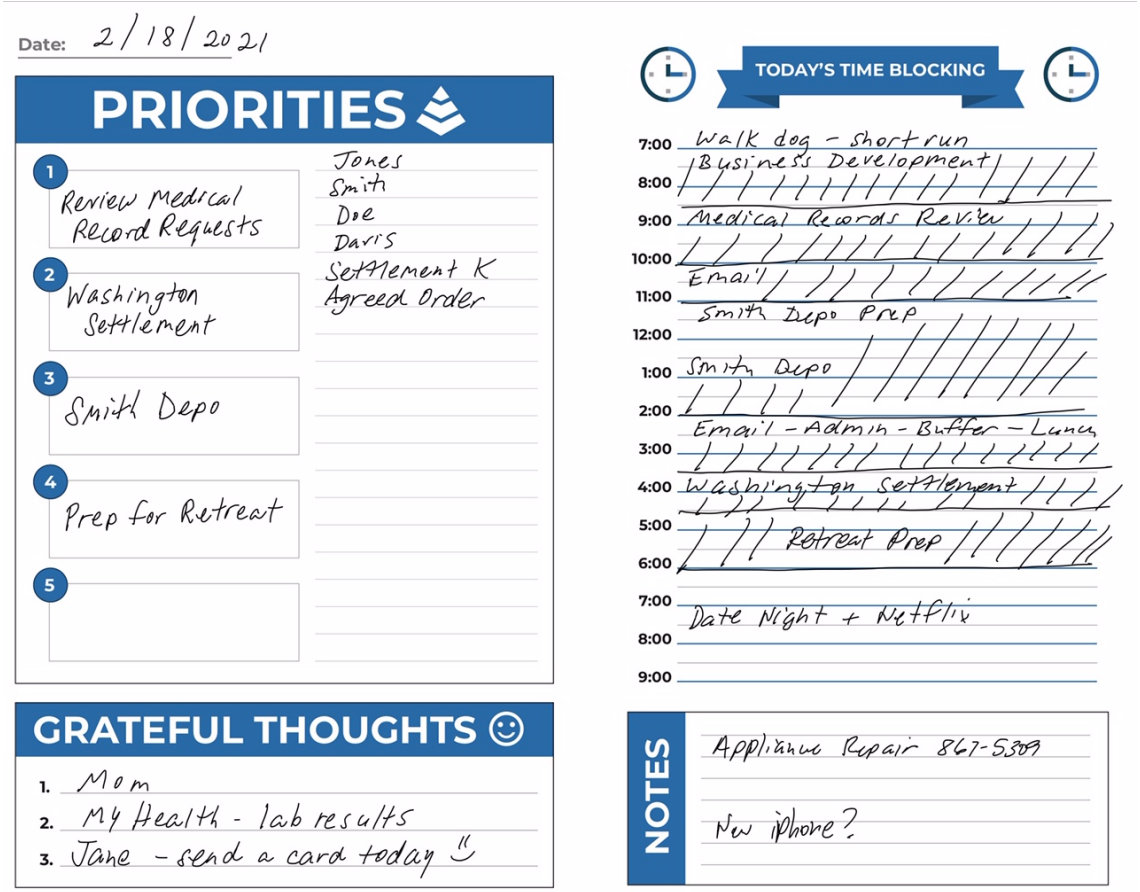
Here is a quick summary of all 7 things to do during your Weekly Deep Dive.



APPENDIX

TDC DAILY PLANNER

The Tame the Digital Chaos (TDC) daily planner is designed to help you plan and maximize productivity on a day-to-day basis. A bound print version of the planner is available at www.pauljunger.com, but feel free to print undated pages and fill them out on a daily basis. Here is a sample completed page. The next 2 pages contain the unfilled and undated blank form.



Date: 2/18/2021

PRIORITIES

1. Review Medical Record Requests
2. Washington Settlement
3. Smith Depo
4. Prep for Retreat
5.

Jones
Smith
Doe
Davis
Settlement K
Agreed Order

GRATEFUL THOUGHTS

1. Mom
2. My Health - lab results
3. Jane - send a card today

TODAY'S TIME BLOCKING

7:00 Walk dog - short run
8:00 Business Development
9:00 Medical Records Review
10:00 Email
11:00 Smith Depo Prep
12:00
1:00 Smith Depo
2:00 Email - Admin - Buffer - Lunch
3:00 Washington Settlement
4:00
5:00 Retreat Prep
6:00
7:00 Date Night + Netflix
8:00
9:00

NOTES

Appliance Repair 867-5309

New iPhone?

Date: _____

PRIORITIES

1.

2.

3.

4.

5.

GRATEFUL THOUGHTS

1. _____

2. _____

3. _____

TODAY'S TIME BLOCKING

7:00

8:00

9:00

10:00

11:00

12:00

1:00

2:00

3:00

4:00

5:00

6:00

7:00

8:00

9:00

NOTES

FIGHT the PAPER

HOW TO ELIMINATE PAPER IN THE LEGAL OFFICE

Paul J. Unger | Barron K. Henley

Affinity CONSULTING

FIGHT THE PAPER

How to Eliminate Paper in the Legal Office

Paul J. Unger, Esq. & Barron K. Henley, Esq.
Affinity Consulting Group

MEET THE AUTHORS

PAUL UNGER, ESQ.

Paul J. Unger is a nationally recognized speaker, author and thought-leader in the legal technology industry. He is an attorney and founding principal of Affinity Consulting Group, a nationwide consulting company providing legal technology consulting, continuing legal education, and training. He is the author of dozens legal technology manuals and publications, including recent published books, *How to Effectively Manage your Workload – A Lawyer's Guide to Distraction, Time, Task & Email Management* (2019) and *PowerPoint in an Hour for Lawyers* (2014). He served as Chair of the ABA Legal Technology Resource Center (2012-13, 2013-14)(www.lawtechnology.org/), Chair of ABA TECHSHOW (2011)(www.techshow.com), and currently serves on the Executive Committee for ACLEA (The Association for Continuing Legal Education). Mr. Unger now spends most of his time doing CLE programs, professional development programs for law firms, and conducting technology and practice management assessments.

BARRON HENLEY

Barron is an attorney who has over 22 years of experience in legal technology. After earning his B.S./B.A. (marketing and economics) and J.D. from The Ohio State University, Barron discovered his passion for helping lawyers fix problems within their practice. Today, Barron partners with our clients to make law firms and legal departments more efficient. Barron's breadth of knowledge enables him to dive into the details of a firm's operations. He is often the lead on Comprehensive Practice Analysis projects for clients that examine all aspects of making a firm more successful: technology, organizational design, process optimization and financial practices.

FIGHT THE PAPER
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7 DOCUMENT MANAGEMENT SYSTEM

8 DOCUMENT MANAGEMENT WITHOUT DM SOFTWARE (HOME-GROWN DMS)

1 THE PROBLEM WITH PAPER

INTRODUCTION

To achieve effective time, document and email management, we have to "get organized." In order to be organized today, we absolutely must figure out how to manage digital information. According to one study, we receive via digital delivery (email, text, social media, on our phones, computers, etc.), the equivalent of 140 newspapers of information per day! This can be overwhelming, especially if you don't have a system in place to process that digital information.

In most offices today, only 1 attorney in 10 have eliminated 90+% of the paper file. In other words, only 1 in 10 have stopped maintaining a paper file and rely solely on the digital file. While better than nothing, that needs to be significantly better.

The good news is that the tools necessary to eliminate paper are available, easy to use and inexpensive. Of course, this hasn't always been the case. Back in the 90s, scanners were very expensive and relatively slow. Document management systems weren't very easy to use, and they were also expensive and made primarily for large organizations. Electronic storage space on servers was also expensive. Since that time, the tools have steadily improved as their costs have declined. Secure cloud storage is a highly competitive market, and therefore, there are many solutions available at a reasonable cost. As a result, the benefits of paper reduction now far outweigh the costs of implementing such a system.

PROBLEMS WITH PAPER RELIANCE

There is still a heavy reliance on paper for many users in most environments. I realize that some people generally don't see paper reliance as a problem. Therefore, I want to explain why paper reliance represents an efficiency problem and needs to change.

Paper Reliance Means Higher Operating Costs: Most law offices are very interested in ways to save money. Operational efficiency means lower costs and improved profitability. Further, high efficiency and paper reliance are mutually exclusive. Creating paper files, maintaining them, updating them, moving and storing them all require non-billable labor. An organization's number one cost is probably payroll, so paper management factors into that. The paper, toner and office supplies (such as folders) are all expensive. Redweld expanding files are $10 for a 5 pack. Staples copy paper is $46 per case. Avery file labels are $26/pack (Staples); black toner for your copiers and printers is expensive. Further, a percentage of your offices are occupied by filing rooms and filing cabinets. So, you're technically paying rent every month for those files.

The bottom line is that all of these things add up to a large amount of money per year. These costs are a primary reason that courts, banks and almost every business that previously dealt with a lot of paper is now all electronic. Law offices are not exempt from this economic reality.

More Paper Means Limited Mobility: Transporting bulky paper files is difficult and sometimes impossible (depending upon the number one needs). As a result, lawyers often feel tethered to the office because they can't easily take the paper files with them if they need to work remotely.

Too Easy to Lose Something or Drop a Ball: If a lawyer or paralegal has stacks of files and paper all over his/her office, there is no way he/she knows what is at the bottom of those piles. Almost every person I've ever spoken

to who has a big mess of files in their office has claimed "I know where everything is." However, if I pick up a random stack and ask them to tell me everything that's in the pile, they have to admit that they don't know.

Digital Records Are Being Forced on Lawyers: Much of what we do as lawyers, whether we like it or not, is already digital whether we like it or not. ALL documents that we create start out as digital files. They don't start in typewriters! Why do we convert those to paper? Many courts have gone to electronic filing, governmental entities we deal with are electronic, documents are traded between attorneys and clients electronically, and more and more evidence and discovery is electronic. Lawyers who insist on operating with an analog/paper approach will have to keep printing more and more electronic documents in order to maintain a complete paper file. All professional service industries will eventually be electronic because that's the form all of the information they deal with will take. Accountants, physicians, engineers, financial planners and architects are already there. The only question for offices who provide legal services is whether they'll wait until the last minute and be reactive, or get out in front of it proactively.

Overwhelming Volume of Communications to Manage: We machine gun one another with electronic communications resulting in many more pieces of correspondence to keep track of. When I started practicing law 25 years ago, we received an occasional fax and no email. Most correspondence came in the form of letters received via USPS or FedEx. I might have received 3 to 5 pieces of mail a day related to cases I was working on. Today, it's not uncommon for a lawyer to receive 150 emails a day related to their practice, some with attachments and most of which requiring an immediate response. Voice mails are often emailed as sound files and faxes are also often received as emailed PDF files. As a result of this, the volume has exploded and paper-based systems break down as volume increases.

Hunting for Files Is Expensive: All offices who maintain paper case files spend non-billable, administrative time looking for paper files every month. For example, files might be in your office (on the desk, under the desk, on the floor, in a cabinet or on a shelf), in a person's office, on a counter in a hallway, on a ledge somewhere in the office, in a filing cabinet, in the wrong filing cabinet, in someone's car, at someone's home or in someone's briefcase or bag. That's a lot of places to look. The cost associated with finding files can be very high.

Paper Files Can Only Be in One Place at a Time: Generally, only one person can be in possession of a paper file at a time. However, the same electronic files can be accessed by multiple people simultaneously.

Paper Files Are Not Sharable: If you want to share a paper file, then you have no choice but to incur the additional time and expense of making more paper copies. This makes it difficult to collaborate with clients, experts, courts and co-counsel.

Finding the Document Once You've Found the File: Once you locate the paper file, now you begin the second search - finding the individual piece of paper within that file. If the file is really big, it may take just as long to find a document within the file as it took to find the file in the first place.

Paper Files Are Not Searchable: Obviously, you lose the search functionality an electronic file provides.

The Paper File is not Complete and Neither is the Electronic File: Almost everyone I talk with indicates that email is not getting saved into the digital file and some of the work product is not getting saved. Nearly everyone my polls indicate that they feel overwhelmed by email and there isn't an easy way to save incoming and outgoing emails into the digital case file or paper file.

ROADMAP / ESSENTIAL ELEMENTS TO ACHIEVE PAPERLESS

The following are the elements required in every successful paper reduction initiative. The good news is that most organizations have already implemented many of these steps. You may just need to help getting over the finish line with changes in process and some simple training.

Ensure You Have Solid I.T. Infrastructure, Redundant Backup Systems And Security

You must have dependable servers, redundant data backup, and security systems and protocols in place if you are going to eliminate paper. If you implement a cloud-based system, much of this is simplified and solved as part of your monthly service fee. In fact, most reputable cloud providers have achieved and maintain security certifications that would be cost-prohibitive for most organizations. This is another reason most legal departments and law offices are migrating to cloud-based solutions. Within legal departments at corporations or colleges/universities, getting consistent I.T. assistance is tough because of the bureaucratic red tape that is involved and the high turnover of employees within the I.T. department. This makes cloud solutions even more attractive.

Confidence In Your I.T. Department

Unless and until your users have confidence in the people running the system, they will continue to rely on the security of paper. It is their safety blanket.

Acquire Desktop Scanners

This is discussed below, but in short, your staff needs small, fast convenient desktop scanners so they can easily scan documents directly into the digital file right at their desk without having to get up and go stand in line to do their scanning.

Automatic OCR Engine

All PDFs much be searchable, and that process needs to be automatic. You should not use up staff time to run this process. It is too expensive, and it will not get done a great deal of the time, resulting in people believing that documents are searchable, but they are not. See below for discussion on software solutions that can do this for you (Symphony OCR, ndOCR, Content Crawler, etc.).

Document Management System (DMS)

This can be a software solution, or a do-it-on-your-own process by saving documents in a central organized manner within a Windows folder structure. Most experts today agree that the with the volume of email and other digital content that we receive on a day to day basis, that we need software to assist us with document management.

Procedural Requirements

1. **Digitize All Incoming Paper**: Everything that comes in the door must be scanned (excluding advertisements) and then the paper goes in one of three places (preferably #1, below):
    - The shredder
    - Send back to client

- A very thin paper file you may maintain because a statute, regulation or rule requires that you keep the blood-signed original.

2. **Scan Paper Work Product**: For example, lots of lawyers like to write on legal pads. It's perfectly fine to continue doing that as long as the resulting notes are scanned into the electronic file with everything else. Also, think about utilizing tablet-based note taking (I.e., iPad + Notability, Surface Pro + OneNote), and not even having to scan pages torn from legal pads.
3. **All Digital Case Documents must be Stored in DMS or Digital File:** Every PDF, Word document, Excel spreadsheet, PowerPoints, … everything, must be saved to the DMS or digital file and properly categorized based on document type (correspondence, pleadings, agreements, memos, notes, etc.)
4. **Important Case/Matter Email Must Be Stored in DMS or Digital File**: All important email must be stored along with the rest of the electronic documents related to any particular matter. Some important **copies** of emails can still be in Outlook, but copies must be stored in the DMS where the rest of the office can easily access them. Note: One observation that I see people often make is that they to save every email into the digital file, and that just isn't necessary. Saving just the important emails is fine. When people aim for perfection or everything, it paralyzes them, not to mention that it results in time wasted and a ton of redundant emails. Most of the time, with the exception of emails with attachments, the last email in an email conversation contains the entire historical thread.
5. **Workflow Review Method.** There must be a process in place that insures that the intended recipients of the documents, and anyone else, (1) reviews the electronic information, and (2) tasks & deadlines get assigned based on that review. Most offices will have a legal assistant (or a scanning clerk) do the following:
    - scan the document,
    - save it into the proper case/matter,
    - record & assign deadlines,
    - and then forward a **link** to the person that needs to review the document.

Dual Monitors

Dual monitors are absolutely needed for effective paper reduction. I understand that there some may resistance to this idea, but the reality is that dual monitors have not only become standard issue for law offices and legal departments across the country, but this concept is also a key ingredient for helping to reduce reliance on paper. See discussion below on Dual Monitors.

Portable Hardware/Mobility

If every lawyer is tethered to a desktop computer at the office, then the office loses out on a lot of the mobility benefits of being paper-reduced. For lawyers who go to court, meet with clients or work outside of the office, there must be a means for them to take the electronic file with them. Obviously, this is where notebook PCs, tablets or hybrids become very important. Think about adding iPads for some lawyers who are road warriors or who try cases would be extremely valuable.

Conference Room Technology

One reason that lawyers keep paper is to have the file available to them when they go to the conference room to meet with the client. To avoid this evil, you must have presentation technology in the conference room to review file information with the client on a large screen. Most firms today are using very large LED HD televisions/monitors and projecting wirelessly via their laptops.

Collaborative Technology

If you want to share an electronic file with someone outside of your office, then there must be a means for doing that without printing and shipping everything. DMS systems provide some of this functionality. It is baked into some systems like NetDocuments because they are cloud-based. If not baked in technology, then consider solutions like Citrix ShareFile.

Document Your Scanning Protocols

Every firm needs a written "here's how we do it" manual. Process documentation allows new users to pick up the system quickly. Maybe more importantly, written policies make it much easier for the firm to gently remind users who have fallen off the wagon of what they previously agreed to do. We recommend Snagit (www.techsmith.com) to document those processes by using screen shots and recordings, as well as process mapping your steps for ALL your important processes. We recommend Lucid Chart (www.lucidchart.com) or Microsoft Visio for mapping. This will become one handout for your training.

Provide Training For All Lawyers And Staff

This doesn't take long and isn't expensive, but it's critical to the success of any paper reduction initiative. Everyone needs to know how to play along. They also need to understand the "why". Without the right training, people do the craziest things (i.e., like print documents, sign it, scan and re-save as a PDF, and then send). Unless people know how to perform their core "paper" functions within a digital world, they will never give up the paper.

2 PORTABLE DOCUMENT FORMAT (PDF)

WHY PDFS ARE SO IMPORTANT

- **Worldwide Standard**: Every electronic court filing site in the country now requires the filing of PDFs. This is our new reality. PDFs have become the worldwide standard for the distribution of electronic documents. Since they are so common, it's extremely uncommon for the recipient of a PDF to be unable to open it.

- **Protect the Document**: Adobe Acrobat, and similar tools like Nuance PowerPDF, Foxit, PDFDocs, etc., allow you to protect a document so that the text cannot be altered. You can also control who may access it, whether it can be printed or opened, etc.

- **Collaboration**: Today, PDF tools make it easy to solicit feedback, comments and proposed changes to a PDF document. This makes PDFs ideal for negotiating the language of a documents and the like.

- **Easy Creation**: You can create PDFs from any computer program that will print (such as Microsoft Word). PDFs can also be created with a scanner.

- **Easy Combination**: PDFs can be compiled from many sources and any PDF can be combined with another.

- **Forms**: PDF Tools allow for the creation of fillable forms and makes it easy to collect the data that is entered into them.

PDF FILE TYPES

PDF Files

PDF (Portable Document Format) is a file format that captures all elements of a printed document as an electronic image that you can view, navigate, print, or forward to someone else. PDF files are created using a PDF writer or print driver. To view and use the files, you need the free Adobe Reader (or other free or inexpensive PDF viewers), which you can easily download for free (www.adobe.com). Once you've downloaded the Reader, it will launch automatically whenever you want to look at a PDF file. PDF files have also become the de-facto standard method for distributing electronic forms on the Internet.

PDF/A?

PDF/A (archival PDF) is a type of PDF that is used for the long-term storage of documents. Standard PDF files rely on external information, such as font libraries, to be read, and this can pose problems for retrieval far in the future. PDF/A files, on the other hand, have all information embedded in the file and do not rely on external information. This is useful for archiving, as anyone with a PDF/A reader can view a PDF/A file without the need for appropriate external information. The drawback to this is that because all information must be embedded in PDF/A files, they

tend to be larger than regular PDF files.[1] For a more detailed description of PDF/A, see the description provided by the Sustainability of Digital Formats Planning for Library of Congress Collections here: http://tinyurl.com/4wfwazy. PDF/A matters to law firms because many of the electronic case filing systems require PDF/A or may require it in the future.

Image Only PDFs

This type of PDF is visually an exact replica of the original document (whether the original document was electronic or paper-based), but it contains no text which could be searched by Acrobat or any other program. This also means that you cannot copy and paste text from the document. This is usually the type of PDF that you get when you scan a document using a copier, scanner or multifunction machine.

Searchable PDFs

This type of PDF is also an exact replica of the original document, but it also contains a hidden layer of text so that you can search for any word on any page. PDFs created from other computer programs electronically are searchable by default. In other words, if I create a PDF from a Word or WordPerfect document, an Excel workbook or an email, they are always searchable. As mentioned above, PDFs created by scanning can be, but are not always searchable. The software you're using to scan will determine whether you can create searchable PDFs. So that you can easily find the PDF documents you're looking for, you want to use searchable PDFs. See below "Searching" for a discussion on programs that will automatically make image-only PDFs text-searchable.

PDF PROGRAM OPTIONS FOR LAWYERS

There are a number of PDF programs on the market today. Here are my top recommendations that you should evaluate:

1. **Adobe Acrobat Pro DC**: There are two flavors here: Acrobat DC Pro "with services" which you can only rent; and Acrobat DC Pro desktop which you can buy. You can rent DC Pro with Services for $179.88/year or $24.99/month; and you can buy DC Pro Desktop for $449. Only Pro is available for the Mac.
2. **Adobe Acrobat Standard DC**: There are two flavors here: Acrobat DC Standard "with services" which you can only rent; and Acrobat DC Sandard desktop which you can buy. You can rent DC Standard with Services for $155.88/year or $22.99/month; and you can buy DC Standard Desktop for $299. Standard is not available for the Mac.
3. **Nuance Power PDF Advanced**: Matches features of Acrobat Professional for only $149.99. This has quickly become one of the best alternatives to Acrobat.
4. **Nuance Power PDF Standard**: Matches features of Acrobat Standard for only $99.99.
5. **Foxit PhantomPDF for Business:** Very similar to Acrobat Pro for $129.
6. **Foxit PhantomPDF Standard:** Strong match with Acrobat Standard for $89.
7. **pdfDocs Pro by DocsCorp:** Very strong feature match with Acrobat Professional and recently completely revamped. A 12 month subscription is the only way to buy it and it's $107 annually.
8. **Nitro Pro:** Matches the features of Acrobat Professional. They offer a Nitro Pro+ which is rental only for $7.99/month ($95.88 paid annually - no option to pay monthly) and Nitro Pro (desktop) which is $159.99.

[1] What Is PDF/A? See https://en.wikipedia.org/wiki/PDF/A

3 SCANNING

LARGE CENTRAL SCANNERS VS. DESKTOP SCANNERS

In most offices, it is a mistake to solely rely on large central printer/copier/scanners in the copy room. We call this centralized scanning. It results in a back log of scanning because it is an inefficient way to scan most documents. Large central scanners are fine for large documents because of their speed, but they are terrible for most documents (1 – 30 pages).

It takes on average 3-5 minutes to scan a 10-page document on a large scanner from start to final saving location, versus 45-60 seconds on a desktop scanner.

Today we are scanning less and less because so much is coming into our offices via email (or download) as PDFs. That said, we still receive quite a bit of paper, and until that stops, we will continue to need scanners. For most offices, we recommend desktop scanners for legal assistants, paralegals, and only those attorneys who express the desire to do some of their own scanning.

ESSENTIAL FEATURES OF A DESKTOP SCANNER

- Must have an automatic document feeder which holds 25 pages or more;
- You don't need a flatbed scanner because you have your multi-function copier/scanner, which has a flatbed for the rarer situation that you have a bound book or magazine.
- It must be fairly quiet (users should be able to conduct phone conversations without yelling over the scanner);
- We recommend a USB 3.0, USB-C or Thunderbolt connection to your computer;
- It must be able to scan black & white, gray-scale and color;
- It must be able to scan legal and letter sized documents; and
- It must be fairly fast (recommend 20 – 35 ppm).

RECOMMENDED DESKTOP SCANNERS

Lower Volume Daily Scanners

The following are excellent scanners that can easily handle the scanning volume for most users.

1. **Fujitsu ScanSnap iX1500.** The ScanSnap scanner is small, fast (30 ppm single sided, 60 ppm double-sided), comes with the full version of Nuance PowerPDF, and can create searchable PDFs natively. It also has a 50 sheet automatic document feeder and also includes ABBYY FineReader which will allow you to convert paper documents into documents you can edit in MS Word. It costs between $400 - $440 from a variety of vendors. It's world-class software scanning interface is incredibly user-friendly. Because it is so easy, fast & reliable, this scanner (and its predecessor, the ix-500) has made this scanner the most widely used desktop scanner in North America.

FIGURE 1

2. **Epson ES-400.** This is a TWAIN-compliant scanner that is also small and very fast (30 ppm single sides, 60 ppm double-sided). Because it is TWAIN-compliant, it can natively integrate with many programs, but the software for the end-user is not as easy to use as the Fujitsu ScanSnap Scan Manager software. I generally recommend the Fujitsu ScanSnap (above), but when TWAIN-compliancy is required, I recommend this scanner.

FIGURE 2

Higher Volume Scanners

If TWAIN-compliancy is a requirement, and you are looking for a scanner with a higher duty cycle (example: the need to regularly scan over 1000 pages a day), then I recommend looking at these models:

1. **Fujitsu fi-7160 Sheet-Fed Scanner**: This scanner is TWAIN-compliant and scans up to 60 ppm/120 ppm duplex black and white or grayscale. That is very fast for a desktop scanner. It has a 80-page Automatic Document Feeder (ADF) with enhanced hard and embossed card scanning (Example: credit or healthcare cards). This scanner usually retails for $850.

FIGURE 3

2. **Fujitsu fi-7300NX**: This is slated to replace the 7160 mentioned above although both are still available. The 7300NX adds WiFi connectivity so it can be placed anywhere and doesn't have to be physically connected to a PC in order to work. It also has a touch screen which makes it easier to scan. Otherwise, it has the same speed and characteristics as the 7160.

FIGURE 4

3. **Fujitsu fi-7180 Sheet-Fed Scanner**: Up to 80 ppm/160 ppm duplex black and white or grayscale. 80-page Automatic Document Feeder (ADF) with enhanced hard and embossed card scanning (Example: credit or healthcare cards). This scanner usually retails for $1,500.

FIGURE 5

4 DUAL MONITORS

DUAL MONITORS INCREASE PRODUCTIVITY & REDUCE PAPER

Dual monitors are absolutely needed for effective paper reduction. I understand that there some may resistance to this idea, but the reality is that dual monitors have not only become standard issue for law offices and legal departments across the country, but this concept is also a key ingredient for helping to reduce reliance on paper. Having 2 monitors simply allows you to spread out and see two things at once (like research and the document you're drafting based upon that research). Of course, it also eliminates a lot of the minimizing and maximizing of applications when you're working with two programs simultaneously. Overall, it's a big efficiency gain and I doubt you'll ever find someone with dual monitors who would ever consider going back to just one monitor. Monitors that rotate to portrait view has also turned out to be valuable to some to help review documents on the computer rather than hard copy. Many lawyers print documents in order to review them because they find it difficult to review documents on a computer screen. This difficulty typically arises out of the fact that when viewing a document on a monitor, one can only see a few paragraphs of each page because the monitor is landscape (wide) and the document is portrait (tall). To remedy this problem, we recommend buying monitors that rotate to portrait (see screen shot below). Monitors with this capability usually only cost a few dollars more than those without it and it is completely worth the extra money. As you can see below, a standard 22" monitor rotated to portrait not only allows a user to see an entire page of text at once, but it makes it nearly twice as big as it would appear if you printed it on 8.5 x 11" paper.

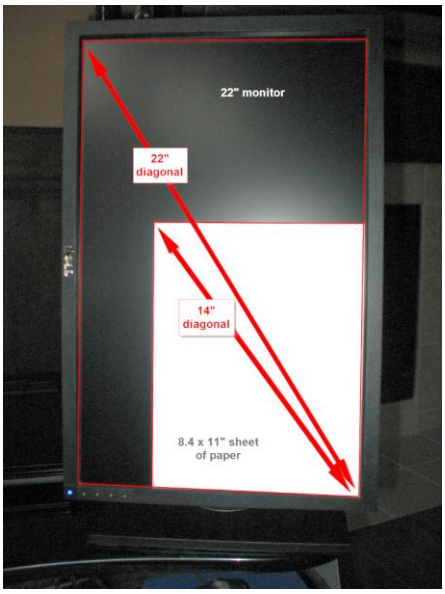

FIGURE 6

My recommendation is something like a Dell Professional 27" monitor (part number P2717H) which is $258 on amazon.com (http://www.dell.com/ed/business/p/dell-p2717h-monitor/pd). These monitors are beautiful, bright, and I guarantee will increase productivity.


FINANCIAL REPORT FY15Q2
11%
3%
2%
61%
23%
SAINT HELENS
FINANCIAL REPORT FY15Q2
11%
3%
2%
61%
23%
SAINT HELENS

FIGURE 7

5 IPADS/TABLETS

IPADS/TABLETS HAVE REVOLUTIONIZED PAPER REDUCTION

One of the primary reasons that lawyers hang on to the paper file is because they don't have an effective way to bring the case/matter information with them when they go visit a client or go to court. Simply put, the iPad (and now other tablets) solve this problem 9 times out of 10.

In the 8-9 years since Apple released the iPad, it quickly established itself as a very useful tool for lawyers, and one of the biggest innovations in legal technology to come along in some time. iPads (or tablets, generally) are instrumental if a lawyer wants to take "the file" out of the office without taking or maintaining a paper file. I believe the tablet or iPad was this missing tool in our "paperless movement", and the lack of it caused us to maintain a dual filing system (maintaining our electronic file and our paper file) for nearly 20 years. Now that we have tablets, there aren't many situations where we need the paper file. We can simply carry the case file with us on our iPad. In fact, you can carry thousands of banker's boxes on your iPad. Try carrying even one banker's box in one hand!

The iPad's design is ingenious. Its functionality is equally as nice and continues to improve as legal software developers create new and innovative apps for lawyers. Indeed, the iPad remains the tablet of choice for legal app developers, far outpacing Android and Windows tablets in the number of legal apps available. Two features of iPads and Android tablets that are so appealing are (1) it is instant "on" and connected to the internet, and (2) the size, sleekness and multi-touch screen makes it many times a better experience than handling paper.

If you carry around a legal pad and a lot of paper in a legal file or Redweld, the iPad can become your legal pad and digital folder. It is truly redefining the idea of the "paperless law office", allowing you to actually carry most of your office around with you, all in a very small, light device. For courtroom work, the iPad can be used to access exhibits, pleadings, legal research, depositions, and just about any document you might need in hearings or at trial.

The iPad has some drawbacks as a computing tool that make it unsuitable as a complete replacement for your desktop or laptop; however, I believe it is ideal for courtroom use and client meetings because it is so light and easy to hold and operate. It is very easy to understand and use, with little training required. In fact, if you already use an iPhone, as so many of you already do, you'll be able to start working with an iPad right away.

Among the often-cited negatives of the iPad are (1) that it has no USB port for plugging the tablet into other devices and (2) that the battery is not removable or replaceable. One of the reasons that the lack of a USB port is not troubling is that the iPad comes with Bluetooth capability, so keyboards, printers, and other devices can be connected wirelessly to the device. Also, a number of cloud providers (NetDocuments, Dropbox, Box, OneDrive and Tresorit, among others) make it easy for you to access all of your documents online, without needing to connect your iPad to anything.

The iPad Pro has a 12.9" screen. This is one of my favorite tablets. There are some compelling features that make it worthy of consideration (at least for some users, not all). In particular, with the Apple Pencil, notetaking/handwriting on this device is an incredible experience.

In my opinion, it is this ease of use that explains why iPads are rapidly catching on with lawyers. A laptop, netbook, or even the "traditional" convertible tablet PCs, which are useful at counsel table, cannot be carried

around the courtroom easily when the lawyer is standing at the podium or addressing the jury. We firmly believe the iPad is the preferred mobile device for litigators in particular, because the apps designed for use in the courtroom are very powerful, but also simple enough that they will not distract from actually trying a case.

Essentially, the iPad is just a little heavier than a paper legal pad and not nearly as heavy as the lightest netbook or laptop.

Tablets are now integrating themselves into the workflow of lawyers, irrespective of office size or practice area, and nowhere has this been more apparent than for litigators. Whether you need to take notes, mark and handle exhibits, or manage deposition transcripts, these little computers can supercharge your trial practice. But the iPad can make any lawyer more productive, regardless of practice.

I don't think every attorney needs a tablet. In short, I think those who do more courtroom work, litigation, and those who are very mobile. One could also use a laptop/tablet hybrid (like a Lenovo Yoga, a Dell 2-in-one, etc.), but in my experience, most lawyers prefer to have a tablet separate and apart from their laptop because (1) many times you want to do tablet functions (like handwritten note-taking) at the same time you look up information on your laptop (perhaps in Legal Server, as an example; and (2) sometimes you want to just grab the tablet and leave the laptop behind.

6 SEARCHING YOUR DOCUMENTS

SEARCH PROGRAMS

One of the most common technology problems facing lawyers today is difficulty finding their documents and email. We are forced to "re-invent the wheel" because we cannot tap into the intellectual capital of our (and others') previous creations. We are constantly forced to do research over and over, and then re-write things from scratch, resulting in loss of productivity and sometimes inconsistent advice to clients.

Document management systems (DMS) solve this and many other document management problems, but a full blown DMS requires an investment of time and money. If a full robust document management solution (discussed below) is not in your budget at the moment, or just not needed right now, you would definitely benefit from a search engine or a search program in the interim. These programs crawl through entire folder structures and will create an index of every single word in every single text-searchable document going back to the beginning of time (late 80's when word processors were first utilized). It is important to note that the document must be text-based/text-searchable (see discussion below on OCR Tools).

WINDOWS SEARCH ENGINES

Copernic Desktop Search: See www.copernic.com. There are three versions of Copernic, Home (FREE), Professional ($49.95) and Corporate ($59.95). Unless you're installing it in a very large firm, you only need the Professional version. You can try the free home version, but one of the limitations of the free version is that it does not search network drives. So unless you're keeping all of your files on the C:\ of the computer you're using (I certainly hope you're not doing this), the Home version will not help you very much. Copernic will search all of your files (Word, Excel, PowerPoint, PDF, HTML, WordPerfect, text and another 150 types of files). It will also search your Outlook email and any attachments to email.

X1 Search Engine: See https://www.x1.com/products/x1-search/. Very similar to Copernic, X1 will also creating an index that is searchable in seconds. X1 retails for $96.

dtSearch: See www.dtSearch.com - $199 - one of the most sophisticated and fast search engines I've ever seen. It provides the most search options and file types that it can recognize. If you need industrial strength search capability involving enormous numbers of documents, this is your program.

Filehand: See www.filehand.com - FREE. Instantly search for files on your computer, by content. See the extracts of the files you found, even for PDF files. Scroll through the extracts so you can quickly find the information you're looking for. Find the file you are looking for, even when many files match, because Filehand Search sorts the results by relevance. Do complex Boolean searches and searches by phrase. Use it all the time because it is so simple to use!

Windows Instant Search (Windows 7 and 10): The Windows operating system has a basic, but powerful ability to search all folders.

APPLE/MAC SEARCH ENGINES

Spotlight Search (Mac OSX): This is included with the Mac OSX operating system. For more information, see http://support.apple.com/kb/HT2531

EasyFind: If you are looking for something a little more robust than the Spotlight Search, EasyFind is one alternative. Free - see http://easyfind.findmysoft.com/mac/

HoudahSpot: $15 - see https://www.houdah.com/houdahSpot/download.html.

OCR TOOLS

As discussed above, in order for a document to be searchable, it must be text based. MS-Word documents, Word Perfect documents, Excel Spreadsheets, PowerPoint files are all natively searchable because they are natively text-based. PDFs may not be IF they are generated from a scanner or copier. PDFs are searchable if they converted to PDF (using an add-in, driver, or printed from Word, Excel, or PowerPoint. If a PDF is generated from a scanner, then there is an extra step that must be taken in order for that image-only PDF to become text searchable. That step is called Optical Character Recognition (OCR). This is a process that takes a short amount of time. On average, a 1-10 page document will take 5-30 seconds to OCR. That number increases significantly as the number pages increases. Generally, this is not a function that you want to require staff to perform. It is not a good use of their time, and as a practical matter, it just doesn't get done a huge part of the time, resulting in a bunch of documents that people can't search!

Many computer users don't even know what OCR means and they just assume the search tool is broken because it is "not finding my documents, and I know it is there!" Many of these image-only PDFs come if from clients, or opposing counsel, or from a discovery production. Some come from your copier. As you may know, To address this problem, we strongly recommend a third-party back end OCR tool like SymphonyOCR or DocsCorp Content Crawler. These solutions will look at any PDF deposited in a document management system (for NetDocuments, Worldox and iManage), or a plain Windows folder structure and run the OCR function automatically. ndOCR is an add-on to NetDocuments that retails for about $3/user per month. These solutions allow you to quickly scan PDFs into the system without the time-consuming process of converting them to searchable PDFs at the time they're added. It also will OCR all your old or legacy PDFs that are currently in Windows folders and Legal Server. This may not sound like a huge issue, but it will save you and your office hundreds of hours per year. See http://symphonysuite.com. The cost of Symphony is roughly $45/user/year.

7 DOCUMENT MANAGEMENT SYSTEM

DMS DEFINED

A Document Management System (DMS) is the combination of software/hardware tools which streamlines and automates the process of document & email management. Document management software has become so useful over the past 20 years, most organizations believe it is the true foundation for knowledge management and eliminating paper in the office.

Since DMSs only manage electronic documents, any paper documents must be converted (scanned) so that they can be managed by the DMS. In simple terms, your paper "Files" are just collections of paper documents related to a particular matter. Once all of that paper is in digital form, a DMS can organize it by matter just as your paper files are currently organized.

DMS FEATURES

Legal document management software should have all the below **core functions**/features:

Easy Compliance – Integration With Major Apps

In order to be convenient to use, the DMS must integrate with Word, Acrobat (or pdfDocs, Nuance PowerPDF, Foxit, etc.), Excel and any other major application in which you save documents or files. For instance, when someone clicks the Save or Open button in Word, the DMS must intercept and ask the user to "profile" or save the document, or find the document within the DMS.

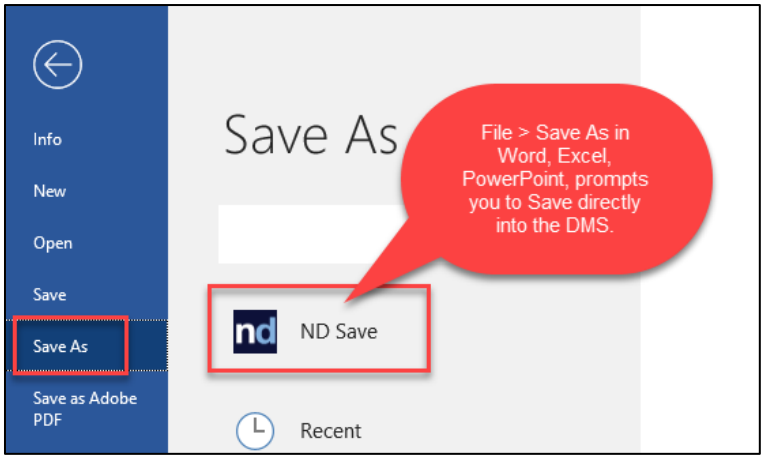

FIGURE 8

Email Management – Integration With Outlook

Email management is extremely important since most people feel crushed by email. A DMS is a full email management system (among other things). With a DMS, all emails related to a particular matter can be easily saved along with the other matter-related documents. Right now, without a DMS, users are saving emails in Outlook subfolders that no one else has access to, or they are saving emails to Windows folders through a very inefficient tedious process. Saving emails must be an easy process! Important features include:

One-click Saving: People do this constantly, every day. The process can't be time consuming, tedious or have too many steps. A good DMS solution will have integration with Outlook by selecting or opening an email and then simply clicking on a toolbar button to move a copy of the email into the DMS, as seen here in a screenshot from the Worldox document management system:

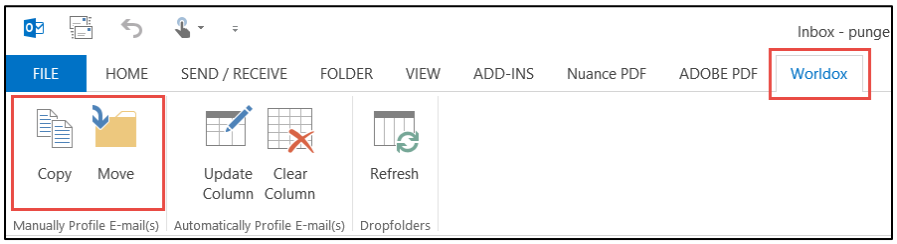

FIGURE 9

One selects an email and then hits with Copy to Worldox or Move to Worldox.

Here is a screenshot from the NetDocuments document management system:

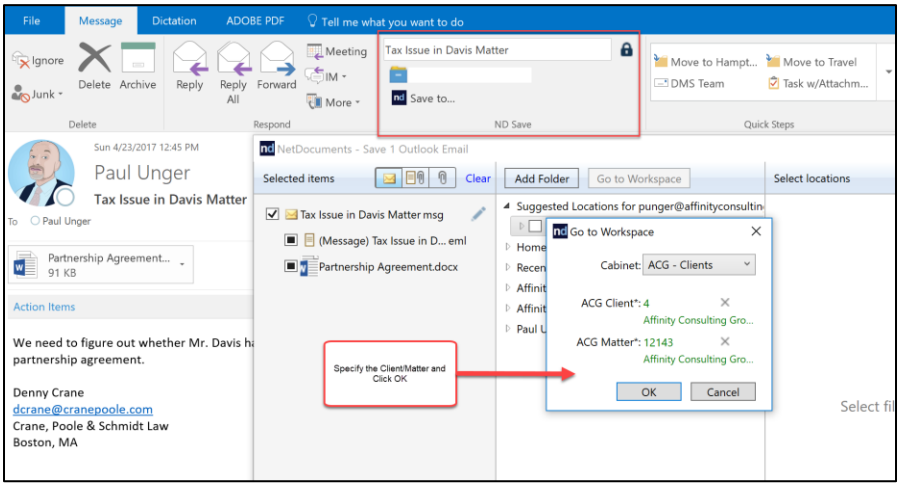

FIGURE 10

The user simply selects an email or multiple emails and using the ndSave function, can select the correct client/matter or area/matter.

Ability to save emails with attachments embedded in the native email format from within Outlook without "exporting" them or saving them somewhere else before they're moved into the DMS.

Ability to save only attachments easily into the DMS from a right-click on the email attachment and use the Save to the DMS Command as seen here with the NetDocuments integration with Outlook:

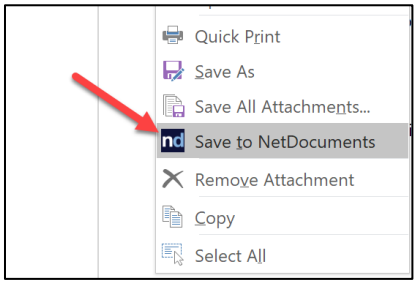

FIGURE 11

Saving Email Using Artificial Intelligence (Ai)

The NetDocuments' DMS has launched a pretty amazing new feature that uses AI to help lawyers automate the saving of email, eliminating many clicks from the above process. The feature is called ndMail. It is an optional add-on module that enhances the email filing experience from Microsoft Outlook by drastically reducing the time and effort required to save email messages into the client/matter folder.

Core to the application is the predictive email filing component which uses machine learning to determine which matter each email message in your inbox should be filed against based on the sender, recipient, subject and content from the actual message.

As a user highlights an email message in Outlook, the integrated ndMail panel will display suggested matters that it has determined may be appropriate for that email. They are listed in order based on the its "confidence" of fit. The user can then make the decision to accept, override or ignore the suggested destinations:

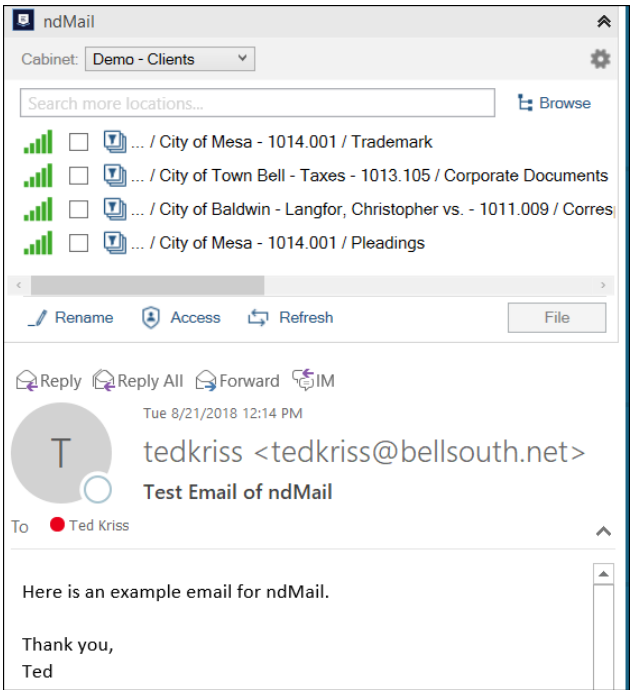

FIGURE 12

Most importantly, ndMail "learns" each time a user in your firm files an email with ndMail, which significantly increases the accuracy of suggested destinations over time across the entire firm.

ndMail also provides an email de-duplication service during the email saving process, as it reviews each message and instantly notifies the user if that email has already been saved into the system previously by anybody else at your firm.

Full Text And Boolean Logic Searching

If you have a document management program (like Worldox, NetDocuments, iManage or OpenText), you do not need to invest in a separate search engine (like Copernic, X1, dtSearch). The search engine functionality is part of the program, and within legal DMS programs, they are extremely powerful. Full text searching gives users wide-open access to their documents by framing searches based on concepts rather than categories. Users can search by many criteria - words, combinations of words, phrases, words within proximity of each other, expressions, etc. Each document matching the search terms is returned as a "hit" and the integrated file viewer will highlight each occurrence of a search term in the returned documents. This is exactly like doing

a Lexis or Westlaw-type search through your own documents. When evaluating DMSs, you want the ability to view the documents in a viewer without actually opening them, you want to be able to use Boolean logic terms (and, or, not, near, etc.), and you want the search terms highlighted in the document the system found. This is a screenshot from Worldox, who has one of the best and cleanest advanced search dialog boxes:

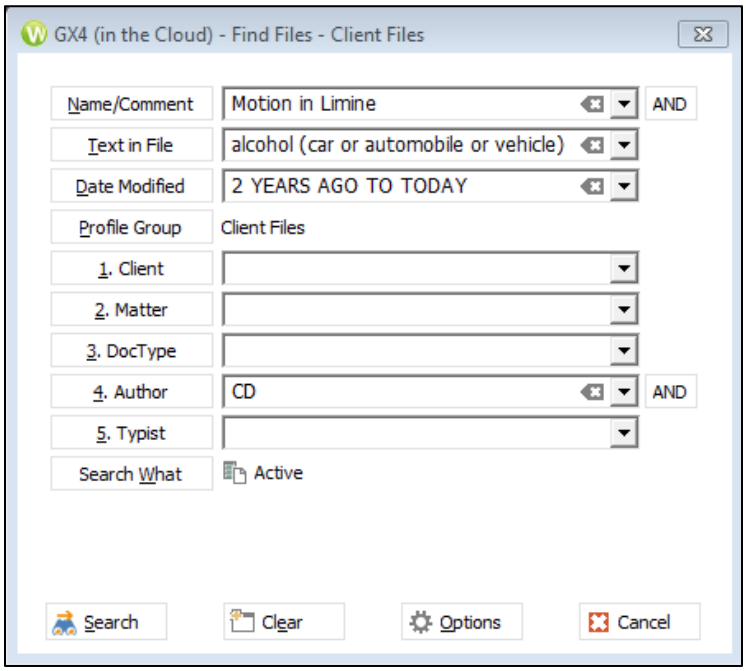

FIGURE 13

Simple Google-Type Searching

It is important for less tech-savvy people to have the ability to do quick simple searches with a "Google-Type" single search field, as best seen here in NetDocuments:

FIGURE 14

Metadata Searches

In the realm of document management, metadata is the critical additional information stored about the document (other than the file name).

Metadata includes, but is not limited to, information like:

- Name
- Comments
- User-defined "tags"
- Indexed full text
- Email From

- Email To
- Email Sent Date
- Doc ID
- Date Modified, Created, Accessed
- Cabinet
- Client
- Matter
- DocType
- Author
- Typist
- Date (actual date associated with the document)
- Date range

This search capability ensures continuity and a smooth transition when someone leaves or joins your office. For example, if someone unexpectedly (and suddenly) left your office, it would be pretty difficult to determine exactly what they were working on before they left. However, if a document management system were in use, it would be quite easy to find every single document or email that person touched in the last 90 days (for example). It's one thing to have a log or list of documents they were working on; it's quite another to actually be able to find those documents. Furthermore, the searches can be narrowed down considerably. For example, I could easily find every pleading (document type), containing the phrase "motion for summary judgment" (text in file), created by a particular employee (author), between 11/1/2008 and 11/1/2009 (date created range), for any matter having to do with the Jelson Electric, Inc. (client name). I imagine that it is presently impossible for anyone in your office to even contemplate a search like that

OCR Capabilities

As discussed above, the ability to OCR Image-Only PDFs to make them Text Searchable is critical. The DMS should be able to identify PDFs that are non-searchable and automatically OCR them to make them text searchable. This should happen on the back-end automatically, so users do not have to waste time running the OCR process on every PDF they scan or receive via email. Most DMS systems utilize add-on products like Symphony OCR or ndOCR to perform the OCR automatically.

Give Clients/External Users Secure Access to Some Documents

Systems like NetDocuments have collaboration tools natively built-in because they are designed using pure cloud architecture. In other words, you don’t need to buy an add-on product like Citrix ShareFile in order to create a place to share documents with clients. This is a screenshot taken from NetDocuments, showing this feature, which they call Collaboration or Share Spaces:

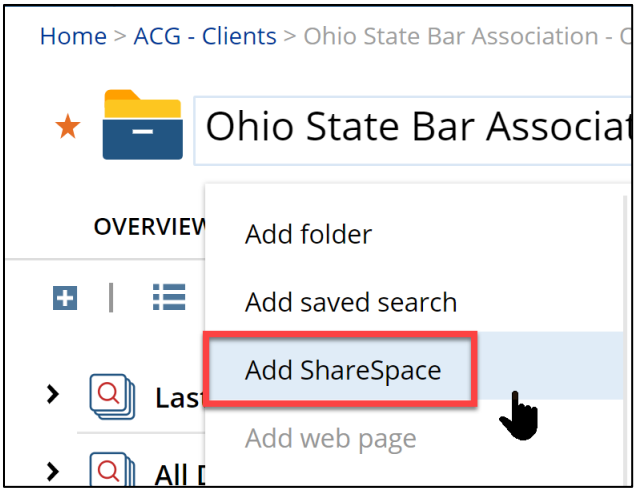

FIGURE 15

No Accidental Drag & Drops

A frequent issue reported to us is the cry for help when a document folder goes missing. Those folders are often accidentally dropped into a different folder and the user has no idea what happened. This is impossible with a document management system. Moreover, if documents do get moved accidentally, the audit trail would accurately identify what happened, when it happened, and who did it.

Deleting Doesn't Have To Mean Deleted

The office can set up a rule where deleted documents go to a 'trash' holding place where they can be auto deleted after a certain number of days or kept until an administrator empties the trash.

Organize a Library or Brief Bank

A document management system can be incredibly helpful when it comes to categorizing and protecting forms, templates, precedents and organizing a brief bank by topic that is fully text searchable. Create a dedicated cabinet that is fully searchable to tap into your organization's knowledge base.

Ability to Save Most Any File Type

The DMS must be able to hold any type of file you've created in-house as well as any type of scanned document (PDF, TIF or JPG) which will typically represent the documents you're received from the outside. A search must turn up all relevant documents regardless of physical location, format, and source application. For example, we have seen plenty of copier-based applications which only hold documents you scan. It does little good to have scanned documents in one system and all of the documents you've created in-house in another system. The idea is to get everything related to a matter in the same system, including documents you've created in-house, documents you've scanned, faxes, hand-written notes, email and attachments to email.

Version Tracking/Management

The DMS must be able to keep multiple versions of every document. This becomes very important when a document is undergoing revision and is being passed back and forth between attorneys. Most DMSs will keep over 100 versions of every document along with a detailed audit trail noting who did what to the file and when. When the revised document is saved within the system, it will prompt the user with the option to save it as another version, as see here with Worldox:

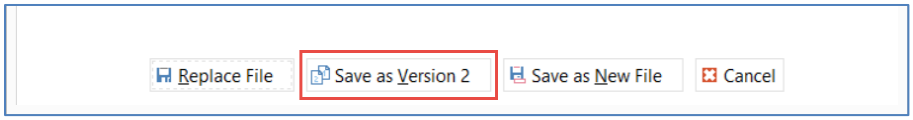

FIGURE 16

Once saved, whenever that document appears in a search result or list, the DMS groups all of the versions as one listing, and indicates that there are multiple versions available of that document, as seen here in a screenshot from NetDocuments:

FIGURE 17

If users want to see all versions of the document, they can right-click and select list versions and see a complete history:

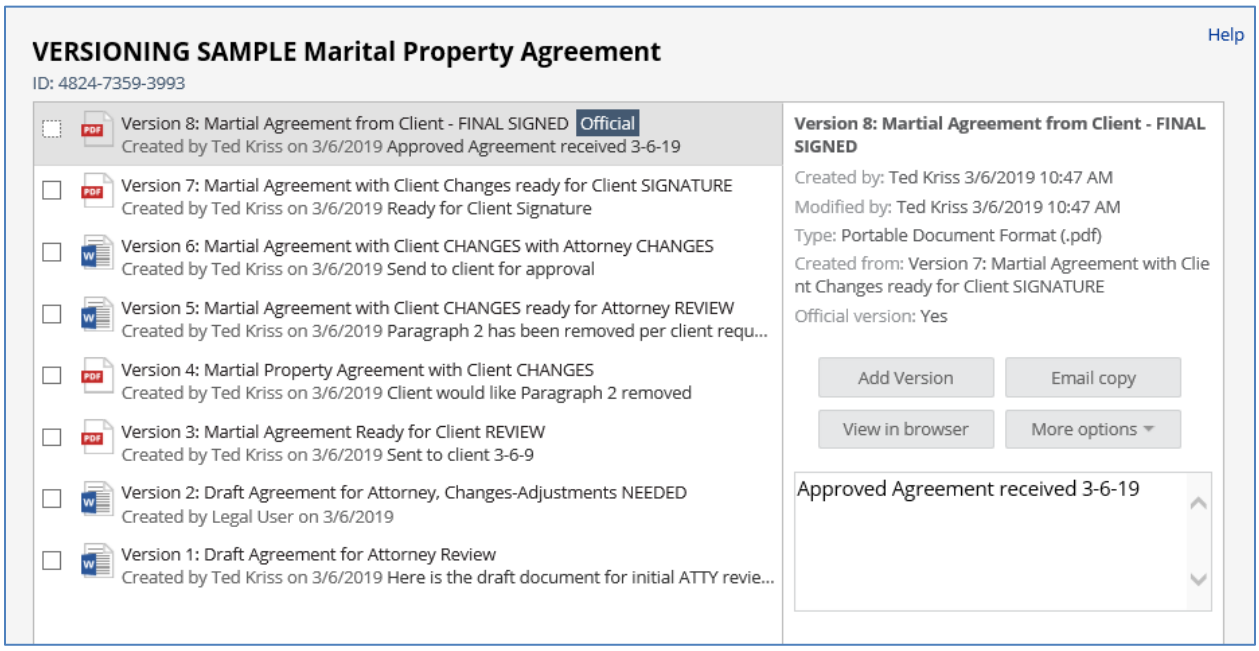

FIGURE 18

Ability to Compare Documents

Related to version tracking, users must also have the ability to compare different versions of a document or compare one document to another. In order to compare documents, some people use the compare features built into MS Word while others use 3rd party applications like CompareDocs or Workshare Professional (fka DeltaView). Since all of the documents being compared to one another will be stored in the DMS, the DMS must integrate with these functions in Word or 3rd party programs. Not all DMSs incorporate this functionality which is why this is an important question to ask up front.

Audit Trail / Document History

The DMS must be able to automatically audit all transactions related to a file saved within the system so it is easy to determine with files were first created, see everyone who touched it, and determine things like when files were copied, printed, emailed or deleted from the system.

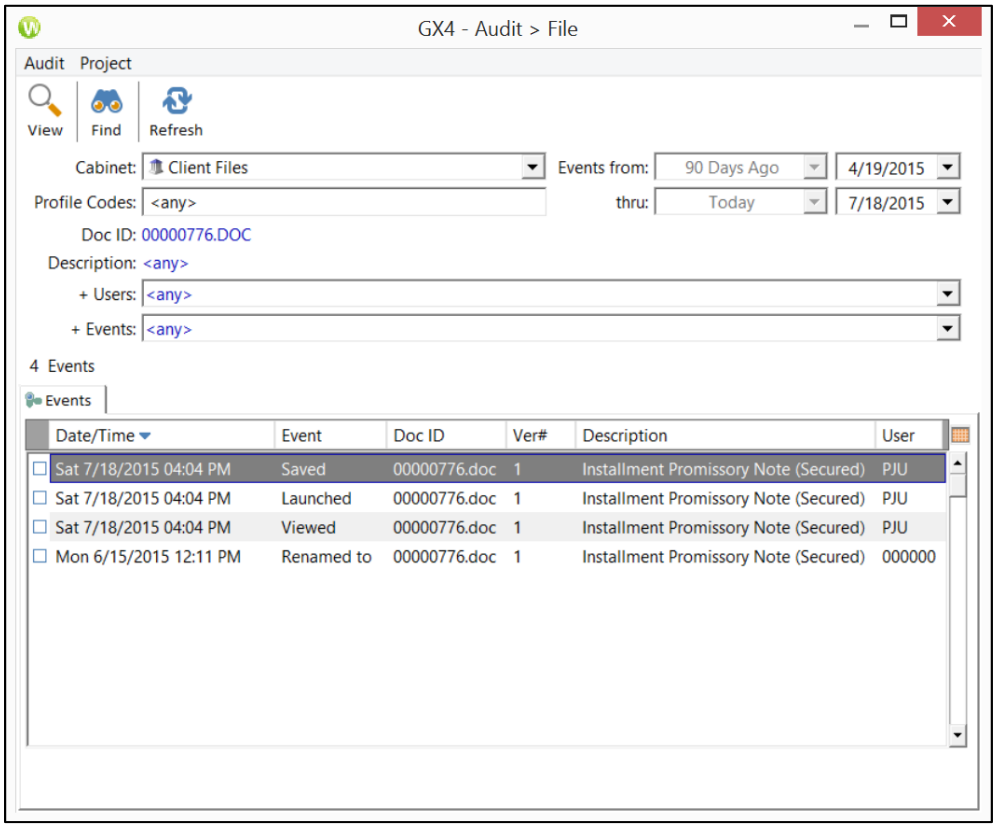

FIGURE 19

Following a Document

If you want, you should be able to have the DMS system notify you if a document has been reviewed or edited.

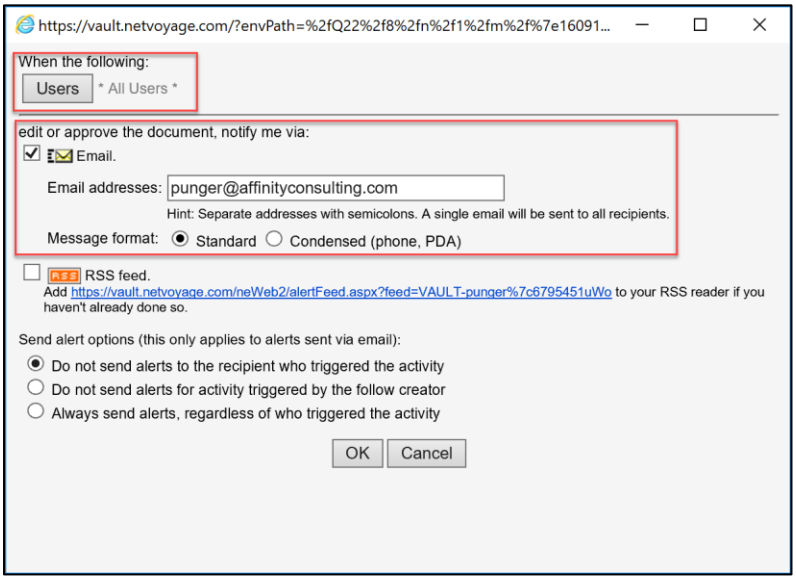

FIGURE 20

Archiving

Archiving is a means to move dated or unused files off the main storage medium to secondary storage. The DMS ensures that users can still search for information in the archived files and that there is a ready means to restore it. Many DMSs will allow site administrators to set "triggers" in the document profiles that enable automated archiving. For example, it may be desirable to set internal memos to be archived automatically after say, 24 months.

Offline Access

The DMS must be accessible when you're not in the office or if you lose connectivity … at least the most recent documents that you have touches. You will need to have full access to those recent documents. This functionality is called “mirroring” or “caching”.

Remote Access

It is critical that lawyers have access to the system via the web, from an iPhone, iPad or other mobile device. All major legal document management programs (Worldox, NetDocuments, iManage and OpenText) offer these solutions and this incredibly convenient access.

Scanning Integration

Scanned documents must be easily added to the DMS so that they are included in the document store and can be associated with matters, clients, and the like. All the major legal DMS programs have direct integration with the Fujitsu ix1500 desktop scanner. This is important because the ix1500 is the most popular desktop scanner in North America.

Consistency

The system must ensure that documents are consistently labeled and stored. This means that profile fields are drop-down lists and people don't have to manually type document types, client and matter identification numbers, etc.

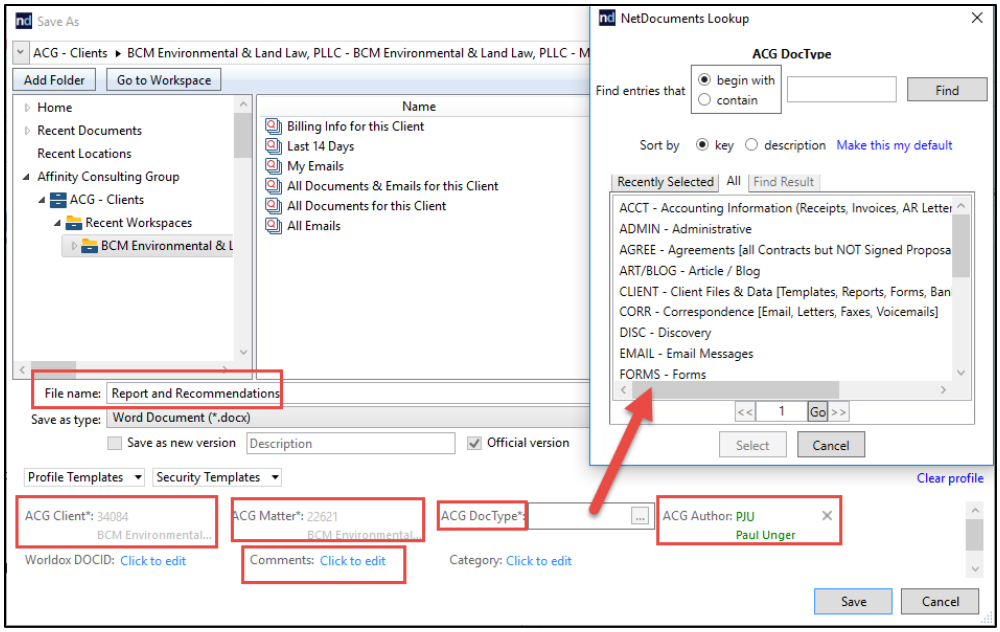

FIGURE 21

Legal DMS Main Players

I've listed below the main players in the legal market, but there are many other options:

NetDocuments: See www.netdocuments.com. This is a pure cloud-based option and is therefore going to be less expensive up front than the on-premise options. NetDocuments is easily the most mature cloud DMS platform on the market today. NetDocuments is currently one of the most popular DMS for most firms, and is a great choice for firms of all sizes.

Worldox: See www.worldox.com. Worldox is also one of the most popular DMS options. It can also accommodate larger environments, but NetDocuments, iManage and OpenText are probably better suited for very large environments (over 350 users). Worldox's core product is terrestrial (on-premises), but they do offer a hosted hybrid cloud solution.

iManage: See http://www.imanage.com. iManage is an excellent program, but it tends to cater to large enterprises. iManage's core product is terrestrial (on-premises), but they do offer a hosted hybrid cloud solution.

OpenText (formerly Hummingbird): See http://www.opentext.com. Like iManage, OpenText tends to cater to large enterprises also. OpenText's core product is terrestrial (on-premises), but they do offer a hosted hybrid cloud solution.

8 DOCUMENT MANAGEMENT WITHOUT DM SOFTWARE (HOME-GROWN DMS)

From a productivity standpoint, an enormous amount of time is collectively wasted daily in law firms and legal departments searching for documents when documents are managed poorly. Unfortunately, in our experience, most organizations, no matter the size, have poor document management practices if they do not have document management software. It's simply too hard to police and monitor to make sure that people comply … ie. Saving documents in the central designated location and doing so in a consistent manner. As the firm size grows, so does the need and justification for a DMS. That said, sometimes there isn't money in the budget right now. So what can you do in the interim? What are the essential elements?

CENTRAL FOLDERING THAT IS MATTER-CENTRIC

It is critical that documents are saved by **client/matter, or within a legal department by area/matter**, and not by user. Saving documents by user can create lots of problems, such as:

- Documents for one client being located in more than one folder.
- Revision conflicts.
- Losing things permanently if staff turns over. Turnover creates an administrative nightmare for everyone in managing those documents. Saving by user results in duplicate files and no one really knowing what is the authoritative version of a document or how matters were left.

Saving documents on a user's local hard drives is a big no-no as well. Those documents are not getting backed up! They need to be saved centrally on a file server or in the cloud, within one matter folder. You can create a logical directory layout, find documents easier, and it makes backing up your documents simpler. You can use Windows active directory security to limit access to folders based on users.

If S is your server drive where your documents are located, you may create something like:

- S:\Clients
- S:\Accounting
- S:\Marketing
- S:\Admin
- S:\Library

It would look something like this:

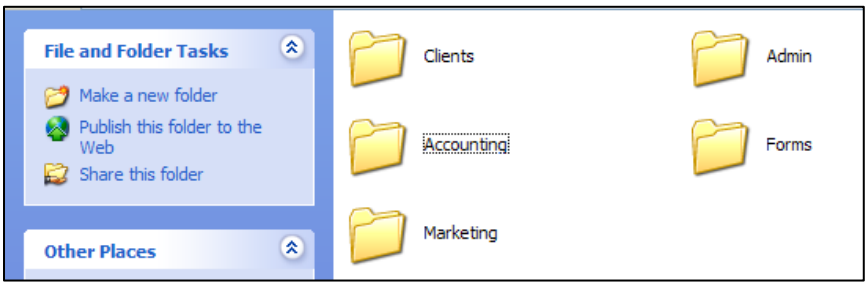

FIGURE 22

If S:\ is your server drive, you'd create a folder called S:\Clients, and sub-folders for each client thereunder:

- S:\Clients\Carsey, Joe
- S:\Clients\Cochran, Doug

Within the specific client folder, you would have a subfolder for each matter.

S:\Clients\Smith, John\Real Estate - Sale of 123 Maple St

- S:\Clients\Smith, John\Real Estate - Purchase of 400 E Main St
- S:\Clients\Smith, John\Divorce

Within each matter, you would have a subfolder for each document type (correspondence, memos, pleadings, etc.)

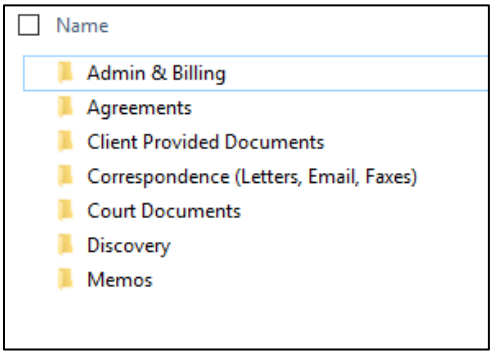

FIGURE 23

We recommend keeping an empty set of these folders and then pasting them into each matter/case created so that you have a consistent folder structure for all of your matters/cases. This will also make it much easier later down the road if you decide to purchase a full-blown legal document management system. Migrating documents to the new system will be much easier.

SOLID NAMING SCHEME

Just like the paper file, most people would like everything sorted by true chronological date. To accomplish this, precede every file name with a date, year first. If you enter the date month/day/year, then all of the January files (for all years) are lumped together, all of the February files are together, etc. Recommended naming convention:

2020-10-30 - Letter to Rob Miller re Jared.docx

2020-09-10 – Letter to Jared re Paula.docx

2019-01-14 – Letter to Judge Smith re Nothing in Particular.pdf

The date indicates the date the document was mailed out if it's a letter; and the longer description makes it clear what this document contains without even opening it.

SEARCH ENGINE

If a full robust document management solution is not in your budget at the moment, or just not needed right now, you would definitely benefit from a search engine or a search program in the interim to find documents saved in the above-referenced folder structure. These programs crawl through entire folder structures and will create an index of every single word in every single text-searchable document going back to the beginning of time (late 80's when word processors were first utilized). See above *Searching Your Documents – Search Programs*.

Cybersecurity and Ethical Pitfalls of Everyday Law Office Computing

Presented for Indiana Law Update 2021

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Affinity Consulting Group

Protection of client information, confidences and secrets is one of the most sacred traits defining the relationship between attorneys and their clients. Without a proper understanding of technology, you may be compromising that relationship. Email, cloud computing, traditional computers, smartphones, tablets, networks, viruses, worms, spyware, metadata, electronic court filings, just to name a few, may already be compromising that relationship without you even knowing it.

Take email as an example. In 2020, the average legal professional will receive between 125-150 messages daily. Without question, email is one of the most important technological communication advancements of the past 100 years. It has fundamentally changed the way we communicate with clients and the way that we do business. Major corporations and law firms are run via email communication instead of face-to-face communication. For lawyers, emails present a wide array of issues that most of the business world and ordinary consumers will never face.

Under ABA Model Rule 1.6, Attorneys have a broad obligation to act competently and reasonably protect client information and confidences. Rule 1.6 (replacing DR 4-101) revised the scope of confidential information. Similarly, in Canada, Model Code of Professional Conduct, Rule 3.3 requires the same protection of client information and confidences. Practicing law without technology (and email) has almost become an impossibility. However, law and technology have become so intertwined that you can find yourself in many ethical dilemmas pretty quick. This seminar and article seek to address these issues that may lead to an ethical violation or malpractice.

"Competence" Re-Defined and Taking Reasonable Steps to Protect Client Information

National Trend – Examples

Pennsylvania (approved October 22, 2013)

Rule 1.1 – Comment 8: Maintaining Competence
[8] To maintain the requisite knowledge and skill, a lawyer must keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Pennsylvania was the first state to adopt the new language. 38 states have adopted the Duty of Technical Competence. Some of those include:

Alaska (effective October 15, 2017)
Arkansas (effective June 26, 2014)
Arizona (effective January 1, 2015)
Colorado (approved April 6, 2016)
Florida (effective January 1, 2017)
Indiana (effective January 1, 2018)
Illinois (effective January 1, 2016)
Kansas (effective March 1, 2014)
Kentucky (effective January 1, 2018)
Louisiana (adopted April 11, 2018)
Michigan (effective January 1, 2020)
Minnesota (approved February 24, 2015)
Missouri (approved Sept. 26, 2017)
New Hampshire (effective January 1, 2016)
New York (adopted March 28, 2015)
North Carolina (approved July 25, 2014)
Ohio (effective April 1, 2015)
Oklahoma (adopted September 19, 2016)
Pennsylvania (effective October 22, 2013)
South Carolina (approved November 27, 2019)
Virginia (effective March 1, 2016)
Washington (effective Sept.1, 2016)
West Virginia (effective January 1, 2015)
Wisconsin (effective January 1, 2017)

Some states have not yet adopted the new language within their rules of professional responsibility. As of February of 2021, those include:

Oregon
Nevada
Mississippi
Alabama
Georgia
Maine
Maryland
New Jersey

Some states have not adopted the rule change but have addressed it in an ethics opinion. For example, **California** has not formally adopted the change to its rules. However, they expressly acknowledge the duty of technical competence in Formal Opinion No. 2015-193, and even cites ABA's Comment 8.

As another example, **Oregon** in Formal Opinion 2011-187 imposes a duty of technical competence *when dealing with metadata* and cites Arizona Ethics Op No. 07-03. It is reasonable to conclude that all Oregonian attorneys should have general technical competence (not just technical competence with metadata) in light of this opinion on metadata and the national trend.

Acting Competently to Preserve Confidentiality

Indiana Rule 1.6, Comments 16 & 17

[16] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

[17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Ohio Rule 1.6 (and Model Rule 1.6) and Comments 18 & 19

Rule 1.6(c) – Confidentiality of Information: A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Rule 1.6 – Comment 18 & 19: Acting Competently to Preserve Confidentiality

[18] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule.

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Similarly, many other states have taken the same approach in their comments, as the ABA and Ohio. Take Maine, New Hampshire and Oklahoma as an example:

Maine Rule 1.6
Acting Competently to Preserve Confidentiality – Comments 16 & 17

Acting Competently to Preserve Confidentiality

[16] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. Consistent with Section 66 of the Restatement, a lawyer who takes action or decides not to take action allowed under this Rule is not, solely by reason of such action or inaction, subject to professional discipline, liable for damages to the lawyer's client or any third persons, or barred from recovery against a client or third persons. The legal effect of the lawyer's choice, however, is beyond the scope of the Model Rules of Professional Conduct.

[17] When transmitting a communication that includes confidences or secrets of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

New Hampshire Rule 1.6
Acting Competently to Preserve Confidentiality - Comments 18 & 19

[18] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these rules.

Oklahoma Rule 1.6
Acting Reasonably to Preserve Confidentiality – Comments 16 & 17

[16] Paragraph (c) requires a lawyer to act reasonably to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1, and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern date privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3] -[4].

[17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Louisiana Rule 1.6 – Comments 18 and 19

[18] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Mississippi Rule 1.6 + Comments

Mississippi requires reasonableness and competency, but they don't provide as much guidance in their comments as other states:

> **Acting Competently to Preserve Confidentiality.** A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See rules 1.1, 5.1 and 5.3.
>
> When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this rule.

Cloud Computing

Cloud computing is an umbrella term that covers several concepts. Within the scope of legal technology, it most often refers to Software-As-A-Service ("SaaS"). There are a ridiculous number of definitions of SaaS, but I think this one sums it up succinctly without using 15 more acronyms requiring definitions:

> "Generally speaking, it's software that's developed and hosted by the SaaS vendor and which the end user customer accesses over the Internet. Unlike traditional packaged applications that users install on their computers or servers, the SaaS vendor owns the software and runs it on computers in its data center. The customer does not own the software but effectively rents it, usually for a monthly fee. SaaS is sometimes also known as hosted software or by its more marketing-friendly cousin, 'on-demand.'"

To be clear, this means that you do not have the software installed on your computer - it is accessible only via a browser on the Internet. Further, your data and/or documents are located on the vendor's servers and not on your computer or server.

This obviously raises ethical concerns because you are entrusting client confidential information with someone other than you and your employees.

An excellent compilation of ethics decisions around the country can be found at the ABA Law Practice Management Section's Legal Technology Resource Center (LTRC).

http://www.americanbar.org/groups/departments_offices/legal_technology_resources.html

Probably the best decision that I have read to date in the U.S. comes from Pennsylvania:

http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/saas.html

Pennsylvania, and nearly every jurisdiction who has addressed the issue employ a standard of reasonableness and typically requires segregation of data, privacy/security of data, ability to keep a local download, and reliability of the vendor. The court stated:

The standard of reasonable care for "cloud computing" may include:

- Backing up data to allow the firm to restore data that has been lost, corrupted, or accidentally deleted;

- Installing a firewall to limit access to the firm's network;
- Limiting information that is provided to others to what is required, needed, or requested;
- Avoiding inadvertent disclosure of information;
- Verifying the identity of individuals to whom the attorney provides confidential information;
- Refusing to disclose confidential information to unauthorized individuals (including family members and friends) without client permission;
- Protecting electronic records containing confidential data, including backups, by encrypting the confidential data;
- Implementing electronic audit trail procedures to monitor who is accessing the data;
- Creating plans to address security breaches, including the identification of persons to be notified about any known or suspected security breach involving confidential data;
- Ensuring the provider:
    - explicitly agrees that it has no ownership or security interest in the data;
    - has an enforceable obligation to preserve security;
    - will notify the lawyer if requested to produce data to a third party, and provide the lawyer with the ability to respond to the request before the provider produces the requested information;
    - has technology built to withstand a reasonably foreseeable attempt to infiltrate data, including penetration testing;
    - includes in its "Terms of Service" or "Service Level Agreement" an agreement about how confidential client information will be handled;
    - provides the firm with right to audit the provider's security procedures and to obtain copies of any security audits performed;

- will host the firm's data only within a specified geographic area. If by agreement, the data are hosted outside of the United States, the law firm must determine that the hosting jurisdiction has privacy laws, data security laws, and protections against unlawful search and seizure that are as rigorous as those of the United States and Pennsylvania;

- provides a method of retrieving data if the lawyer terminates use of the SaaS product, the SaaS vendor goes out of business, or the service otherwise has a break in continuity; and,

- provides the ability for the law firm to get data "off" of the vendor's or third-party data hosting company's servers for the firm's own use or in-house backup offline

- Investigating the provider's:

  - security measures, policies and recovery methods;

  - system for backing up data;

  - security of data centers and whether the storage is in multiple centers;

  - safeguards against disasters, including different server locations;

  - history, including how long the provider has been in business;

  - funding and stability;

  - policies for data retrieval upon termination of the relationship and any related charges; and,

  - process to comply with data that is subject to a litigation hold.

- Determining whether:

  - data is in non-proprietary format;

  - the Service Level Agreement clearly states that the attorney owns the data;

  - there is a 3rd party audit of security; and,

  - there is an uptime guarantee and whether failure results in service credits.

- Employees of the firm who use the SaaS must receive training on and are required to abide by all end-user security measures, including, but not limited to, the creation of strong passwords and the regular replacement of passwords.

- Protecting the ability to represent the client reliably by ensuring that a copy of digital data is stored onsite.

- Having an alternate way to connect to the internet, since cloud service is accessed through the internet.

In Oregon, while the model rule language in Comments 18 & 19 has not been explicitly adopted, in Formal Opinion No. 2011-188 (revised 2015) they have adopted "the rule to act reasonably" as it applies to an attorneys obligation under Rule 1.6 to protect client confidential information. Opinion 2011-188 specifically concludes that an attorney may contract with a third-party vendor to store and retrieve files online via the Internet (i.e., cloud computing).

In Canada, only the Law Society of British Columbia has directly addressed cloud computing, and the Legal Education Society of Alberta has adopted the same standard. It seems to be a higher standard than the U.S., and many practicing in other areas of Canada that haven't addressed it have felt comfortable following the U.S. rules. The Law Society of BC developed an extensive checklist that is submitted as a separate paper hereto. The checklist encourages potential cloud service users to consider, among other things:

- use of a private cloud, which is designed to offer the same features and benefits of public cloud systems without some of the typical cloud computing concerns such as data control, security, and regulatory compliance;
- encryption of data using a 3rd party encryption product and the compatibility of the 3rd party product with the cloud provider's product and services;
- data security and responsibility for specific aspects of security, including firewall, encryption, password protection and physical security;
- regulatory requirements, including statutory privacy requirements, retention periods indicated in the LSBC Rules, the ability to produce documents with respect to a LSBC investigation in the form and time prescribed, and the retention of custody over client data;
- adequacy of remedies in the event of data breaches, data loss, indemnification obligations, and service availability failures;
- the cloud provider's breach notification obligations;
- termination of the services agreement with the cloud provider, specifically as it relates to issues including cost, service level failures (bandwidth, reliability, etc.), data availability after termination, and transition services;

- technical considerations, including compatibility with existing systems, uptime, redundancies, bandwidth requirements, security measures, and technical support service availability; and
- the track record of the cloud services provider (such as uptime, security, support service level, etc).

The above is neither an exhaustive list of applicable considerations nor a complete summary of the Checklist.

Advantages of Cloud Computing (Saas):

- Up Front Price Advantage: Let's say you want to start using a case management application for your practice. If you were to buy one such as Time Matters, you would have to pay for the software outright along with the annual maintenance contract which is mandatory ($905 for the first license and $525 for each license thereafter). You may have to buy a file server or otherwise upgrade your hardware in order to run the program. For an example cost, a new server plus installation and setup could easily run $5,000 - $8,000. Therefore, buying software may turn out to be quite expensive. In the alternative, you would begin subscribing to something like www.rocketmatter.com in which case you would pay $59.99 for the first user per month and $49.99 per user for the next 5 users per month. You wouldn't have to buy a server and you probably wouldn't have to upgrade any of your existing equipment assuming you already have high speed Internet access.

- Ease of Use

- World-Class Data Security

- New Hardware often NOT Required: If you already have a computer and high speed Internet access, then you probably don't need anything else from a hardware perspective.

- Works in Apple or Windows: Since these applications are browser based, they will usually work with both Apple and Windows computers.

- Updates Included: Most cloud application include all updates which are installed for you.

- Technical Support Included: With most cloud applications, you get "free" technical support included with your monthly subscription fee. Of course, purchased software also provides technical support but it is often an extra fee on top of the original software purchase price.

- Access From Anywhere: As long as you're using a computer with internet access, you can probably use your cloud applications. You wouldn't need a VPN, GotoMyPc, or any other type of additional remote access application to accomplish this.

- Share Applications Among Users Spread Out Geographically: For lawyers with multiple offices or who wish to work from multiple locations, cloud applications provide a lot of flexibility. Of course, there are other ways to gain access to programs besides subscribing to cloud applications, but this feature is obviously built in to cloud apps without buying anything else.

- Redundancy Provided: Since your data is stored on the host company's servers, they almost always provide redundant data storage along with that so that there is little (if any) risk that you would lose your data or access to your application due to a physical hardware failure.

E-Mail Encryption and Other Pitfalls

❶ To Encrypt or Not to Encrypt?

According to most jurisdictions in the United States, a lawyer does not violate the duty to preserve confidences and secrets if an email is sent without encryption technology.

In Canada, the rules do not explicitly say that encryption is not required. Instead, the rules imply a duty to act reasonably to protect client confidences. Lawyers should consider the use of information technologies to communicate with the client in a timely and effective manner appropriate to the abilities and expectations of the client. Lawyers may use email (see Rule 3.1-1(d) and 3.1-2 of the Rules of Professional Conduct).

Lawyers must display the same care and concern for confidential matters regardless of the information technology being used. When communicating confidential information to or about a client, lawyers should employ reasonably appropriate means to minimize the risk of disclosure or interception of data by malicious intruders.

What are the risks that a particular information technology poses for inadvertent disclosure or interception? Lawyers should inform a client of the risks of unauthorized disclosure and interception before using information technologies. Lawyers need to ensure that their clients, too, understand that they need to protect the confidentiality of communications to them. Seeking client consent before using a particular technology for communications may be appropriate.

In Ohio, Ethics Opinion 99-2, issued April 9, 1999, by contrast states that a lawyer does not violate the duty to preserve confidences and secrets if an email is sent without encryption technology citing DR 4-101 of the Ohio Code of Professional Responsibility. An attorney must use his or her professional judgment in choosing the appropriate method of each attorney-client communication. Most jurisdictions in the U.S. are consistent with Ohio.[1] Also see Formal Opinion No. 99-413 of the American Bar

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[1] Excerpt from Ohio Op. 99-2:

The trend among advisory bodies in other states (and the District of Columbia) is that electronic mail without **encryption** is ethically proper under most circumstances.

In the District of Columbia, "[i]n most circumstances, transmission of confidential information by unencrypted electronic mail does not per se violate the confidentiality rules of the legal profession. However, individual circumstances may require greater means of security." District of Columbia Bar, Op. 281 (1998).

In Illinois, "[l]awyers may use electronic mail services, including the Internet, without **encryption** to communicate with clients unless unusual circumstances require enhanced security measures." Illinois State Bar Ass'n, Op. 96-10 (1997).

In New York, the state bar association advised that "lawyers may in ordinary circumstances utilize unencrypted Internet **e-mail** to transmit confidential information without breaching their duties of confidentiality under Canon 4 to their clients, as the technology is in use today. Despite this general conclusion, lawyers must always act reasonably in choosing to use **e-mail** for confidential communications, as with any other means of communication. Thus, in circumstances in which a lawyer is on notice for a specific reason that a particular **e-mail** transmission is at heightened risk of interception, or where the confidential information at issue is of such an extraordinarily sensitive nature that it is reasonable to use only a means of communication that is completely under the lawyer's control, the lawyer must select a more secure means of communication than unencrypted Internet **e-mail**." New York State Bar Ass'n, Op. 709 (1998). The city bar association advised that "[a] law firm need not **encrypt** all **e-mail** communications containing confidential client information, but should advise its clients and prospective clients communicating with the firm by **e-mail** that security of communications over the Internet is not as secure as other forms of communication." Ass'n of the Bar of the City of New York, Formal Op. 1998-2 (1998).

In North Dakota, "Rule 1.6 of the North Dakota Rules of Professional Conduct is not violated by a lawyer who communicates routine matters with clients, and/or other lawyers jointly representing clients, via unencrypted electronic mail (**e-mail**) transmitted over commercial services (such as America Online or MCI Mail) or the Internet unless unusual circumstances require enhanced security measures." State Bar Ass'n of North Dakota, Op. 97-09 (1997).

In Vermont, "[a] lawyer does not violate DR 4-101 by communicating with a client by **e-mail**, including the Internet, without **encryption**." Vermont Bar Ass'n, Op. 97-5.

One state is reticent in its advice regarding unencrypted electronic communication with clients. In Arizona, the state bar responded "Maybe" to the question "Should lawyers communicate with existing clients, via **e-mail**, about confidential matters?" They advised "it is not unethical to communicate with a client via **e-mail** even if the **e-mail** is not **encrypted**" but suggested "it is preferable to protect the attorney/client communications to the extent it is practical." The committee suggested using a password known only to the lawyer or client, using **encryption** software, or at a minimum using a cautionary statement such as "confidential" and "Attorney/Client Privileged" either in the "re" line or beginning the communication. An additional suggestion was to caution clients about transmitting highly sensitive information via **e-mail** if the **e-mail** is not **encrypted** or otherwise secure from unwanted interception. Attorneys were "reminded that **e- mail** records may be discoverable." State Bar of Arizona, Op. 97-04 (1997).

Several states have reconsidered their initial views on the issue. In South Carolina, the bar association first advised that "unless certainty can be obtained regarding the confidentiality of communications via electronic media, that representation of a client, or communication with a client, via electronic media, may violate Rule 1.6, absent an express waiver by the client." South Carolina Bar, Op. 94-27 (1995). Later, the bar advised that "[t]here [now] exists a reasonable expectation of privacy when sending confidential information through electronic mail (whether direct link, commercial service, or Internet). Use of electronic mail will not affect the confidentiality of client communications under South Carolina Rule of Professional Conduct 1.6." South Carolina Bar, Op. 97-08 (1997).

In Iowa, the bar association rescinded Formal Op. 95-30 and replaced it with Formal Op. 96-1 advising that "with sensitive material to be transmitted on **E-mail** counsel must have written acknowledgment by client of the risk of violation of DR 4-101 which acknowledgment includes consent for the communication thereof on the Internet or non-secure Intranet or other forms of proprietary networks, or it must be **encrypted** or protected by password/firewall or other generally accepted equivalent security system." Iowa State Bar Ass'n, Op. 96-1 (1996). See also Iowa State Bar Ass'n Op. 96-33 (1997). Later, the bar

Association Standing Committee on Ethics and Professional Responsibility, *Protecting the Confidentiality of Unencrypted Email*, dated March 10, 1999.

The opinion contains an important caveat that should not be ignored:

> The conclusions reached in this opinion do not diminish a lawyer's obligation to consider with her client the sensitivity of the communication, the costs of its disclosure, and the relative security of the contemplated media of communication. Particularly strong protection measures are warranted to guard against the disclosure of highly sensitive matters. Those measures might include the avoidance of e-mail, just as they would warrant the avoidance of the telephone, fax and mail.

Is there a problem with this decision that is was issued so long ago? What effect do the newer Model Rules have on this opinion? Despite advances in technology, and the rules in most jurisdictions, the opinion would stand up today.

First, the same opinion is shared in well over a majority of jurisdictions, many of which had the New Model Rules already in place. Comment 17 to Rule 1.6 states:

> [17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. **Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement.** A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this rule.

The ABA accepted the same approach in Comment 16 to Model Rule 1.6.

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association amended Opinions 96-1 and 96-33 by advising that "with sensitive material to be transmitted on **e-mail** counsel must have written acknowledgment by client of the risk of violation of DR 4-101 which acknowledgement includes consent for communication thereof on the Internet or non- secure Intranet or other forms of proprietary networks to be protected as agreed between counsel and client." Iowa Bar Ass'n, Op. 97-1 (1997).

Second, email is a very efficient form of communication. Third, the same security issues exist in other forms of communication such as wiretapping phone lines or stealing U.S. mail. Fourth, any interception of email or older forms of communication such as US mail or telephone calls is illegal. Finally, there is support in case law for the proposition that a reasonable expectation of privacy may exist even though a form of communication is capable of being intercepted, citing *State v. Bidnost*, 71 Ohio St. 3d 449, 461 (1994).

Ohio accepted the same approach in Comment 19 to its rule 1.6:

[19] When transmitting a communication that includes information relating to the representation of a client, **the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients**. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. **A client may require the lawyer to implement special security measures not required by this Rule** or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Duty to Do More? … Some Say Yes

Pennsylvania and New Jersey have adopted the same rule, but added a little more stringency to it. In Pennsylvania, Informal Opinion 97-130, issued September 26, 1997, concluded:

1. A lawyer may use e-mail to communicate with or about a client without encryption;
2. A lawyer should advise a client concerning the risks associated with the use of e-mail and obtain the client's consent either orally or in writing;
3. A lawyer should not use unencrypted e-mail to communicate information concerning the representation, the interception of which would be damaging to the client, absent the client's consent after consultation;
4. A lawyer may, but is not required to, place a notice on client e-mail warning that it is a privileged and confidential communication; and,
5. If the e-mail is about the lawyer or the lawyer's services and is intended to solicit new clients, it is lawyer advertising similar to targeted, direct mail and is subject to the same restrictions under the Rules of Professional Conduct.

While other jurisdictions are not bound by rules 1 through 5, above, I recommend them as best practices to follow.

The New Jersey Advisory Committee on Professional Ethics, in Opinion 701, issued in April 2006, states in a footnote that confidential documents sent over the Internet should be password protected.

In conclusion, in light of evolving technology and rules, it is my recommendation that attorneys (1) should advise clients verbally and in their engagement letter about email, as described in the Pennsylvania opinion, and (2) should have encryption available for use in appropriate circumstances.

❷ Email Encryption Solutions

Office 365 w/hosted Exchange and E3 licensing
www.office.com

Protected Trust
www.protectedtrust.com

Mail It Safe
www.mailitsafe.com

AppRiver
http://www.appriver.com/services/email-encryption/

Send
www.sendinc.com

TrendMicro
http://www.trendmicro.com/us/enterprise/network-web-messaging-security/email-encryption/index.html

❸ Retracting Sent E-Mails

Are there times when you wish that you could UNSEND something? This is actually something that can be done to prevent a known ethical violation where it may not be possible with ordinary U.S. Mail. With U.S. Mail, once the mail is in the post box, good luck getting it back!

I have 2 suggestions in this regard:

- If your firm uses Exchange Server, be sure to tell your system administrator to set a 5 minute delay before the email is actually sent from your server. This may give a user in your office enough time to catch it before it goes out.

- You may want to try out something like www.mailitsafe.com, or similar functioning service, which is an email verification program, but also allows retraction so long as it hasn't been retrieved by the recipient. You can also encrypt emails and attachments, requiring recipients to use passwords to open. The cost is $150 per year.

❹ E-Mail Addressing: AutoComplete can be an AutoDisaster

Outlook and other popular email programs have an ”Auto-Complete” function that saves you the time of having to type out someone’s complete email address if the name already exists in the program’s address book. Once you type the first character in the TO field, Outlook starts guessing the name of the recipient and will display potential names. If to quick and careless, you could accidentally hit ENTER and auto-complete the wrong recipient. While a nifty feature if used correctly, this can get you into trouble if you are careless.

As an example, if you intend to send something to your client “Brian Cluxton”, you could accidentally send something to opposing counsel “Brian Clayton” by typing B-R-I and hitting ENTER too quickly. If you don’t catch it, you could send something really damaging to the wrong person. I don’t think this warrants disabling the feature … just be careful!

Metadata Pitfall

You just hit the SEND button. You start to sweat and suddenly experience a panic attack. You and your associate were revising a contract for a client. Before sending it on to your client, you forgot to accept or reject tracked changes and remove all the hidden text from the word processing document. You also forgot to remove any other "metadata" before sending it. Anyone who receives the file can easily find out the following information:

- All the people who authored any part of the document … including the original author who happens to be a managing partner at a competing law firm
- The hidden text that states the client "is a moron!"
- The suggested changes made by a 1st year associate in your office (half of which were a bit moronic)
- The total time you spent revising the document … 15 minutes (even though you billed the client 8 hours – which is a big ethical problem of its own!)

This story is not fictional. It actually happened. This is just one of many bad messes that you can get yourself into if you are not using technology correctly.

The Bad News … Say goodbye to the glory days when you could simply draft and send a word processing document to opposing counsel or your client.

The Good News … Most technology-created pitfalls are easily avoidable if reasonable steps are taken.

Metadata … Is it really a "Nightmare"?

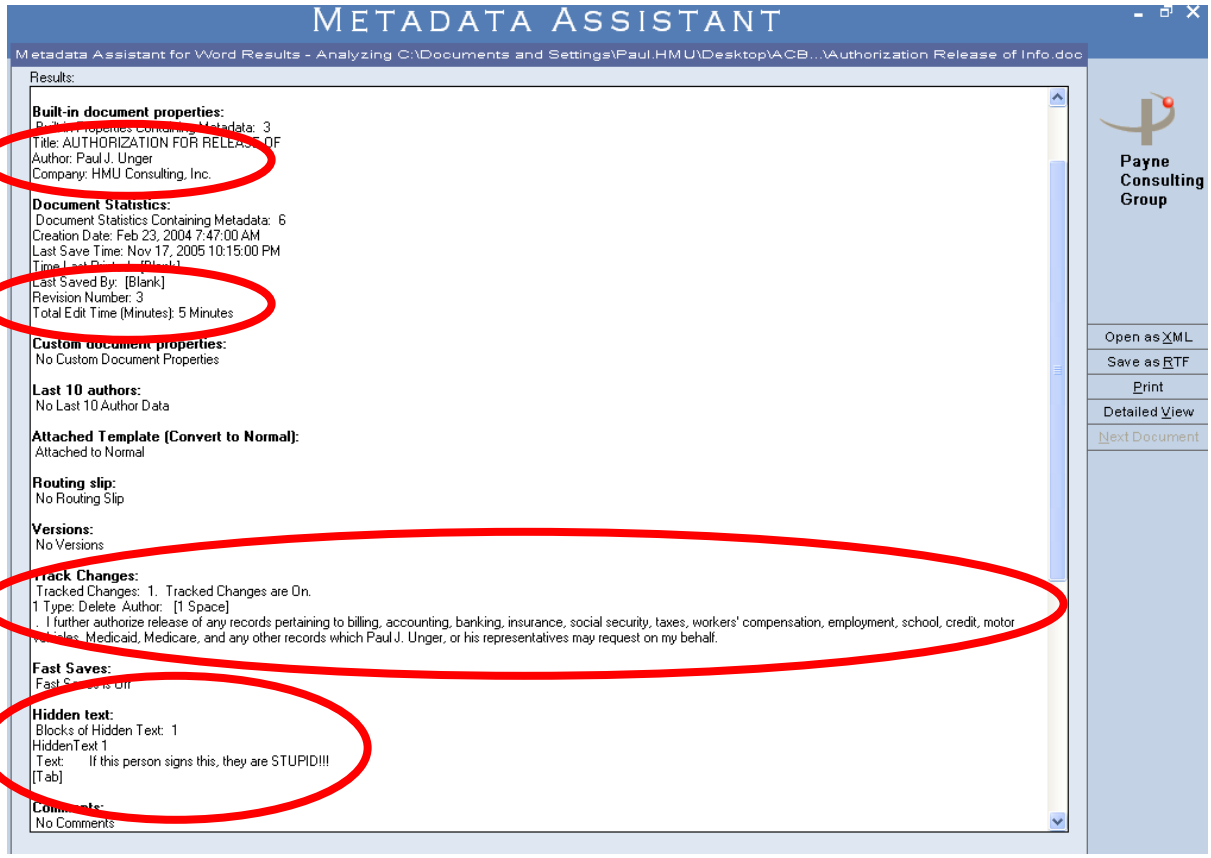
What is Metadata? Literally, metadata means "data about data." In the personal & business computing world, it is the hidden or invisible information contained within computer files. Most notably in the legal technology field, lawyers worry about metadata found in Microsoft Word, PowerPoint, Excel, Corel WordPerfect and Adobe Acrobat files.

The kind of information that can be found under the surface a Word document, for example, might be:

- Last 10 authors
- Firm name
- File locations

- Tracked changes
- Hidden text
- Deleted document comments
- Routing slip information
- Document versions
- Revision time
- Document properties (file size, modification date, etc.)
- Fast saves
- Hyperlinks
- Linked objects

As an example, below is part of a report showing metadata using a widely-used metadata remover called "Metadata Assistant" created Payne Consulting Group.



Why have metadata if it is so bad? Well, quite frankly because it is really useful information and it was never intended to be bad. Microsoft designed its programs to store metadata for a variety of reasons, one of which was for document management before Document Management Systems (DMS) existed.

As a very simple example, if one wanted to find all documents created or modified between December 1, 2005 and December 31, 2005 as a way to verify that you created

timesheets for all your billable time in December, you would perform a search using a Microsoft Find Files or Folders utility or a third-party program like dtSearch that searches … yes … metadata.

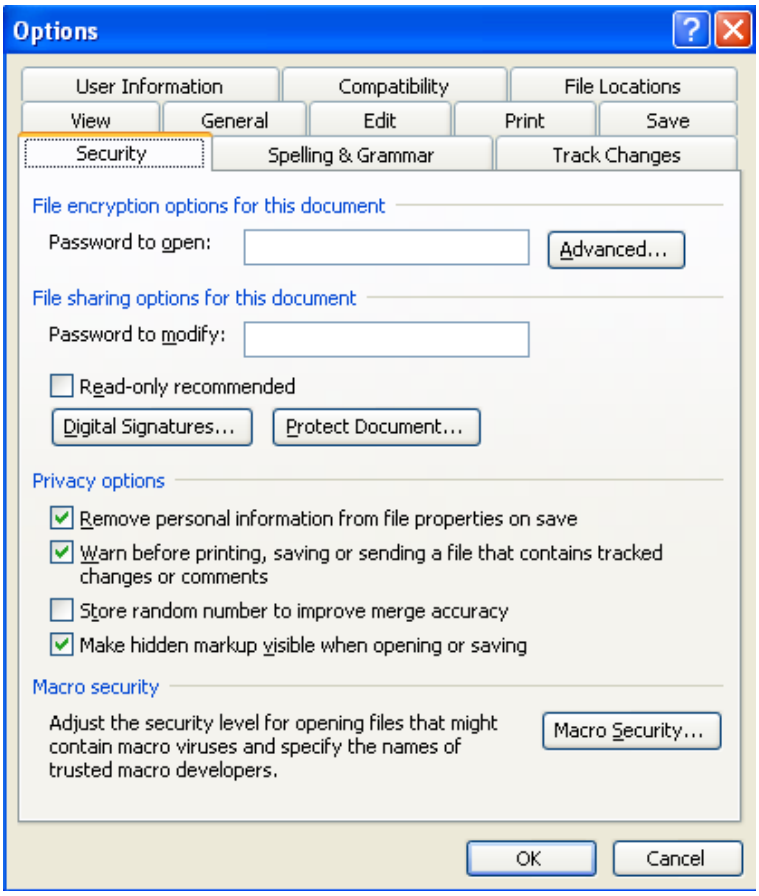
If you exchange electronic word processing files with anyone outside your office and do nothing to remove metadata it can result in a nightmare if the file contains metadata that was intended to be confidential. So, yes, it can indeed be a nightmare as many legal technologists claim. However, if you are not careless, these problems are not a nightmare at all. You just need to know what to do. Below is a list of what you need to do to avoid the word processing so-called "metadata nightmare."

❶ Learn the Security Settings within Microsoft Word

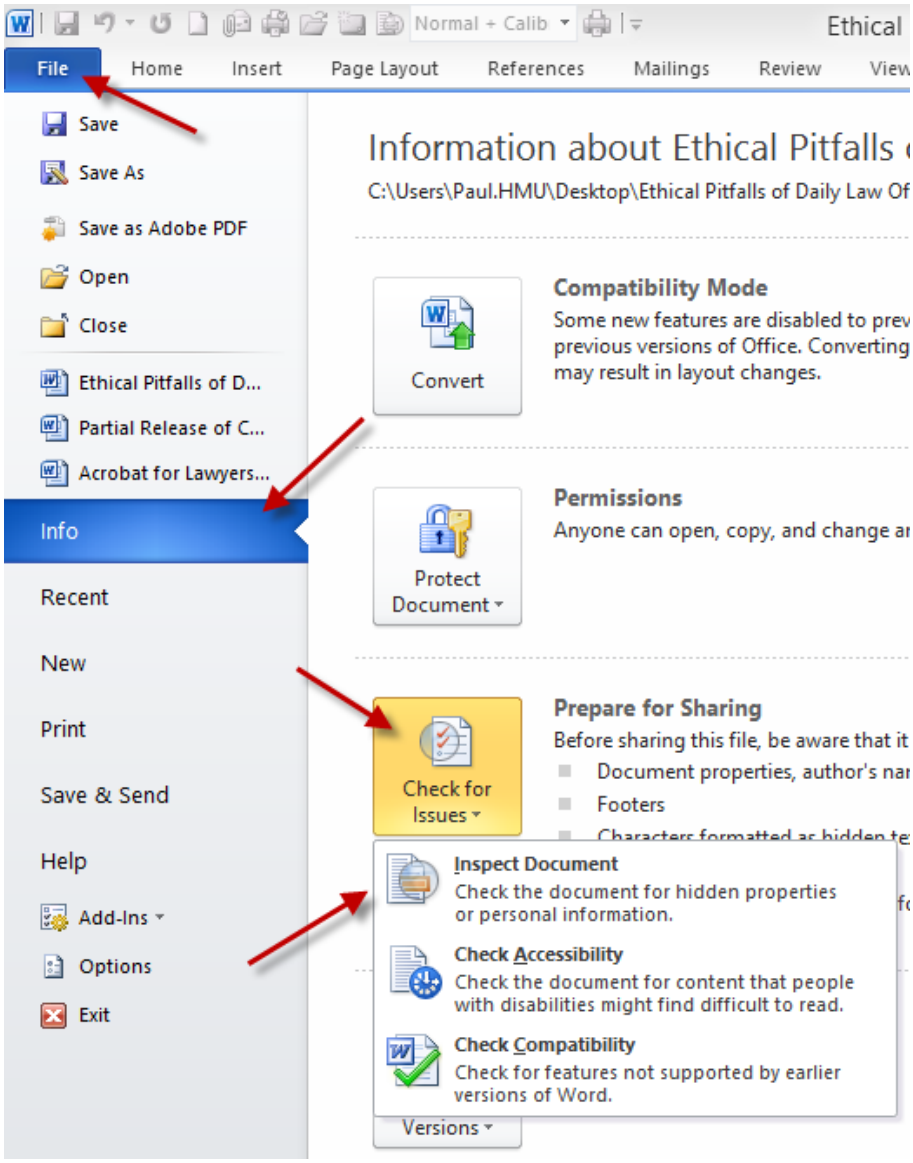
Much of the "dangerous" metadata contained in Microsoft Word documents can be prevented from transmission if certain security features are turned on.

In Word 2003 and earlier, open Word and select **Tools** and then **Options** and select the **Security** tab:

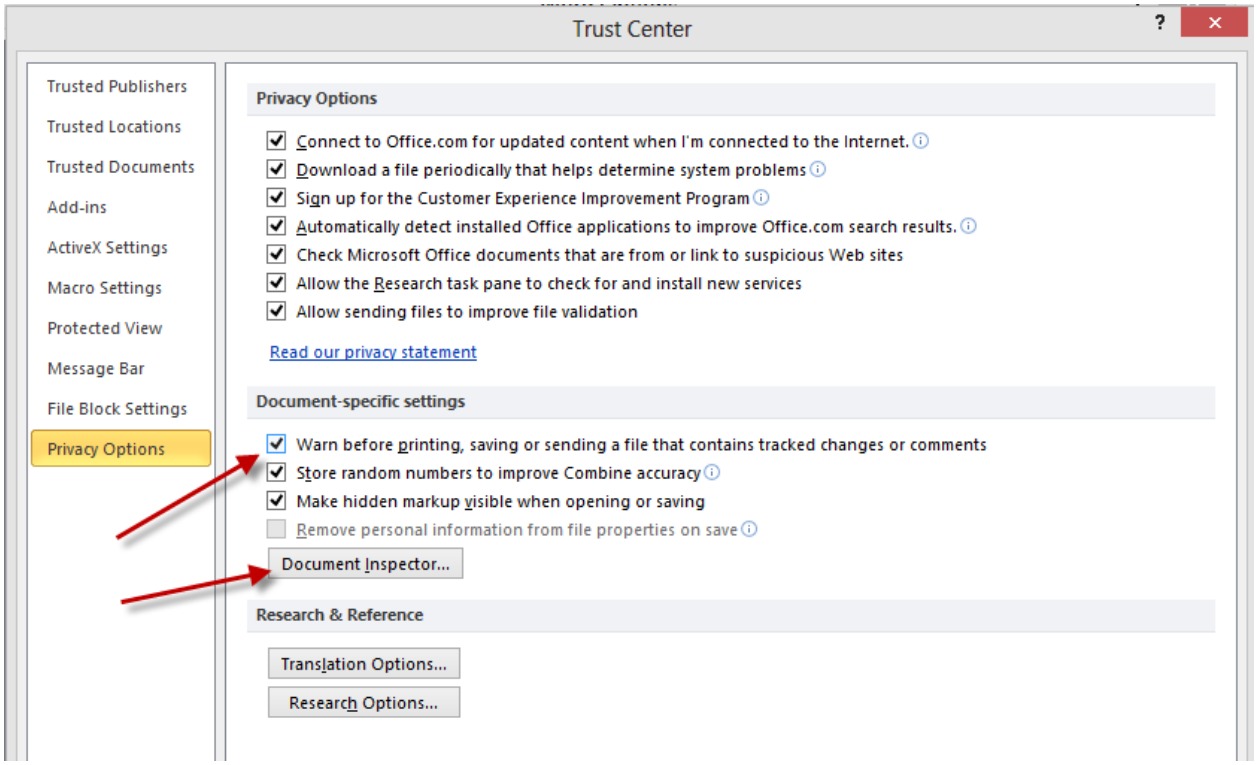
- Check "Remove personal information from file properties on save"
- Check "Warn before printing, saving or sending a file that contains tracked changes or comments"
- Check "Make hidden markup visible when opening or saving"



In Word 2010 and later, you must run the document inspector, which is most easiest found at **File > Info > Check for Issues > Document Inspector.**


Normal + Calib
Ethical
File
Home
Insert
Page Layout
References
Mailings
Review
View
Save
Save As
Save as Adobe PDF
Open
Close
Ethical Pitfalls of D...
Partial Release of C...
Acrobat for Lawyers...
Info
Recent
New
Print
Save & Send
Help
Add-Ins
Options
Exit
Information about Ethical Pitfalls
C:\Users\Paul.HMU\Desktop\Ethical Pitfalls of Daily Law Of
Convert
Compatibility Mode
Some new features are disabled to prev
previous versions of Office. Converting
may result in layout changes.
Protect Document
Permissions
Anyone can open, copy, and change ar
Check for Issues
Prepare for Sharing
Before sharing this file, be aware that it
Document properties, author's nar
Footers
Inspect Document
Check the document for hidden properties or personal information.
Check Accessibility
Check the document for content that people with disabilities might find difficult to read.
Check Compatibility
Check for features not supported by earlier versions of Word.
Versions

You may want to have Word warn you if there are tracked changes comments on save, print or send commands. It is found under **File** and then **Options**, **Trust Center, Trust Center Settings**, and then **Privacy Settings**.



You can also download and install a free add-in from Microsoft - Office 2003/XP Add-in: Remove Hidden Data. CAUTION: This will not remove all metadata. Metadata still exists. The question is whether it is benign or damaging metadata.

❷ Learn About Tracked Changes in Word

"Track Changes" is a fantastic feature available in Microsoft Word that allows multiple reviewers of a document to literally track changes or compare documents electronically to see what edits have been made to a document. My first suggestion is to start using it if you have the need for that type of feature. My second suggestion is to learn how to use it correctly so those internally tracked changes do not end up in the hands of opposing counsel or even your own client. Here is an example of a paragraph that has tracked changed turned on.

"Track Changes" is a fantastic feature available in Microsoft Word that allows multiple reviewers of a document to literally track changes or compare documents electronically to see what edits have been made to a document. My first suggestion is to start using it if you have the need for that type of feature. My second suggestion is to learn how to use it correctly so those internally tracked changes do not end up in the hands of opposing counsel or even your own client so you don't look like a freaking idiot. ~~Here is an example of a paragraph that has tracked changed turned on.~~

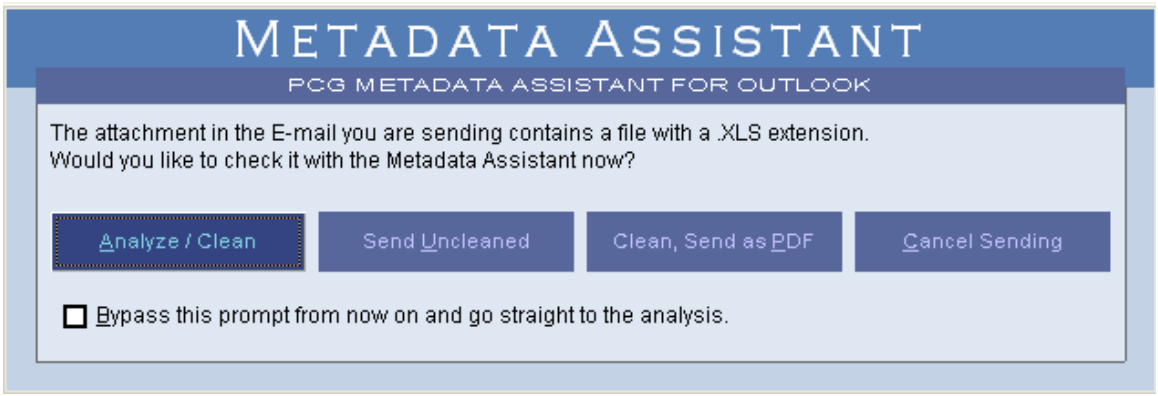
Added Text & Deleted Text

The first big mistake that people make is not accepting or rejecting all changes before sending the document on to opposing counsel for their review. It is imperative that you go through the entire document and accept or reject all the changes made in the document. Changes that were made between versions that are not **accepted** or **rejected** will show up in a metadata analysis. This may expose your thought process or a weakness that you knew about, but the other side didn't think of … at least until now!

The second critical thing that you do is make sure that you can see the tracked changes (the marked up or redlined version). Be sure that you select **Final Showing Markup** in the reviewing toolbar. Otherwise, you may not even realize that there are tracked changes in the document. Also remember in the security settings (discussed above) there is an option that will warn you before printing, saving or sending a document that has tracked changes.

❸ Consider a Third-Party Meta Data Removal Tool

Another option which I generally favor is investing in a metadata removal tool. These are programs that strip the metadata out of electronic documents before you send it to another party. You can either run the cleaner manually on a document OR intercept, evaluate and clean all attached documents when you are emailing it to the outside world. This makes the process much easier and requires no working knowledge of how tracked changes work or security settings within the program. As an example, Donna Payne's Metadata Assistant intercepts attachments with this dialog box when you hit the **Send** key from Outlook's email:



I suggest a metadata remover for those people who actually exchange electronic documents containing potentially harmful metadata. Many attorneys don't do this. If you do not exchange documents, don't spend the money.

Metadata removal tools to consider:

- Metadata Assistant (Payne Consulting Group – www.payneconsulting.com). Cost is $79 per license.
- CleanDocs (www.cleandocs.com)
- Workshare Protect (www.workshare.com). Cost is $29.95 per year.
- iScrub by Esquire Innovations (www.esqinc.com).
- Out-of-Sight by SoftWise (www.softwise.net). Cost is $30 per user.
- ezClean by KKL Software (www.kklsoftware.com). You must buy at least 20 licenses at $20 per license.

❹ Exchange PDF Documents

Although PDF documents do contain some metadata, they do not contain as much. Tracked changes can indeed be passed on from a Word document to PDF, but you would have to do it one of two ways. First, the person converting the document would have to attach the Word file into the PDF in its native format (Acrobat allows you to attach files into a PDF document). While possible, I know of no one who uses that function. So…just don't do it that way. A second way is if you have the tracked changes visible when you convert to PDF. That would create a PDF with the tracked changes blatantly showing. You would have to be blind or extremely careless not to see the tracked changes in the Word document and the resulting PDF. Also, if you have your printing configuration in Word set to print 'tracked changes' along with the document. In this instance, again, you would have to be blind and 100% careless by failing to review the newly created PDF before sending it.

Another benefit sending a PDF is that PDF documents are less editable, especially if you have security turned on. This has less to do with metadata, but it is a nice benefit if you send a PDF to a client, for instance, and tell them to print and sign the attached. If the document is editable, the client could change the text using Adobe Acrobat and then sign it (and not tell you). If the PDF document is secure, the signing party would have to go to greater lengths to make a deceptive change that is not noticeable.

❺ WordPerfect also contains Meta Data

Contrary to popular belief, WordPerfect also contains metadata. Examples of metadata stored in WordPerfect documents include:

- Authors
- Tracked changes
- Comments and hidden text
- Document revision annotations
- Undo/Redo history
- User names, initials and company
- Document summary information
- Header/Footer information
- Hyperlinks

See Minimizing Metadata in WordPerfect 12 Documents, Corel Corporation, copyright 2004.

Like Microsoft, Corel also made available a metadata removal tool which is available on their website. Also check WordPerfect Universe (www.wpuniverse) which offers a metadata removal tool for WordPerfect.

Keeping Information Safe from Disaster, Accidental Loss, Theft, Viruses and Malicious Intruders

ABA Model Rule 1.6 also imposes a duty upon attorneys to keep their technology in safe and working order to protect client information. Similarly, in Canada, Section 3.3 of the Rules of Professional Conduct requires competence and confidentiality.

As an example, section 5.7 of the Law Society of Upper Canada's Technology Practice Management Guidelines states:

5.7 Confidentiality

Lawyers using electronic means of communications shall ensure that they comply with the legal requirements of confidentiality or privilege. (Section 3.3 of the Rules of Professional Conduct).

When using electronic means to communicate in confidence with clients or to transmit confidential messages regarding a client, a lawyer should

- develop and maintain an awareness of how to minimize the risks of disclosure, discovery or interception of such communications
- discuss the inherent security risks associated with each technology with the client and confirm in writing that the client wishes to communicate using that method
- use firewalls and security software to protect at-risk electronic information
- use and advise clients to use encryption software to assist in maintaining confidentiality and privilege
- take appropriate measures to secure confidential information when using cloud-based services
- develop and maintain law office management practices that offer reasonable protection against inadvertent discovery or disclosure of electronically transmitted confidential messages.

ABA Model Rule 1.6(a) states:

> (a) A lawyer shall not reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by division (b) or required by division (c) of this rule.

Comment 16 further states:

> Acting Competently to Preserve Confidentiality [16] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1, and 5.3.

The State Bar of Arizona issued an opinion in response to an inquiry about the steps a law firm must take to safeguard data from hackers and viruses. They stated:

> ER's 1.6 and 1.1 require that an attorney act competently to safeguard client information and confidences. It is not unethical to store such electronic information on computer systems whether or not those same systems are used to connect to the internet. However, to comply with these ethical rules as they relate to the client's electronic files or communications, **an attorney or law firm is obligated to take competent and reasonable steps to as-sure that the client's confidences are not dis-closed to third parties through theft or inadvertence.** In addition, an attorney or law firm is obligated to take reasonable and competent steps to assure that the client's electronic information **is not lost or destroyed.** In order to do that, an attorney must either have the competence to evaluate the nature of the potential threat to the client's electronic files and to evaluate and deploy appropriate computer hardware and software to accomplish that end, or if the attorney lacks or cannot reasonably obtain that competence, to retain an expert consultant who does have such competence. (Emphasis added.)

State Bar of Arizona, Opinion No 05-04, July, 2005.

The ABA Standing Committee on Ethics and Professional Responsibility has stated something similarly. In Opinion 95-398, they concluded "[a] lawyer who gives a computer maintenance company access to information in client files must make reasonable efforts to ensure that the company has in place, or will establish, reasonable procedures to protect the confidentiality of the client information."

In 2006, Nevada spoke to a similar issue relating to offsite storage of data and reached a consistent conclusion. They stated that a lawyer may store confidential information electronically with a third party to the same extent and subject to the same standards as storing confidential paper in a third party warehouse. In doing so, the lawyer must act" competently and reasonably to ensure the confidentiality of the information. Opinion 33 (February 9, 2006), Nevada Standing Commission on Ethics and Professional Responsibility.

David Reis, a partner with Thorp, Reed & Armstrong, LLP in Pittsburgh, PA, and a colleague legal technologist suggests the following basic steps:

1. Keep your operating systems patched.

2. Install and use anti-virus and spyware protection on all computers (and keep them all current with updates).

3. Use Care with Email attachments and Embedded Links.

4. Make backups of important files and folders.

5. Use strong passwords or other authentication (combine numbers and characters).

6. Use care when downloading and installing programs.

7. Install and use a hardware firewall.

8. Install and use a file encryption program.

Additionally, I recommend:

1. Apply the above principles to laptops and PCs that are used at home for business purposes.

2. Have a secondary backup system (consider an online backup service like Iron Mountain, MozyPro or Carbonite).

3. Encrypt laptops and external hard drives or flash drives where you store or transfer client information.

4. Use Adobe Acrobat Pro (or similar competing products like Kofax PowerPDF Advanced, pdfDocs, etc.) to redact important client information (social security numbers, billing information, etc.) contained in documents that you may have to file with the court electronically.

Disposing of Old Computer Equipment

You just got all new workstations for your staff. What do you do with the old workstations? What about all the confidential information contained on the hard drives? If you think that you deleted the information, think again! You may be violating Model Rule 1.6, HIPAA and opening yourself up to liability.

According to a study performed at the Massachusetts Institute of Technology (MIT), two graduate students scavenged through the data inadvertently left on 158 used disk drives. They found more than 5,000 credit card numbers, detailed personal and corporate financial records, numerous medical records, gigabytes of personal email and pornography. The disk drives were purchased for less than $1,000 from eBay and other sources of used computer hardware. Only 12 were properly sanitized (http://web.mit.edu/newsoffice/2003/diskdrives.html) .

❶ Avoiding the Ethical Pitfall – What is Required?

An attorney must act reasonably to preserve confidences and secrets of his/her client. The rules in the U.S. and Canada impose the same duty. ABA Rule 1.6 (and old rule DR 4-101) imposes a duty to preserve confidences and secrets. In all likelihood, disposing of employee workstations was not contemplated when DR 4-101 was adopted by the Supreme Court of Ohio on October 5, 1970 and likewise in other jurisdiction following suit; nevertheless, the rule applies. The New Rule as written, establishes a broad duty to preserve confidences and secrets that applies to all methods of communication. The duty clearly extends to disposing of client information and communication.

What does this mean in practical terms? Reasonableness, in my opinion, requires one of the following:

(A) Retain the hard drive(s) of the computer(s) for safe keeping; or
(B) Hire a company to erase and reformat the hard drives[2]; or
(C) Hire a company that uses a special data erasing program; or
(D) Purchase and utilize a special data erasing program. Using data erasing/rewriting programs to mask data stored on the hard drive is much more effective than just deleting it. This is a time-consuming process. Most of these programs claim they delete data to Department of Defense (DOD) level data

[2] Erasing and reformatting hard drives will not completely protect the data. A skilled computer technician or forensic expert can likely recover some (not all) data from that hard drive using specialized software. This process is time-consuming and expensive.

destruction specifications (DOD sanitizing standard 5220.22-M). These programs delete the data and then rewrites data to the hard drive using a series of meaningless information in binary code patterns of "ones" and "zeros." These programs perform this function multiple times. Using very expensive technology, someone really talented could read something on a disk several rewrites deep, but it is unlikely and extremely costly.

❷ **Use a Service like PCDisposal (www.pcdisposal.com)**

PCDispoal is probably the largest computer disposal service in the country. It handles more than 10,000 computers per week thrown out by the U.S. Government. They will pick up your units (or have them shipped), properly delete data, provide a certified report detailing the services performed and confirming software removal (listed by hardware serial number)(Services are HIPAA compliant), and if possible, refurbish computers and may resell to companies looking for a bargain, sharing profits with you. They offer free shipping if it is over 10 units.

Contact Information:
Telephone: Toll Free 1-877-244-0250
FAX: (509) 562-4323
Postal address: 900 E. Loula, Olathe, Kansas 66062
E-mail: isales@pcdisposal.com

Also check out:

www.retire-IT.com (nationwide service)

http://www.ohiodropoff.com (Ohio Computer and Recycling Center)

IMPORTANT: Most computer recycling companies will not delete data or reformat hard drives. Make sure that you specifically request this, or it will not be done.

❸ Do-It-Yourself

You could do the DOD-level data destruction yourself with programs like the ones listed below, OR simply take out your screwdriver and physically remove the hard drive and throw it in a locked file cabinet. Programs that you can buy to erase data yourself are:

- cyberCide Data Destruction (www.cyberscrub.com) offers a product for $29.00.
- Active@ Kill Disk - Hard Drive Eraser (www.killdisk.com/eraser.htm) offers a free version and a professional version for about $30.
- OnTrack DataEraser™ (www.ontrack.com) offers a personal version for $29.

IMPORTANT NOTE: If trying to **sanitize data on a solid state drive (SSD)** (most hard drives after 2013), I recommend that you use Parted Magic (www.partedmagic.com), or rely on an expert to do it for you and provide written certification. The above tools will not work on SSDs.

❹ Don't Forget SmartPhones, Tablets, and Copy Machines!!

Be sure to follow manufacturer's instructions on wiping all data from smartphones and tablets.

Copy machines are the most often forgotten about devices that contain an enormous amount of potentially confidential client information. Copy machines just don't copy anymore. They first take a snapshot image of the document, stores it on a hard drive, and then prints a copy per your instructions. Depending on the size of the hard drive and the volume you scan, your machine can hold days, weeks, months, and potentially years of "copied" documents.

CBS did an excellent story on copy machines that is quite alarming:
http://www.youtube.com/watch?v=iC38D5am7go

Password Management and Two-Factor Authentication

In short, passwords need to be (1) unique; (2) strong; and (3) stored safely. With as many passwords that we maintain, personally and professionally, there are some very inexpensive, but fantastic solutions that can provide you with relief.

❶ Two-Factor Authentication is Critical

Putting in place two-factor (or multi-factor) authentication (also known as 2FA) is more important today than changing passwords or using unique passwords. I still think unique passwords is important, but changing passwords every 30 days has recently been regarded as a waste of time. 2FA is more important because without the second method of authentication (usually a text message notification requiring your intervention, like entering a code, providing a PIN, proving your fingerprint from your smartphone) a cybercriminal will not be able to login to an important account even if they have your password. See this regarding Microsoft finally acknowledging this year that 2FA is critical and changing passwords is not very important anymore: https://www.cnet.com/news/microsoft-admits-expiring-password-rules-are-useless/.

❷ Make Passwords Strong and Unique

Passwords should not be re-used. If your credentials are compromised, they could be sold on the dark web. If you used the same password at another site (i.e. Dropbox, a client portal, your bank, etc.) your information (potential confidential information or documents) is now compromised. Moreover, most cybersecurity experts now advise people to use long phrases that combine letters, numbers and characters. I generally aim for at least 12 characters.

❸ Safely Store your Passwords

If you don't have a password manager, I recommend saving your passwords in an encrypted Word or Excel file (see above how to encrypt Word & Excel files).

❹ Password Management Programs

I strongly recommend investing in a password manager. In fact, I believe in this technology so much, that our company now provides a password manager to every employee in our organization. The good news is that the above 3 objectives can be

achieved with some very inexpensive solutions. Here are some of the common features:

- Automatic password generators for unique passwords that never repeat
- Automatic password generators that create insanely strong & cryptic passwords
- Cloud encrypted storage of passwords
- Access to passwords from all mobile and desktop devices
- Integration with all major browsers
- Works on a Mac or PC
- Apps for iPhone, Android-based phones, iPads, Android tablets
- Safe storage of financial and estate information
- Ability to share with loved ones or individuals at work

Highly Rated Password Managers

1. **Dashlane** (www.Dashlane.com)
2. **LastPass** (www.LastPass.com)
3. **1Password** (www.1password.com)
4. **Roboform** (www.roboform.com)
5. **Keeper** (www.keepersecurity.com)

Section Two

2021 CRIMINAL
CASE LAW UPDATE

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Section Two

2021 Criminal Case Law Update.....Kathie A. Perry
Mark E. Kamish

Indiana Public Defender Council Legislative Update

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Getting to know IPDC is a must for any Indiana attorney who chooses to represent clients accused of crime. While its mission is to support public defenders and those in the trenches of indigent defense, the IPDC has resources available to all criminal defense lawyers. Visit IPDC's website at https://www.in.gov/ipdc/ for more information.

DISCLAIMER

All information provided is subject to constant and ongoing change. It should, therefore, only be used as a starting point for further research, investigation and study.

I. SEARCH AND SEIZURE

A. Warrantless Stops & Seizures

State v. Torres, (12/17/2020) 159 N.E.3d 1018, (Ind. Ct. App.), **Concurring judge requests legislative review of turn signal statute noting, "[a]ll Hoosiers will appreciate and benefit from a traffic code that reduces the opportunity for arbitrary enforcement."**

In a consolidated appeal, the Court of Appeals reversed the trial court's grant of two motions to suppress evidence obtained after traffic stops for failing to signal the intention to turn at least 200 feet in advance, as required by Ind. Code Section 9-21-8-25. Both defendants were driving on a city block approximately 500 feet in length, not speeding or driving erratically, and they both came to a complete stop and activated their turn signals before turning. The trial court determined that "in many circumstances within a normal city block it is impossible to comply" with that requirement. The Court of Appeals reversed, finding that regardless of whether compliance with the statute was possible under the circumstances, Defendants' failure to signal a turn until they reached a stop sign was enough for the officer, the same officer in both cases, "to establish a reasonable belief the statute had been violated, and that is all that is required." Judge Mathias concurred, writing separately to express his frustration "to be required to apply a statute that authorizes a traffic stop on any city street if the driver does not continuously signal for at least 200 feet before turning or changing lanes" and noting "this precise statute appears to be employed often to make arbitrary traffic stops."

Cox v. State, (12/21/2020) 160 N.E.3d 557 (Ind. Ct. App.) **No custody or *Pirtle* violation despite officer's request to search after the purpose of traffic stop was complete**

Defendant was a passenger in a vehicle that was stopped by police. Police found the vehicle to be unsafe, informed the occupants it would be towed and that they were free to leave. However, the driver and passengers all agreed to wait for a ride, which prompted the officer's request to search them for officer safety. Defendant gave his consent to search, resulting in the discovery of a small socket containing marijuana. Three other officers arrived on the scene. Defendant was given a summons and charged, tried and convicted of misdemeanor possession of paraphernalia. Defendant argued the purpose of the traffic stop had been fulfilled when he was detained and asked for consent to search, rendering his consent invalid. The Court of Appeals concluded that Defendant was never detained or in custody and was not coerced into providing consent to search. Thus, the *Pirtle* requirement to advise him he had the right to consult with an attorney before consenting to a search of his person was not triggered. The totality of the circumstances indicates Defendant's consent to search was knowing and voluntary and his Fourth Amendment rights were not violated. Held, denial of motion to suppress affirmed.

Torres v. Madrid, (03/25/2021) 141 S. Ct. 989, (U.S.) **The application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person**

Torres was involved in an incident with police officers in which she was operating a vehicle under the influence of methamphetamine and in the process of trying to get away, endangered the two officers pursuing her. In the process, one of the officers shot and injured her. Torres pleaded no contest to three crimes: (1) aggravated fleeing from a law enforcement officer, (2) assault on a police officer, and (3) unlawfully taking a motor vehicle. Later, she filed a civil-rights complaint in federal court against the two officers, alleging claims including excessive force and conspiracy to engage in excessive force. Construing Torres's complaint as asserting the excessive-force claims under the Fourth Amendment, the court concluded that the officers were entitled to qualified immunity. In the court's view, the officers had not seized Torres at the time of the shooting, and without a seizure, there could be no Fourth Amendment violation. The U.S. Court of Appeals for the Tenth Circuit affirmed.

Under the Court's precedents, common law arrests are considered seizures under the Fourth Amendment, and the application of force to the body of a person with intent to restrain constitutes an arrest even if the arrestee escapes. The use of a device, here, a gun, to effect the arrest, makes no difference in the outcome; it is still a seizure. There is no reason to draw an "artificial line" between grasping an arrestee with a hand and using some other means of applying physical force to effect an arrest. The key consideration is whether the conduct objectively manifests the intent to restrain; subjective perceptions are irrelevant. Additionally, the requirement of intent to restrain lasts only as long as the application of force. In this case, the officers' conduct clearly manifested intent to restrain Torres and was thus a seizure under the Fourth Amendment.

B. Warrantless Searches/Arrests

Johnson v. State, (12/01/2021) 157 N.E.3d 1199 (Ind.) **Admission of evidence found after pat-down search affirmed under Fourth Amendment**

Defendant offered to sell a substance he called "white girl" to a fellow patron at a casino. The patron believed the term was slang for cocaine and reported the incident to security. After his report was verified by looking at the video surveillance, a Gaming Enforcement Agent led Defendant to an interview room and told him he would need to pat him down. During the pat-down, the agent felt what he called a "giant ball" in Defendant's pocket and immediately believed the lump was packaged drugs. He removed the item from Defendant's pocket, saw that it was a baggie containing a white powder, and placed him under arrest. Testing revealed the substance was baking soda, and Defendant was convicted of dealing in a look-a-like substance as a Level 5 felony. The Supreme Court found the agent was justified in performing a *Terry* stop after speaking to the other patron and viewing the surveillance video. Noting that the tipster stayed at the scene and confirmed his account to the agent, the court found "scant reason to doubt the veracity" of the account and that the agent had the necessary reasonable suspicion to stop Defendant. Next, the court found it was reasonable to believe Defendant was armed and dangerous so that the agent could lawfully perform a pat-down search. The facts supported the reasonableness of the pat-down because the agent suspected him of trying to sell drugs and was about to interview him one-on-one in a small windowless room early in the morning. Finally, the court found

the agent could seize the baggie when he immediately identified the lump as contraband the moment he touched it through Defendant's pocket. The agent immediately recognized, consistent with his training and knowledge of the situation, that the lump felt "like a ball of drugs." Held, the pat-down search did not run afoul of the Fourth Amendment and the trial court did not abuse its discretion in admitting the evidence obtained as a result. Justice Slaughter dissented, noting that unlike the majority he did not find Defendant's suspected drug activity, in combination with the time of the encounter and the fact the agent was alone in a room with the Defendant, would be enough to suggest Defendant was armed and dangerous. "Because neither the time nor the location gives rise to the inference that [Defendant] was armed, *Terry*'s critical link is missing, and this protective weapons search was unconstitutional."

Triblet v. State, (05/25/2021), 20A-CR-1686 (Ind. Ct. App.) **Officer could rely on criminal history to determine if Defendant "armed and dangerous"**

After a traffic stop for an expired license plate, a police officer searched Defendant and found a firearm. The Court of Appeals noted the "escalating events" of his passenger being arrested and his vehicle towed, combined with the officer's knowledge Defendant's criminal history precluded him from legally possessing a firearm, the size and shape of the bulge in Defendant's pocket as well as his attempts to conceal the firearm all support the officer's deduction he was armed and dangerous. The search was justified and reasonable under both the United States and Indiana constitutions. Held, denial of motion to suppress affirmed.

Alexander-Woods v. State, (02/03/2021) 163 N.E.3d 902 (Ind. Ct. App.) **Argument regarding police officer's qualifications to distinguish smell of marijuana from hemp waived on appeal**

On appeal of his convictions and habitual offender enhancement for possession of a narcotic drug, carrying a handgun without a license and possession of marijuana, Defendant challenged the admission of evidence as unconstitutional, and the evidence of marijuana admitted in court was fundamental error because a police officer failed to show he was qualified to distinguish between the odors of illegal marijuana and legal hemp. Defendant's failure to raise the "hemp argument" or challenge the officer's qualifications in the trial court was fatal to his claim that the trial court fundamentally erred in finding probable cause for the vehicle search. Moreover, waiver notwithstanding, Court found that the facts and circumstances within officer's knowledge support the trial court's finding of probable cause for the vehicle search.

Marling v. Littlejohn, (07/13/2020) 964 F.3d 667 (7th Cir.) **Police acted within discretion authorized by their local policy in conducting inventory search**

Defendant arrested on a warrant while driving car. Officers took an inventory of car and found locked box in trunk. Officers opened locked box with a screwdriver, causing damage to the box, and found illegal drugs. Motion to suppress denied at trial and conviction affirmed by Court of Appeals. U.S. District Court for Southern District granted habeas corpus relief finding that because police department had a local policy that forbid damage to a container, the officer's damage to the locked box with a screwdriver was a violation of the police policy which was constitutional error, *citing Florida v. Wells*,

495 U.S. 1 (1990). Wells holds that the validity of an inventory search rests on the police department having a policy about when to take inventories and that compliance with the local policy is essential and a violation of the local policy also violates the Constitution. 7th Circuit reverses district court grant of habeas corpus relief stating in this case the local police policy gave the police discretion and here the officer who opened the locked box acted within the discretion permitted by the police department's local policy which forbade "unreasonable damage." Here the lock was damaged but not the box and there had been no finding below of unreasonable damage. 7th Circuit found the U.S. District court "misunderstood" the holding in *Wells*.

Unlawful warrantless search of arrestee's vehicle in driveway

Combs v. State, (07/09/2020) 150 N.E.3d 266, ***TRANSFER GRANTED*** (Ind. Ct. App.)

Warrantless search of Defendant's van following a crash violated his Fourth Amendment rights. After driving his van into an electrical box to avoid hitting another vehicle, Defendant took photos of the damage to the van, rummaged around under the driver's seat and then left the scene. A police officer who arrived shortly after followed a fluid trail that eventually led to Defendant's home at a nearby neighborhood, where he had parked the damaged van. Defendant, whom the officer suspected was under the influence of medication or drugs, then failed two field sobriety tests and stated that he had taken his prescribed Adderall medication. After agreeing to submit to a chemical test and being handcuffed for transport, but before he was taken to the hospital, Defendant told officers they could look under the seat of his van but not open the black bag they had found. But the officers searched the van in Defendant's driveway without a warrant after calling for the vehicle to be towed, finding three different controlled substances. Court of Appeals found that the warrantless search of Defendant's van was impermissible under the open view and plain view doctrines, as well as the Fourth Amendment. Additionally, the record supported a finding that the officers' inventory search was a pretext for searching the van, and that officers did not need the van in solving the OWI or leaving accident scene investigation. Held, possession of narcotic drug convictions reversed, operating while intoxicated and leaving accident scene convictions affirmed.

Reagan v. State, (11/06/2020) 157 N.E.3d 1266 (Ind. Ct. App.) **Warrantless strip search of misdemeanor arrestee at jail did not violate Indiana Constitution**

Although *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005) controls the constitutionality of a strip search under Article 1, Section 11 of the Indiana Constitution, the specific analysis regarding the reasonableness of warrantless strip searches set forth in *Edwards v. State*, 759 N.E.2d 626 (Ind. 2001) offers guidance. Here, after police arrested Defendant on suspicion of operating a vehicle while intoxicated, she was taken to the processing center at the Marion County jail. There, an officer conducted a strip search after noticing Defendant was "fidgety," shaking her leg, trying to engage in small talk and looking around the room. The search revealed a small baggie of cocaine stuck to Defendant's breast. Court acknowledged that the search involved a high degree of intrusion, but law enforcement needs balanced in favor of permitting the strip search here. Where, as here, law enforcement has a high degree of suspicion that an arrestee is concealing contraband, there is a strong

need to search for contraband during the intake procedures for the safety of the offender and the jail population. *Edwards* disapproved of the routine practice of subjecting all misdemeanor arrestees to a warrantless strip search but permitted them on the basis of reasonable suspicion. The search here was reasonable under the totality of the circumstances and did not run afoul of Article 1, Section 11 of the Indiana Constitution. Thus, the court did not abuse its discretion in admitting evidence obtained from the strip search. Held, judgment affirmed. Weissmann, J., dissenting, believes that the officer's vague "feeling" that Defendant may have been in possession of contraband after her arrest for OVWI was insufficient suspicion to justify the strip search. Although law enforcement "undeniably" has a strong interest in protecting inmates and keeping jails free from contraband, the State did not establish that law enforcement needs for a strip search were significant in this case. The dissent warned the majority's holding "would render per se reasonable a strip search of every person being processed for a substance offense, no matter how minor."

Shorter v. State, (07/06/2020) 151 N.E.3d 296 (Ind. Ct. App.) **Defendant's statement to confidential informant that he wanted to leave town was an exigent circumstance justifying warrantless arrest**

Fact that officers knew Defendant wanted to leave town was an exigent circumstance justifying Defendant's warrantless arrest. Defendant sold drugs to a confidential informant and later told the informant that he knew the police were looking for him and he wanted to leave town. Police went to home where they knew Defendant to be staying and watched him, for over forty minutes, through an open door where they could plainly see him sitting on a couch. Police approached the house and arrested Defendant inside the home and then brought in a drug sniffing dog who indicated on drugs outside the home. Defendant was tried and convicted of dealing and conspiracy to deal in methamphetamine and narcotics. The Court of Appeals found the warrantless search of Defendant was supported by probable cause and exigent circumstances, although stating "it would have been advisable and best practice for the officers to at least attempt to obtain an electronic warrant prior to arrest but because there were sufficient exigent circumstances...a warrant was not required." The search was also reasonable under the Indiana Constitution. Judge Pyle, dissenting, finding that an arrest warrant could have been obtained, especially when considering the advent of technology that could have assisted in obtaining an arrest warrant in an expedited manner. Also, there was no evidence of the existence of an emergency or imminent destruction of evidence, and police could have obtained an arrest warrant based upon an identifiable description of Defendant even without the police knowing Defendant's actual name.

C. Warrantless Home Searches

Caniglia v. Strom, (05/17/2021) No. 20–157 (U.S.) "**Community caretaking" exception cannot justify warrantless home entry and search**

Law enforcement cannot legally enter homes without a warrant, exigency or consent, even in cases where doing so may benefit the public interest under the "community caretaking" exception. Here, police acted unlawfully by entering a Caniglia's home and removing his firearms without a warrant after he had expressed thoughts of suicide and was taken to the hospital for a psychiatric evaluation.

Police entered the home under a “community caretaking” exception that allows entry in cases where doing so benefits the public interest, which has traditionally applied to incidents regarding vehicles but not in homes. Noting that "[w]hat is reasonable for vehicles is different from what is reasonable for homes," the Court ruled that the community caretaking exception could not be extended to the home without violating the Fourth Amendment. Kavanaugh, J., issued a concurring opinion to note that the court's decision does not affect police officers’ ability to take “reasonable steps to assist those who are inside a home and in need of aid” that are protected under a separate “exigent circumstances” doctrine, such as when an elderly person has fallen or to prevent a potential suicide. Alito, J., concurring, noted that court's ruling implicates but does not address “red flag” laws that allow police to seize guns pursuant to a court order to prevent harm to oneself or others.

State v. Ellis, (04/23/2021) No. 21S-CR-159 (Ind.) **Waiver of "right against search and seizure" clearly informs community-corrections participant of waiver of right against warrantless/suspicionless searches**

A community-corrections home-detention contract stating that the defendant “waives all rights against search and seizure” unambiguously informs the defendant that a search may be conducted without reasonable suspicion. Additional language specifying that the defendant may be searched without reasonable suspicion and waives the right against "unreasonable" search and seizure is unnecessary. To the extent that *Jarman v. State,* 114 N.E.3d 911 (Ind. Ct. App. 2018), suggests language should be used in community-corrections contracts to clarify that the defendant is consenting to warrantless, suspicionless searches, Court found that language unnecessary. When an individual waives his rights against search and seizure, this waiver clearly encompasses the right to be free from search and seizure absent reasonable suspicion. Here, because Defendant unambiguously consented to community correction searches absent reasonable suspicion, the trial court erred when it suppressed the evidence obtained from the search of his home. Held, transfer granted, Court of Appeals' opinion at 153 N.E.3d 305 vacated, trial court's judgment reversed.

D. Search Warrants

Albrecht v. State, (12/16/2020) 159 N.E.3d 1004 (Ind. Ct. App.) **Substantial basis for search warrant for hard drive found in bathroom of residence**

Police sought and obtained a search warrant for Defendant’s apartment based upon allegations of child molestation. The search warrant was specifically for condoms believed to be located in the bathroom of the residence. While searching for condoms in the bathroom, police found an external hard drive within arm’s reach of the condoms. The police sought a second warrant to seize and search the hard drive and Defendant’s cell phone. Court of Appeals finds that considering the totality of the circumstances, the nature of the crime being investigated, the proximity of the hard drive to other evidence relating to the crime, the clandestine storage of the hard drive, the nature of the hard drive and the reasonable inference that a bathroom is not where one usually stores such an item and the normal and common sense inferences that perpetrators in child molest cases often photograph or video themselves committing sexual acts, the issuing judge had a substantial basis for concluding that

probable cause existed for the issuance off the search warrant and that there was a fair probability that evidence of a crime may be present on the hard drive. The warrant set forth that police sought potential seizure and review of digital media that would include procedures to find hidden, erased, compressed, password-protected or encrypted files and by a computer expert which may require examination of all stored data. The Court of Appeals finds the warrant was not impermissibly general but contained sufficient particularity of the items to be seized and scope of search to be performed. Court explains that a government's search of an electronic device is like looking through drawers in a filing cabinet for relevant files which may require sifting through a great deal of information on the electronic device to find the relevant information. Held, denial of motion to suppress affirmed.

Ryder v. State, (06/29/2020) 148 N.E.3d 306 (Ind.) **Filing requirement for search warrant satisfied where signing judge certified that probable cause affidavit had been delivered to her at time of warrant's authorization**

A blood-draw search warrant application satisfied the filing requirement of Ind. Code § 35-33-5-2(a) because the signing judge's uncontroverted certification that an affidavit had been delivered to her at the time of the warrant's authorization established that the filing requirement had been satisfied. Police arrived at an early morning crash to find that Defendant had been driving the wrong way on I-465. After refusing a breath test, Defendant was taken to the arrestee processing center but no judge was available to sign a warrant for a blood draw. So, the state trooper called a local judge who met him at a gas station to review the probable cause affidavit and proposed warrant for blood draw. A warrant was obtained. Defendant was taken to the hospital for a blood draw. The probable cause affidavit and warrant were not file-stamped with the clerk until four hours later. Defendant moved to suppress the results of the blood draw, arguing the results were obtained in violation of Ind. Code § 35-33-5-2 (warrant requirement statute), the Fourth Amendment and Article 1, section 11 of the Indiana Constitution. Defendant argued the search warrant was unauthorized because it was obtained prior to an affidavit being filed with the judge, in violation of Ind. Code 35-33-5-2. Trial court granted Defendant's motion to suppress, which was affirmed by a divided panel of the Indiana Court of Appeals. On transfer, the Indiana Supreme Court unanimously reversed and remanded, finding that the warrant-authorizing judge certified contemporaneously, and in writing, that the probable cause affidavit had been properly filed with her when the search warrant was issued. Second, the court held that even if the affidavit was filed a few hours after it was presented to the authorizing judge — as the trial court found — it was still valid under Indiana's substantial compliance filing doctrine and suppression of evidence obtained from the search warrant was not justified.

Bunnell v. State, (12/18/2020) 160 N.E.3d 1142, ***TRANSFER GRANTED*** (Ind. Ct. App.) **Officers must explain basis for "training and experience" to get search warrants based solely on drug odors**

The smell of marijuana emanating from a residence, when detected by law enforcement that is qualified to identify and distinguish the odor, by itself can establish probable cause for issuing a search warrant. But where, as here, probable cause for a warrant is premised solely on law enforcement's detection of the odor of raw marijuana, the assertion must be based on more than a personal belief: the affiant-officer must provide some information about the detecting officers' relevant qualifications,

experience, or training in identifying and distinguishing the odor that led to the ultimate conclusion. *Johnson v. United States*, 333 U.S. 10, 13 (1948). Here, while responding to a domestic violence call at Defendant's home, two sheriff deputies smelled raw marijuana emitting from one of the doors of the residence. This odor, based on the deputies' "training and experience," was the sole basis for establishing probable cause to search the home. But the probable cause affidavit did not include any information about the deputies' relevant qualifications, experience, or training from which a warrant-issuing judicial officer could find either deputy qualified to identify or distinguish the odor of raw marijuana. Thus, the affidavit failed to provide the warrant-issuing judge with a substantial basis for its probable-cause determination. Because there was no probable cause to issue the warrant under "the unique facts and circumstances of this case," the initial search of Defendant's home was illegal and the exclusionary rule requires suppression of the evidence seized from both the initial search warrant and a subsequently issued warrant. Held, denial of motion to suppress reversed.

State v. Stone, (08/31/2020) 151 N.E.3d 815 (Ind. Ct. App.) **Statements made to police by person who sold stolen gun to Defendant were statements against interest and supported probable cause for search warrant**

After an investigation of two stolen firearms led police to Defendant – who had purchased one of the guns -- law enforcement received and executed a search warrant for Defendant's home. The search resulted in the discovery of multiple firearms, though not the stolen gun, as well as drugs and $6,000 in cash. Defendant was arrested at the scene for possession of methamphetamine and later charged with Level 4 felony unlawful possession of a firearm by a serious violent felon, and Level 5 felony possession of methamphetamine, as well as Level 5 felony possession of a narcotic drug and Class A misdemeanor theft. The trial court granted Defendant's motion to suppress all evidence seized as a result of the search warrant, expressly determining that "[t]he analysis of the facts in this case is controlled by the Indiana Supreme court's holding in *State v. Spillers*, 847 N.E.2d 949 (Ind. 2006)." But the Indiana Court of Appeals reversed, agreeing with the State that the warrant was supported by probable cause and that the trial court erred in suppressing the evidence. Specifically, the appellate court disagreed with the trial court's finding that statements to law enforcement by the person who sold the gun to Defendant were not declarations against penal interest. Reversed and remanded.

Hardin v. State, (06/23/2020) 148 N.E.3d 932 (Ind.) **Search extended to vehicle on curtilage even though not specifically listed on warrant**

Though not explicitly listed in the search warrant, it was not improper for police to search Defendant's vehicle which he drove up and parked on his driveway while they were executing the warrant. The warrant permitted police to search areas of Defendant's yard, curtilage, and the interior of his home. The search did not violate the Fourth Amendment because police knew that Defendant owned and controlled the vehicle searched and objectively reasonable indicia showed the same, so the vehicle in this situation fell within the scope of the warrant for the home. Balancing the three factors set forth in *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005), a 3-2 majority of the Supreme Court held the search did not violate Article 1, Section 11 of the Indiana Constitution because the high degree of law-enforcement concern and moderate law-enforcement need outweighed the moderate intrusion caused

by the search, so the search was constitutionally reasonable under the totality of circumstances. Held, transfer granted, Court of Appeals' opinion at 124 N.E.3d 117 vacated, judgment affirmed. Slaughter, J., concurring, urges Court to reconsider *Litchfield* given the "widely varying conclusions" and "ongoing uncertainty among litigants and lower courts" in applying its three factors. David, J., joined by Rush, C.J., concurring with the majority's Fourth Amendment analysis, but would find that evidence obtained from Defendant's vehicle must be suppressed under Article 1, Section 11 because the search was "highly intrusive" and law enforcement needs were "extremely low." Because police could have and should have obtained a warrant to search Defendant's vehicle, the search was unreasonable under the Indiana Constitution.

Brown v. Eaton, Hancock Co. Prosecutor, (02/10/2021) 164 N.E.3d 153 (Ind. Ct. App.) **Erroneous exclusion of cellphone data in civil forfeiture proceeding**

In civil forfeiture proceeding, trial court erred in excluding data obtained from Defendant's cell phone on the basis of a nine-day delay in the officer's execution of the search warrant. Defendant argued the search of his cell phone was unconstitutional under the Indiana Constitution. Under the *Litchfield* analysis, Court found the cellphone search is intrusive, but law enforcement has a broad need to combat the war on drugs and probable cause was found to issue the search warrant in this case. On balance, police did not unreasonably execute the search warrant and the cell phone data should have been admitted as evidence. Court noted that the amendment of I.C. 35-33-5-7 to include subsection (f) was a remedial measure intended to clarify that a search warrant is considered "executed" for purposes of the statute when officers seize the items described in the search warrant. The Court remanded the case for a new evidentiary hearing where Defendant's pre-*Miranda* statements should be excluded but the cellphone data may be admitted.

II. CONFESSIONS/COMPELLED TESTIMONY

State v. Diego, (08/19/2020) 150 N.E.3d 715, (Ind. Ct. App.) **D's statements properly suppressed -- custodial interrogation without warnings**

Trial court did not err in granting Defendant's motion to suppress his statement to police because, as in *State v. Ruiz*, 123 N.E.3d 675 (Ind. 2019), his statement was obtained during a custodial interrogation without *Miranda* warnings. In finding substantial evidence of probative value to support trial court's suppression order, Court of Appeals noted that Defendant's freedom of movement was curtailed to the degree associated with an arrest and he was subjected to inherently coercive pressures such as those at issue in *Miranda*. The police determined and controlled the environment in which the interrogation took place, *i.e.*, Defendant was removed from his girlfriend and placed in a closed room in a police station with a police department employee sitting between Defendant and the closed door. Although Defendant was told he was not under arrest and was free to leave, he was also told that he "needed" to be there to answer the detective's questions. He was never told that he was free to refuse to answer the questions, nor was he told that he could leave through the secured police station door without police assistance. Additionally, the Court noted that Defendant was subjected to prolonged questioning that lasted 40 minutes and that the questioning was "persistent and accusatory." The

detective repeatedly stated as fact that Defendant had engaged in sexual contact with the complaining witness, repeatedly accused Defendant of lying when he denied such activity, and repeatedly asked questions that focused on encouraging Defendant to admit to the detective's description of the wrong-doing.

Pedraza v. State, (06/05/2020) 145 N.E.3d 152 (Ind. Ct. App.) ***Miranda* does not require accused to be informed of specificity of charges**

Court granted Defendant's petition for rehearing to clarify its factual recitation regarding the circumstances of Defendant's *Miranda* waiver. In its original memorandum opinion, Court rejected Defendant's argument that his *Miranda* waiver was not knowing or voluntary because detective did not recite the specific charges pending against him despite Defendant's multiple requests during the custodial interrogation. Court *clarified* that the detective referred to the incident involving victim's death approximately twenty seconds after Defendant signed the *Miranda* waiver.

Crabtree v. State, (09/02/2020) 152 N.E.3d 687 (Ind. Ct. App.) **Defendant who voluntarily went to police station, took polygraph examination and spoke to police officers not in custody for *Miranda* purposes**

Defendant argued his statements, made under questioning after a polygraph examination he volunteered to take and conducted at a police station, were inadmissible under the Fifth Amendment to the United States Constitution. Defendant argued the trial court erred by admitting his statements because: (1) he was in custody and, therefore, was entitled to *Miranda* warnings; (2) he was not advised of his *Miranda* rights a second time after the polygraph examination ended; and (3) law enforcement violated his Fifth Amendment right against self-incrimination by failing to honor his right to remain silent. The Court of Appeals compared the facts of this case to *State v. Ruiz*, 123 N.E.3d 675 (Ind. 2019) to determine if Defendant was in custody. In Ruiz, the Indiana Supreme Court determined that the defendant's freedom of movement had been curtailed and the aggressive nature of the questioning added up to a situation where a reasonable person would not feel free to end the interrogation and leave. Court found the facts here distinguishable because Defendant volunteered to take a polygraph examination, was advised that the interview room door was unlocked; and Defendant could simply ask officers to unlock the door that was locked to leave. Defendant was advised of his rights and signed a waiver. And even though twice during conversations with police Defendant asked to reschedule the interview, on both occasions Defendant continued talking to the officers and answering questions. Unlike in Ruiz, the officers' questioning was not aggressive or deceptive, and the officers did not outnumber Defendant. Defendant argued he should have been re-read his *Miranda* rights after the polygraph examination and prior to subsequent questioning. The Court of Appeals concluded Defendant was not in custody and, thus, was not entitled to *Miranda* warnings, much less a second *Miranda* warning. Defendant argued he twice invoked his right to remain silent by asking to reschedule his interview and because the officers did not stop the interrogation when he asked to reschedule, his statements to the officers were inadmissible. Court of Appeals finds here the assertion was not clear and unequivocal and Defendant continued to talk to the officers even after asking to reschedule.

Brown v. Eaton, Hancock Co. Prosecutor, (02/10/2021) 164 N.E.3d 153 (Ind. Ct. App.) **Erroneous admission of pre-*Miranda* statements and exclusion of cellphone data in civil forfeiture proceeding**

In a civil forfeiture proceeding, trial court abused its discretion by admitting Defendant's pre-*Miranda* statements from a traffic stop in violation of his Fifth Amendment right against self-incrimination. While forfeiture proceedings are civil in nature, there is a punitive nature to them because the State uses them to confiscate property associated with criminal activity. Here, Defendant was in custody and questioned without receiving warnings, thus his pre-*Miranda* statements should not have been admitted.

Ross v. State, (09/02/2020) 151 N.E.3d 1287 (Ind. Ct. App.) **Custodial statements given to police were voluntary and and did not violate *Miranda***

Custodial statements given to police were voluntary and and did not violate *Miranda*. Court of Appeals held that although Defendant was in custody, his statements were volunteered and not the result of interrogation. And even assuming that removing the Tupperware lid and showing it to Defendant was an action likely to elicit an incriminating statement, it was merely cumulative of his first statement. Consequently, the Court of Appeals found the admission of the second statement, even if erroneous, was harmless error. Judge Mathias concurred in result but wrote separately to note that the police officers never advised Defendant of his *Miranda* rights, not when he was placed in restraints, when his car was searched, when he was told he had a warrant, or when he was taken to the police station and the failure to provide *Miranda* warnings risked that any statements would be inadmissible. Judge Mathias found the police conduct of showing the content of the container to Defendant was reasonably likely to elicit an incriminating response from him. However, because his response was merely cumulative of his previous statement, which was volunteered, any error in the admission of the statement was harmless.

Perkins v. State, (11/30/2020) 158 N.E.3d 1274 (Ind. Ct. App.) **Waiver of previously-invoked right to counsel during police interrogation**

Following Defendant's request for an attorney during his interview in a felony murder and attempted murder case, he initiated further discussions with law enforcement officers and knowingly, voluntarily and intelligently waived the right previously invoked. The initiation of further communication by an accused, standing alone, is not sufficient to establish a waiver of the previously invoked right to counsel. *Osborne v. State*, 754 N.E.2d 916, 922 (Ind. 2001). But here, there is no evidence that Defendant lacked the capacity to understand his rights, and at no point did police threaten, intimidate, deceive, or make promises in order induce him to continue the second interview. The decision to waive his right to counsel at the start of the second interview was an informed one. Accordingly, under the totality of circumstances, Defendant's Fifth Amendment right to counsel was not violated and the trial court did not abuse its discretion by admitting the statements Defendant made during his second interview with police.

Johnson v. State, (06/24/2020) 150 N.E.3d 647 (Ind. Ct. App.) **Insufficient evidence of corpus delicti to support admission of confession**

Complaining witness (C.W.) did not appear in court for Defendant's trial for Level 5 battery with a deadly weapon. Over objection, testimony of police officer as to her conversation with C.W., photos of bruises of C.W., a stick and Defendant's out-of-court confession were admitted into evidence. Court of Appeals found insufficient evidence to support the inference that a crime had been committed with regard to battery with a deadly weapon before Defendant's out-of-court confession regarding that charge was admitted into evidence. Even assuming the photographs, the stick and the C.W.'s statements to the police officer were properly admitted, there was still insufficient evidence to support conviction that Defendant committed battery by a deadly weapon against C.W. Held, conviction reversed.

Schneider v. State, (10/20/2020) 155 N.E.3d 1268 (Ind. Ct. App.) **No abuse of discretion in admitting Defendant's statements**

In murder prosecution, trial court did not abuse its discretion in admitting two recorded statements and a written confession nor when it excluded a note purportedly written by the victim. The Court of Appeals found Defendant's alleged intoxication did not render his first statement involuntary when the detectives both testified that they did not notice any signs Defendant was intoxicated and a forensic toxicologist testified that a person with the levels of drugs found in Defendant's system would have been "conscious of what [he was] doing and would not [have] be[en] in a state of mania." The second challenged statement was given at the jail and the detective admitted at trial that he was not truthful with Defendant about recording the interview. The Court of Appeals found that the detective's deception was just one factor to consider in determining the voluntariness of the confession and held that under the totality of the circumstances the State proved by both a preponderance of the evidence and beyond a reasonable doubt that the statement was given voluntarily. During the recorded interview, Defendant wrote a confession but then attempted to cross out what he had written. In an incident that lasted less than one minute, several officers entered the room to help the detective retrieve the confession. The Court held the written confession was not induced by violence or other improper influence and the force used to retrieve the confession was not unreasonable.

Seo v. State, (06/23/2020) 148 N.E.3d 952 (Ind.) **Compelling D to unlock iPhone was testimonial and violated Fifth Amendment**

After the trial court ordered the Defendant to unlock her smartphone and a divided panel of the Court of Appeals reversed, the Indiana Supreme Court accepted transfer and held that the compelled production of an unlocked smartphone is testimonial and entitled to Fifth Amendment protection—unless the State demonstrates the foregone conclusion exception applies. A suspect surrendering an unlocked smartphone implicitly communicates that the suspect knows the password, the files on the device exist, and the suspect possessed those files. And, unless the State can show it already knows this information, the communicative aspects of the production fall within the Fifth Amendment's protection. Here, the court concluded that the State did not. Instead, law enforcement sought to compel Defendant

to unlock her iPhone so that it could then scour the device for incriminating information, providing the State with information that it did not already know. The court also noted that extending the foregone conclusion exception to the compelled production of an unlocked smartphone is concerning because such an expansion fails to account for the unique ubiquity and capacity of smartphones, may prove unworkable, and runs counter to U.S. Supreme Court precedent. Massa, J, joined by Slaughter, J, dissented because the resolution of the underlying criminal case rendered the issue moot and to resolve it under Indiana's "great public interest" exception would violate the core principles of federalism and leave our state's court as the final arbiter of our nation's fundamental law. Slaughter, J., wrote separately to express his view that the mootness standard of "novel, important issue of great public interest that will surely recur" cannot be reconciled with the actual-injury requirement implicit in our constitution's separation-of-powers command. Instead, he would adopt "capable of repetition, yet evading review" as the court's mootness standard.

III. PRETRIAL PROCEEDINGS

A. Charging Information/Amendments

Hobbs v. State, (11/30/2020) 160 N.E.3d 543 (Ind. Ct. App.) **Abuse of discretion to allow State's belated amendment to charging information**

Trial court abused its discretion by allowing the State, over objection and 14 days before trial, to amend the charging information to include three new counts of child molesting. The trial court also denied Defendant's motion for a continuance to prepare to defend against the new charges. While the new charges involved the same alleged victims, the State added a Class A felony child molesting charge relating to one of the victims for a time period that was not previously charged and a Level 1 felony child-molesting charge relating to the other victim when the prior charging information set forth only a Level 4 felony child-molesting charge for her. Although Defendant's primary defense at trial was the complaining witnesses were lying, he should have been given the opportunity to see if there was anything about the new allegations that supported his theory. Defendant cannot be faulted for not being able to explain to the trial court how a continuance would assist in his defense, as he did not know what he did not know. An investigation was fundamental. And fourteen days before trial was an insufficient amount of time to conduct one. It is too broad a stroke to say if a defendant's defense remains the same, then the State can add new charges up to the time of trial. Held, judgment affirmed in part and remanded with instructions to reverse convictions and corresponding sentences on added counts.

Campbell v. State, (12/21/2020) 161 N.E.3d 371 (Ind. Ct. App.) **Belated habitual offender charge requires State to affirmatively demonstrate good cause - ongoing plea negotiations**

Trial court abused its discretion in allowing the belated filing of an habitual offender enhancement one business day before trial without requiring or making any finding of good cause for the tardiness.

Defendant was charged with unlawful possession of a firearm by a serious violent felon (SVF), auto theft, three counts of resisting law enforcement, possession of marijuana and two counts of leaving the scene of an accident. In May, the State filed a Notice of Intent to File Habitual Offender Enhancement, notifying Defendant it intended to file an habitual offender sentencing enhancement if good faith plea negotiations were unsuccessful. Nine months later, on the eve of trial, the State filed the Habitual Offender Enhancement. The State argued the belated filing was due to ongoing plea negotiations and that it waited until the last minute to file the Habitual Offender Enhancement to give Defendant the opportunity to accept a plea offer. The trial court found good cause and allowed for the late filing. Trial counsel objected and moved for a continuance, which was granted. In finding an abuse of discretion in allowing the late habitual offender enhancement, the Court of Appeals found the State's tendering of the same plea offer several times and then asking Defendant if he wanted to make a counteroffer is not a bona fide ongoing plea negotiation. Judge Brown, concurring in part and dissenting on this issue, found that because the intent to file the habitual offender enhancement was filed nine months prior to the charge being filed and then the trial did not occur until four months after the charge was filed, the trial court did not abuse its discretion in allowing the State to file the enhancement.

B. Bail/Initial Hearing

DeWeese v. State, (02/15/2021) 163 N.E.3d 357 (Ind. Ct. App.) **Defendant who was not a flight risk entitled to pre-trial release regardless of alleged victim's testimony of fear of release**

Indiana Criminal Rule 26 provides that, where a qualifying arrestee does not present a substantial risk of flight or danger to self or others, the trial court should release the arrestee without money bail or surety subject to such restrictions and conditions as determined by the court. Moreover, in setting the amount of bail or deciding whether to grant conditional pre-trial release, trial courts must consider all facts relevant to the risk of a defendant's failure to appear, including factors enumerated in I.C. 35-33-8-4(b). Here, Defendant was charged with Level 2 felony aiding, inducing or causing a burglary after police stopped the car she was driving and Defendant admitted to being the getaway driver in a home invasion gone wrong. Three others entered the home of a 67 year-old man and attempted to rob him. Gunfire was exchanged and one of the three was shot by the home owner. At Defendant's initial hearing, her bond was set at "$50,000 NO 10% CASH ONLY." Defendant lived with her mother and stepfather in a neighboring county. Defendant moved for bond reduction or conditional pretrial release. Among other things, Defendant noted a lack of criminal history, that she had been pre-screened and was eligible for electronic home detention through community corrections. She also was a high school senior who had been accepted into two universities to study nursing. But the homeowner testified that he was in fear of Defendant and the accomplices, and the trial court wrongly determined that was enough to find Defendant was not entitled to pretrial release under Criminal Rule 26. The Court of Appeals granted an emergency stay of that order pending appeal, which was granted, and Defendant was released to pretrial home detention. The Court of Appeals' decision reaffirmed its emergency order and found the trial court abused its discretion. The Court stated "Although we are sympathetic to [the home owner's] distress, [his] testimony that he remains in a fearful state cannot, standing alone, sustain

the trial court's finding that [Defendant] poses a risk to [his] physical safety. We decline to find, as the trial court did, that [his] testimony sufficed to establish, by clear and convincing evidence, that [Defendant] posed a risk to [his] physical safety," "Moreover, we regard the trial court's elevation of [his] testimony over the Indiana Code Section 35-33-8-4(b) factors, and its reliance 'primarily' thereon in denying [Defendant's] conditional pre-trial release, as impermissibly punitive. … We do not reach this conclusion lightly." Lastly, the record on appeal reveals that the State granted conditional pretrial release on home detention to one of the accomplices who went into the home, possibly wielding a firearm, and was shot by the homeowner. The court noted its decision was effective immediately and that Defendant was to remain in pretrial home detention.

Utley v. State, (04/07/2021) 20A-CR-1741 (Ind. Ct. App.) **Day of arrest not included in 15-day time frame for which a person arrested for a probation violation and not admitted to bail may be held in jail without a hearing**

Defendant arrested on a probation violation and held without bond argued he did not have a hearing within fifteen days as required by I.C. 35-38-2-3(d). Considering Trial Rule 6(A) and the general rule that when computing time for performance of an act which must take place within a certain number of days of the triggering event, Court of Appeals held that the day of the triggering event is not included. Here, Defendant had a hearing on the 15th day, excluding the day of his arrest. Held, probation violation affirmed.

Doroszko v. State, (10/02/2020) 154 N.E.3d 874 (Ind. Ct. App.) **Denial of request for bail in murder case affirmed**

In murder prosecution stemming from a fatal drug deal, trial court did not abuse its discretion in denying Defendant's request for release on bail. A defendant charged with murder can be held without bail "when the proof is evident, or the presumption strong." Ind. Const. art. I § 17; Ind. Code § 35-33-8-2. Here, Defendant armed himself and arranged for marijuana deal to be carried out in a well-lit location, showing his awareness of the inherent dangers and potential for violence associated with drug dealing. Evidence at bail hearing also showed that Defendant shot victim to prevent him from stealing the marijuana. Thus, it was reasonable for the trial court to find by a preponderance of the evidence that there was an immediate and causal connection to the contemporaneous crime being committed and the confrontation that led to victim's death. in so holding, Court rejected Defendant's reliance on *Gammons v. State*, 148 N.E.3d 301 (Ind. 2020), for the proposition that the State was obligated to prove beyond a reasonable doubt at the bail hearing that Defendant did not act in self-defense.

Hall v. State, (04/13/2021) 21A-CR-41 (Ind. Ct. App.) **Denial of bail in murder case affirmed; State disproved self-defense and sudden heat by a preponderance of the evidence**

Defendant, charged with murder, appealed the trial court's denial of his petition for release on bail, arguing the State failed to carry its burden to show that the proof of his guilt for murder is evident or the presumption of guilt is strong. Defendant argued that the State failed to rebut his claims he acted in self-

defense or in sudden heat. The Court of Appeals found the State disproved Defendant's self-defense claim by a preponderance of the evidence because his actions as a security guard who shot a woman as she drove away after an altercation were not a proportionate response to the situation. The Court also applied the preponderance of the evidence standard to the State's burden of proof to show Defendant did not act in sudden heat, holding that there was evidence to support the trial court's ruling the State carried its burden to show Defendant committed murder. Held, denial of petition for release on bail affirmed.

Broering v. State, (04/30/2021), 20A-CR-2232 (Ind. Ct. App.) **Failure to show prejudice from State's failure to hold initial hearing six days after arrest**

Ind. Code § 35-33-7-1(a) provides that a "person arrested without a warrant for a crime shall be taken promptly before a judicial officer . . . for an initial hearing in court" in which bail can be set. "If the prosecuting attorney states that more time is required to evaluate the case and determine whether a charge should be filed...then the court shall recess or continue the initial hearing for up to seventy-two (72) hours, excluding intervening Saturdays, Sundays, and legal holidays." Ind. Code § 35-33-7-3(b). Here, majority of Court implicitly concluded that a six-day delay in bringing Defendant before judge for an initial hearing automatically violated the promptness requirement of I.C. 35-33-7-1(a). When the State filed its request for a 72-hour extension, the trial court should have denied the request and set an initial hearing at which the prosecuting attorney could make the request on the record with Defendant present. However, Defendant did not show prejudice from State's failure to promptly bring him before a judicial officer for an initial hearing within 48 hours of his arrest. Held, denial of motion to reduce bond affirmed; Bradford, C.J., concurring in result with separate opinion.

C. Speedy Trial

Battering v. State, (08/05/2020) 150 N.E.3d 597 (Ind.) **State seeking interlocutory appeal must seek stay of proceeding to toll Criminal Rule 4(C)'s one year limitation**

When the State pursues an interlocutory appeal and the trial-court proceedings get stayed as a result, the deadline is extended accordingly. *Pelley v. State*, 901 N.E.2d 494 (Ind. 2009). Here, trial court abused its discretion in denying Defendant's motion for discharge of his child molesting and child solicitation counts because the State waited too long to bring a stay of the proceedings for interlocutory appeal in order to toll Indiana Criminal Rule 4(C)'s one-year limitation. The State filed an interlocutory appeal after Defendant successfully suppressed certain evidence. Rather than request a stay of the proceedings—a motion that almost certainly would have been granted—the State specifically asked for only a continuance during the pendency of its appeal. After Defendant moved for discharge under Criminal Rule 4(C), the State belatedly asked for and received a stay of the proceedings. Defendant renewed his motion for discharge and the trial court denied his request. Reviewing the plain language of Indiana Rule of Appellate Procedure 14 in conjunction with Criminal Rule 4(C), Indiana Supreme Court held that Rule 4(C)'s clock continued to tick until the State formally moved for a stay of the proceedings.

Because this time continued to count against Rule 4's one-year limitation in prosecuting the charged crimes and the State exceeded this limitation, the Court found that Defendant is entitled to discharge.

Watson v. State, (10/21/2020) 155 N.E.3d 609 (Ind.) **CR 4(C) inapplicable to retrial of habitual offender (HO) determinations - constitutional speedy trial violation found**

One-year time limitation to bring a defendant to trial under Criminal Rule 4(C) does not apply to persons being held for habitual offender rehearings, Defendant's constitutional right to a speedy trial in this case was violated by the nearly six and a half years of delay. After securing post-conviction relief that vacated the 30-year habitual offender enhancement, retrial was continued on motions from Defendant, the State and the trial court, while two judicial recusals further delayed the proceedings. Defendant also wrote four letters to trial court demanding to be brought to trial when his first attorney was unresponsive to his inquiries and not filing documents with the court to expedite the process. The Court found that all four of the factors outlined in *Barker v. Wingo*, 407 U.S. 514 (1970), weighed in favor of finding a violation of Defendant's constitutional right to speedy trial. Six-plus years of delay to try Defendant on a habitual-offender allegation is uncommonly long; the government was responsible for a majority of that delay; Defendant appropriately asserted his right to a speedy trial, and has shown prejudice resulting from the extraordinary delay. Held, transfer granted, Court of Appeals opinion at 135 N.E.3d 982 vacated, habitual offender enhancement vacated.

NOTE: In a footnote, Court appears to send a strong signal that defendants should argue Article 1, Section 12 is more protective than the Sixth Amendment under *Barker v. Wingo*. The Court implied that the Indiana constitutional analysis for speedy trial claims is different from the federal analysis in that Article 1, Section 12 is a "directive" rather than a "right." Thus, a defendant need not assert his right to a speedy trial in making a claim under the Indiana Constitution because "the speedy trial demand is effectively made for him."

Anderson v. State,(01/26/2021) 160 N.E.3d 1102 (Ind.) **Pro se CR 4(B) motion for early trial after counsel appointed - D speaks to court through counsel**

Per Curiam. Court granted transfer of Court of Appeals' memorandum opinion to clarify that once counsel has been appointed, even if counsel has not yet entered an appearance, a defendant speaks to the court through counsel. When a defendant files a pro se motion after counsel has been appointed to represent him, such as Defendant's pro se request for an early trial under Indiana Criminal Rule 4(B), the trial court is not required to consider that request. *See Underwood v. State*, 722 N.E.2d 828, 832 (Ind. 2000). Before counsel's appointment, a trial court must consider a defendant's pro se motion, like a request for an early trial. But after counsel's appointment, this consideration is left to the trial court's discretion.

Here, counsel was appointed for Defendant at the initial hearing. Shortly thereafter, Defendant mailed the trial court a document requesting a speedy trial. At a subsequent hearing, the trial court explained that Defendant's "request [was] not an actual Speedy Trial request," because it was filed after counsel had been appointed. Though Defendant's counsel was not present at this hearing, the trial court advised Defendant that he could discuss with his attorney whether seeking a speedy trial would be

beneficial and that his "attorney actually makes the formal request." Because counsel had been appointed for Defendant, the trial court was not required to consider his pro se motion and therefore acted within its discretion by disregarding it. Held, transfer granted, Court of Appeals' memorandum decision summarily affirmed, judgment affirmed in part and remanded in part on other grounds.

Owens v. State, (04/30/2021), 20A-CR-1685 (Ind. Ct. App.) **Denial of Defendant's motion for release under Criminal Rule 4(A) affirmed**

Trial court properly denied Defendant's Criminal Rule 4(A) motion for release from jail, where less than six months was attributable to the Criminal Rule 4(A) period. Defendant was arrested on April 12, 2019 and could not be detained pending trial for more than six months from that date "except where a continuance was had on his motion, or the delay was caused by his act[.]" Crim. R. 4(A). Because Defendant moved to continue his scheduled jury trial on June 25, 2019 to depose State witnesses, the time limitation contained in Criminal Rule 4 was "extended by the amount of the resulting period of such delay caused thereby." Crim. R. 4(F). Defendant acknowledged that some delay following his continuance motion would be attributable to him, but argued that only the time between his continuance motion (June 25, 2019) to the date that the State requested the trial court to reschedule the trial (January 14, 2020), which totals 203 days, should be attributable to him, while the remaining 125 days from the State's trial scheduling request (January 14, 2020) to the new trial date (May 18, 2020) should be counted toward the six-month limitation of Criminal Rule 4(A). Court disagreed, noting that when a defendant requests a continuance, the elapsed period between his motion for a continuance and the new trial date is generally chargeable to the defendant. Stephenson v. State, 742 N.E.2d 463, 488 (Ind. 2001). Court declined to address the applicability of the Indiana Supreme Court's emergency COVID-19 orders, noting the issue was not before the Court. Held, judgment affirmed.

D. Venue/Jurisdiction

Nix v. State, (10/26/2020) 158 N.E.3d 795 (Ind. Ct. App.) **Denial of change of venue affirmed despite juror's post-trial comments indicating knowledge of defendant's criminal history**

Defendant was convicted of Level 3 felony rape. He moved for a change of venue because, in the six months prior to his motion, he had been sentenced in three other, similar cases that had been reported in the local media. The court denied the change of venue motion. At the close of sentencing, defense counsel told the court that after trial the jury foreperson stated that several jurors knew about Defendant's prior cases. Court of Appeals rejects Defendant's argument he was denied an impartial jury and should have received a change of venue, finding the arguments as to how the jurors were exposed to his prior criminal history speculative and that the issue was not preserved. Moreover, Defendant invited error by: 1) questioning potential jurors about his prior criminal history; 2) not asking the court to separate or admonish the prospective jurors and not objecting to the procedure the court employed with the jurors; and 4) not renewing his motion for change of venue.

Riggle v. State, (07/16/2020) 151 N.E.3d 766 (Ind. Ct. App.) **Defendant failed to establish lack of jurisdiction over offense on Indian land**

Defendant was convicted of Unlawful Possession of a Syringe after an incident on tribal land of the Pokagon Tribe. Defendant challenged the sufficiency of the State's evidence and asserted the State failed to establish the offense was governed by state law and failed to prove he is non-Indian. Territorial jurisdiction is the authority for the State to prosecute an offense within its territorial boundaries. Although not necessarily an element of the offense, the State must prove it beyond a reasonable doubt. *Ortiz v. State*, 766 N.E.2d 370 (Ind. 2002). The State's witness, an officer with the Pokagon Band Tribal Police Department and a special deputy of the St. Joseph's County Sheriff's Department, was qualified to give an opinion as a skilled witness. The officer testified about his training regarding jurisdiction for a victimless crime on tribal land and the Court held that his testimony was sufficient to establish the authority of the State to charge Defendant in this case. The Court further held that the burden to show facts that would divest the trial court of jurisdiction under the Indian Country Crimes Act, specifically that Defendant was Indian, is on Defendant, not the State.

E. Discovery

Sawyer v. State, (05/19/2021), 20A-CR-1446 (Ind. Ct. App.) **Statute restricting D's ability to take child depositions in sex cases conflicts with Indiana Trial Rules and is invalid**

Defendant, accused of sex crimes, petitioned the trial court for funds to obtain sworn testimony of witnesses. The prosecutor invoked newly-enacted IC 35-40-5-11.5, which requires "extraordinary circumstances" or prosecutorial consent to depose an alleged child victim under sixteen years of age. Defendant filed a motion for hearing pursuant to the statute, but objected to the hearing on the basis it shifted the burden of proof. The trial court denied Defendant's request to despose the child accusers after the hearing and certified its order for interlocutory appeal. Thereafter, Defendant challenged the statute, arguing that it significantly alters the ability of those accused of particular sex crimes to investigate allegations against them and irreconcilably conflicts with the Indiana Trial Rules. The Court of Appeals agreed, finding the statute is procedural and in conflict with the Trial Rules, specifically Rules 26 and 30(A), in that "it necessitates the prosecutor's permissions...and...requires a defendant to move for a hearing when the permission sought is not forthcoming- and otherwise places the burden of proof on the defendant at the contemplated hearing." Therefore, the provisions of the trial rules govern. *Key v. State*, 48 N.E.3d 333 (Ind. Ct. App. 2015). The Court reversed the trial court's order denying Defendant's petition for depositions.

Archer v. State, (04/12/2021) 20A-CR-1677 (Ind. Ct. App.) **Erroneous quash of defense subpoena for deposition; State failed to show paramount interest in non-disclosure**

After Defendant's child molesting conviction was affirmed on direct appeal, Court of Appeals vacated the conviction and remanded for a new trial on appeal from denial of post-conviction relief. In preparation for the new trial, counsel requested to depose the alleged victim (AV) seven years after her original allegations. When trial counsel issued a subpoena to depose the AV, the State move to quash the subpoena. The trial court granted the State's motion to quash notice of deposition and trial counsel

moved for interlocutory appeal, which was granted. Because the Order granting the State's motion to quash was non-specific, leaving the Court of Appeals with no details about the grounds on which it relied, the Court of Appeals review was akin to de novo. The Court of Appeals relies on the three-part test outlined in *Dillard v. State*, 274 N.E.3d 387 (Ind. 1971), to determine if the discovery request should have been granted. The test is: 1) whether there is sufficient particularity of items to be discovered, 2) whether the items sought to be discovered are relevant and 3) does the State have a paramount interest in non-disclosure. Here, the Court determined that the Defendant's request did show sufficient particularity, specifically that trial counsel should be permitted to determine what a witness remembers many years after the event. The request was also relevant, as this was a new trial where the defense needed to form a specific defense strategy and the State failed to show a paramount interest in non-disclosure. The Court emphasized the State failed to make a record to support that any trauma the AV would experience would outweigh trial counsel's need to take the deposition to properly defend her client. On balance, the 20-50 year exposure of the client and the need for counsel to depose the AV to properly prepare a defense outweighed any uncomfortable feeling the AV may have about being deposed. In this instance the State did not meet its burden of showing paramount interest in non-disclosure under the *Dillard* test and therefore the trial court abused its discretion by quashing the subpoena for the AV's deposition. Held, judgment reversed and remanded for further proceedings.

State v. Jones, (11/02/2020) 155 N.E.3d 1287 (Ind. Ct. App.), *TRANSFER GRANTED;* Oral argument held 4/8/21. **State failed to meet burden to show application of informer's privilege**

To prevent disclosure of a confidential informant's (CI's) identity, it is not enough to show that the CI's identity might be revealed. Rather, it is the State's burden to prove that the CI's identity would be revealed as a result of a face-to-face interview. Here, Defendant was charged with Level 2 felony burglary, Level 3 felony counts of robbery, criminal confinement and kidnapping, Level 5 felony kidnapping and Level 6 felony auto theft. The charges came after a police officer spoke with a CI who had specific information about a home invasion and possible subjects. That information was forwarded to other officers who were investigating the home invasion, leading to the charges against Defendant.

Defendant's counsel made three attempts at questioning the CI in a manner that protected the informant's identity, but all three attempts failed. Counsel then amended his motion to compel and the trial court ordered the State to produce the CI for a face-to-face interview with Defendant's counsel but ordered counsel not to ask any questions that may disclose the CI's identity, identifiers, residence, etc. The Court of Appeals upheld trial court's grant of Defendant's motion to compel, finding Defendant had met his burden to demonstrate that the CI had information that was relevant and helpful to his defense or necessary for a fair trial. Court found that the trial court fashioned a solution that balanced Defendant's right to information that would allow him to prepare his defense with the State's desire to keep the CI's identity hidden when it allowed defense counsel to interview the CI without asking any questions that would reveal the CI's identity. Because the State did not meet its burden to demonstrate that the CI's identity would be revealed, it failed to meet its initial burden to establish that the informer's privilege applied. Moreover, the Court concluded that even if the privilege applied, the defense had adequately overcome the privilege by showing that the CI "had information that is relevant and helpful to his defense or necessary for a fair trial...[T]he information from the CI would be helpful

for him to understand how the officers investigating the robbery at [victim's] house linked him to that offense."

F. Guilty Pleas

Bautista v. State, (01/29/2021) 163 N.E.3d 892 (Ind. Ct. App.) **Involuntary guilty plea - inadequate translation for Spanish-speaking defendant**

Defendant's guilty plea to child molesting was not knowingly, intelligently, and voluntarily entered because the Spanish translation he received at his guilty plea hearing did not adequately advise him of one of the rights required by *Boykin v. Alabama*, 395 U.S. 238 (1969), namely, the right to confront the witnesses against him. Although interpreter's translation informed Defendant that he could ask questions, it failed to specify to whom Defendant may ask questions. The translation failed to make any mention of the witnesses against him or use other words that would convey a similar meaning. Thus, it did not effectively communicate that Defendant had the right to confront or cross-examine the witnesses against him. The defendant does not bear the burden to establish that he did not know he was waiving his *Boykin* rights; rather, a defendant who demonstrates that the trial court failed to properly give a *Boykin* advisement during the guilty plea hearing has met his threshold burden for obtaining post-conviction relief. *Ponce v. State*, 9 N.E.3d 1265, (Ind. 2014).

Here, Defendant carried his initial burden of demonstrating that he failed to receive an adequate advisement at the guilty plea hearing that he had the right to confront and cross-examine the witnesses against him, and the State failed to show that the record as a whole nonetheless demonstrated that Defendant understood this right and that he was waiving it by pleading guilty. Held, denial of post-conviction relief reversed and remanded with instructions to vacate guilty plea.

Williams v. State, (03/16/2021) 21S-CR-113 Ind.) **Trial courts must be clear and consistent as to whether Defendant waives only right to appeal conviction or right to appeal conviction and sentence**

Defendant entered into a guilty plea agreement and at the sentencing hearing, the judge advised him he was waiving the right to appeal his conviction but failed to clarify whether he was also waiving his right to appeal his sentence. *Johnson v. State*, 145 N.E.3d 785, 786-7 (Ind. 2020), held that a plea agreement's generalized statement that the defendant "waives right to appeal," without more, was insufficient to establish a knowing and voluntary waiver of the defendant's right to appeal his sentence. Here, the Court granted transfer for the sole purpose of reminding trial judges that "the plea agreement, guilty plea and sentencing hearing colloquy, and sentencing order must be clear and consistent as to whether a defendant waives only the right to appeal the conviction or the right to appeal the conviction and sentence." Held, sentence affirmed.

McHenry v. State, (07/17/2020) 152 N.E.3d 41 (Ind. Ct. App.) **Defendant can appeal "open plea" where plea agreement leaves sentencing discretion to trial court even if plea agreement wrongly states that plea is not an open plea and appeal is waived.**

Defendant pleaded guilty pursuant to an open plea and appealed his sentenced. The State argued the appeal should be dismissed because a paragraph in the plea agreement erroneously stated the plea was not an open plea and he could not appeal his sentence. Defendant's plea agreement notified him that a defendant has a right to appeal the sentence imposed after entering an open plea but erroneously characterized his plea as not an open plea. The plea agreement left Defendant's sentence to the trial court's discretion, and the trial court was only limited in the sentence it could impose by the statute outlining the maximum and minimum penalties for a Level 4 felony. Also, the trial court advised Defendant of his right to appeal at the end of Defendant's sentencing hearing, and the State did not object. Therefore, the Court of Appeals declined to dismiss the appeal allowing the appeal to go forward; however the Court rejected Defendant's appropriateness challenge to his 24-year sentence for two level 4 child molesting charges.

Merriweather v. State, (08/21/2020) 151 N.E.3d 1281 (Ind. Ct. App.) **No waiver of right to appeal sentence notwithstanding waiver of right to appeal in plea agreement**

Defendant placed his initials next to the provision in plea agreement indicating he had waived his right to appeal his sentence. When asked by the trial court during his guilty plea hearing whether he understood each of the rights he was waiving pursuant to the terms of the plea agreement, Defendant answered in the affirmative. However, while conducting an oral review of the rights that Defendant was waiving pursuant to the agreement, and prior to the trial court's acceptance of his guilty plea, the court advised Defendant, "Since the sentence that is being imposed is one that the Court decides its [sic] discretionary within thirty (30) years. You do have the right to appeal the sentence if you feel it is fundamentally unfair. Do you understand that sir?" Defendant answered in the affirmative. Neither the deputy prosecutor nor defense counsel objected to these statements. Subsequently, during the sentencing hearing, the court again advised Defendant, "[S]ince the Court had discretion in announcing your sentence; you have the right to appeal the Court's sentence." The trial court went on to explain the timeline for filing a notice of appeal and, after Defendant indicated that he did, in fact, wish to appeal his sentence, appointed appellate counsel. Again, neither the prosecutor nor defense counsel objected. Court of Appeals finds *Bonilla v. State*, 907 N.E.2d 586 (Ind. Ct. App. 2009), *trans. denied*, controls. In *Bonilla*, Defendant was advised at his guilty plea and sentencing hearings that he had a right to appeal even though Bonilla's plea agreement, as the case here, contained a written waiver of the right to appeal. The Court of Appeals notes that had they not found Defendant's waiver of the right to appeal his sentence invalid, an argument could be made that the State waived the ability to enforce the waiver provision and seek dismissal of this appeal by sitting idly by during the plea hearing, and again at the sentencing hearing, while the trial court gave the erroneous advisements. Neither party should be rewarded for behavior that is contrary to the administration of justice. Court finds thirty year sentence not inappropriate following plea to three counts of level 4 felony burglary under Indiana Appellate Rule 7(B) review.

Harris v. State, (11/17/2020) 159 N.E.3d 988 (Ind. Ct. App.) **Trial court's rejection of Defendant's plea agreement after reviewing PSI affirmed**

Trial court acted within its discretion when it accepted a guilty plea but explained it would not be accepted until review of Defendant's PSI report. Charged with Level 1 felony neglect of a dependent resulting in death, Defendant agreed to plead guilty to Level 3 neglect resulting in serious bodily injury with a sentence of nine years with eight years suspended. The trial court accepted Defendant's plea of guilty but stated it would withhold sentence until a pre-sentence investigation was done. After reviewing the PSI, the trial court rejected the plea agreement and following a jury trial, Defendant was convicted of Level 1 felony neglect of a dependent resulting in death and sentenced to thirty years of incarceration. In affirming Defendant's conviction, the Court of Appeals distinguished these circumstances from *Reffett v. State*, 571 N.E.2d 1227 (Ind. 1991), where the trial court had explicitly accepted both the guilty plea and the plea agreement and then rescinded its initial acceptance. In this case, trial court determined the plea agreement was unacceptable after reviewing the PSI and did not abuse its discretion in rejecting the plea agreement.

Fields v. State, (01/26/2021) 162 N.E.3d 571 (Ind. Ct. App.) **Notwithstanding waiver of appeal provision in plea agreement, belated appeal permitted under PC Rule 2**

Defendant entered into a plea agreement with the State wherein he pleaded guilty to six felony counts as well as a habitual offender sentencing enhancement with sentencing "open to argument" but with "a cap of 25 years on any executed sentence." The plea agreement included a provision that waived "the right to appeal any sentence imposed by the Court…so long as the Court sentences the defendant within the terms of this plea agreement." The trial court sentenced Defendant to an aggregate term of 37 years, with 25 years executed and 12 years suspended. Four years later, Defendant filed a petition for permission to file a belated notice of appeal, asserting that his sentence was contrary to law because the trial court had used an improper aggravator when it sentenced him. The trial court denied the petition without a hearing.

The Court of Appeals noted that even when a waiver of appellate review appears to be unqualified, a defendant retains the right to appeal his sentence when it is imposed contrary to law and the defendant did not agree to the specific sentence. *See Crider v. State*, 984 N.E.2d 618, 625 (Ind. 2013). Here, while Defendant agreed to the cap on the executed portion of his sentence, he did not agree to be sentenced either to the full executed term or to an additional 12 years suspended based on an improper aggravator. Defendant would have had the right to raise that issue in a timely appeal. Held, Defendant is an eligible defendant pursuant to Post-Conviction Rule 2(A).

Wilson v. State, (11/30/2020) 160 N.E.3d 222 (Ind. Ct. App.) **Rejection of voluntary manslaughter plea affirmed**

Trial court had discretion to reject the plea agreement even though there was ambiguity as to whether the trial court had accepted the plea and entered judgment or taken the plea under advisement. Defendant shot and killed the victim inside Defendant's apartment, resulting in a murder charge. On the morning of her scheduled jury trial, Defendant agreed to plead guilty to Level 2 felony

voluntary manslaughter pursuant to a written plea agreement. In exchange for her plea, the State agreed to dismiss the murder charge and agreed to a cap of fifteen years executed. After an agreed factual basis was entered, the trial court stated it was "going to take this plea under advisement and . . . enter[] . . . an order of conviction for the offense of Voluntary Manslaughter." The court's chronological case summary ("CCS") states that the court entered "[j]udgment" on the voluntary manslaughter charge at this time. The court then set the matter for a sentencing hearing, during which it expressed concern about whether Defendant had entered her plea knowingly and voluntarily based on her statements in the PSI about acting in self-defense. Thus, the trial court reset the matter for trial.

IV. TRIAL

A. Right to Counsel/Right to Self-Representation

Vonhoene v. State, (03/18/2021) 165 N.E.3d 630 (Ind. Ct. App.) **Erroneous finding of forfeiture of right to counsel and proceeding with pro se trial without first investigating eligibility for pauper counsel**

On the morning of her trial, Defendant moved for a continuance in order to secure counsel. The trial court found she "waived" her right to counsel due to her prior request for a continuance and the court's general advisements of her legal rights. Defendant proceeded pro se and trial court convicted her of possession of marijuana after a bench trial. Distinguishing *Kowalskey v. State*, 42 N.E.3d 97 (Ind. Ct. App. 2015), the Court of Appeals found the record did not support a finding that Defendant either waived or forfeited her right to the assistance of counsel by her conduct. Further, Defendant's statements before her trial that she did not know how to secure court-appointed counsel triggered the trial court's duty to conduct further inquiry regarding her eligibility for pauper counsel. Held, judgment reversed and remanded.

Wright v. State, (05/04/2021), 20S-LW-260 (Ind.) **Denial of D's equivocal request for self-representation affirmed - State's interest in the fairness of capital/LWOP cases**

When deciding whether a defendant properly waives the right to counsel in capital and LWOP cases, a trial court should frame its waiver inquiry with the State's heightened reliability interests in mind. That inquiry should focus on whether, and to what extent, the defendant has prior experience in the legal system; the scope of the defendant's knowledge of criminal law and legal procedures, rules of evidence, and sentencing; and whether and to what extent the defendant can articulate and present possible defenses, including lesser-included offenses and mitigating evidence. Here, Defendant was charged with murder, along with other felony offenses, and after the State sought the death penalty a few months after his initial hearing, the trial court appointed new capital-qualified attorneys to represent him. Defendant was unhappy with his new counsel and notified the court he wanted to represent himself. After a lengthy colloquoy with Defendant about why he wanted to represent himself, the trial court denied the motion, finding Defendant was equivocal in his request and that rather than truly wishing to represent himself, he just wanted different counsel. Defendant was convicted and sentenced to life

without the possibility of parole. The Indiana Supreme Court held the trial court's denial of Defendant's request to act as his own attorney was proper. The Court discussed the historical background of the constitutional right to self-representation, including the seminal U.S. Supreme Court case *Faretta v. California*, 422 U.S. 806, 816 (1975). The majority held that courts should weigh a request for self-representation with a particular focus on the State's interest in heightened reliability on the fairness of the proceedings because capital and LWOP cases have the most serious consequences for criminal defendants. As a result, trial courts should hold a presumption against waiver and in cases where the defendant is permitted to represent himself be ready to appoint standby counsel. The Court also rejected Defendant's appropriateness challenge to his LWOP sentence. Justice Massa concurred in result with the majority because he found Defendant's waiver of counsel was equivocal. However, he agreed with the dissenting opinion that the majority's decision seems to contradict the U.S. Supreme Court's decision in *Faretta*. Justice Slaughter dissented for the reason noted in the concurrence and because he found Defendant invoked his right to self-representation clearly and unequivocally.

B. Right to Jury Trial

Wiley v. State, (07/16/2020) 150 N.E.3d 710 (Ind. Ct. App.) **Implied waiver of right to misdemeanor jury trial was not knowing and is therefore invalid**

Defendant was charged with two misdemeanor offenses and advised regarding Crim. R. 22 of his right to a jury trial and the procedural effects if a request for a jury trial was not timely filed in writing. His counsel made an oral request for a jury and later indicated he had filed a written request for a jury trial. The trial court set the matter for a jury trial which was later continued. The statements of trial counsel and the actions of the trial court led Defendant to believe that the necessary steps had been taken to ensure a jury trial. Defendant appeared at the first setting of his jury trial and paid the costs associated with securing the jury pool in order to obtain a continuance. It was not until the State filed a motion to strike the jury trial five months later and just three weeks before the reset jury trial that Defendant was made aware that no written jury demand had been filed. Further, by the time the trial court struck the jury trial it was impossible for Defendant to comply with the requirements of Crim. R. 22 as the deadline for filing a written jury demand had already passed. The Court of Appeals held that under these circumstances, Defendant established that his implied waiver of his jury right was not knowing and therefore invalid. Reversed and remanded for a jury trial.

C. Right to be present/Trial *in absentia*

Smith v. State, (01/20/2021) 160 N.E.3d 1152 (Ind. Ct. App.) **In trial in absentia, no fundamental error for trial court to inform jurors that court personally advised Defendant of trial date a few weeks before trial**

Trial court did not abuse is discretion by conducting jury trial in absentia, where record established that Defendant knew of court date, did not appear and clearly waived his right to be present. Court of

Appeals held it was not fundamental error for trial court to advise potential jurors that the court had personally advised Defendant of the trial date a few weeks before trial. This was not a prohibited comment on defendant's refusal to testify but rather recognition of Defendant's absence. Also, jurors were appropriately instructed regarding presumption of innocence and State's burden of proof.

D. Contempt

Grogg v. State, (10/21/2020) 156 N.E.3d 744 (Ind. Ct. App.) **450-day sentence affirmed for four separate findings of contempt of court resulting from D's repeated attempts to contact person with whom he was court-ordered to have no contact**

Court affirmed Defendant's aggregate 450-day sentence imposed for committing four separate acts of contempt based on his repeated attempts to contact a person in violation of a no-contact order. The Court rejected Defendant's argument that this should have been one continuous act of contempt because it involved the same protected person and the same conduct. The trial court imposed a 60-day, 90-day, 120- day and 180-day sentence on four separate counts of contempt, running them consecutively to each other and to Defendant's sentence for Level 5 felony domestic battery. Because the maximum possible sentence on each contempt charge was six months and none of the individual sentences imposed by the trial court exceeded six months, the trial court did not abuse its discretion at sentencing. Further, even though the trial court waited until after the conclusion of the trial on the underlying charges to determine whether the Defendant's conduct constituted contempt, the no-conduct order remained in effect, all the contempt charges included alleged distinct violations of the no-contact order, and three allegedly occurred prior to trial. Given the no-contact order remained in place following trial, there was a risk of continued contemptuous behavior by Defendant and an ongoing necessity for the trial court to ensure compliance with its order.

Wine v. State, (05/27/2020) 147 N.E.3d 409 (Ind. Ct. App.) **Multiple contempt citations for disruptive behavior in court affirmed**

At trial, Defendant committed repeated acts of contemptuous behavior and trial court sentenced him to consecutive 180-day sentences for five counts of contempt totaling 900 days. In his petition for post-conviction relief (PCR), Defendant alleged that trial and appellate counsel were ineffective for failing to challenge the contempt citations as one single episode. Court of Appeals affirmed trial court's denial of PCR, finding each act was separate and distinct and not one continuous episode of contempt and therefore trial and appellate counsel were not ineffective. However, Court found four separate acts of contempt rather than five and reduced sentence to 720 days for the four counts. State cross appealed, arguing case should be dismissed for lack of subject matter jurisdiction because post-conviction rules do not apply to criminal contempt adjudications. Court disagreed, finding post-conviction relief is a criminal contemnor's only opportunity to collaterally challenge such an adjudication.

E. Voir Dire

Peppers v. State, (08/31/2020) 152 N.E.3d 678 (Ind. Ct. App.) **No error in trial court conducting voir dire where Defendant submitted written questions**

Defendant was arrested on a warrant at his home and was cooperative with officers. One month after Defendant's arrest, a video called "To The Judges" was posted on YouTube. In the video, Defendant threatened to kill "Big Country," the nickname of one of the police officers who arrested him, for allegedly pointing a gun in his face and at his stepdaughter during the arrest. Defendant was charged with one count of Level 6 felony intimidation. Prior to jury trial, the parties submitted written questions for voir dire, with Defendant submitting 86 questions for the prospective jurors and the State submitting eight. The trial court conducted voir dire and did not ask all of Defendant's submitted questions finding them either covered by the court's questions or conditioning the jury and therefore not appropriate to ask. Trial counsel did not object to the jury panel before it was sworn or submit additional questions for the jury after his motion to orally examine prospective jurors was denied. Finding the issue waived and reviewed under a fundamental error standard, the Court of Appeals rejected Defendant's argument that the trial court violated Indiana Trial Rule 47(D) by denying his counsel the right to question the prospective jurors and to ask them follow-up questions. The Court found Defendant failed to show how the trial court's voir dire procedure led to a jury panel that was not fair or impartial, or in violation of Indiana Trial Rule 47(D), finding no error in the trial court's conduct of voir dire. The court also found the evidence sufficient to support the intimidation charge in that the jury could reasonably infer that Defendant publicly posted the video to YouTube and that was enough to support the required element that he knew or would have had good reason to believe the video would reach the police officer, relying on prior cases that affirmed the communication can be indirect and not limited to only those threats made directly to or in the presence of the threatened party.

F. Jury Instructions

Gammons v. State, (06/26/2020) 148 N.E.3d 301 (Ind.) **Self-defense jury instruction - contemporaneous crime limitation did not apply**

Under Indiana's self-defense statute, "a person is not justified in using force if the person," among other things, "is committing . . . a crime." Ind. Code § 35-41-3-2. Here, during Defendant's trial for attempted murder and carrying a handgun without a license, he asserted that he acted in self-defense when he fired six shots at a man who aggressively confronted him and whom he knew had a history of violence. Over Defendant's objection, the trial court instructed the jury using language that tweaked his tendered self-defense instruction and stated that "a person may not use force if," among other things, "he is committing a crime that is directly and immediately related to the confrontation." Noting and agreeing with Justice Boehm's concurring opinion in *Mayes v. State*, 744 N.E.2d 390, 396 (Ind. 2001), which warned that the "but for" test was too broad and could foreclose self-defense where the defendant should be free to argue it, the Indiana Supreme Court held that self-defense is only barred when there is "an immediate causal connection between the crime and the confrontation."

Because the instructional error could have served as the basis for the jury's decision to convict, the Court reversed Defendant's conviction and remanded for a new trial.

Littleton v. State, (12/30/2020) 162 N.E.3d 531 (Ind. Ct. App.) **Jury sufficiently instructed on presumption of innocence**

In *McCowan v. State*, 27 N.E.3d 760 (Ind. 2015), the Indiana Supreme Court held that a defendant is per se entitled to a jury instruction on the presumption of innocence and when requested trial courts do not have discretion whether to instruct the jury that the presumption of innocence continues throughout the trial. Here, Defendant tendered instructions that tracked the approved language the Indiana Supreme Court had set out in *McCowan*. The trial court declined to give Defendant's proffered instruction and instead provided its own instructions. The Court of Appeals stated it would have been "better practice" for the trial court to give an instruction that included the same words proscribed by the Indiana Supreme Court. However, the Court found that the court's instructions, although stated differently than the precise language of McCowan, contained the same substantive information, namely that the jury was instructed that Defendant was presumed innocent of any crime and that presumption continued throughout the trial and the jury was to consider evidence under the presumption that Defendant was innocent if reasonably possible.

Larkin v. State, (11/09/2020) 159 N.E.3d 976 (Ind. Ct. App.) **Erroneous instruction on involuntary manslaughter -- not a factually included lesser offense of charged voluntary manslaughter offense**

In voluntary manslaughter prosecution, trial court erred in instructing the jury on involuntary manslaughter based on a battery just minutes before closing arguments. Defendant claimed the shooting of his wife which resulted in her death was an accident in the course of self defense. The defendant’s intent (to kill or to batter) distinguishes the offenses of voluntary manslaughter and involuntary manslaughter. While a person may shoot another person with an intent to batter rather than with an intent to kill, the Court of Appeals concluded that neither the charging instrument nor the State's argument at trial made such an allegation in this case. Rather, in requesting the involuntary manslaughter instruction, the prosecutor argued Defendant intended to commit a battery by pushing his wife. The charging information referred to a handgun but did not allege all of the elements of a battery by pushing or an incidental killing. The Court declined to conclude that the mere assertion that the charged offense was committed by means of a handgun, without more, automatically means the information also asserted a battery. Thus, because involuntary manslaughter was not an inherently or factually included lesser offense of the charged crime, the jury should not have received an involuntary manslaughter instruction.

Moreover, a defendant must receive fair notice of the charge against which he must defend at trial. Here, at a minimum, there was a reasonable doubt as to whether the State’s charging instrument provided Defendant with fair notice of the charge of which he was eventually convicted. Additionally, based on the lack of sufficient evidence to contradict Defendant's statement of self-defense, Court was compelled to find the State did not meet its burden of negating Defendant's self-defense claim beyond a

reasonable doubt. Held, conviction reversed and remanded with instructions to enter a judgment of acquittal.

Shepherd v. State, (09/14/2020) 155 N.E.3d 1227 (Ind. Ct. App.) **No evidence to support defendant's proposed reckless homicide instruction**

In reckless homicide and criminal recklessness with deadly weapon prosecution, trial court did not abuse its discretion when it rejected Defendant's proposed instruction that read: "[p]roof that an accident arose out of the inadvertence, lack of attention, forgetfulness or thoughtfulness of the driver of a vehicle or from an error in judgment on his part, will not support a charge of reckless homicide." Charges resulted from the deaths of three young children and serious injury of another struck by pickup truck Defendant was driving that failed to stop for a school bus stopped to pick up the children for school. Defendant's theory at trial was that she experienced an error of judgment which caused the collision. Nonetheless, Court of Appeals found there was no evidence at trial to support giving the instruction because Defendant did not point to evidence supporting portions of her proffered instruction regarding "inadvertence, lack of attention, forgetfulness or thoughtfulness." Even if there were evidence to support defense theory that the collision resulted from an error of judgment, Defendant did not offer a separate instruction limited just to that wording. The Court of Appeals found sufficient evidence Defendant acted recklessly rather than negligently, thus sustaining her convictions for reckless homicide and criminal recklessness. The jury reasonably concluded that Defendant recognized that the vehicle before her in the road was a stopped school bus or that she was aware of conditions that would have disclosed that fact to any reasonable person.

However, the Court vacated Defendant's misdemeanor reckless driving conviction on double jeopardy grounds, finding that the reckless driving and criminal recklessness convictions were both established by the same evidence and same act of recklessly driving past the stopped school bus. Thus, the Court remanded the case with instructions to issue a new sentencing order expressly indicating the two ordered license suspensions are to be served concurrently.

See also: *Schneider v. State*, 19A-CR-1928, 10/20/2020, Ind. Ct. App. (No abuse of discretion in refusing to give D's tendered instruction on the lesser- included offense of reckless homicide, where multiple stab wounds to the head and chest were evidence of an awareness of a high probability that the victim will be killed and there was no serious evidentiary dispute permitting the jury to find D acted recklessly but not knowingly).

Atkinson v. State, (07/09/2020) 151 N.E.3d 311 (Ind. Ct. App.) **No error in failing to instruct jury on lesser included offenses of reckless homicide and involuntary manslaughter**

In murder, aggravated battery and neglect causing death prosecution, trial court did not err in refusing Defendant's tendered lesser included offense instructions on reckless homicide and involuntary manslaughter. Defendant's conviction stemmed from the death of his girlfriend’s minor child from multiple blunt force traumatic injuries. Experts testified that the child’s injuries occurred through multiple blows and falls and that the injuries included multiple blunt force traumatic injuries to the head, and blunt force injuries to the chest, abdomen, and pelvis. In affirming the trial court's refusal to

instruct the jury on reckless homicide, Court noted that the child's injuries were so severe that no reasonable person could have found the injuries to have been inflicted only recklessly. There was likewise no evidentiary dispute regarding Defendant's intent to kill, even assuming involuntary manslaughter was a factually-included lesser offense. Thus, the proposed involuntary manslaughter instruction was not warranted.

Morales v. State, (03/25/2021) 20A-CR-913 (Ind. Ct. App.) **Arson convictions violated statutory prohibitions on substantive double jeopardy**

On appeal of his arson and burglary convictions, Court rejected Defendant's argument he was entitled to a "reasonable theory of innocence" instruction following *Hampton v. State*, 961 N.E.2d 480 (Ind. 2012), which found such an instruction mandatory when the only evidence of the actus reus was circumstantial. Here, the court noted that the State's evidence included Defendant's statement to his girlfriend he would burn the parole office, which was direct evidence of the actus reus.

G. Mistrial

Jarrett v. State, (11/30/2020) 160 N.E.3d 526 (Ind. Ct. App.) **Denial of motion for mistrial affirmed**

Defendant shot and killed a man while trying to rob him at a convenience store. At trial, Defendant twice moved for a mistrial. Once because Defendant wished the judge a happy birthday making the judge feel uncomfortable although she stated she could still be fair and second when an investigator's statements could have been inferred to indicate Defendant had fled after the shooting. The Court of Appeals affirmed the trial court's denial of mistrial in both instances, finding neither incident had placed Defendant in grave peril or prejudiced his trial.p

H. Juror Misconduct

Loehrlein v. State, (12/09/2020) 158 N.E.3d 768 (Ind.) **Defendant not harmed by jury forewoman's gross misconduct in providing a misleading answer on a jury questionnaire**

Proof that a juror was biased against the defendant or lied during voir dire generally entitles the defendant to a new trial. *State v. Dye*, 784 N.E.2d 469 (Ind. 2003). But when a juror commits gross misconduct, defendants must still demonstrate that they were probably harmed as a result of that misconduct to be entitled to relief. Here, in a case where Defendant murdered his wife and savagely attacked his two daughters, Defendant was not harmed by the attorney juror forewoman's gross misconduct in providing a misleading answer on her jury questionnaire. The juror (L.W.) falsely answered "N/A," meaning not applicable, instead of "yes" to questions concerning whether she, immediate family members or close friends had been charged or convicted with a crime. The Supreme Court first noted that L.W. committed gross misconduct, and her actions were even more egregious "because she is an attorney who had previously handled some criminal matters and as such, she should have known better." Because L.W.'s answers on the jury questionnaire were cryptic and her demeanor during her post trial deposition was defensive and evasive, Court found that her misconduct was gross.

But given the facts and circumstances of this case, including strong evidence of Defendant's sanity, it was not likely that he was harmed. L.W.'s personal experience with domestic violence is not directly related to a sanity inquiry and further, she testified that she was impartial. Thus, trial court did not abuse its discretion in denying Defendant's motion to set aside the jury verdict. Held, transfer granted, Court of Appeals' opinion at 142 N.E.3d 966 vacated, denial of request for new trial affirmed.

V. SENTENCING

A. Sentencing Procedure

Wampler v. State, (04/28/2021) 20A-PC-2043 (Ind. Ct. App.) **Trial court lacked jurisdiction to resentence Defendant who had served sentence and been released from DOC**

Trial courts are limited to imposing sentences that are authorized by statute. *Wilson v. State*, 5 N.E.3d 759, 762 (Ind. 2014). Here, Defendant was sentenced in 2015 to an aggregate 33-year sentence following his convictions for two counts of burglary and a habitual offender enhancement. The Indiana Supreme Court found Defendant's sentence inappropriate and reduced his term to an aggregate 16 years. Defendant then filed for post-conviction relief, arguing in a 2020 amendment to his petition that his habitual offender adjudication and sentence should be vacated because the Court of Appeals earlier that year had vacated one of the convictions that supported his adjudication. The trial court granted his motion and concluded that, without the habitual offender enhancement, Defendant's sentence for the burglary convictions would have been complete in July 2017. Thus, Defendant was released. But on the same day as the trial court's ruling, the State moved to resentence Defendant on one of the burglary convictions. The trial court granted the State's motion, and Defendant filed an interlocutory appeal. Defendant argued that the trial court erred in granting the State's motion to resentence him because the Indiana Supreme Court had ordered a specific six-year sentence for each burglary conviction upon remand of Defendant's direct appeal. Court did not address Defendant's argument because the trial court erred in granting the State's motion to resentence Defendant for another reason. Because Defendant has served his sentence for the burglary convictions and has been released from the Department of Correction, the trial court had no authority to resentence him. There is no statute authorizing trial courts to resentence a defendant who has served his sentence and been released from the DOC. In addition, it would be manifestly unfair for the trial court to call Defendant back into court and potentially resentence him to additional time for the burglary conviction when he had already served his sentence for that conviction and been released from the DOC. Accordingly, Court reversed the trial court's order granting the State's motion to resentence Defendant.

Crane v. State, (06/18/2020) 147 N.E.3d 424 (Ind. Ct. App.) **Sentencing orders should reflect disposition of all charges**

Defendant was tried to a jury on two counts. The jury found him guilty on Count II and not guilty on Count I. The trial court's sentencing order did not reflect the disposition of Count I. The Court of Appeals remanded to the trial court to amend its sentencing order to reflect Defendant was tried and acquitted

of Count I. In so holding, Court noted that the better practice is for sentencing orders to be complete and accurate with respect to the charges that were tried and the disposition of each, not just the charges that were reduced to a conviction.

B. Aggravating/Mitigating Circumstances

Chastain v. State, (03/04/2021) 165 N.E.3d 589 (Ind. Ct. App.) **23-year sentence for child molesting affirmed despite improper aggravator**

Despite a trial court improperly considering an aggravating factor that went against a "clear directive" from the Indiana Court of Appeals, Defendant's 23-year sentence for molesting his niece was upheld on remand. In 2019, Defendant's Class A felony child molesting conviction was reduced to a Class B felony on direct appeal, and the case was remanded for resentencing. In its first opinion in the case, the Court of Appeals found "concerning" an aggravating factor noting other allegations of child abuse against Defendant, even though he did not admit, was not charged or had been acquitted of charges based on those allegations. However, in resentencing Defendant to 23 years on remand, the trial court again noted the other allegations of sexual misconduct made by three individuals against Defendant.

The trial court assigned "the greatest weight" to the aggravator that Defendant was at least 21 years old at the time he molested C.W., allowing his age to be an enhancing factor. Because Defendant admitted his date of birth at the sentencing hearing, this aggravator did not run afoul of *Blakely v. Washington,* 542 U.S. 296 (2004), and his right to have a jury determine whether his age should have constituted an aggravating factor. Defendant also waived his Blakely arguments by not objecting at the time of sentencing. Court also found no abuse of discretion based on the trial court's use of the other allegations of molestation as a "moderating factor" that diminished Defendant's lack of criminal history, despite the trial court's improper consideration of this factor in violation of the court's "clear directive." A single aggravating circummstance is enough to justify an enhancement or the imposition of consecutive sentences. Here, the trial court found several valid aggravators and several other mitigators. Under these circumstances, the Court could say with confidence that the trial court would have imposed the same sentence even without the improper consideration that was used to diminish the weight of the mitigator. The Court likewise rejected Defendant's argument that his sentence was inappropriate in light of the nature of his crime and character.

McCain v. State, (06/30/2020) 148 N.E.3d 977 (Ind.) **Trial court did not impermissibly increase sentence based on disagreement with jury's verdict**

Trial court's comments disagreeing with the jury's verdict were insufficient to taint the sentencing decision, and the sentence was not inappropriate given the nature of the crime and defendant's demonstrated character. Defendant was charged with murder, but jury convicted him of manslaughter. At sentencing, the trial court stated the verdict was a "gift" and the evidence was presented "the cleanest cut video I have ever seen of my impression of murder." Court unanimously found that although trial court's comments expressing disagreement with the jury's verdict came very close to unacceptable comment indicating judicial disagreement with the verdict, the record contained sufficient other factors

that demonstrate the judge did not enhance the sentence based on that disagreement. Further, Defendant did not receive a maximum sentence, and his 45-year sentence is "substantially lower" than what it would have been for murder. Court denied Defendant relief under Appellate Rule 7(B) given Defendant's extensive criminal history, his Facebook post "showing a desire for a violent conflict" and his "point-blank shooting of a complete stranger in a crowded fast-food restaurant after getting into an argument because someone looked at him sideways."

Scott v. State, (01/27/2021) 162 N.E.3d 578 (Ind. Ct. App.) **Failure to consider D's significant history as victim of human trafficking**

In robbery and fraud prosecution, trial court abused its discretion in failing to consider and include as a mitigating circumstance Defendant's significant history as a victim of human trafficking. Although the Court would not second-guess the trial court's possible disbelief of Defendant's report of her own mental condition, the trial court effectively found that Defendant experienced no trauma whatsoever in refusing to consider trafficking a mitigating circumstance. To support such a finding, the trial court would have to conclude either that Defendant was never trafficked at all and had hoodwinked Indiana's statewide human trafficking task force (IPATH), advocates and federal prosecutors or that her victimization had no traumatic effect. Both conclusions are clearly against the logic and effect of the facts before the court. However, the trial court's error was harmless because considering the many unconstested aggravating circumstances, it would have reached the same 14-year sentence even after duly considering Defendant's history of being trafficked.

C. Consecutive Sentences

Gober v. State, (02/03/2021) 163 N.E.3d 347 (Ind. Ct. App.) **Erroneous consecutive sentence for neglect causing death of two children in fire - not a crime of violence**

Because neglect of a dependent resulting in death is not "a crime of violence" as specified in Ind. Code 35-50-1-2(a), the trial court was constrained to impose an aggregate sentence of no more than 42 years under subsection (d) because the two counts arose from a single episode of criminal conduct. Thus, the trial court abused its discretion in imposing an aggregate sentence of 51 years. Defendant left her children-- ages 2, 4, and 6-- unattended in her apartment while she stayed in another apartment in the same building with a man she was dating. The two younger children died after setting the apartment on fire while trying to make breakfast. Defendant pleaded guilty and her sentences were capped at 30 years on the Level 1 charges and one year on the Level 6 count, the advisory sentences for each felony. The court sentenced her to 51 years — 25 each on the Level 1 counts, served consecutively, plus one year served consecutively on the lesser count. The Court of Appeals found the sentence in violation of Indiana Code 35-50-1-2(d), which provides that except for crimes of violence, the total consecutive term of imprisonment in a Level 1 sentence may not exceed 42 years. The three convictions arose out of the same facts and circumstances occurring at the same time and the same place. Her actions as they related to each victim occurred simultaneously and contemporaneously, and were therefore a single episode of criminal conduct. Held, judgment reversed and remand for resentencing with instructions for the trial court to limit the aggregate term of imprisonment to not more than 42 years.

Hobbs v. State, (12/23/2020) 161 N.E.3d 380 (Ind. Ct. App.) **Following grant of PCR, trial court had authority to order consecutive sentences**

Following grant of Defendant's petition for post-conviction relief and remand for new sentencing hearing, trial court had authority to order his sentence to run consecutively to his sentences in the other causes and that it did not violate ex post facto prohibitions. In 1994, Defendant was convicted and sentenced to an aggregate 120 years for rape, criminal deviate conduct and burglary. He unsuccessfully challenged his convictions and sentence on direct appeal, but successfully claimed on post-conviction that his appellate counsel provided ineffective assistance by failing to argue on direct appeal that Defendant should have been sentenced under a newly amended version of I.C. 35-50-1-2(a). On remand, trial court resentenced Defendant to an aggregate term of 45 years but ordered his sentence to run consecutive to his sentences in two other causes. On appeal, Defendant argued that the trial court did not have authority to change the part of the original sentencing order requiring his sentence to be served concurrent with the sentences in the other causes because that aspect of the order was not illegal, and the trial court was permitted on remand to change only the illegal portion of his sentence. Distinguishing *Lane v. State*, 727 N.E.2d 454 (Ind. Ct. App. 2000), Court disagreed, noting that trial court was merely following the mandate of the postconviction court to resentence Defendant pursuant to the amended version of I.C. 35-50-1-2(a). The Court cited *Gootee v. State*, 942 N.E.2d 111 (Ind. Ct. App. 2011), *Greer v. State*, 680 N.E.2d 526 (Ind. 1997) and *Coble v. State*, 523 N.E.2d 228 (Ind. 1988), as cases that illustrate the dimensions of the trial court's authority to resentence on remand. There was no ex post facto violation here because Defendant's crimes in this case received no punishment in addition to what was permitted under the prior version of subsection (a).

D. Court Fees and Restitution

Ross v. State, (06/17/2020) 150 N.E.3d 233 (Ind. Ct. App.) **Erroneous imposition of probation fees based upon post-sentencing probation department memo without notice to probationer or inquiry into ability to pay**

Trial court erred in imposing post-sentencing probation fees based upon probation department memo. Court of Appeals finds that practice of probation department submitting a memo to the trial court post-sentencing and without notice to the defendant requesting imposition of probation fees impedes the interest of criminal defendants in the transparency of judicial proceedings. Accordingly, Court vacated the probation fees and remanded for further proceedings. In so holding, Court notes that at time the fees are imposed, a defendant's ability to pay should be assessed and trial court is to assess probation fees, not the probation department.

E. Appropriateness Review

Hubbert v. State, (03/05/2021) 163 N.E.3d 958 (Ind. Ct. App.) **18-year executed sentence for dealing methamphetamine inappropriate**

18-year executed sentence for dealing in methamphetamine was inappropriate in light of nature of offense and character of the offender. After being charged in connection with three controlled buys,

Defendant agreed to plead guilty to Level 2 felony dealing in meth in exchange for dismissal of two other charges against him in the instant case as well as charges filed in a separate cause. At his sentencing hearing, Defendant testified that he got into dealing to support his habit and that he was visually impaired. He requested that a portion of sentence by assigned to community corrections or another addiction treatment program. In a presentence investigation report, the local probation department likewise recommended community corrections and substance abuse treatment. The prosecutor, however, said Defendant's visual impairment should not be a "get out of jail free card" and urged the trial court to impose a fully executed sentence. Agreeing with the prosecutor, the trial court sentenced Defendant to 18 years executed in the Indiana Department of Correction. The court recognized Defendant's visual impairment as a "significant" mitigator but identified multiple aggravators, including his prior criminal history and his previous unsuccessful stints on probation and in treatment.

The Court of Appeals agreed with Defendant and ordered all but four years of the sentence be served on probation with substance-abuse counseling and placement in community corrections. Regarding the nature of the offense, Court was "obviously troubled" that Defendant conducted a drug deal in a public library, although the amount of methamphetamine sold was only a small amount over what was needed to constitute a Level 2 felony. But as to Defendant's character, the record supports his contention that his addiction is the underlying source of his criminal behavior. Defendant is considered at a low risk to reoffend according to the Indiana Risk Assessment System. And although he previously had one opportunity to receive substance-abuse treatment while on probation and failed, Court did not believe one such failure should preclude future opportunities to reform," Vaidik continued. Finally, Court found Defendant's visual impairment to be a "significant" mitigator that substantially affects his opportunities while incarcerated.

Mullins v. State, (07/06/2020) 148 N.E.3d 986 (Ind.) **24 1/2 year- sentence for drug crimes inappropriate for young defendant with difficult upbringing and limited criminal history**

In a Per Curiam opinion, Indiana Supreme Court reduced sentence from 24 1/2 years to 18 years exercising discretion under Indiana Appellate Rule 7(B) review. Trial court did not abuse its discretion, but Court considered Defendant's relative youth at 21 years old, limited non-violent criminal history and significant mitigating circumstances stemming from an abusive childhood and untreated mental health issues to warrant a lesser sentence, stating exercising 7(B) discretion "boils down to our collective sense of what is appropriate." Justice Slaughter dissented, believing transfer should be denied.

Smith v. State, (08/208/2020) 154 N.E.3d 838 (Ind. Ct. App.) **Partially-executed 365-day sentence inappropriate for 65-year-old Defendant in declining health**

Ordering 65-year-old Defendant in poor physical health to serve 180 days of a 365-day sentence for Class A misdemeanor resisting law enforcement was inappropriate based on Defendant's character and the nature of his offense. Defendant's offense was relatively minor on the spectrum of resisting law enforcement in that he led officers on a short foot pursuit, was quickly apprehended and he did not injure anyone or damage any property. His lengthy sentencing testimony included ramblings on aliens, the Bible, Revelations, and other irrelevant and sometimes incoherent thoughts. This evidence led Court

to believe Defendant's recent criminal acts are just as much the result of deteriorating mental health as they are of genuine criminal intent. Furthermore, the record does not suggest that Defendant is a person of poor character. His physically disabled wife relies on him as her primary caretaker. And despite Defendant's troubling behavior over the past two years, he was a law-abiding citizen until age sixty-four, when he began committing a series of misdemeanor offenses. For these reasons, a 365-day sentence, with 185 suspended to probation and 180 days to serve consecutive to the 277 days for a probation violation, was inappropriate. Court reversed and remand to the trial court to impose a sentence of 365 days, with 20 days to serve and 345 days suspended to probation. Defendant will be on probation for 345 days and, as already ordered by the trial court, will be required to undergo a mental-health evaluation and follow all recommendations.

Turkette v. State, (07/22/2020) 151 N.E.3d 782 (Ind. Ct. App.) **Appellate sentence review does not include assessment of aggravators and mitigators & appropriateness challenge can be brought under either nature of offense or character of the offender prong**

Defendant appealed her 10-year aggregate sentence following her guilty plea to level 4 felony dealing in a narcotic drug, level 5 felony dealing in a narcotic drug, level 6 felony possession of a narcotic drug and possession of syringe. Defendant argued her sentence was inappropriate in light of the nature of the offense and the character of the offender under Indiana Appellate Rule 7(B) review. Court of Appeals affirmed the sentence but in two lengthy footnotes discussed the correct standard of review when making a sentencing argument under Indiana Appellate Rule 7(B) review. Citing *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified* on reh'g 875 N.E.2d 218, Court noted it did not believe that a Rule 7(B) analysis should begin with an assessment of the trial court's recognition or non-recognition of aggravators and mitigators. In a concurring opinion, Judge Bailey expressed his belief that under Anglemyer, the Court of Appeals will give "due consideration" to the trial court's decision but will not conduct a line-item review of the articulated aggravators and mitigators found by the trial court. Judge Bailey noted the a split of opinion among Court of Appeals panels as to whether sentence revision may be obtained only upon showing inappropriateness under both prongs of Rule 7(B). Although Court must consider the evidence relative to each prong, Defendant "need not necessarily prove inappropriateness as to each prong. Indeed, the statutory definition of certain offenses (such as simple possession) may not allow for portrayal of the offense in a positive light. That said, we await and invite further guidance from our Supreme Court."

See also: *Scott v. State*, 20A-CR-1131, Ind.Ct.App., 1/27/2021 (noting split among panels as to whether defendants must argue both the "character" and "nature of offense" prongs to avoid waiver of their Appellate Rule 7(B) claims. The Court chose to follow the Indiana Supreme Court's example in *Shoun v. State*, 67 N.E.3d 635 (Ind. 2017), declining to find waiver where a defendant exclusively challenged his sentence under the character prong. Court rejected appropriateness challenge to D's 14-year sentence for robbery despite her history of being trafficked).

MacFarland v. State, (09/17/2020) 153 N.E.3d 369 (Ind. Ct. App.), **15-year sentence for resisting law enforcement not inappropriate**

After a guilty plea, the trial court sentenced Defendant to concurrent fifteen-year terms on three counts of Level 3 felony resisting law enforcement and concurrent to those sentences a five-year term on the count of Level 5 felony resisting law enforcement, for an aggregate sentence of fifteen years. The Court of Appeals held that the sentence was not inappropriate in light of the offense and Defendant's character. As to the nature of the offense, the Court found that Defendant's offense was sufficiently egregious to justify a deviation from the "typical" offenses of resisting law enforcement. Defendant sped away from officers who had attempted to initiate a traffic stop, disregarded stop signs, and collided with a vehicle containing two adults and two children. Both children died immediately, the children's father later died as a result of his injuries, and the children's pregnant mother also suffered injuries. It was also later determined Defendant had cannabinoids in his system at the time of the offense. Regarding the character of the Defendant, the Court noted that notwithstanding his "profound remorse, Defendant's criminal history is extensive and includes three prior felony convictions along with numerous misdemeanor convictions. At the time of the offense, Defendant was out on bond for carrying a handgun without a license and dealing in marijuana, both as Level 5 felonies, had failed other community corrections programs, and had prior convictions for the same offenses.

Prince v. State, (06/17/2020) 150 N.E.3d 233 (Ind. Ct. App.) **Three-year commitment to DOC for driving in violation of lifetime license forfeiture not inappropriate**

After pleading guilty to Level 5 felony driving after license forfeiture for life, trial court sentenced Defendant to three-year advisory sentence to be served in the Department of Correction, consecutive to sentences in three other cases. On appeal, Defendant argued that this sentence was inappropriate in light of her character under Indiana Appellate Rule 7(B) because she had four dependent children and had taken steps to address her substance abuse. She also argued there was nothing inherently aggravating as to the nature of the offense, as police pulled her over for an improper lane change. Court rejected Defendant's appropriateness challenge to her sentence, finding she had a criminal history that reflected negatively on her character and continuing to drive showed no regard for the law.

Gerber v. State, (04/13/2021) 20A-CR-1771 (Ind. Ct. App.) **Sentence for domestic battery not inappropriate, no abuse of discretion in maximum sentence for contempt**

After pleading guilty to Level 6 felony domestic battery and contempt of court for calling the complaining witness (C.W.) hundreds of times in violation of a no-contact order, trial court imposed a two-and-one-half year sentence for the felony and 180 days for the contempt finding. The Court of Appeals noted that the nature of the offense, included slapping C.W., holding her down, and punching her in the head multiple times with a closed fist. Regarding Defendant's character, the Court noted that he has seven prior felony convictions and two prior misdemeanors and, while this case was pending, he was twice charged with invasion of privacy for going to C.W.'s house in violation of the no-contact order

and made hundreds of other calls to her by phone and by tablet. The Court held the two-and-one-half year sentence is not inappropriate. Additionally, the trial court did not abuse its discretion in sentencing Defendant to 180 days for indirect criminal contempt for his violations of the no-contact order.

Skeens v. State, (07/23/2020) 151 N.E.3d 1248 (Ind. Ct. App.) **41-year sentence for neglect of dependent causing death affirmed**

Defendant consumed alcohol and smoked marijuana before driving with her four children in her van. During a fight with her boyfriend while driving, Defendant lost control of the vehicle and her six-year-old daughter was partially ejected and died from her injuries. The Court of Appeals rejected Defendant's appropriateness challenge to her forty-one-year aggregate sentence under Appellate Rule 7(B). Regarding the nature of the offense, the court stated, "the scale of [Defendant's] neglect cannot be overstated." And, although she had no criminal history, she admitted to having a long history of substance abuse and to driving her children while under the influence on other occasions, which the Court concluded reflected poorly on her character.

See also: *Elliott v. State*, 19A-CR-2498 (Ind. Ct. App. 7/17/2020) (75-year sentence for murder enhanced because committed by use of a firearm affirmed and not inappropriate under Indiana 7(B) review); *Flowers v. State*, 19A-CR-322 (Ind. Ct. App. 9/23/2020) (Court rejected D's appropriateness challenge to his aggregate 85-year sentence based on the nature of the offense (shooting victim in the face at a party) and his character).

F. Sentence Enhancements/Habitual Offender

State v. Vande Brake, (08/04/2020) 150 N.E.3d 595 (Ind.) **State waived its discretion to seek a firearm enhancement by failing to act to pursue it or object when the trial court dismissed it**

After filing a "use of firearm" sentence enhancement against Defendant, the State failed to raise the issue at any of the nine pretrial conferences, inform the court the CCS omitted listing it as a charged offense, propose any preliminary or final jury instructions relating to the enhancement, alert the court to the need for a bifurcated jury trial at any time before the court excused the jury, or object to the dismissal of the enhancement while the jury remained in the building. Under these circumstance, the Indiana Supreme Court found clear waiver of the discretion to seek a firearm enhancement and found the State failed to meet its burden to show the trial court's implied finding of waiver and subsequent sua sponte dismissal of the enhancement were contrary to law.

Parrish v. State, (03/30/2021) 20A-CR-1487 (Ind. Ct. App.) **Statutory factors to support criminal-organization enhancement are not mandatory or exclusive**

A CVS was robbed by two men and during the robbery employees were ordered to lay face down on the floor. The two men were apprehended shortly after the robbery. Police later received information that a third man was involved, and a police dash camera video showed three men fleeing the CVS. Further investigation indicated that Defendant knew one robber arrested at the scene and had been with that person shortly before the robbery and driving that person's mother's car. Defendant was

charged as an accomplice to Level 2 felony robbery, three counts of Level 3 felony confinement, habitual offender and enhancement of being a member of a criminal organization. The Court of Appeals upheld the convictions under an accomplice liability theory, stating that even though Defendant had not entered the store, he had knowingly or intentionally aided the two men in the robbery. The criminal-organization statute enhances penal consequences for committing one or more felony offenses in connection with a criminal organization. A "criminal organization" is defined as a formal or informal group with at least three members that assists in or participates in the commission of a felony. The Court of Appeals found sufficient evidence to support the criminal-organization enhancement, relying on the plain meaning of the word "member." The Court stated that even though the statute is intended to apply to gang related activity and that the criminal organization enhancement statute lists ten factors which may be used as evidence that a person was a member of a criminal organization and that none of the factors apply, those factors are neither mandatory nor exclusive. The Court was bound by the decision of the trier of fact because the legislature has provided that an informal group of people who assist or participate in a felony is a criminal organization. The Court found it "concerning" that such a harsh sentencing enhancement can be imposed on a defendant with none of the statutory factors present, but that is a concern for the legislature and not the court. The Court found the criminal-organization enhancement was based upon attendant circumstances, did not violate double jeopardy and Defendant's resulting 52-year sentence was not inappropriate.

G. Credit Time

Temme v. State, (10/20/2020) 158 N.E.3d 423 (Ind. Ct. App.), *TRANSFER PENDING -- oral argument 4/8/21* **Doctrine of credit for time erroneously at liberty rejected under Indiana law**

The doctrine of credit for time erroneously at liberty is an equitable doctrine with strong roots in federal jurisprudence and has been adopted in many states. The doctrine allows that a prisoner who is released through no fault of his own may have his sentence continue to run while he is at liberty. Here, Defendant was sentenced to serve a misdemeanor sentence at the local jail, as well as a felony sentence in the DOC. DOC officials erroneously applied 450 days of credit time to both his felony and misdemeanor sentences, which led to his mistaken early release. Defendant notified DOC officials and his lawyer of the mistake but was released anyway. He moved back in with his parents, resumed his prior employment, and led a law-abiding life. The Court of Appeals rejected the argument that Defendant should be granted credit time for the days he was erroneously at liberty through no fault of his own, noting that the award of credit time is covered by statute in Indiana and the type of credit sought by Defendant is not authorized by the General Assembly. The Court of Appeals further held that Defendant failed to show the government's actions rose beyond mere negligence and so declined to find any violation of due process.

Bonds v. State, (03/31/2021) 20A-CR-1449 (Ind. Ct. App.) **Sentencing judgment must reflect time spent in confinement prior to sentencing**

Defendant was sentenced after conviction for two counts of Class A felony child molesting. His abstract of judgment reflected 777 days pre-trial confinement, but his sentencing judgment did not reflect the 777 days of pre-trial confinement. Defendant filed a motion to correct erroneous sentence, asking that the sentencing judgment reflect the 777 days of pre-trial confinement. The trial court denied the motion to correct erroneous sentence, but the Court of Appeals reversed, citing *Robinson v. State*, 805 N.E.2d 783 (Ind. 2004), which held that I.C. 35-38-3-2 requires a sentencing judgment to include credit time earned for time spent in confinement before sentencing.

H. Double Jeopardy/Double Enhancements

Wadle v. State, (08/18/2020) 151 N.E.3d 227 (Ind.) ***Richardson* actual evidence test expressly overruled in favor of a new analytical framework for substantive double jeopardy claims**

In expressly *overruling* the constitutional tests formulated in *Richardson*, the Indiana Supreme Court set forth the following test: When multiple convictions for a single act or transaction implicate two or more statutes with common elements, a court first looks to the statutes themselves. If the language of either statute clearly permits multiple punishment, either expressly or by unmistakable implication, the court's inquiry comes to an end and there is no violation of substantive double jeopardy. But if the statutory language is not clear, then a court must apply Indiana's included offense statutes, I.C. 35-38-1-6 and 35-31.5-2-168 to determine whether the charged offenses are the same. If neither offense is included in the other (either inherently or as charged), there is no violation of double jeopardy. But if one offense is included in the other (either inherently or as charged), then the court must examine the facts underlying those offenses, as presented in the charging instrument and as adduced at trial. They key question of that examination is whether the defendant's actions were "so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction." If the factual analysis reveals two separate and distinct crimes, there is no violation of substantive double jeopardy even if one statutory offense is included in the other. But if the analysis shows a single continuous crime with one statutory offense included in the other, then the prosecutor may charge these offenses only in the alternative, not cumulative sanctions. The State can rebut this presumption only by showing that the statute--either in express terms or by unmistakable implication, clearly permits multiple punishment. Finally, the court emphasized that supplemental Indiana constitutional provisions work in harminy with the substantive double-jeopardy protections discussed above to ba multiple punishments in a single trial. Article 1, Section 16 of the Indiana Constitution requires that all penalties be "proportioned to the nature of the offense," the protections in Article 1, Section 13 entitle the defendant to clear notice of the charge or charges against him which operates to bar a conviction of a lesser included offense unless the charging instrument alleges all of the essential elements of that offense, and Article 7, sections 4 and 6, which through Ind. Appellate Rule 7(B), permit a criminal offender to challenge the trial court's sentence as "inappropriate in light of the nature of the offense and the character of the offender." Here, Defendant was convicted of four offenses. The State conceded and the Court agreed that under the new framework, two of them--OWI endangering a person and OWI with a blood-alcohol concentration of 0.08 or more--violate double jeopardy. Neither statute clearly permits cumulative punishment, and the latter offense is an included offense of the former. The remaining two convictions were leaving the scene of an accident and OWI causing serious

bodily injury. Neither statute clearly permits multiple punishments, either expressly or by unmistakable implication, so the Court proceeded to analyze the offenses charged under Indiana's included-offense statutes. The Court concluded that Level 5 felony OWI-SBI is included in the offense of Level 3 felony leaving the scene of an accident and found that because Defendant's actions were so compressed in terms of time, place, singleness of purpose, and continuity of action, they were one continuous transaction. As a result, the Court concluded that the separate statutory offenses present alternative (rather than cumulative) offenses and vacated the level 5 felony offense.

SEE ALSO:

Johnston v. State, 164 N.E.3d 817, (Ind. Ct. App. March 2, 2021) (new double jeopardy framework does not apply retroactively on PCR; *Richardson* 'actual evidence' test applies); *Barrozo v. State*, 156 N.E.3d 718 (Ind. Ct. App. Sept. 24, 2020) (declining to definitively decide whether the *Wadle* analysis is to be applied retroactively).

Wisdom v. State, No. 162 N.E.3d 489, (Ind. Ct. App. Dec. 22, 2020) (sucessive prosecution/procedural double jeopardy claim. Court rejected defendant's claim of procedural or successive prosecution double jeopardy, that the "State should not have been allowed to go forward on the gang enhancement in the second phase of the trial because he was acquitted of criminal-organization activity in the first phase of the trial." The Court relied on a footnote in *Wadle* in which the justices left open the issue of additional Section 14 protection in the successive prosecution context of double jeopardy).

Diaz v. State, 158 N.E.3d 363 (Ind.Ct.App. 2020) (murder and Level 5 felony robbery convictions did not violate double jeopardy under old law or *Wadle* analysis because they are two distinct chargeable crimes and continuous crime doctrine did not apply).

Thurman v. State, 158 N.E.3d 372 (Ind. Ct. App. 2020) (pointing a firearm and criminal recklessness convictions vacated as lesser included offenses of attempted murder).

Hendricks v. State, (01/14/2021) 162 N.E.3d 1123 (Ind. Ct. App.) (after first determining "the offense of conspiracy to commit robbery could be an included offense of the felony murder, as charged in this case" and then reviewing the evidence presented at trial, the court held "under these facts" the defendant's criminal acts were a single transaction not subject to multiple punishments and remanded with instructions to vacate the robbery conviction).

Madden v. State, (01/12/2021) 162 N.E.3d 549, (Ind. App.) (under *Wadle* analysis, Court found that "because criminal confinement is included in kidnapping" and the defendant's actions were so "compressed in time, place, singleness of purpose, and continuity of action that his convictions for both crimes violate double jeopardy"; further, under test in *Powell* (see below), the Court also held, as the State conceded, that only the Level 2 felony kidnapping may stand but Defendant's Level 5 felony kidnapping conviction must be vacated; however, Defendant's two convictions for aggravated battery were affirmed. Noting that "[b]ecause the gravamen of this offense is the injury of another person, it is a result-based statute" the court continued to the second step in Powell and held that since "the two batteries were separated by time, place, and purpose, they were not part of a single transaction.").

Jones v. State, (10/29/2020) 159 N.E.3d 55 (Ind. Ct. App.) (Defendant was convicted of two counts of Level 3 felony aggravated battery, one count of Level 2 felony criminal confinement and two counts of kidnapping – one as a Level 2 felony and one as a Level 5; Court held that under both the old continuous crime doctrine test and the new uniform substantive double jeopardy test found in *Wadle*, Defendant's battery convictions survive, but his Level 5 felony kidnapping and Level 2 felony criminal confinement convictions must fall).

Brown v. State, (11/19/2020) 160 N.E.3d205 (Ind. Ct. App.) (Court found no double jeopardy violation from dual convictions for reckless homicide and dangerous possession of a firearm when "the State used different, unrelated facts to support each of the charges." "Reckless homicide was supported by Brown pulling the trigger of the firearm" while dangerous possession "was supported by facts related to Brown's actions with the firearm before the shooting." His actions were not "so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction.").

Jarrett v. State, (11/30/2020) 160 N.E.3d 526 (Ind. Ct. App.) (neither the attempted robbery nor murder was an offense included in the other and therefore did not violate double jeopardy; Judge Weissmann wrote separately to address "a practical dilemma facing appellate courts, lawyers and litigants" after the recent revision of long-standing double jeopardy caselaw. Appellate counsel could not have anticipated *Wadle* and may have opted to argue double jeopardy instead of an Appellate Rule 7(B) argument on appeal. But even so, Judge Weissmann stated the Court of Appeals could not sua sponte review Defendant's sentence under 7(B), citing *Wilson v. State*, 19S-PC-548 (Ind. Nov. 17, 2020)).

Demby v. State, 20A-CR-1012 (Ind. Ct. App. Feb. 16, 2021) (Defendant's burglary conviction was not an included offense of aggravated battery or attempted murder, thus his burglary conviction did not violate double jeopardy; however, while aggravated battery is not an inherently included lesser offense of attempted murder, it may become a lesser-included offense depending on how it is charged. Pursuant to *Wadle*, if as here the factual circumstances and charging information render aggravated battery a lesser-included offense of attempted murder, the aggravated battery conviction would violate against double jeopardy.).

Powell v. State, (08/18/2020) 151 N.E.3d 256 (Ind.) **While attempted-murder statute contains no clear unit of prosecution, the multiple shots defendant fired—despite their proximity in space and time—amount to two chargeable offenses based on his dual purpose of intent to kill both victims**

Defendant's actions of firing multiple shots in rapid succession at two men seated in a car, despite their proximity in space and time, amounted to two distinct, chargeable acts of attempted murder. In reaching its conclusion, the Indiana Supreme Court described and applied its framework for analyzing claims of multiplicity, a branch of substantive double jeopardy based on the charging of a single offense in several counts. The Court framed the key question as whether the same act may be punished as two counts of the same offense and its task as determining whether the statute permits punishment for a single course of criminal conduct or for certain discrete acts within that course of conduct. The inquiry involves a two-step process: first, a review of the text of the statute to discern whether expressly or by judicial construction it indicates a unit of prosecution and then, if the statute is

ambiguous, determining whether the facts indicate a single offense or distinguishable offenses. Any doubt counsels against turning a single transaction into multiple offenses.

Here, while the attempted murder statute does not contain a clear unit of prosecution, Defendant's criminal acts indicate distinguishable offenses. First, the Court considered the attempted murder statute and concluded that alternative readings of it reveal equally legitimate ways of thinking about the statute's unit of prosecution: ether by conduct or by result. Given the ambiguity, the Court then examined the facts to conclude that the multiple shots Defendant fired--despite their proximity in space and time--amount to two chargeable offenses based on Defendant's dual purpose of intent to kill both men.

SEE ALSO: *Hill v. State*, 157 N.E.3d 1225 (Ind. Ct. App. 2020) (two reckless homicide convictions arising from two fatalities did not violate double jeopardy under either old law or recently-adopted *Powell* test, because reckless homicide is a "result-based" statute that creates a separate "unit of prosecution" for each death caused by a defendant's reckless act; Court also held that the only common-law rule that survived *Wadle* and *Powell* is the continuous-crime doctrine, though only as part of the new tests, not as a separately enforceable double-jeopardy standard."); *SEE ALSO Woodcock v. State*, (01/28/2021) 163 N.E.3d 863 (Ind. Ct. App.) (noting split, Court held that common law principles of substantive double jeopardy no longer exist independently post-*Wadle*).

BUT SEE: *Shepherd v. State*, (09/14/2020) 155 N.E.3d 1227 (Ind.Ct.App.); and *Rowland v. State,* (09/08/2020) 155 N.E.3d 637 (Ind.Ct.App.) (leaving "undisturbed" the five categories of common-law protections identified by Justice Sullivan's concurring opinion in *Richardson* and later adopted by the full court in *Guyton v. State*, 771 N.E.2d 1141 (Ind. 2002)).

Koetter v. State, 158 N.E.3d 820, 825–26 (Ind. Ct. App. 2020) (finding no double jeopardy protection for multiple (6) counts of possession of child pornography and noting "the legislature defined the crime of possession of child pornography listing objects in the singular, *e.g.*, 'a photograph', 'a digitized image', etc. This conveys the legislature's clear intent to make the possession of each photograph or digitized image a distinct occurrence of offensive conduct in violation of the statute.").

Morales v. State, No. 20A-CR-913 (Ind. Ct. App. March 25, 2021) (convictions for two counts of arson for setting a series of fires within same building during a 30-minute period violated the statutory prohibition on substantive double jeopardy).

Barrozo v. State, (09/24/2020) 156 N.E.3d 718 (Ind. Ct. App.) (one of two reckless driving convictions resulting from fatal car crash violated double jeopardy; but under *Wadle* analysis, there was no double jeopardy violation stemming from the convictions for reckless homicide, reckless driving and leaving the scene of an accident).

I. Sentence Modification

Sargent v. State, (10/21/2020) 158 N.E.3d 783 (Ind. Ct. App.) **Motion to participate in Purposeful Incarceration Program does not count as a request for sentence modification under statute's two-motion limit**

Defendant's pro se motion to participate in the Purposeful Incarceration Program does not count as a request for sentence modification under Ind. Code § 35-38-1-17(j), which limits the filing of sentence modification petitions to one per year and no more than two during any consecutive period of incarceration without the consent of the prosecuting attorney. Here, Defendant filed a pro se motion to participate in Purposeful Incarceration Program and then subsequently filed two motions for sentence modification. The trial court erroneously concluded that it lacked statutory authority to consider the merits of Defendant's current petition for modification because he had already filed two such petitions during his consecutive period of incarceration. Because Defendant's pro se request to participate in in the Purposeful Incarceration Program was not a request for sentence modification, Defendant had only made one prior motion to modify his sentence.

Mance v. State, (02/17/2021) 163 N.E.3d 367 (Ind. Ct. App.) **Lack of response from prosecutor does not constitute consent to modify sentence absent indication prosecutor's office received letter**

Petitioner was convicted and sentenced in 2004 for two murders. In 2020, Petitioner filed for sentence modification under I.C. 35-38-1-17(k) which states (after 365 days) a petitioner convicted of a crime of violence must get prosecutor's consent prior to filing a motion for sentence modification. Petitioner wrote a letter to the person who had been the trial court prosecutor in his case and said if he did not get a response from the trial court prosecutor in thirty days, he would consider the lack of response as prosecutor consent to filing his petition for sentence modification. Petitioner did not hear from the prosecutor and filed his petition for sentence modification, which was denied. Court of Appeals found no indication the prosecutor's office received the request for consent and the lack of response to a letter was not the equivalent of prosecutor consent. Court distinguished *State v. Harper*, 8 N.E.3d 694 (Ind. 2014), where it was clear the prosecutor's office was aware of the request for modification but did not object. Helf, denial of sentence modification affirmed.

Merkel v. State, (12/14/2020) 160 N.E.3d 1139 (Ind. Ct. App.) **Authority to review placement of non-violent offenders due to Covid-19 does not override substantive Indiana law on sentence modifications**

Defendant pleaded guilty to being a serious violent felon in exchange for the State's agreement to dismiss the habitual offender enhancement. 366 days after the guilty plea, Defendant filed an emergency petition for release from custody based on the Covid-19 pandemic and motion to modify sentence. The State filed an objection, and the trial court denied the petition. The Court of Appeals held that under Indiana Code 35-38-1-17(d)(14), the trial court's authority to consider a modification without the consent of the prosecutor ended on day 365 and the trial court was without the authority to

consider the petition. Even though Defendant is older and has diabetes, which places him in a high-risk category for contracting COVID-19, he would still be high risk if released to the community. Also, the Indiana Supreme Court's Administrative Rule 17 Emergency Relief order dated April 3, 2020, gave authority to trial courts to review county-jail and direct placement community corrections sentences of non-violent inmates, but it did not override substantive Indiana law on sentence modifications and was inapplicable to Defendant because he was not placed in a county jail and was convicted of a violent offense.

VI. PROBATION/COMMUNITY CORRECTIONS REVOCATION

A. Conditions

Coleman v. State, (02/11/2021) 162 N.E.3d 1184 (Ind. Ct. App.) **No abuse of discretion to add condition of probation not specified in plea agreement**

After Defendant pleaded guilty to Level 6 felony strangulation, trial court did not abuse its discretion in ordering that he attend and complete classes in anger management or conflict resolution, even though plea agreement did not include any conditions of probation. First, the court addressed a motion Defendant filed to strike a portion of the State's brief that cited to information contained in the probable cause affidavit. Noting that the strict rules of evidence do not apply to sentencing hearings and that the review of his sentence does not rely on any facts he disputes, the court denied the motion. Next, the court found that the requirement to attend anger management or conflict resolution classes as a condition of probation is an administrative or ministerial condition. It is an obligation that is rehabilitative in nature and does not materially add to the punitive obligation of his sentence. Held, no abuse of discretion.

Salhab v. State, (08/10/2020) 153 N.E.3d 297 (Ind. Ct. App.) **Probation condition barring probationer from "businesses that sell sexual devices or aids" unconstitutionally overbroad**

Defendant was convicted of three counts of Level 3 felony rape, as well as Level 5 felony counts of child seduction, criminal confinement and Level 6 felony child seduction. At sentencing, the trial court vacated the Level 5 felony counts over concerns about double jeopardy violations. Defendant was sentenced to eight years for each of the rape convictions, with two years suspended from each of those individual sentences, and to one year for his Level 6 felony child seduction conviction. He was ordered to serve his three rape sentences consecutively because the trial court believed the evidence showed each charge constituted a distinct act, and there was a "significant" aggravating circumstance of his having care, custody and control over the victim. Defendant was also sentenced to three years' probation. The Court of Appeals affirmed Defendant's sentence but reversed a condition of Defendant's probation barring him from "businesses that sell sexual devices or aids." The Court noted that identical parole and probation conditions were struck as unconstitutionally overbroad in *Bleeke v. Lemmon*, 6 N.E.3d 907, 921 n.8 (Ind. 2014); *Custance v. State*, 128 N.E.3d 8, 12 (Ind. Ct. App. 2019); and *Collins v. State*, 911 N.E.2d 700, 714 (Ind. Ct. App. 2009), *trans. denied*.

Brown v. State, (02/05/2021) 162 N.E.3d 1179 (Ind. Ct. App.) **Abuse of discretion to order execution of entire remaining suspended sentence for technical violation of probation**

After revoking Defendant's probation, trial court abused its discretion in ordering Defendant to serve more than sixteen years of his previously suspended 20-year sentence when the evidence before the court showed only that Defendant had missed an undetermined number of meetings with his probation officer. While it is correct that probation may be revoked on evidence of violation of a single condition, the selection of an appropriate sanction will depend upon the severity of the defendant's probation violation. *Heaton v. State*, 984 N.E.2d 614, 618 (Ind. 2013). Held, judgment remanded to resentence Defendant "in a manner commensurate with the severity of missed appointments with his probation officer, the only violation the State established on this record."

B. Revocation; Procedure and Hearing

Mosley v. State, (05/21/2021), 20A-CR-2094 (Ind. Ct. App.), **Probation revocation reversed -void no-contact order issued to protect a dead person**

Because a no-contact order cannot be issued to protect a dead person, trial court abused its discretion for revoking Defendant's probation based on violation of that void order. Six months after Defendant was imprisoned for fraud, he sent an apology letter to one of his victims. A no-contact order imposed as a condition of his probation barred that contact. Unbeknownst to the parties, the victim had died about two years before Defendant's sentencing, when the trial court entered the no-contact order. Nonetheless, the trial court found Defendant violated the terms of his probation by writing to the deceased woman, consequently revoked three years of Defendant's probation, and ordered him to spend those years in prison. Court of Appeals held that the no-contact order was void and could not support either a prosecution for attempted invasion of privacy or a probation revocation based on Defendant's commission of that offense. The purpose of a no-contact order imposed as a condition of probation pursuant to Ind. Code § 35-38-2-2.3(a)(18)-- to protect the victim of an offense from the perpetrator-- is not served where, as here, the victim already has died. The only reasonable interpretation of "individual" in that statutory context is "a living person." Reading "individual" to include dead people would be illogical and even absurd, both results to be avoided in statutory construction. As the trial court lacked authority under Indiana Code § 35-38-2-2.3(a)(18) to issue a no-contact order barring Defendant's contact with victim, given her earlier death, the order was void at the outset. Court rejected State's argument based on Indiana's attempt statute (I.C. § 35-41-5-1(b)) that the impossibility defense should be unavailable in this context, noting that the State is requesting revocation for attempting to violate a no-contact order that the State should never have sought and the trial court should never have entered as to a victim who no longer needed protection. Regardless, a probation revocation cannot be based on the violation of a void condition of probation. *See*, *e.g.*, *Foster v. State*, 813 N.E.2d 1236, 1239 (Ind. Ct. App. 2004) (reversing probation revocation based on violation of term of probation void for vagueness). Held, judgment reversed.

Arrowood v. State, (08/18/2020) 152 N.E.3d 663 (Ind. Ct. App.) **Defendant not denied right to counsel in community correction revocation hearing; more lenient due process standard applied**

After the State filed a motion to revoke Defendant's placement in community corrections for a violation of its terms, the trial court conducted a hearing on the petition. Defendant did not appear in person but was represented by counsel. The trial court revoked Defendant's placement and ordered her to serve the balance of her sentence in incarceration. The Court of Appeals held that because the revocation of probation or community corrections placement is civil, not criminal, in nature, Article 1, section 13 of the Indiana Constitution is inapplicable. The Court declined to hold that the right to counsel at all criminal prosecutions extends to revocation hearings and instead held such proceedings are governed by principles of due process, citing *Baum v. State*, 533 N.E.3d 1200 (Ind. 1989).

Mefford v. State, (02/15/2021) 165 N.E.3d 571 (Ind. Ct. App.) **Termination from drug court program and imposition of agreed-upon sentence affirmed**

Distinguishing *Holsapple v. State*, 148 N.E3d 1035 (Ind. Ct. App. 2020), which invalidated a zero-tolerance punishment resulting from a probation violation, the Court of Appeals affirmed Defendant's termination from participation in a drug court program, the entry of conviction for two Level 6 felonies and his five-year executed sentence. Notwithstanding the COVID-19 pandemic and its unfortunate consequences, the trial court did not have discretion to impose anything less than the executed five years provided in Defendant's plea agreement. Unlike Defendant, Holsapple was not participating in Drug Court through a Section 14 deferral and "must have been referred to [Drug Court] as a condition of probation." Defendant's sentence was not a stayed sentence; it was a conviction and sentence that was deferred while he participated in Drug Court, which would be imposed if he was terminated from the program.

Knight v. State, (09/15/2020) 155 N.E.3d 1242 (Ind. Ct. App.) **Trial court followed procedural requirements for probation hearing but lacked discretion to impose additional community service requirements**

Under Ind. Code § 35-38-2-1.8, "probation can be altered at any time, even in the absence of a probation violation. *Collins v. State*, 911 N.E.2d 700, 708 (Ind. Ct. App. 2009). Here, after a senior judge accepted Defendant's plea agreement, the presiding judge scheduled a modification of probation hearing and amended the conditions of probation to include a term requiring Defendant to perform 600 hours of community service and to report his progress to the probation department monthly. The Court of Appeals held that while the trial court complied with the procedural requirements of Ind. Code § 35-38-2-1.8(c) when conducting a new probation hearing, the imposition of the community service condition was beyond the trial court's discretion because that condition was not specified in the plea agreement and the agreement contained language that limited the court's discretion. Although the agreement conferred broad discretion to the trial court to impose probation conditions, the later language providing that Defendant's probation would revert to nonreporting probation ultimately imposed a limitation of the trial court's discretion to order a probation condition that would require

continued reporting. Defendant waived his claimed violation of his right to allocution during the new probation hearing by failing to object.

C. Parole

Aguilar v. State, (12/31/2020) 162 N.E.3d 537 (Ind. Ct. App.) **Plea agreement calling for consecutive sentences in two causes did not prevent Defendant's release to parole while also on probation**

Defendant entered into a plea agreement concerning two separate cause numbers: a single offense under cause FB-10 with a sentence of twenty years in the DOC, and several offenses under FB-12 with a sentence of ten years in the DOC with all the time suspended to probation. The agreement summarized the sentence by specifying the "combined sentence" across both causes was "30 years to the [DOC], 20 served, 10 suspended." After serving time in DOC and accruing credit time in FB-10, Defendant was placed on parole. He was also placed on probation in cause FB-12. A violation of probation led to an agreement that Defendant would serve 2,370 days in the DOC and have no further probationary period in FB-12. After he began serving that sentence, the parole board held a hearing and revoked ten years of Defendant's credit time in FB-10, arranged so he would serve the balance of his sentence in FB-10 before that in FB-12. Defendant filed a petition for post-conviction relief that the trial court denied. On appeal, Defendant argued he should have bypassed parole in FB-10 and moved straight to his term of probation in FB-12, citing Ind. Code 35-50-6-1(a).

The Court of Appeals concluded because it is not possible under Indiana's sentencing scheme to receive a single "sentence" across counts, let alone across causes, Defendant cannot demonstrate he was improperly placed on parole in FB-10 because of a suspended sentence in FB-12. Even if it were possible to negotiate a plea agreement that calls for bypassing parole, the instant plea agreement did not do so and calls for a standard sentencing scheme which did nothing to prohibit the parole board from placing Defendant on parole under FB-10. The court further noted that even if the Defendant should not have been on both probation in FB-12 and parole in FB-10, the trial court still had the authority to revoke his probation at any time after sentencing. Held, no error in granting summary disposition of PCR petition to the State.

VII. SUBSTANTIVE OFFENSES

A. Offenses against the Person

Coleman v. State, (06/30/2020) 149 N.E.3d 313 (Ind. Ct. App.) **Battery by bodily fluid statute not unconstitutionally vague and saliva is considered a bodily fluid under the statute**

Defendant, an inmate at Wabash Valley Correctional Facility, spit on a corrections officer. He was charged with battery by bodily fluid against a public safety official and convicted by a jury. On appeal Defendant argued "bodily fluid" is not defined in the statute and therefore the statute was unconstitutionally vague as applied to him. Court of Appeals looked to the dictionary definition to find that a person of ordinary intelligence would know that the term bodily fluid would include saliva.

Gibbs v. State, (10/29/2020) 157 N.E.3d 562 (Ind. Ct. App.) **Insufficient evidence to support domestic battery enhancement-- no evidence CW was in care of Defendant**

Defendant was convicted of domestic battery, elevated to a Level 5 felony because it resulted in bodily injury to a family or household member who has a mental or physical disability and who is in the care of the defendant. The complaining witness (C.W.) was obese, had bad knees, struggled to stand, and used an electric scooter. The Court of Appeals found insufficient evidence to support a conclusion Defendant voluntarily assumed care of C.W. First, there was no evidence C.W. was in anyone's care or that she needed or wanted care. Second, even if she did need some level of care because of her disability, there is no authority to support the proposition that anybody who enters a romantic relationship with such a person necessarily assumes the care of that person. The Court of Appeals remanded the case to the trial court for the entry of a conviction for a Class A misdemeanor.

Jackson v. State, (03/19/2021) 165 N.E.3d 641 (Ind. Ct. App.) **"Dated or has dated" language in statutory definition of "family or household member" is not unconstitutionally vague**

The term "family or household member" for purposes of Indiana's domestic battery statute has been defined in Indiana Code § 35-31.5-2-128(a)(1)-(3) to mean an individual who "is a current or former spouse of the other person," a person who "is dating or has dated the other person," and a person who "is or was engaged in a sexual relationship with the other person." Ind. Code § 35-31.5-2-128(a)(1)-(3). On appeal of his domestic battery conviction, Defendant argued that the phrase "dated or has dated" as contained in the statutory definition of "family or household member" is unconstitutionally vague because it "encompasses the mundane to the intimate." Court disagreed, concluding that "dating" is within the range of activities included in the statute, which as applied to the totality of the facts and circumstances of this case is sufficiently clear to have informed Defendant of the conduct that is prohibited. And there are at least two subsections under which the trial court as trier of fact could have found that the complaining witness was a "family or household member" in relation to Defendant, whom she met online through RoseBride.com, visited several times and legally married in Kentucky. Held, judgment affirmed.

Smith v. State, (04/30/2021) 20A-CR-206 (Ind. Ct. App.) **Sufficient evidence of "moderate bodily injury"**

In prosecution for Level 6 felony domestic battery resulting in moderate bodily injury, State presented sufficient evidence of probative value from which a reasonable jury could find beyond a reasonable doubt that the complaining witness (C.W.) suffered an impairment of physical condition that included substantial pain amounting to moderate bodily injury. When C.W. informed Defendant she wanted a divorce, Defendant used her "as a battering ram" and repeatedly kicked her and hit her head against a door frame. C.W. declined to go to the hospital but said she suffered from "massive migraines" and other related pain and illness after the attacks. She suffered various injuries including lumps, scratches and redness on her head as well as scratches and bruises on other parts of her body. In the week following her attack, C.W. could not move her neck quickly without pain or vomiting and continued to see stars. Also, the doorframe was dented from the attack and a piece of siding had come loose after Defendant hit C.W.'s head against it. "While there may be no bright line to differentiate

levels of pain, the State's evidence demonstrated that C.W.'s pain was above the threshold to show bodily injury and enough to show that the result of Defendant's attack on C.W. was "an impairment of physical condition that include[d] substantial pain." Ind. Code § 35-31.5-2-204.5.

Tate v. State, (01/28/2021) 161 N.E.3d 1225 (Ind. Ct. App.) **LWOP – Sufficient Evidence of Torture and Molest Aggravators**

Affirming Defendant's sentence of life without parole, Court found sufficient evidence to support the statutory aggravating circumstances that Defendant killed the victim while committing or attempting child molest, and torture. The jury reasonably relied on the number and nature of the victim's injuries in finding the torture aggravator. And the significant rectal injuries that occurred while Defendant was alone with the victim was substantial probative evidence from which the jury could reasonably infer that Defendant intentionally killed the victim while molesting him. Court concluded that any error concerning the torture and child-molest aggravators was harmless because the jury would have been just as likely to recommend a life-without-parole sentence had it considered only the murder-of-a-child aggravator. Held, judgment affirmed.

Perkins v. State, (11/30/2020) 158 N.E.3d 1274 (Ind. Ct. App.) **Sufficient evidence to support attempted murder based on accomplice liability**

The Court rejected Defendant's sufficiency challenge to his attempted murder conviction. Defendant was among a group of armed, masked people who invaded a home at 3:00 a.m. which led to a fatal gun battle. Although the plan of attacking and stealing from the attempted murder victim was not Defendant's plan, his course of conduct, before, during, and after the occurrence of the crimes showed that he actively participated in the attempted murder.

B. Sex Offenses

Brown v. State, (07/02/2020) 149 N.E.3d 322 (Ind. Ct. App.) **Circumstantial testimonial evidence sufficient to prove age**

In trial for child molesting, the State failed to present direct evidence that Defendant was at least twenty-one years old when he committed the offense. However, testimony established that Defendant was "bald in the middle at the top and hair in the back with a white beard," he owned three cars, worked as a handyman, had a house, and cared for six to ten children at a time. The court held the jury could use its common sense to determine from the evidence that Defendant was at least twenty-one years old when he committed the offense.

Cutshall v. State, (03/25/2021) 20A-CR-1866 (Ind. Ct. App.) **Circumstantial evidence of penetration sufficient in child molesting case**

In prosecution for Level 1 felony child molesting, evidence was sufficient to show penetration without testimony from the child complaining witness (C.W.), who was too young to speak in full sentences, because penetration can be inferred from circumstantial evidence. An eyewitness testified

Defendant and C.W. were in bed under the covers, but their crotches were together, C.W. legs were in the air and Defendant's penis was exposed and erect. C.W. was also examined by a nurse who documented injuries to C.W.'s genitalia and testified that they were likely caused by blunt force trauma and that it was not a common injury for a child of her age. Noting that it cannot reweigh evidence, Court found that from the evidence presented, the trier of fact could have inferred Defendant committed child molesting by penetration.

Smith v. State, (02/11/2021) 163 N.E.3d 925 (Ind. Ct. App.) **Sufficient evidence for child molesting -- child witness's testimony not incredibly dubious**

On appeal from his Level 4 felony child molesting conviction, Defendant challenged the sufficiency of the evidence under the incredible dubiosity rule, which allows the reviewing court to judge the credibility of witnesses when certain conditions are met. The rule is applied in limited circumstances, namely where there is: "[(1)]a sole testifying witness; [(2)]testimony that is inherently contradictory, equivocal, or the result of coercion; and [(3)]a complete absence of circumstantial evidence." *Moore v. State*, 27 N.E.3d 749, 756 (Ind. 2015). The complaining witness (CW), her mother, and a detective all testified, but the CW was the sole testifying witness who could establish the elements of the offense. However, her testimony was not inherently contradictory and equivocal and her testimony on the important facts regarding the molestation was consistent. Also, the fact there was no physical evidence to corroborate her testimony does not render it incredibly dubious. Held, conviction affirmed.

Cutshall v. State, (12/23/2020) 160 N.E.3d 247 (Ind. Ct. App.) **Sufficiency and vagueness challenges to possession of child pornography conviction rejected**

State presented circumstantial evidence to prove that Defendant knowingly possessed two digital images of child pornography on his wife's cellphone, even though the forensic analysis of the LG phone did not reveal who had downloaded the images. Court rejected Defendant's suggestion that there was insufficient evidence that the girls in the digital images appeared to be less than eighteen years old. The detective who conducted the forensic analysis testified that the girls in the images were "prepubescent" females. Additionally, "an assessment as to the girl's age is not only a matter of common sense but also the trier of fact may take into account her overall appearance, including the developmental stage of the girl based upon her breasts, body hair, and other anatomical features." *Bone v. State*, 771 N.E.2d 710, 717 (Ind. Ct. App. 2002). Defendant also waived his argument that the child pornography statute was unconstitutionally vague because he did not raise the claim before the trial court. Waiver notwithstanding, the Court held that Indiana's child pornography statute is not unconstitutionally vague. Given the precise circumstances of this case, a person of ordinary intelligence would, from the phrase "appears to be less than eighteen years of age" as used in Indiana's possession of child pornography statute, know that having digital images of prepubescent females engaged in sexual intercourse and oral sex was included in the proscribed conduct of possessing a digital image that depicts sexual conduct by a child who appears to be less than eighteen (18) years of age. Accordingly, Defendant failed to meet his burden of showing that Ind. Code § 35-42-4-4(d) is unconstitutionally vague.

Koetter v. State, (11/19/2020) 158 N.E.3d 820 (Ind. Ct. App.) **Evidence sufficient for child pornography convictions**

Defendant was convicted of six counts of possession of child pornography based on uploads of files from an email account. The Court of Appeals found sufficient evidence established that Defendant was present at the location associated with the upload IP address and that Defendant owned the email account in question. Emails from the account were linked to Defendant's phone and social media account, the account contained pictures of Defendant including his driver's license, purchases from the account were delivered to his BMV-listed address, and there was no evidence indicating anyone else was using the account.

C. Sex Offender Registry/Sexually Violent Predator Finding

Mehringer v. State, (08/24/2020) 152 N.E.3d 667 (Ind. Ct. App.) **Sexual Violent Predator (SVP) finding does not violate separation of powers or due process**

Under Ind. Code § 35-38-1-7.5(2014) ("SVP Statute"), a person is an SVP by operation of law if he, being at least eighteen years of age, commits one of several enumerated offenses. An SVP is subject to additional restrictions beyond those imposed on non-SVP sex offenders. Here, Defendant received a sentence of nine years with seven years executed in the Department of Correction for his Level 3 felony child molesting conviction. Defendant's conviction is one of the enumerated offenses that automatically renders a person an SVP. Defendant argued the SVP Statute is unconstitutional because it violates the principle of separation of powers and that his due process rights were violated because he was deemed an SVP by operation of law and could not rebut the statutory presumption that he is likely to reoffend. He framed his argument as a challenge to the SVP statute on vagueness grounds. The Court of Appeals rejected Defendant's arguments and affirmed his SVP status.

Spencer v. State, (08/03/2020) 153 N.E.3d 289 (Ind. Ct. App.) **Sexually violent predator registry requirement -- exhaustion of administrative remedies and improper use of out-of-state convictions**

When Defendant moved to Indiana from Florida in 2016, he had a criminal history of two separate convictions from 1996 and 1997 which occurred when he was eighteen years old and required him to register in Florida for life as a sex offender. In 2016, as required by Indiana law, Defendant registered as a sex offender in Indiana. In 2018, the Sheriff's office telephoned Defendant and informed him that he was being designated as a sexually violent predator (SVP) but never gave him written notice of the change of his designation. Defendant filed a petition in the trial court to remove his designation as an SVP which was denied after a hearing. On appeal, the State argued Defendant failed to exhaust the administrative remedies that were available to him, specifically the "DOC Appeal Procedure". The DOC Appeal Procedure sets forth the manner in which a local law enforcement authority may implement a proposed change to information regarding a local registrant in the Indiana Sex and Violent Offender Registry. It also sets forth the administrative procedure by which the registrant can protest any

proposed change and, if necessary, appeal the decision to the DOC. However, the DOC Appeal Procedure states that the right of protest arises only when the local law enforcement authority notifies a registrant of a proposed change in writing.

Here, because the Sheriff's office never gave Defendant written notice that he would be designated as an SVP, Defendant did not fail to exhaust his administrative remedies. The Court also found that Defendant's Florida convictions were not substantially equivalent to the crimes of Class A or Class B felony child molesting as defined in Indiana to require that he register as a SVP in Indiana. And the law in effect in 2016 when Defendant moved to Indiana provided that, to be an SVP, he must have committed a crime substantially equivalent to child molesting as a Level 4 felony "for crimes committed after June 30, 2014." Defendant's crimes occurred in 1995 and he is therefore not required to register as an SVP under the statute that existed at the time Defendant moved to Indiana. Held, registration as an SVP reversed.

D. Drug Offenses

Dowell v. State, (10/23/2020) 155 N.E.3d 1284 (Ind. Ct. App.) **Maintaining common nuisance - insufficient evidence**

Where State presented only evidence of one drug transaction involving Defendant's car, that single instance of use is not sufficient to prove Defendant committed Level 6 felony maintaining a common nuisance. *See Leatherman v. State*, 101 N.E.3d 879, 884 (Ind. Ct. App. 2018) (noting the Legislature intended by removal of the "one or more times" language to restore prior common law and statutory requirement that a common nuisance is one in which continuous or recurrent prohibited activity takes place). While text messages suggested that Defendant participated in multiple drug transactions, it is not clear from those messages what vehicle, if any, she was driving to complete those transactions. Held, judgment reversed and remanded with instructions to vacate maintaining common nuisance conviction.

Sutton v. State, (05/07/2021), 20A-CR-2213 (Ind. Ct. App.) **Insufficient evidence to support conviction for possession of narcotic drug where Defendant possessed stimulant**

Because the drug Lisdexamfetamine found in Defendant's backpack is a stimulant and not a narcotic drug listed in Indiana Code § 35-48-2-6(b), evidence was insufficient to prove that Defendant knowingly or intentionally possessed a narcotic drug. Although Lisdexamfetamine is not included in Indiana Code § 35-48-2-6(b), which identifies narcotics that qualify as controlled substances, it is listed under Ind. Code § 35-48-2-6(d), which identifies stimulants that qualify as controlled substances. Defendant raised this as a defense at trial, thereby alerting the State and the trial court to the problem; however, neither the trial court nor the State moved to amend the charging information at that time or enter judgment of conviction for the lesser offense of possession of a controlled substance, which was the crime actually committed by Defendant. Held, conviction vacated.

E. Offenses against Property

Williams v. State, (11/12/2020) 158 N.E.3d 817 (Ind. Ct. App.) **Indiana's theft statute does not criminalize the taking of lost or mislaid property**

Defendant was convicted of theft for taking the change a previous customer accidentally left behind in a grocery-store self-checkout station. The State did not establish the identity of the man who left the money at the self-checkout station. The Court of Appeals found that it could reverse Defendant's conviction for that reason alone but also that the more fundamental problem with the conviction is that Indiana's theft statute does not criminalize the taking of lost or mislaid property. The Court noted that Indiana used to have a statute that criminalized failing to take reasonable measures to restore mislaid property to its owner, but that statute was repealed over forty years ago. Held, conviction reversed.

F. Driving Offenses; Specialized Driving Permits

King v. State, (08/13/2020) 158 N.E.3d 1274 (Ind. Ct. App.) **Insufficient evidence D's license was still suspended at time of traffic stop**

After pulling Defendant over at 11:30 a.m. on October 24, 2018, trooper ran driver's license through the dispatch database and received a report that Defendant's driver's license was suspended for failure to pay child support. At trial, the State presented a certified copy of Defendant's driving record which indicated a license suspension effective on "8/30/2018" with an expiration date of "10/24/2018," the date of Defendant's late morning traffic stop. Relying on the BMV's manual (which was not sufficiently instructive), *Vogel v. State es rel Laud*, 107 Ind. 374, 8 N.E. 164 (1886), the general rule for computation of days in various legal contexts, and the persuasive guidance of an out-of-state case, the Court held that Defendant's license suspension ended at midnight of October 24. As a result, the Court found insufficient evidence that Defendant's driver's license was suspended when he was pulled over at 11:30 a.m. on October 24 and reversed his conviction for class A misdemeanor driving while suspended.

G. Miscellaneous Offenses

Harris v. State, (02/23/2021) 163 N.E.3d 938 (Ind. Ct. App.) **Neglect resulting in death conviction and maximum sentence affirmed**

State presented sufficient evidence to support Defendant's conviction for Level 1 felony neglect of a dependent resulting in death. Last month, the Indiana Supreme Court affirmed the murder/LWOP conviction for Defendant's boyfriend, Dylan Tate. Two months before Tate beat the toddler (H.H.) to death, Defendant twice took H.H. to the emergency room because of swelling injuries to his head and face. At the end of December 2017, H.H.'s primary care provider suspected that H.H. was the victim of child abuse and referred him to the Riley Hospital emergency room, which has a Team to investigate such abuse. The ER physician clearly told Defendant that H.H., who had two black eyes, an internal ear injury, and a broken leg, was being abused. The physician was so concerned about H.H.'s injuries that she wanted him admitted to the hospital that day. In addition, Defendant knew that Tate was volatile.

Tate kicked her out of the house in January 2018 because, as Defendant told [a relative], "he was still angry over the broken leg incident." But a few weeks later, Defendant had moved back in with Tate and wanted H.H. to return home. Defendant also knew that Tate was both taking and selling drugs and had, as she told a detective, "been getting angrier and angrier" around the time that he brutally beat H.H. This evidence established that Defendant knowingly placed H.H. in a dangerous situation and was sufficient to support her conviction. The Court found that, by itself, Defendant's abuse of her position of trust with H.H. was a sufficient aggravating factor to support her 40-year sentence. The Court likewise rejected Defendant's claim that her maximum sentence was inappropriate, finding that "her violation of her position of trust with her 18-month-old son reflects very poorly on her character."

Skeens v. State, (07/23/2020) 151 N.E.3d 1248 (Ind. Ct. App.) **Evidence sufficient to support conviction for neglect of a dependent causing death**

Defendant consumed alcohol and smoked marijuana before driving with her four children in her van. During a fight with her boyfriend while driving, Defendant lost control of the vehicle and her six-year-old daughter was partially ejected and died from her injuries. The Court found sufficient evidence and that because the case presented no medical or scientific issues with respect to causation, no medical or scientific expert testimony was required. Further, the court found no abuse of discretion in the trial court's instruction to the jury regarding causation. The Court noted that proximate cause was determined to be the proper standard in both *Patel v. State*, 60 N.E.3d 1041 (Ind. Ct. App. 2016), and *Abney v. State*, 766 N.E.2d 1175 (Ind. 2002), and Defendant failed to establish an abuse of discretion.

H. Firearm Offenses

B.R. v. State, (01/28/2021) 162 N.E.3d 1173 (Ind. Ct. App.) **Juvenile adjudication for carrying a handgun without a license reversed for insufficient evidence**

State failed to prove that juvenile Respondent constructively possessed a handgun without a license. Respondent was driving an intoxicated friend home in a vehicle belonging to the friend's parent when he was pulled over for failing to properly signal a turn and to fully stop at a stop sign. A police officer commenced a search of the vehicle based on the smell of marijuana he detected. The officer removed an intact piece of the dashboard to the left of the steering wheel and discovered a handgun concealed behind it. The Court of Appeals found that because Respondent was seated close to the hidden compartment and could have reduced the gun to his possession, the State presented evidence of his capability to maintain dominion and control over the handgun. However, the State failed to provide any "additional circumstances" to determine beyond a reasonable doubt that Respondent knew of the concealed handgun. Accordingly, the evidence was insufficient to sustain Respondent's delinquency adjudication.

McCoy v. State, (09/10/2020) 153 N.E.3d 363 (Ind. Ct. App.) **Evidence sufficient to support conviction for unlawful possession of a firearm by a serious violent felon**

Defendant's out-of-state conviction for robbery was substantially similar to the serious violent felony of robbery in Indiana and could be relied upon to support his conviction unlawful possession of a firearm by a serious violent felon. The Court noted that as the serious violent felon statute requires the elements of the underlying conviction be substantially similar, but not perfectly congruent, the Michigan statute and the Indiana statute satisfy that requirement with respect to robbery in the two jurisdictions. Based on video evidence from inside a grocery store, Court also found sufficient evidence Defendant had actual possession of the firearm he discarded in a shopping basket after police officers arrived.

Campbell v. State, (12/21/2020) 161 N.E.3d 371 (Ind. Ct. App.) **Sufficiency challenge to SVF conviction rejected**

The Court found sufficient evidence to support the charge of unlawful possession of a firearm by a SVF because the State was required to prove only that Defendant knowingly possessed a firearm after being convicted of a serious violent felony and did not need to prove the Defendant knew he was a serious violent felon. In *Rehaif v. United States*, 139 S.Ct. 2191(2019), the U.S. Supreme Court held that under two federal statutes which prohibit an individual from possessing firearms, the government had to prove the defendant knew he belonged to a category that barred him from possessing a firearm and that he knew he possessed a firearm. Distinguishing *Rehaif*, the Court of Appeals found that Indiana's statute SVF statute is different from the federal statute and does not require the State to prove that Defendant knew he was a serious violent felon when he unlawfully possessed a firearm having a prior conviction for a serious violent felony.

I. Interference with Government Operations

Felony escape conviction relating to pretrial home detention upheld but Court of Appeals encourages legislature to reconsider penalties

Giden v. State, (06/24/2020) 150 N.E.3d 654, (Ind. Ct. App.), *Transfer Pending*

Defendant was placed on pretrial home detention after being charged with Level 5 and Level 6 felonies. He was subsequently charged and convicted of two counts of Level 6 felony escape. Evidence to support the escape charges was that GPS showed he left his residence. On appeal, Defendant argued the escape statute under which he was convicted, I.C. 35-44.1-3-4(b), violates the Proportionality Clause of Article 1, Section 16 of the Indiana Constitution. That statute, which makes the violation of a home detention order a Level 6 felony, runs afoul of the Proportionality Clause because the unauthorized absence statute, I.C. 35-38-2.5-13, provides that the unauthorized absence from home detention is a Class A misdemeanor. Defendant argued “common sense and sound logic dictate that (the unauthorized absence statute) should apply equally to a person placed on home detention as a condition of pre-trial release” in order to comply with Indiana’s Proportionality Clause. He pointed out a “presumptively innocent defendant” placed on home detention as a condition of pretrial release “can received a harsher penalty” than an already-convicted offender. The Court of Appeals found the unauthorized absence statute “applies only to cases where the offender has been placed on home detention as a condition of probation.” Since Defendant was on home detention as a condition of pretrial release and

not because he was on probation, the unauthorized absence statute is not applicable. In a footnote, the Court of Appeals expressed concern that Defendant now had two felony convictions for relatively minor violations and encouraged the legislature to amend the escape statute to include staggered penalties based upon type of violation. Held, convictions affirmed.

Jackson v. State, (11/19/2020) 156 N.E.3d 1286 (Ind. Ct. App.) **Conviction for forcibly resisting law enforcement reversed due to insufficient evidence of physical resistance**

Defendant was convicted of Class A misdemeanor forcibly resisting law enforcement based on evidence he refused to comply with a police officer's command to remove his hands from his pockets and sit down, causing the officer to remove Defendant's hands from his pockets and handcuff him. The Court of Appeals found no evidence Defendant physically resisted, such as by pulling away or stiffening his arms, when the officer grabbed his hands and handcuffed him. Thus, the Court reversed Defendant's conviction, finding insufficient evidence to support the "forcibly" element of the offense.

Jacobs v. State, (07/07/2020) 148 N.E.3d 1175 (Ind. Ct. App.) **Assisting a criminal -- lying to provide false alibi was sufficient evidence of intent to hinder punishment**

In contrast to Class A misdemeanor false informing, the offense of assisting a criminal requires the State to prove Defendant's action of lying to police assisted a criminal and was done with intent to hinder the suspect's apprehension or punishment *See* Ind. Code § 35-44.1-2-5. Here, Court found sufficient evidence that Defendant lied to police by providing a false alibi for a murder suspect with the intention of hindering the suspect's punishment and was therefore sufficient to support her conviction for assisting a criminal as a Level 5 felony rather than false informing.

J. Offenses against Public Health, Order and Decency

McCoy v. State, (10/21/2020) 157 N.E.3d 28 (Ind. Ct. App.) **Disorderly conduct -- yelling at police as they intervened in domestic disturbance constituted political speech**

Absent evidence that comments rose to the level of unreasonable noise, loud criticism of government action does not constitute disorderly conduct. Here, police arrived at a domestic disturbance and Defendant, a neighbor, was arrested and convicted of disorderly conduct after yelling at police officers. The Court of Appeals found evidence insufficient to support a conviction that would be consistent with article 1, section 9 of the Indiana Constitution, because Defendant demonstrated both that the State restricted her political expression and that she had not abuse the right to speak. Defendant's extremely brief interaction with police where she clearly expressed her political speech did not infringe upon the peace and tranquility of her neighbors and evidence was insufficient to support her disorderly conduct conviction.

Estes v. State, (03/29/2021) 20A-CR-1921 (Ind. Ct. App.) **Walking in public road way at 2:00 a.m. sufficient to find actual endangerment to life and not merely speculative under public intoxication statute**

Defendant was walking on public road at 2:00 a.m. and cars had to swerve to avoid hitting him. Court of Appeals finds that this conduct plus signs of intoxication were sufficient to demonstrate that Defendant met the statutory definition of endangerment to life and that his conduct was more than speculative danger. Held, Public Intoxication conviction affirmed.

VIII. ETHICS

Matter of Blickman, (12/09/2020) 164 N.E.3d 708 (Ind.) **Ethics - balancing duty to report child abuse with duty to client confidentiality**

Per Curiam. A short delay which allowed Respondent to do some research before advising his client (Park Tudor School) to report sexual abuse of a child to the DCS did not result in incompetence on Respondent's part under Prof. Cond. R. 1.1, or in counseling or assisting a criminal act, Prof. Cond. R. 1.2(d). The requirement to "immediately" report abuse under Ind. Code § 31-35-5-1 is a case-specific and fact-specific requirement, and the length of delay is not the only thing that matters. Other considerations include "the urgency with which the person files the report, the primacy of the action, and the absence of an unrelated and intervening cause for delay." *C.S. v. State*, 8 N.E.3d 668 (Ind. 2014) (four-hour delay of rape report not "immediate" where principal declined to contact police who were stationed in the school). Court noted that its decision in C.S. "does not demand perfection or even specialized expertise from attorneys."

As for the attorney's decision to not report himself, Ind. Code § 31-35-5-1 requires anyone who becomes aware of possible child abuse to report the matter to the DCS or local law enforcement. However, multiple authorities opine that attorneys may choose to not report evidence of child abuse or neglect protected by client confidentiality, except that attorneys must report suspected child abuse if the attorney believes it necessary to prevent reasonably certain death or substantial bodily harm. The Court refused to resolve the issue, because the lawyer's failure to report had no nexus with the lawyer's fitness under Rule 8.4. Digital images collected of a 15-year-old girl was child pornography and the "best course of action for all who took possession of these materials [] would have been to promptly involve law enforcement." However, Respondent's act of taking possession of the images and not immediately contacting law enforcement did not reflect adversely upon the lawyer's fitness.

But the Court found Respondent violated Rule 1.1 and 8.4(d) for drafting and including a confidentiality provision in the proposed settlement agreement at the mutual wish of both school and student-victim's family. "If Respondent believed that full disclosure already had occurred, it is difficult to conceive what legitimate objective might be gained from preventing Park Tudor personnel or the Student's family from speaking with DCS or law enforcement during any follow-up on the initial report." Court thus cited Respondent's efforts to "silence a fifteen-year-old crime victim and frustrate law enforcement" as aggravators supporting a public reprimand. Justice Slaughter dissented from Court's

finding re: Resondent's use of confidentiality clause, believing that Respondent did not violate either rule.

Matter of Greenaway, (12/04/2020) 19S-JD-165 (Ind.) **Judge convicted after meth sting permanently barred from bench, suspended**

A Hamilton County magistrate who purchased meth from an informant in a sting operation then bit the thumb of an officer who tried to stop the judge from swallowing the evidence violated Indiana Code of Judicial Conduct Rules 1.1 (failing to respect and comply with the law) and 1.2 (failing to avoid impropriety and act at all times in a manner that promotes public confidence in the integrity, independence and impartiality of the judiciary). Repondent's acts also violated Indiana Professional Conduct Rule 8.4(b) (committing a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer in other respects). Following his arrest for Level 6 felonies, Respondent pleaded guilty to misdemeanor charges of possession of methamphetamine and obstruction of justice. As an aggravating factor, the parties cited "the adverse impact Respondent's misconduct had on the public's confidence in the integrity of the judiciary and its respect for the Indiana judiciary. In mitigation, Respondent has no prior discipline as a judge or a lawyer, has cooperated with the disciplinary process, and has taken several proactive steps to address factors contributing to his misconduct." Held, Respondent permanently barred from holding judicial office but may continue to conditionally practice law after a 90-day suspension.

Matter of Cooper, (02/03/2021) 161 N.E.3d 362 (Ind.) **Four-year suspension without automatic reinstatement for long-serving elected prosecutor convicted of domestic battery and confinement**

In 2019, Respondent pleaded guilty to criminal confinement, indentity deception, and official misconduct as Level 6 felonies. The charges stemmed from a domestic dispute with Respondent's then-fiancee. The hearing officer recommended disbarment, *citing* a prior reprimand for critical comments Respondent made about a judge's ruling in a case he had prosecuted and that the prior misconduct did not prompt Respondent to address his underlying concerns of alcohol use disorder and anger management issues. Indiana Supreme Court stopped short of disbarment, instead issuing a four-year suspension without automatic reinstatement given fact Respondent accepted responsibility for his deplorable acts and has taken meaningful and substantial steps to address his alcohol use disorder and anger management issues. "While these after-the-fact measures do not mitigate the misconduct itself, which was reprehensible, they do point to Respondent's potential for rehabilitation and narrowly persuade us that the door to Respondent's legal career should not be permanently and irrevocably closed."

State v. Herrmann, (07/29/2020) 151 N.E.3d 1256 (Ind. Ct. App.) **Part-time deputy prosecutor with conflict of interest in criminal case, who was one of three deputy prosecutors in small prosecutor's office, did not cause entire prosecutor's office to be in conflict.**

Trial court erred in disqualifying entire prosecutor's office and appointing a special prosecutor.Defendant was indicted by a grand jury for theft and forgery, after which she filed a petition to appoint a special prosecutor, alleging that one of the three deputy prosecutors in the Franklin County Prosecutor's Office had a conflict of interest and therefore the whole office should be disqualified. The trial court granted the petition and appointed a special prosecutor. The State then filed an interlocutory appeal. Court of Appeals finds that it is well settled that if the elected prosecutor has a conflict of interest, the whole prosecutor's office is disqualified. However, it is not necessary to disqualify the whole office if one deputy has a conflict of interest. Court of Appeals held it is not necessary to disqualify the whole office, since the deputy prosecutor who has the conflict is a part-time deputy who primarily handles child-support matters and has had no involvement in the criminal case even though it is a small office with only three deputy prosecutors. Trial court's order disqualifying entire office and appointing special prosecutor reversed.

IX. EVIDENCE

A. Relevancy/404(b)

Killian v. State, (06/03/2020) 149 N.E.3d 1189 (Ind. Ct. App.) **Witness's prior conviction for similar crime properly excluded under Rape Shield Rule**

In a criminal case involving alleged sexual misconduct, evidence of specific instances of a victim's or witness's sexual behavior is admissible under Indiana Evidence Rule 412(b)(1)(A) if offered to prove that someone other than the defendant was the source of the semen, injury, or other physical evidence. Here, Defendant convicted of sexual misconduct with a minor after impregnating his granddaughter wanted to introduce evidence at trial that his son was convicted of sexual misconduct with a minor in 1994, arguing it should be introduced under Rule 412 (b)(1)(A). But trial court did not err in excluding this evidence because the 1994 conviction could not have been the "source" of the victim's current pregnancy and was being introduced merely to add speculation that because the son had a prior conviction for the same offense he may have been the perpetrator here.

Stewart v. State, (04/09/2021) 20A-CR-180 (Ind. Ct. App.) **Erroneous exclusion of victim's statements in murder case - rejection of self-defense affirmed**

Statements made by a victim which are offered to show the reasons why Defendant acted in the way he or she did are relevant and not hearsay. *Sylvester v. State*, 698 N.E.2d 1126, 1129 (Ind. 1998). Here, in murder prosecution, trial court erred in excluding Defendant's testimony recounting "very aggressive" statements that victim made to her at a party before she shot him. Defendant argued that, by excluding the statements as hearsay, the trial court denied the jury information regarding her fearful state of mind as it related to her self-defense claim. But Defendant waived this issue because she failed to make an offer of proof at trial. Waiver notwithstanding, Court held that the erroneous exclusion of victim's statements was harmless given other evidence admitted at trial of his aggressive behavior

toward Defendant. Additionally, during Stewart's testimony, she stated that the victim displayed ongoing aggression toward her and eventually struck her face after she rejected his sexual advances. Court also rejected Defendant's challenge to the admission of surveillance videos, which had "some relevancy despite their quality and limited depictions." Finally, Court found that State presented sufficient evidence to rebut Defendant's self-defense claim. Despite victim's "reprehensible" behavior, Defendant was no longer under physical threat or reasonable fear of danger when she left the porch, retrieved her gun from her car and then approached the victim. Under the circumstances of this case, Defendant did not act without fault and was not justified in her use of deadly force.

Cutshall v. State, (03/25/2021) 20A-CR-1866 (Ind. Ct. App.) **Erroneous admission of testimony regarding adult pornography in child molest case**

In prosecution for Level 1 felony child molesting, Court found harmless error in the admission of evidence that Defendant accessed adult pornography on the night of the incident. Defendant's browsing history and pornography at issue was irrelevant, but there was no substantial likelihood the erroneous admission of this evidence contributed to the conviction given the substantial independent evidence of guilt.

Schnitzmeyer v. State, (05/05/2021), 20A-CR-1311 (Ind. Ct. App.) **Text messages spanning time period prior to charges admissible to show intent to deal drugs and not unfairly prejudicial**

In prosecution for Level 3 felony dealing in methamphetamine, trial court did not abuse its discretion in admitting incriminating text messages from Defendant prior to date of arrest, which police testified were slang indicative of drug dealing. Citing Ind. Evidence Rule 403, Defendant argued the text messages were not relevant and any probative value gleaned was outweighed by their prejudicial effect. The Court of Appeals held the text messages were properly admitted over objection because they were highly probative. There was no objection based upon Ind. Evidence Rule 404, but on appeal Defendant argued the text messages were admitted in violation of Indiana Evidence 404(B). The Court found the risk of unfair prejudice did not outweigh the highly probative value and the text messages were both relevant and admissible to establish Defendant's intent to deal and his identity.

B. Hearsay/Confrontation

Shepard v. State, (09/30/2020) 157 N.E.3d 1209 (Ind. Ct. App.) **Video interview of child witness inadmissible where D effectively cross examined witness at trial**

In aggravated battery and voluntary manslaughter prosecution, Defendant's right to confrontation and cross-examination was not infringed when the trial court excluded video recordings of the police interview with Defendant's son. Indiana Evidence Rule 613(a) provides that a witness may be examined about a prior statement. However, a prior inconsistent statement is not admissible under Rule 613 if the witness has already acknowledged the prior inconsistent statement on cross-examination because impeachment is complete after such an acknowledgment. *Dixon v. State*, 967 N.E.2d 1090,

1092 (Ind. Ct. App. 2012). Here, Defendant was able to call the son as a witness in order to impeach him with inconsistent statements regarding the time he woke his father, what he knew about the victim's condition when he wrote an essay at school, and his initial false claim he attempted CPR. Further, a small portion of the video was played for the jury, allowing it an opportunity to observe the child's demeanor and physical size at the time of the events.

Gorby v. State, (08/06/2020) 152 N.E.3d 649 (Ind. Ct. App.) **Video of forensic interview admissible as "recorded recollection" exception to hearsay rule**

During Defendant's jury trial on child molesting charges, the complaining witness (C.W.) testified that Defendant had her "play the copycat game" wherein "you have to copy" things that cartoon characters were doing. Previously, during a forensic interview, C.W. had specified what the characters were doing and that the "copycat game" included Defendant putting his "peeing thing" in her mouth. However, during C.W.'s trial testimony she stated the characters were doing something that was "not okay" but she did not "remember" or did not "know" exactly what it was. During a break, she watched the video of her interview and afterward testified that she still did not remember what the characters were doing or what she and Defendant did but she twice stated that everything she told the interviewer was "the truth." The trial court allowed the jury to view the video of the forensic interview over Defendant's objection. The Court of Appeals held that the video of the interview fell under the "recorded recollection" exception to the rule against hearsay. Although C.W. gave conflicting answers that may have indicated she did not want to talk about the copycat game rather than being unable to remember it as the rule requires, the Court deferred to the trial court's conclusion that C.W. could not remember the events and found that Evidence Rule 803(5)(A) was therefore satisfied. Similarly, although C.W. at one point testified she did not talk to the interviewer about the copycat game, the Court noted that on other occasions she said she told the interviewer the truth and again deferred to the trial court's finding that Evidence Rule 803(5)(C) was satisfied. The Court found no abuse of discretion in admitting the forensic interview into evidence.

Robey v. State, (05/20/2021) 20A-CR-2187 **Any error in playing video recording of forensic interview harmless**

In prosecution for child molesting, the Complaining Witness (C.W.) was able to testify fully and accurately about the essential elements of the crime. However, the trial court also permitted the publication of the C.W.'s forensic interview as a recorded recollection pursuant to Indiana Evidence Rule 803(5). The Court of Appeals held that the video recording was merely cumulative of C.W.'s testimony, and any error in its publication was harmless.

Williams v. State, (03/12/2021), 20A-CR-865 (Ind. Ct. App.) **Out-of-court forensic interview admissible under Protected Person statute**

In child molesting prosecution, trial court did not abuse its discretion by admitting a recorded out-of-court forensic interview of complaining witness (C.W.), who testified at trial but refused to talk

about what Defendant had done to her because she had already told forensic interviewer and sexual assault nurse. Thus, C.W. did not testify live to the facts underlying the charges against Defendant, which eliminates the concern expressed in *Tyler v. State*, 903 N.E.2d 463 (Ind. 2009) about repetition of testimony from a live witness and a videotaped statement. In addition, the State attempted to take the "clearly preferable" path of having C.W. testify live, but she refused to talk about the molestations while on the stand. The trial court had already determined that C.W.'s out-of-court statements were reliable and admissible under the requirements of Indiana's Protected Person Statute (Ind. Code § 35-37-4-6).

Garber v. State, (08/04/2020) 152 N.E.3d 642 (Ind. Ct. App.) **Trial court's admission of out-of-court statements and other testimony affirmed**

In Defendant's trial for rape and battery, trial court did not abuse its discretion in admitting testimony regarding out-of-court statements made by complaining witness (C.W.), who also testified. The evidence at issue was bodycam footage of C.W.'s statement to police at the scene and testimony from one of the officers that C.W. yelled she had been raped as well as emergency room physician's testimony that C.W. told her she was digitally penetrated. The physician additionally testified that she believed people seeking medical care were honest for the most part and did not really have a reason to lie. In *Modesitt v. State*, 578 N.E.2d 649 (Ind. 1991), the Indiana Supreme Court surveyed law from other states and Federal Rule of Evidence 801(d)(1) to hold that a prior statement of a testifying declarant is admissible under a few specified circumstances and also clarified its decision "did not affect the existing, recognized hearsay rule and its exception." The Court of Appeals held that because C.W.'s statements were admitted as excited utterances, they do not qualify for any of the hearsay exclusions mentioned in *Modesitt* and Evidence Rule 801(d) and there was no harmful or fundamental error in that regard. The Court further held that while the emergency-room physician's testimony came close to crossing the line into impermissible vouching, it did not quite rise to that level because rather than specifically opining that C.W. was telling the truth, she offered only a general observation on how emergency room patients behave based on her experience.

Webb v. State, (07/09/2020) 149 N.E.3d 1234 (Ind. Ct. App.) **Defendant's self-serving hearsay properly excluded**

In burglary prosecution, trial court did not abuse its discretion in excluding an affidavit by investigating officer containing statements Defendant had made to him during the search of her apartment. Specifically, Defendant told officer she had permission from her employer's ex-boyfriend to take personal items from the employer's home as compensation for lost wages resulting from the employer's failed business. Defendant argued she was unavailable under Indiana Evidence Rule 804(a) because she exercised her right not to testify at trial. Additionally, she alleged she was entitled to present her statement from the affidavit under Evidence Rule 804(b)(3)' statements against interest hearsay exception because the statement was inculpatory and exculpatory — *i.e.*, she admitted she "was there, but [she] had permission." Trial court properly excluded the hearsay, finding it was not against her interest and thus was not admissible under Evidence Rule 804. The Court of Appeals agreed with the State's argument that Defendant "is attempting to have her cake and eat it too," because her

supposed statement against interest balances farther towards purely exculpatory rather than evenly exculpatory and inculpatory, and because she wishes to introduce an unsubstantiated hearsay claim without allowing the State a fair opportunity to cross-examine her about her claim of consent."

Hurt v. State, (08/21/2020) 151 N.E.3d 1256 (Ind. Ct. App.) **Erroneous admission of victim's hearsay statement in domestic violence case**

In domestic battery prosecution, trial court erred in admitting complaining witness's (C.W.'s) hearsay statements which were used to prove the truth of the matter asserted, *i.e.*, that Defendant struck C.W. and caused her injuries. The State argued C.W.'s statement was admissible under the three hearsay exceptions listed in Ind. Evidence Rule 803: recorded recollection, excited utterance, and/or present sense impression. C.W.'s statement to police was recorded on the officer's body cam. At trial, C.W. did not vouch for the accuracy of her statement to police. She was heavily intoxicated when she gave the statement and could not recall speaking to the officer. For these reasons, the admission of C.W.'s statement was not permissible under the recorded recollection exception. Although C.W. suffered a startling or stressful event, she was not under stress from that event when she spoke to police and therefore the statement was not admissible under the excited utterance exception. At least fifteen minutes had elapsed between the 911 call and C.W.'s statements to police and she made the statement to the officer in response to his questioning. Court noted that C.W. was deliberating—albeit drunkenly—about how to respond to repeated questioning over the course of several minutes. C.W.'s hearsay statement was also inadmissible under the exception for present sense impressions, which permits "[a] statement describing or explaining an event, condition or transaction, made while or immediately after the declarant perceived it." In order for a statement to fall under the present sense impression exception, three requirements must be met: (1) it must describe or explain an event or condition; (2) during or immediately after its occurrence; and (3) it must be based upon the declarant's perception of the event or condition. C.W. did not make her statements to police either during or immediately after she was injured, and given her multiple explanations for how she suffered the injuries to her nose and mouth, C.W. had time to deliberate before she spoke to police. Her ability to deliberate was hindered by her state of intoxication, but the record establishes that she was still able to consider her responses to the officer's questions. Held, conviction reversed and remanded for new trial.

Hackner v. State, (01/12/2021) 161 N.E.3d 1287 (Ind. Ct. App.) **No abuse of discretion to admit officer's testimony a head movement was a "yes" in response to his question**

A dying victim's non-verbal identification of the perpetrator, in response to an officer's question, is a question of credibility and not admissibility. An officer at the scene of a shooting asked the victim, who later died of his injuries, if it was Defendant who shot him and the victim nodded his head in response. The nonverbal conduct was not captured by the officer's bodycam, but the trial court allowed the testimony describing the nod and the officer's interpretation that it was intended as a "yes" to his question. The Court of Appeals rejected the argument the nod was too ambiguous to be considered a nonverbal dying declaration under Evid. R. 804(b)(2). Rather, the Court found the officer's interpretation

of the alleged nonverbal act was not a question of admissibility but bears more on the officer's credibility, a question solely for the finder of fact. Held, no abuse of discretion in admitting the evidence.

Lancaster v. State, (08/14/2020) 153 N.E.3d 1144 (Ind. Ct. App.) **Witness's testimony admissible as adoptive admission and statement made by a party opponent**

In murder prosecution, trial court did not err in permitting witness to testify about the conversation he overheard between Defendant and Defendant's brother about the need to kill all three victims before the murders occurred. After Defendant's brother stated that they needed to "smoke Jessica," meaning to kill her, Defendant did not deny, disagree with, or refute the statement, and even went a step further, saying that they would "have to do them all." Defendant's brother's first statement was not hearsay, but was admissible as an adoptive admission, which is a statement offered against an opposing party that "the party manifested that it adopted or believed to be true[.]" Ind. Evid. R. 801(d)(2)(B). Defendant's statement was plainly admissible pursuant to Ind. Evid. Rule 801(d)(2)(A) as a statement made by a party opponent (Defendant) and was offered by the State against that party. Therefore, the trial court did not err by admitting this portion of the witness's testimony. *Bell v. State*, 29 N.E.3d 137, 143 (Ind. Ct. App. 2015) (holding that it was not error to admit into evidence defendant's out-of-court statement).

A.B. and J.R. v. DCS, (10/15/2020) 154 N.E.3d 818 (Ind.) **Parent's drug test results in TPR case admissible under business records hearsay exception**

Drug test records are exceptions to the hearsay rule under the records of a regularly conducted business activity (Ind. Rule Evid. 803(6)). The Indiana Supreme Court, addressing an issue that had resulted in conflicting decisions in the Court of Appeals, held a parent's drug test results were properly admitted into evidence under Indiana Evidence Rule 803(b), business records exception to hearsay in a Termination of Parental Rights (TPR) case (see full review under CHINS/TPR section, below).

McGill v. State, (12/10/2020) 160 N.E.3d 239 (Ind. Ct. App.) **No abuse of discretion to exclude IQ assessment offered under business record exception**

Trial court did not abuse its discretion in excluding the results of Defendant's IQ assessment from evidence. Defendant attempted to introduce the psychological assessment without the testimony of the psychologist who administered the test by using the business record exception to the hearsay rule. The Court of Appeals found the authentication affidavit did not identify a business entity or detail what routine business activity required performing psychological assessments and also did not explain how the maintenance of psychological records is necessary for a business purpose. Allowing the admission of the assessment into evidence without allowing the State to examine the psychologist regarding her qualifications and methodology would sidestep the safeguards set out in Ind. Evid. R. 702, which requires expert opinion testimony to be rendered by a qualified individual relying on established scientific principles.

C. Witnesses, Privileges & Opinion Testimony

Tate v. State, (01/28/2021) 161 N.E.3d 1225 (Ind. Ct. App.) **Fundamental error claims rejected in LWOP case**

In murder and LWOP prosecution, trial court did not commit fundamental error in allowing detective and medical provider's testimony regarding the underlying incident and investigation, including the investigatory tactics used by police and the impressions of medical providers about what happened once Defendant and the child victim arrived at the hospital. Defendant failed to explain how the testimony was improper character evidence contrary to Indiana Rule of Evidence 404(a)(1) or how it was used impermissibly to establish Defendant's propensity to molest and kill children. Even had Defendant developed this argument, Rule 404(a)(1) does not prohibit eyewitnesses from describing their perceptions of a defendant's demeanor and behavior during the events giving rise to the charged conduct. Next, Court found no fundamental in allowing the medical providers to testify about the stages of the victim's bruising and their opinions about the victim's injuries and their source. Defendant waived his undeveloped argument that the witnesses were unqualified to give expert testimony and that their testimony did not rest on reliable scientific data under Evidence Rule 702(b). Waiver notwithstanding, Court discerned no violation of this rule, let alone one that should have been obvious to the trial court. Finally, Court rejected Defendant's argument that the State impermissibly referred to its medical witness as an "expert" during her direct examination. Distinguishing *Farmer v. State*, 908 N.E.2d 1192, 1199 (Ind. Ct. App. 2009), which prohibits only trial judges from calling witnesses "experts" in front of the jury, Court noted that no rule prohibits the State from asking a witness about her history testifying as an expert witness.

Elliott v. State, (07/17/2020) 152 N.E.3d 27 (Ind. Ct. App.) **Clergy privilege did not apply where church did not have formal obligation of confession of sin or need for confidentiality**

The clergyman privilege applies only to confidential communications made to a clergyman in the clergyman's professional character as a spiritual adviser or counselor and confessions or admissions made to a clergyman in the course of discipline enjoined by the clergyman's church. Here, Court of Appeals finds that statements Defendant made to his Pastor who visited him in the jail did not fall within privilege and were properly admitted at trial. Defendant told the Pastor that he planted a knife to make it look as if his wife had attacked him before he shot and killed her. The Court of Appeals found the statements made by Defendant to the Pastor were not made in the course of discipline nor were they confidential based in part upon the statements by the Pastor in deposition that his church recognized the need for discretion and but not confidentiality and their church did not recognize a formal confession of sin. Therefore the statement by Defendant to his Pastor did not fall under section A or B of the statute.

Skeens v. State, (07/23/2020) 151 N.E.3d 1248 (Ind. Ct. App.) **No error in admitting accident reconstruction testimony**

Defendant consumed alcohol and smoked marijuana before driving with her four children in her van. During a fight with her boyfriend while driving, Defendant lost control of the vehicle and her six-year-old daughter was partially ejected and died from her injuries. At trial, a forensic toxicologist testified that Defendant was impaired at the time of the crash because the "combined impairment increas[ed] the overall impairment of each [substance] individually." A state trooper testified that the child "should have been in some form of booster seat" and that she "could have come out of the base of [her] seatbelt" because her shoulder belt had not been properly secured. Another trooper, who was a certified accident reconstructionist, testified over objection that Defendant was impaired at the time of the crash and that the child's death resulted from her not being "properly restrained in a car seat at the time." The Court of Appeals found that Defendant waived her argument regarding the accident reconstructionist's testimony because basis for her objection in trial court was lack of pretrial notice of the trooper's opinions and on appeal she argued the trooper was not qualified to render them. The Court further found any error to be harmless because the testimony was largely cumulative of the testimony from the other trooper and the toxicologist.

D. Authentication; Evidentiary Foundations

Parker v. State, (07/30/2020) 151 N.E.3d 1269 (Ind. Ct. App.) **Facebook messages properly authenticated and admitted**

After learning that Defendant, who was wanted on a warrant, was possibly in the area, a police officer obtained a BMV photo of Defendant and used it to find a profile on Facebook which also matched Defendant's name and date of birth. Using a fictitious profile, the officer contacted Defendant about a vehicle sale and eventually made plans to meet at a gas station to purchase methamphetamine. The trial court admitted the Facebook messages over objection and made a finding the photo on the Facebook profile was similar to the BMV photo of Defendant and appeared to be the same person. The profile under Defendant's name sent a message stating he lived on the same street that law enforcement identified as Defendant's street. The messages discussed methamphetamine and meeting at a particular gas station, and Defendant appeared at that gas station with methamphetamine. After Defendant was arrested, the officer also made a phone call to the Facebook profile and the phone found in Defendant's possession rang. Following *Pavlovich v. State*, 6 N.E.3d 969 (Ind. Ct. App. 2014), *trans. denied*, the Court noted authentication of an exhibit can be established by either direct or circumstantial evidence and concluded the evidence was sufficient to authenticate the messages as being authored by Defendant. Even if the evidence was not indisputable proof he wrote the messages, such proof was not required and the Court held the trial court did not abuse its discretion in admitting the messages.

Wisdom v. State, (12/22/2020) 162 N.E.3d 489 (Ind. Ct. App.) **Social media posts properly admitted**

Trial court did not abuse its discretion by admitting posts from Instagram and Facebook because they were properly authenticated under Evidence Rule 901(a). The trial court allowed the State to admit photographs taken from a Facebook and Instagram account showing photos and videos of Defendant. Noting that the admissibility of photos or videos taken from such online social media platforms has not been specifically addressed in Indiana, the Court of Appeals concluded the authentication of social-media evidence turns on whether there is sufficient evidence to support a finding it is what the claimant purports it to be. And while the source of the evidence may sometimes be needed, authentication depends on context. Here, the exhibits were used by the State to show Defendant was affiliated with other gang members. A detective testified she recognized Defendant in the photos and believed other individuals in the photos were gang members who had been convicted of gang-related activities, one of the accounts was registered in Defendant's name, had a gang-related nickname as a username, and photos and videos referred to gang activity. Held, no abuse of discretion to admit the exhibits.

Flowers v. State, (09/23/2020) 154 N.E.3d 854 (Ind. Ct. App.) **Police officer's testimony sufficient to admit surveillance video under silent witness theory**

In murder prosecution, trial court did not abuse its discretion in admitting apartment complex's video surveillance footage as well as police sergeant's testimony about the videos. The surveillance footage was admissible as substantive rather than merely demonstrative evidence under the silent witness theory, which holds that the trial court must be persuaded of the authenticity and competency of the evidence by relative certainty. As in *McAllister v. State*, 91 N.E.3d 554 (Ind. 2018), the police officer testified about what he knew regarding the security cameras at the apartment complex where he worked part-time security, and his testimony provided sufficient grounds to admit the surveillance video. The officer's opinion testimony regarding the contents and identity of the person in the video was not an abuse of discretion because Defendant opened the door to the testimony when cross-examining the police officer. Although Defendant filed pro se motions for speedy trial while represented by counsel, the trial court did not abuse its discretion by taking no action on the pro se pleadings and in granting the State's motion for continuance because defense counsel did not object to the motion and stated that significant investigation was needed to prepare for trial.

Martin v. State, (9/8/20) 20A-CR-228 (Ind. Ct. App.) **Nurse's testimony laid a sufficient foundation for admission of the blood draw evidence**

On appeal of his conviction for Level 5 felony operating while intoxicated, Defendant argued that because the State relied solely on testimony of nurse, it failed to show that the nurse conducted Defendant's blood draw pursuant to "a protocol prepared by a physician" pursuant to Ind. Code § 9-30-6-6(a). Court disagreed, noting that nurse's testimony that she was trained in legal blood draws, that her hospital had a protocol for legal blood draws, that a physician approved that protocol, and that she followed that protocol was sufficient for the trial court to find that the State laid the proper foundation for the blood draw evidence.

X. JUVENILE

Harris v. State, (03/24/2021) 165 N.E.3d 91 (Ind.) **Parent of a child defendant can remain in courtroom despite a witness separation order if shown to be essential**

Children being tried for a crime as an adult do not have an automatic right to have a parent with them during the trial. Where the parent is subject to a witness separation order, the child defendant can identify the parent's presence as "essential" to presentation of the child's defense pursuant to Evidence Rule 615(c) to allow the parent to remain in the courtroom despite a witness-separation order. To prove that the parent is "essential," the child can offer any number of reasons, such as the child's special needs, that the child is struggling with communicating with counsel, or that the child needs parental guidance when making life-altering decisions, like whether to pursue a line of questioning, take the stand, or accept a plea agreement. However, Defendant did not make that showing here by stating that his parent would like to remain in the courtroom "as much as possible" because of his age and the seriousness of the offense. "In fact, there was no mention that Harris himself wanted his mother present." Therefore, the issue of whether Defendant's mother was essential to his defense, pursuant to Evid. R. 615(c), was waived. Likewise, Defendant did not argue to the trial court that he had a due process right to the presence of his mother during his trial. Certain rights held by children in the juvenile system do not carry over when children find themselves in adult court. With that said, because Defendant did not raise the issue of a due process right to parental presence before the trial court, the argument that due process provided a right to parental presence was waived.

Further, the trial court did not abuse its discretion by not ordering alternative sentencing under I.C. 31-30-4-2. The alternative sentencing statute does not provide factors for the court to consider, but the factors in determining whether to waive a child are instructive, including: the severity of the act and whether it is part of a pattern of repetitive acts; whether the child is beyond rehabilitation under the juvenile justice system; and whether it is in the best interests of the community that the child be tried as an adult. Because Defendant's crime was serious (attempted murder), part of a pattern of repetitive acts, and he had failed many rehabilitative programs previously, the trial court did not abuse its discretion by declining to sentence him under the alternative sentencing scheme. Finally, Defendant's 37-year sentence was not inappropriate under Appellate Rule 7(B) analysis. While Defendant was only fifteen at the time of the crime, he already had accumulated a history of delinquent adjudications, some of which were for violent offenses involving weapons. Defendant had a history of mental health problems but did not explain why those affected his behavior or his propensity for breaking the law.

D.P. v. State and State v. N.B., (09/08/2020) 151 N.E.3d 1210 (Ind.) **Juvenile court does not have subject matter jurisdiction to waive an alleged delinquent offender into adult criminal court if the individual is no longer a "child"**

In a pair of consolidated cases, the Indiana Supreme Court held that a juvenile court does not have subject matter jurisdiction to waive an alleged delinquent into adult criminal court if the individual is no longer a "child." In both cases, Respondents were over the age of twenty-one when the State filed delinquency petitions based on allegations of conduct that occurred when they were juveniles. The

Court considered the statute conferring juvenile jurisdiction, Ind. Code 31-30-1-1, and the statutory definition of "child" in Ind. Code 31-9-2-13(d), to conclude a juvenile court does not have jurisdiction to adjudicate individuals over the age of twenty-one delinquent. The Court further considered the waiver of jurisdiction statutes--Indiana Code sections 31-30-3- 5 and 31-30-3- 6—to hold the juvenile court does not have the authority to waive Respondents into adult criminal court. Under the plain language of the relevant statutes, a juvenile court does not have subject matter jurisdiction to waive an alleged delinquent offender into adult criminal court if the individual is no longer a "child."

K.C.G. v. State, (11/16/2020) 156 N.E.3d 1281 (Ind. S. Ct.) **Juvenile courts lack subject matter jurisdiction of juveniles charged with dangerous possession of a firearm because the offense is not a crime if committed by an adult**

Under Indiana law, only juvenile courts have power to adjudicate a child a delinquent. The delinquency alleged here was that respondent, K.C.G., age 16, committed the offense of dangerous possession of a firearm. However, by the statute's plain terms, an adult can never commit the offense of dangerous possession of a firearm. Thus, the juvenile court lacked subject-matter jurisdiction because juvenile courts have "exclusive original jurisdiction" to hear proceedings in which the State alleges that a child committed "an act that would be an offense"—a crime—"if committed by an adult." I.C. 31-37-1-2 and I.C. 31-30-1-1(1). Because this offense can never be committed by an adult, a juvenile cannot be adjudicated delinquent for committing it. Here, the statute defines the offense solely in terms of a "child" with an unauthorized firearm. The Court acknowledged this might not have been the legislature's intent, but the plain language of I.C. 35-47-10-5 and the juvenile jurisdiction statutes mandate this result. Also, the Court concluded that a delinquency proceeding for violating I.C. 35-47-10-5 could not be considered another "proceeding[] specified by law" over which a juvenile court could have jurisdiction under I.C. 31-30-1-1(14). Held, delinquency adjudication vacated and juvenile's probation modified based on the adjudication.

State v. Stidham, (11/17/2020) 157 N.E.3d 1185 (Ind.) **Extraordinary circumstances warranted revision of juvenile's maximum 138-year sentence for murder and other crimes**

Doctrine of res judicata did not prohibit Court from reconsidering the appropriateness of Defendant's 138-year sentence for murder committed in 1991 when he was 17 years old. In 1994, a narrow majority of Indiana Supreme Court affirmed the appropriateness of the sentence on appeal and declined to exercise the Court's constitutional autority to review and revise sentences. But the Indiana Supreme Court found two "major shifts in the law" allowed them to revisit their prior decision about the appropriateness of Defendant's sentence. The first shift occurred when the Supreme Court eased the standard under which it could review and revise sentences that were determined to be "manifestly unreasonable." As a result, the Supreme Court revised Appellate Rule 7(B) to allow state courts to revise a sentence if the sentence is "inappropriate in light of the nature of the offense and the character of the offender." The second major shift came when the U.S. Supreme Court began limiting when juveniles could be sentenced to harsher punishments. These two major shifts presented "extraordinary

circumstances" warranting reconsideration of Court's prior decision in Defendant's case. Although Defendant's crimes were brutal and horrific, Court acknowledged his abusive childhood and steps toward rehabilitation including completing his high school education and participating in substance abuse counseling. Although maximum possible sentences are generally most appropriate for the worst offenders, Defendant received the maximum possible term-of-years sentence for crimes he committed as a juvenile. As Indiana Supreme Court and U.S. Supreme Court has held before, Defendant's juvenile status weighs against a maximum sentence. Held, transfer granted, Court of Appeals' opinion at 110 N.E. 410 vacated, grant of postconviction relief affirmed, and sentence revised to 88 years. David, J., concurring in result; Slaughter, J., dissenting, noting that the majority based its decision on a claim Defendant did not raise and expressly disavowed at oral argument.

Wilson v. State, (11/17/2020) 157 N.E.3d 1163 (Ind.) **On post-conviction review, aggregate sentence for crimes committed when Defendant was sixteen reduced to 100 years under Appellate Rule 7(B)**

On post-conviction review, the Court found that the enhanced protections for juveniles under *Miller v. Alabama*, 567 U.S. 460 (2012), "do not currently apply" to Defendant's 181-year sentence for two counts of murder, robbery, and a criminal gang enhancement for crimes committed when he was sixteen. This lengthy sentence does not violate the Eighth Amendment because Miller and related cases expressly indicate their holdings apply only to life-without-parole sentences. Even assuming the standards apply to a de facto life sentence, the trial court in this case adequately considered Defendant's youth and attendant circumstances during sentencing. Trial counsel was not ineffective, but Defendant was provided ineffective assistance of appellate counsel when his attorney failed to seek relief under Indiana Appellate Rule 7(B). Rather than remanding for consideration and in the interest of judicial economy, the Court conducted a review of the sentence under Appellate Rule 7(B). Examining only the facts available on direct appeal, the Court concluded a downward adjustment of Defendant's sentence to 100 years was appropriate after reviewing Defendant's character and the nature of the offense. Chief Justice Rush concurred in result and Justice Slaughter concurred in part and dissented in part, stating he would hold as a matter of law that counsel is never deficient for failing to argue a sentence is inappropriate under Rule 7(B).

Jones v. Mississippi, (04/23/2021) No. 18-1259, (U.S.) **Life without parole sentence for juvenile upheld – findings as to why defendant was incorrigible or irredeemable not constitutionally required**

Under the Eighth Amendment, at a sentencing hearing for a homicide committed by a person who was under eighteen (18) years of age at the time of the offense, the trial court need not make any findings, explicit or implicit, as to why the defendant was incorrigible or irredeemable before imposing a life without parole sentence. The Eighth Amendment only requires discretion on the trial court's part: "a State's discretionary sentencing system is both constitutionally necessary *and constitutionally sufficient*." Slip op. at 5 (emphasis added).

The dissent contended that by holding that the court need not, even implicitly, find that the youthful offender is one of the rare children whose crimes reflect irreparable corruption, the majority "guts *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016)."

Practice Pointer: Despite the result in *Jones*, Indiana law should still require an explicit finding as to whether youth was a mitigating factor, and how it weighed against any aggravating factors before imposing life without parole. Indiana Code § 30-50-2-9(c)(7), "Death Sentence; Life Without Parole," explicitly provides the fact that the defendant was less than eighteen (18) at the time the murder was committed is a potential mitigator. Further, subsection (l) of the statute requires that before a death sentence or life without parole may be imposed, the jury or trial court must find that the State proved at least one aggravating factor beyond a reasonable doubt, and that it outweighed "any mitigating circumstances that exist . . . ." Practitioners should use the considerations of *Miller v. Alabama*, 567 U.S. 460 (2012); and *Montgomery v. Louisiana*, 577 U.S. 190 (2016) to frame the argument as to why and how youth is a significant mitigating factor, and outweighs other aggravating factors, and the trial court must respond with an explicit finding. Even for *defacto* life without parole sentences, this should be the strategy, and trial courts will most often be required to address youth as mitigation by explicit fingings. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007), requires a sentencing statement by the trial court articulating all of the aggravating factors and mitigating factors supported by the record. This is only unnecessary where the sentence imposed is the advisory (Ind. Code § 35-38-1-1.3), but in reality most *defacto* life sentences are going to be enhanced beyond the advisory sentence for whatever offense, or a combination of consecutive sentences. Again, practitioners should use the considerations of *Miller* and *Montgomery*, as well as applicable Indiana sentencing considerations as to why youth mitigates against extremely long sentences for youthful offenders. *See, e.g., Fuller v. State*, 9 N.E.3d 653 (Ind. 2014); *Brown v. State*, 10 N.E.3d 1 (Ind. 2014); and *Stidham v. State*, 157 N.E.3d 1185 (Ind. 2020).

XI. FORFEITURE

Brown v. Eaton, Hancock Co. Prosecutor, (02/10/2021) 164 N.E.3d 153 (Ind. Ct. App.) **Insufficient evidence to support civil forfeiture**

State failed to put forth sufficient evidence to sustain the forfeiture order because it did not establish a nexus between the $32,000 found in Defendant's pocket and the illegal activity because Defendant had only a small amount of marijuana in his possession, which without more is not enough to support the inference that drug dealing occurred, much less activity to yield or require over $30,000. The State did not present evidence regarding the quantity of illegal drugs allegedly being trafficked, the number of drug transactions the money allegedly facilitated, the identity of any drug purchasers or suppliers, or the location where any transaction occurred or was intended to occur.

Abbott v. State, (02/15/2021) 164 N.E.3d 736 (Ind. Ct. App.) **Owners may used seized cash for defense-related expenses in civil forfeiture actions**

In civil forfeiture cases, owners may use seized cash for defense-related expenses. Here, the State moved to forfeit four firearms and more than $9,000 in cash from Defendant that was found during a search warrant. Defendant was suspected of dealing drugs and the State designated evidence that he had sold methamphetamine and other narcotics to undercover law enforcement during two controlled buys. Defendant unsuccessfully requested the appointment of counsel at public expense for the forfeiture proceeding, as well as a transcript of proceedings on appeal. During a hearing on State's motion for summary judgment, Defendant claimed the money found in his pocket was lawfully obtained and was set aside to purchase a motorcycle the same day he was arrested. The sale had been postponed, he said, and he simply had not taken the cash out of his pocket. Also, he said, he was employed leading up to his arrest, and his 2015 tax documents showed two sources of lawful wages collectively exceeding $20,000. The trial court entered summary judgment for the State, finding that the "overwhelming designated evidence" indicated the cash in Defendant's pocket was related to criminal conduct. The Court of Appeals concluded that Defendant created a genuine issue of material fact as to the State's entitlement to the *res and* therefore the trial court improperly granted summary judgment. In so holding, the Court expressed concern that the trial court characterized the State's designated evidence as "overwhelming," reminding trial courts that forfeitures "are not favored" and that "'weighing [evidence] – no matter how decisively the scales may seem to tip – [is] is a matter for trial, not summary judgment.'" Addressing Defendant's appellate challenge to the denial of his request for counsel, the Court also held that he was not entitled to counsel at public expense, but because the money in the *res'* still his, he has the means to fund his own defense. Vaidik, J., dissenting on this issue, believes that allowing Defendant to use seized cash to pay for an attorney exceeds statutory limits.

XII. CHINS/TERMINATION OF PARENTAL RIGHTS

A. CHINS

A.P. v. DCS, (07/15/2020) 150 N.E.3d 292 (Ind. Ct. App.) **CHINS reversed because there was no showing that the coercive intervention of the Court was required despite Mother's admitted drug use, DCS did not present any evidence that Mother used marijuana while the Child was in the home or that DCS had ever perceived Mother to be under the influence of drugs.**

CHINS adjudication under Indiana code section 31-34-1-1 requires proof of three basic elements: the parent's actions or inactions have seriously endangered the child; the child's needs are unmet; and "perhaps most critically," those needs are unlikely to be met unless the State intervenes. It is the last element that guards against unwarranted State interference in family life. State intrusion is warranted only when parents lack the ability to provide for their children. In other words, the focus is on the best interests of the child and whether the child needs help that the parent will not be willing or able to provide. Here, the evidence reflects that Mother admitted to having a substance abuse problem,

especially when she felt stressed or overwhelmed and although Mother agreed to participate in services through an Informal Adjustment—which was extended once—she failed to submit consistently to drug screens and conceded to using marijuana on several occasions. Despite Mother's admitted drug use, DCS did not present any evidence that Mother used marijuana while the Child was in the home or that DCS had ever perceived Mother to be under the influence of drugs. The DCS conceded that "the basic needs of the [Child] are being met" and a safety plan was in effect that placed the Child with Maternal Grandmother if Mother felt overwhelmed and in need of marijuana. The DCS concern, without more, that "[i]llegal substance use impairs your thinking, your response, . . . your normal thought processes and action" is not sufficient to support a CHINS determination. CHINS reversed.

In the Matter of J.N (child) CHINS and J.N. (father). v. DCS, (04/29/2021) 20A-JC-2116 (Ind. Ct. App.)
CHINS finding reversed where record shows no need for further State intervention

The CHINS court found that an intense and escalating legal dispute between the parents created a highly contentious domestic relationship and that the child's mental condition was seriously impaired or endangered in her parents' care. The Court of Appeals found that neither finding was supported by the evidence. The record shows legal disagreements between the parties, but not the intense, escalating battle the CHINS court described. And while there were three reports of molestation of the child by the father made to DCS, and found to be unsubstantiated, the identity of the reporter was not disclosed. DCS offered no evidence the child's mental or physical health was endangered. DCS did not request the child receive any services except for a therapeutic evaluation, which resulted in no further referrals or services. DCS failed to establish by a preponderance of the evidence the child needs care, rehabilitation, or treatment she is not receiving and would be unlikely to be provided without the coercive intervention of the state. Held, judgment reversed.

K.S. v. DCS, (03/15/2021) 164 N.E.3d 834 (Ind. Ct. App.) **Children placed in relative's care may still need coercive intervention of the court through CHINS finding to provide the legal authority for relative to care for children absent guardianship, custody or power of attorney.**

DCS opened a CHINS case *citing* neglect and domestic violence between parents. Mother had left the children in Father's care and Mother's Mother (Grandmother) then moved the children into her home. Mother appealed the CHINS finding, arguing because the children were safely with their grandmother there was no evidence she had endangered the children or that the coercive intervention of the State was needed. Court of Appeals held that coercive intervention of the Court was needed because Mother had abandoned the children, which did endanger them, and that the CHINS finding should continue to provide legal authority for Grandmother to care for the children because there was no guardianship, power of attorney or custody agreement in place.

Matter of E.T. v. Ind. Dept. of Child Services, 07/31/2020) 152 N.E.3d 634 (Ind. Ct. App.) **CHINS - separate factfinding hearings did not violate due process**

Trial court did not violate Father's due process rights by adjudicating child a CHINS in mother's case without giving him an opportunity to be heard. Father had been twice convicted of criminal charges related to domestic violence episodes against Mother. As a result of Mother's protective order and fear of Father, trial court granted DCS's motion for separate fact finding hearings. The separate hearings were unavoidable because both parents could not be present at the same fact finding hearing, Father received the due process to which he was entitled because he had the opportunity to be heard at a meaningful time and in a meaningful manner Father had the opportunity to be heard, the trial court did not violate Father's due process rights. The Court of Appeals also found no error in holding Father's fact finding and disposition hearings outside the statutory time frames, which Father waived.

M.P. and J.P. v. DCS, (01/27/2021) 162 N.E.3d 585 (Ind. Ct. App.) **CHINS finding reversed -- insufficient evidence coercive intervention of court was necessary**

DCS did not prove by a preponderance of the evidence that the coercive intervention of the court was necessary to ensure the children's care, thus the juvenile court clearly erred in adjudicating the Children to be CHINS. Mother 's admission at the fact-finding hearing that the children were CHINS is not dispositive. The record revealed Father maintained a positive relationship with the children from the moment he re-obtained contact with them and that they spoke on the phone regularly, often daily. The older child was adamant she wanted to be placed with Father, Father voluntarily provided $400 a month in child support and had already taken steps to secure a larger residence by the date of the fact-finding hearing. Every worker or therapist who had contact with Father agreed he had been compliant and willing to do whatever is required to take care of the Children. The Court concluded the evidence strongly suggests that, at the relevant time, Father was willing to provide a safe and stable living environment. Held, CHINS finding reversed and remanded.

B. Termination of Parental Rights

Parent's drug test results in TPR case admissible under business records hearsay exception

A.B. and J.R. v. DCS, (10/15/2020) 154 N.E.3d 818 (Ind.)

Drug test records are exceptions to the hearsay rule under the records of a regularly conducted business activity (Ind. Rule Evid. 803(6)). The Indiana Supreme Court, addressing an issue that had resulted in conflicting decisions in the Court of Appeals, held a parent's drug test results were properly admitted into evidence under Indiana Evidence Rule 803(b), business records exception to hearsay in a Termination of Parental Rights (TPR) case. At TPR hearing parents objected as hearsay to the admission of their drug test results from Forensic Fluids Laboratories. The TPR court allowed the results to be admitted and, on appeal, the Indiana Court of Appeals found the tests were property admitted as an exception to hearsay under the records of regularly conducted activity exception. Affirming as correct

the trial court's decision to admit the drug test results into evidence over objection as hearsay, the Indiana Supreme Court found the laboratory depends on the records to operate and there was evidence presented to establish the records as sufficiently reliable and therefore the drug test results were properly admitted, as an exception to hearsay, under the regularly conducted activity exception, Indiana Evidence Rule 803(b)(business records exception) to hearsay.

In RE C.C. and B.C., (08/25/2020) 153 N.E.3d 340 (Ind. Ct. App.) **Termination of parental rights affirmed for Father's refusal to complete court-ordered services and drug screens**

Child was removed from Mother's home due to her substance abuse and placed with Father. The juvenile court adjudicated Child as a CHINS and ordered Father to maintain contact with the DCS and, among multiple other orders, submit to random drug screens. A few months later, Father left Child with a relative, which led to Child's placement in foster care. The juvenile court ordered Father's parental rights to Child to be terminated and issued a detailed statement of findings. The Court of Appeals held Father's refusal to complete court-ordered services and drug screens was a blatant disregard for the juvenile court's authority, thus the juvenile court was "justified in its decision" to terminate his parental rights. Judge Pyle dissented, believing that there were other measures available, short of termination, to convince Father to comply with order to submit to drug screens. After a detailed recitation of facts regarding Father's interaction with DCS, including the removal of the first case manager for "inappropriate conduct" and Father's progress in individual therapy, Judge Pyle concluded that the apparent reason for the Child's removal from Father's care was not drug related, thus he would find the DCS failed to meet its burden and termination is not warranted at this time.

K.E. and A.C. v. DCS, (01/13/2021) 162 N.E.3d 565 (Ind. Ct. App.) **Voluntary relinquishment of parental rights reversed and remanded when form mother signed did not include statutorily required language**

Mother signed a form voluntarily relinquishing her parental rights. In a belated appeal, the Court of Appeals reversed the voluntary relinquishment of parental rights and remanded for further fact-finding to determine whether she received an advisement required under Indiana Code Section 31-35-1-12(9). Indiana Code 31-35-1-6 states that before a parent may consent to voluntary termination of their parental rights, they must give their consent in writing and be advised in accordance with Indiana Code section 31-35-1-12. However, in this case the voluntary termination of parental rights form lacked the required advisement of Indiana Code Section 31-35-1-12(9). Where a statutory requirement protecting the fundamental right of parents is absent, it takes on particular importance requiring reversal and remand in this case. In a footnote, the Court of Appeals cited *In Re O.R.*, 16 N.E.3d 965, 971 (Ind. 2014), finding that the Fourteenth Amendment right to establish a home and raise children is an extraordinary compelling reason to find that a forfeited appeal right should be restored. (There appears to be a six-month delay between the final appealable Order and the filing of the Notice of Appeal in this case.)

K.T. v. DCS, (10/21/2020) 159 N.E.3d 36 (Ind. Ct. App.) **Termination of parental rights reversed for second time where DCS made no effort to repair bond between mother and child that it had wrongly severed an emotional and behavioral problems child developed as a result of termination proceedings was not a reason to terminate the parental rights of a fit parent**

This case began in May 2011, when the child was removed from the parents' home and later found to be a child in need of services due to their drug use and domestic violence issues. DCS later moved to terminate the parent-child relationship in May 2015, which was granted in April 2016. But both parents successfully appealed, with Court of Appeals finding that DCS had exhibited an "extraordinarily troubling pattern of behavior." However, the trial court again terminated their parental rights in January 2020 after finding the relationships were not in the child's best interests, among other things. The Court of Appeals affirmed the termination of father's parental rights, concluding that he failed to complete DCS services, cannot provide a safe environment for the child, has not communicated with the child since 2013 and is consistently incarcerated for violent crimes. But the Court of Appeals reversed the termination of mother's parental rights, finding her to be a fit and available parent. Instead of finding mother unfit, the trial court erroneously focused on the behavioral problems the child experienced throughout the proceeding. The emotional and behavioral problems of the child were not a result of Mother's actions or inactions but were instead compounded by DCS's lackluster attempts at reunification. The Court also found as erroneous that DCS had made reasonable efforts toward reunification, stating "We acknowledge the importance of permanency and stability in a child's life. But this alone cannot trump the fundamental and constitutional right parents have to the care and custody of their children. Essentially, the trial court terminated Mother's parental rights because — in the four non-consecutive months she was allowed to attempt parenting time — she was 'unable to build a bond with [Child.]' " However, Mother and Child previously had a strong bond, a bond DCS wrongly severed years ago and made no true attempt to repair. Allowing DCS to remove a child from its fit parent, stall reunification until there is no relationship left, and then claim reunification cannot occur because of the lack of relationship would set a terrifying precedent." Acknowledging that "reunification could have serious psychological and emotional ramifications for Child," the Court concluded that the alternative is worse. "DCS cannot be allowed to wrongly withhold a child from a fit, loving, and available parent for years and then ask this Court to affirm that injustice in the name of the child's happiness. This is a painful decision, and there is no happy outcome. We cannot give Mother and Child back the relationship they once had or the years they have lost together. We cannot give Child the future he wants with his foster family. We can only follow the law which requires us to reinstate the parental rights of Mother, a willing and able natural parent."

T.J. and D.C. v. DCS, (06/10/2020) 149 N.E.3d 1222 (Ind. Ct. App.) **Inadequate consent advisement required reversal of termination of parental rights**

Mother was not at the termination of parental rights hearing. Her attorney was present and advised the court that mother had been advised of her rights and after being advised she signed a consent to termination of her parental rights. Termination of parental rights was granted based upon mother's signed consent. It was clear Mother received eight of nine statutory advisements before signing the consent. However, there was inadequate evidence that mother received the ninth statutory

advisement and TPR was reversed for further factfinding into whether mother received the ninth advisement.

T.L. v. DCS, (10/20/2020) 158 N.E.3d 432 (Ind. Ct. App.) **TPR affirmed, no violation of due process to deny Father's motion to continue**

When Father failed to appear for the fact-finding hearing regarding the termination of his parental rights, his counsel requested a continuance. The trial court denied his request, and during the hearing the parties and the trial court used language that resulted in significant confusion as to whether Father was defaulted for failure to appear or whether the trial court issued a judgment on the merits. After DCS presented family case manager's testimony, Father's drug screen and criminal court records, the trial court ultimately terminated Father's parental rights. The trial court did not change the date of the hearing, there was no emergency motion for a continuance, and Father's counsel was present at the hearing and cross-examined the DCS witnesses. The Court of Appeals held that the trial court's judgment was a judgment on the merits with sufficient evidence to support it and that the trial court did not violate Father's due process rights when it denied his motion for a continuance.

C. W. v. DCS, (05/19/2021) 20A-JT-1999 (Ind. Ct. App.) **Mother not entitled to remand in termination case to challenge possible fraudulent drug screens when she had other positive screens beyond the ones she proposed to challenge**

Mother suffers from drug use disorder and has difficulty caring for a special needs child. Mother failed to appear for her termination of parental rights fact-finding hearing. On appeal, Mother argued she failed to receive sufficient notice of the fact-finding hearing, she was denied Due Process in the denial of her continuance of the fact-finding hearing and she was entitled to a remand of her case to challenge potentially fraudulent drugs screens. Court of Appeals finds there was sufficient notice of the fact-finding hearing and no due process violation because: 1) Mother was represented by counsel who appeared at the hearing and in her absence made argument and cross-examined witnesses; 2) Mother and her counsel received actual notice of the hearings from the court; and 3) the notice issue was waived for not being raised in the trial court. Further, the trial court did not abuse its discretion in denying a continuance absent a showing of good cause. Mother filed a motion for remand to challenge potential fraudulent drug screens through TOMO lab. The motions panel of the Court of Appeals denied the motion for remand, and Court found Mother was not entitled to remand. Although she was challenging two potentially fraudulent lab results from TOMO lab, there were other unchallenged lab test results from other labs that found Mother tested positive for a variety of illegal substances. Held, termination of parental rights affirmed.

XIII. APPEALS/POST-CONVICTION RELIEF/EXPUNGEMENT

A. Appeals/Belated Appeals

Yost v. State, (06/29/2020) 150 N.E.3d 610 (Ind. Ct. App.) **Defendant could not direcly appeal convictions resulting from "open" plea**

It is well-settled that a conviction based on a guilty plea may not be challenged by direct appeal. *Tumulty v. State*, 666 N.E.2d 394, 395 (Ind. 1996); rather, it must be challenged through a petition for post-conviction relief. Here, after entering an open guilty plea to five criminal recklessness convictions, Defendant was prohibited from raising a double jeopardy challenge to the convictions on direct appeal. To the extent cases cited by Defendant allow direct appeals from "open" guilty pleas, Court noted they are inconsistent with *Tumulty and Hayes v. State*, 906 N.E.2d 819, 821 n.1 (Ind. 2009), both of which involved "open" guilty pleas. Moreover, cases cited by Defendant all involved open pleas from which the defendants received no benefit, yet here Defendant clearly received a benefit from his open guilty plea to duplicative charges (*i.e.*, avoiding additional charge of attempted murder). Thus, the Court dismissed Defendant's appeal of without prejudice as to his ability to present his claim in a petition for post-conviction relief.

State v. Diego, (11/05/2020) 150 N.E.3d 715 (Ind. Ct. App.) *TRANSFER PENDING* **Rehearing to clarify State's interlocutory appeal of suppression order was a discretionary appeal**

The Court of Appeals granted the State's motion for rehearing to clarify that the State's appeal is a discretionary interlocutory appeal brought pursuant to subsection 6 of Ind. Code sec. 35-38-4-2 and affirmed its initial opinion in all other respects. The Court of Appeals found that if the State intended to appeal the suppression order under subsection (6), it was required to clearly state as much in its Notice of Appeal and its failure to do so made it deficient. The Court noted the motions panel arguably erred when it granted the motion for interlocutory appeal and admonished the State to state the specific statutory basis for its appeal in future criminal appeals. Concurring in result, Judge Vaidik wrote separately and noted whether made in an appeal under subsection (5) or (6), a representation by the State that a suppression issue precludes further prosecution would constitute a judicial admission. While highly doubtful the State would make such a representation under subsection (6), it will be bound by it and in the event the State loses an appeal after such an admission, the charges at issue would have to be dismissed.

Toles v. State, (08/18/2020) 151 N.E.3d 805 (Ind. Ct. App.) **No separate "reliability" or "unreliability" test as an alternative to the incredible-dubiosity doctrine**

During attempted murder trial, complaining witness (C.W.) testified she had no doubt Defendant was the one who shot her. Citing *Moore v. State*, 27 N.E.3d 749 (Ind. 2015), the Court of Appeals noted that appellate courts do not judge witness credibility unless the incredible-dubiosity doctrine applies, which requires that there be: 1) a sole testifing witness; 2) testimony that is inherently contradictory,

equivocal, or the result of coercion; and 3) a complete absence of circumstantial evidence. The Court declined to adopt a separate "reliability" test in addition to that doctrine and applied the incredible-dubiosity standard to hold that C.W.'s testimony was not incredibly dubious. Thus, there was sufficient evidence to affirm Defendant's conviction.

B. Post-conviction Relief

Kinman v. State, (09/28/2020) 152 N.E.3d 1060 (Ind.) **Post-sentencing motion to withdraw guilty plea treated as petition for post-conviction relief**

Per Curiam. On transfer, Supreme Court agreed with Court of Appeals that because Defendant's post-sentencing motion to vacate judgment and withdraw his guilty plea was written and verified, as required by I.C. 35-35-1-4(b), it is governed by Indiana's Post-Conviction Rules and treated as a petition for post-conviction relief (PCR). Indiana Post-Conviction Rule 1(6) provides that the trial court "shall make specific findings of fact, and conclusions of law on all issues presented, whether or not a hearing is held." But trial court here erroneously failed to include in its summary order any findings or conclusions on the issues Defendant raised in his de facto petition for PCR. Held, transfer granted, Court of Appeals opinion at 149 N.E.3d 619 vacated, remanded to make specific findings of fact and conclusions of law on all issues presented as required by Indiana's Post-Conviction Rules, including Rule 1(6).

Willett v. State, (07/31/2020) 151 N.E.3d 1274 (Ind. Ct. App.) **Pro Se D's Motion to Dismiss Sentence Time Served treated as habeas corpus motion rather than PCR petition**

Where record revealed on its face that Defendant was not entitled to release because his 15-year sentence had not expired, trial court did not err in summarily denying his Motion to Dismiss Sentence Time Served, which Court of Appeals treated as a petition for habeas corpus. Construing Defendant's motion as a petition for post-conviction relief was problematic because the proper procedure in post-conviction proceedings was not followed in this case. Judge Vaidik issued a concurring opinion to express her belief that the matter should have been treated as petition for post-conviction relief, as the State argued, rather than as a petition for habeas corpus. A claim that a sentence has expired is explicitly authorized by Post-Conviction Rule 1(1)(a)(5) and can be instituted at any time to secure relief.

State v. Royer, (04/08/2021) 20A-PC-955 (Ind. Ct. App.) **Newly discovered evidence leads to grant of new trial in successive PCR**

The Court of Appeals affirmed the post-conviction court's grant of Defendant's successive petition for post-conviction relief. In 2005, Defendant was convicted of the murder of an elderly woman in her Elkhart apartment. He was convicted along with a co-defendant on the theory she was the "brains" of the plan while Defendant was the "brawn." Elkhart Police asked forensic specialist Dennis Chapman to review latent fingerprints found at the murder scene, and Chapman said one of the prints belonged to the co-defendant. Chapman also testified at the murder trial, but it was later discovered that he had no experience with latent prints. At the successive post-conviction hearing, law

enforcement testified that the interrogating detective, Conway, had been removed from the homicide unit before Defendant went to trial because he gave false information to an attorney in another murder investigation. His removal was not disclosed to the defense before the trial. A key witness also recanted her testimony, claiming she implicated the co-defendant because Conway threatened her with prison time and the removal of her children. She also said Conway fed her information about the homicide during an unrecorded portion of her interview. Also, the witness was paid $2,000 for her testimony, a fact the State did not disclose. Finally, Conway testified that he "suggested" certain details about the murder to Defendant during the interrogation and that he was aware that details Royer provided did not match physical evidence. Another detective had watched part of Conway's interrogation through closed-circuit video and testified that it was "super leading" and "[p]robably one of the most difficult" interrogations he had seen.

The State referred to the misidentified latent fingerprint as the 'most important piece of evidence in this case' and used the fingerprint to place the co-defendant inside the victim's apartment, and it argued Defendant was also in the apartment because the co-defendant exerted substantial influence over him. The State used the key witness's testimony to exemplify the influence the co-defendant exerted over Defendant and to indicate that the co-defendant had told others about her involvement in the crime. The Court of Appeals agreed with the post-conviction court's determination that the misidentified latent fingerprint, the witness's recantation of her testimony, and receipt of a reward that was not disclosed during trial constitute newly discovered evidence that undermines the State's case against Defendant and produces a reasonable probability of a different result on retrial.

Similarly, the Court affirmed the finding that Conway's removal from the homicide unit was newly discovered evidence that should have been disclosed. The prosecutor knew at the time of the 2005 trial that Conway had been removed based on concerns about his credibility in future trials due to misconduct. Conway's credibility was "integral" to the case against Defendant, especially because no physical evidence linked him to the crime. The jury had to rely on Conway's accounts of the interrogations given that no portions were video recorded and large portions weren't audio recorded. As a result, the Court held the State's failure to disclose Detective Conway's removal from the homicide unit calls into question the integrity of Defendants' conviction and requires a new trial.

As for Conway's interrogation tactics, the panel noted the other detective "intentionally concealed" his observations about Conway's "super-leading" style, thus undermining the jury's evaluation of Conway's testimony. Further, Conway contradicted himself by claiming at trial that he did not give Defendant details about the murder then claiming the opposite at the successive PCR hearing. Finally, the Court held that Defendant was entitled to a new trial because "Detective Conway's testimony at trial left the jury with the impression that he took Royer's mental disabilities into account and took protective measures before interrogating [Defendant]; whereas, Detective Conway's testimony during the successive post-conviction evidentiary hearing reveals he cavalierly dismissed such concerns."

Hamilton v. State, (12/09/2020) 159 N.E.3d 998, *Transfer Pending* (oral argument held 1/7/21) (Ind. Ct. App.) **Ineffective assistance of counsel -- failure to investigate the extent of client's credit-restricted exposure at sentencing or develop a factual record to potentially limit that exposure**

A sentencing court is to determine eligibility for a credit restriction based upon the nature and date of the offense. Here, Defendant pleaded guilty to a Class A felony child molesting charge. At the conclusion of the guilty plea hearing, the State observed an error as to the date in the charging information. Defense counsel took no action to narrow the time frame to determine Defendant's credit restriction eligibility and potentially avoid ex post facto punishment. Court of Appeals finds counsel was ineffective and client was prejudiced. Held, denial of post-conviction relief reversed with remand for a new sentencing hearing.

Bradbury v. State, (12/23/2020) 160 N.E.3d 256 (Ind. Ct. App.) **Ineffective assistance of counsel - stipulating to disputed element of crime and failing to seek lesser included offense instructions**

In murder prosecution, trial counsel were ineffective for failing to request a jury instruction on the lesser-included offense of reckless homicide and in stipulating to the fact that the co-defendant had been convicted of murder. Counsel indicated that he entered into the stipulation because he believed the jury was less likely to convict Defendant if it knew "justice had been done to the actual shooter." But counsel admitted at the PCR hearing that acknowledging co-defendant's intent was not a trial strategy. Moreover, counsel specifically raised the issue of co-defendant's intent in a pretrial motion to dismiss, during pretrial hearings, in opening argument, during discussions of instructions, in his motion for a directed verdict, and during closing argument. The co-defendant's intent was as central to Defendant's prosecution as it was to co-defendant's. The primary issue in both prosecutions was whether co-defendant intended to kill his rival, L.B., or just frighten L.B. by recklessly firing in his general direction when the stray bullet from his gun fatally struck a toddler. Defendant's jury was not bound by the verdict of co-defendant's jury. Yet, informing Defendant's jury of that verdict sent the opposite message: another jury had found beyond a reasonable doubt co-defendant fired with the intent to kill, so Defendant's jury must follow suit. Trial counsel's stipulation to elements of the offense which he thought the State would have had difficulty proving cannot be deemed reasonable. Moreover, the stipulation wholly undercut trial counsel's litigation strategy of establishing co-defendant did not act with specific intent to kill. The evidence did not support the post-conviction court's finding that the decision to omit lesser-included offense instructions was strategic. Defendant could have been convicted as an accomplice to reckless homicide, a lesser offense than murder, but counsel's stipulation that co-defendant was convicted of murder effectively foreclosed that defense. But for counsel's deficient performance, there was a reasonable probability that the result of the proceeding would have been different. Held, denial of post-conviction relief reversed and remanded for further proceedings. Vaidik, J., dissenting, believes that counsel engaged in a proper strategy because acknowledging the co-defendant committed murder demonstrated that the toddler victim's death would not go unpunished.

Jones v. State,(07/31/2020) 151 N.E.3d 790 (Ind. Ct. App.) **Denial of PCR petition in meth manufacturing case affirmed - claim of conflict from joint representation**

Following Defendant's guilty plea to Level 2 felony dealing in methamphetamine, Court of Appeals affirmed the denial of his petition for post-conviction relief, which alleged that guilty plea counsel provided ineffective assistance by representing both Defendant and his wife. Defendant failed to carry his burden to show that the joint representation resulted in an actual conflict of interest that adversely affected counsel's performance. The couple both consented to trial counsel's joint representation and signed a written waiver of any conflict of interest. Although Defendant contended that trial counsel's loyalty to his wife prevented counsel from arguing to the prosecutor that Defendant did not have more culpability than his wife, that would have been contrary to Defendant's express wishes to protect his wife. Defendant also failed to show or waived his claims that his attorney provided ineffective assistance by advising him to plead guilty and failing to file a motion to suppress a search warrant.

Back v. State, (01/27/2021) 162 N.E.3d 593 (Ind. Ct. App.) **Denial of post-conviction relief affirmed**

Trial counsel did not render ineffective assistance by failing to communicate the State's offer to plead guilty to Level 3 felony attempted aggravated battery. Defense counsel testified that he communicated the Level 3 felony attempted aggravated battery plea offer to Defendant and his family prior to Defendant signing the final plea, but Defendant had consistently indicated he would not admit he intended to harm his ex-girlfriend, something the Level 3 offer would require him to do. The Court of Appeals noted it cannot reweigh evidence or witness credibility and found no error. Further, the post-conviction court had the authority to correct the transcript of the guilty plea hearing and ensured the preservation of an accurate record in doing so. The transcript contained a clerical error inserting the word "not" into the factual basis, which was in conflict with what the prosecutor actually said in the recording. Held, denial of post-conviction relief affirmed.

Conley v. State, (02/23/2021) 164 N.E.3d 787 (Ind. Ct. App.) **LWOP sentencing hearing inadequately accounted for Defendant's age and mental health**

Defendant was a deeply troubled seventeen-year-old when he killed his ten-year-old brother. He pleaded guilty and the trial court imposed the maximum sentence of life without the possibility of parole. The Court of Appeals reversed the post-conviction court in part, concluding defendant's trial counsel was deficient and that the sum of the errors adds up to significant prejudice. Specifically, Defendant was prejudiced by trial counsel's failure to fully investigate and present mitigating factors, failure to effectively cross examine the State's expert witnesses, and failure to advance the prevailing mitigating theory of diminished juvenile culpability per *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183 (2005) and *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011 (2010). "A reasonable probability exists that, but for defense counsel's errors, the proceedings…would have resulted in the imposition of less than the maximum LWOP sentence especially in light of the substantial mitigating factors: [Defendant's] age, the fact that [Defendant] did not have a juvenile or criminal record, and [Defendant's] undisputed, severe

mental health issues." The Court of Appeals held the post-conviction court's denial of the remainder of Defendant's claims was not clearly erroneous and remanded with instructions to conduct a new sentencing hearing.

Absher v. State, (01/24/2021) 162 N.E.3d 1141 (Ind. Ct. App.) **Ineffective assistance of trial and appellate counsel - failure to object to amendment of charges & to challenge sufficiency of evidence on appeal**

In child molesting prosecution, trial counsel was ineffective for failing to object to the State's untimely motion to amend the charging information three days before trial. Based on the clear language of Indiana Code § 35-34-1-5(b) in effect at time of trial and supreme court's decision in *Haak v. State*, 695 N.E.2d 944 (Ind. 1998), trial counsel had a firm basis to object to the prosecutor's amendment to add two new counts and he performed deficiently by failing to object to the amendment as one of substance that was untimely pursuant to the statute. But for trial counsel's failure to object, the appellate court would have vacated the convictions for the two new counts added by the amendment pursuant to *Fajardo v. State*, 859 N.E.2d 1201 (Ind. 2007). Thus, there is a reasonable probability that, but for trial counsel's deficient performance, the result of the proceeding would have been different. Court noted that its decision in this case "will likely be an outlier" because Indiana Code § 35-34-1-5 was amended shortly after Fajardo was decided, "such that amendments of substance are permitted any time before trial so long as the defendant's substantial rights are not prejudiced." Though a number of Court of Appeals cases found the amendment to be constitutionally retroactive, Defendant's case was distinguishable because the Court on Defendant's direct appeal determined on the merits that the amendment here was prohibited by the statute. Court also found appellate counsel ineffective for failing to argue insufficient evidence supporting the amended Class A felony count, which alleged that Defendant placed his mouth on complaining witness's (C.W.'s) sex organ. The State's forensic expert testified that amylase, an enzyme found in saliva, was found in C.W.'s underwear, which the State argued was sufficient evidence. But according to the State's expert, one cannot make the leap to conclude that the amylase came from Defendant's saliva. Thus, appellate counsel was deficient in failing to raise the sufficiency issue and the deficiency was prejudicial because it is clearly more likely that the Court of Appeals would have reversed Defendant's conviction on that count.
The Court upheld the denial of post-conviction relief as to the other Class A felony charge, rejecting Defendant's claim that trial counsel was ineffective for failing to object to inflammatory comments the prosecutor made on rebuttal during closing arguments. Trial counsel reasonably and strategically chose not to object to the remarks and therefore did not provide ineffective assistance. Held, denial of postconviction relief reversed and remanded with instructions to vacate Defendant's convictions and sentences for one Class A felony child molesting count and the Class C felony count.

Williams v. State, (12/21/2020) 160 N.E.3d 563 (Ind. Ct. App.) **Trial counsel not ineffective for opening the door for inculpatory evidence**

In murder, attempted murder and carjacking prosecution, trial counsel was not ineffective for opening the door to the admission of handgun evidence, and appellate counsel was not ineffective for

failing to raise the issue on direct appeal. Prior to trial, defense counsel reached an agreement with the State that evidence of a handgun recovered from Defendant's hotel room would not be admitted. A first trial resulted in a mistrial due to a deadlocked jury. At Petitioner's second trial, defense counsel pursued a strategy of questioning the attempted murder victim's credibility, highlighting the incomplete and ineffective investigation by police and suggesting that others had been the shooter. Counsel's cross examination of a police officer opened the door to admission of the handgun evidence, as trial court agreed with the State that defense counsel's questioning created a false impression about the investigation specific to the gun. In post-conviction relief proceedings, Defendant argued trial counsel's opening the door to the handgun evidence constituted deficient performance and prejudice because the first trial, without the gun evidence, had resulted in a mistrial. Before reaching the merits of Petitioner's claim, the Court of Appeals first affirmed the post-conviction court's exclusion of the transcript from the first trial into evidence at the post-conviction relief hearing, finding the transcript from the first trial irrelevant, based on current Indiana state jurisprudence, voicing reluctance to divine the reasons for a jury's verdict and stating without more, the simple fact of a hung jury does not shed light on the jury's reasons for failing to reach a verdict or tend to make any prejudice flowing from a claimed error at a second trial more or less probable. As to the claim of trial counsel's ineffectiveness, the Court found that trial counsel's pursuit of a chosen strategy resulting in the unintended consequence of the admission of evidence previously sought to be suppressed is not per se deficient performance and even if counsel's performance was deficient there was no showing of prejudice due to other significant and substantial evidence of guilt. Turning to the claim of ineffective assistance of appellate counsel, the Court applied the highly deferential standard to appellate counsel's decisions on which issues to raise and found that appellate counsel was not ineffective for failing to challenge the trial court's ruling that the State could introduce the gun and testing of the gun in response to trial counsel opening the door. Even if Court were to have found appellate counsel rendered deficient performance in failing to present this issue on direct appeal, Defendant was not prejudiced because of the considerable independent evidence of Defendant's guilt. There was little probability that the admission of the handgun affected the outcome of Defendant's trial. Held, denial of post-conviction relief affirmed.

C. Expungement

Gulzar v. State, (06/24/2020) 148 N.E.3d 971 (Ind.) **Change in law that makes date of conviction controlling as to expungement eligibility is remedial and applies retroactively**

Indiana Supreme Court finds a new law that eliminates the confusion of date of eligibility for expungement applies retroactively. Senate Enrolled Act 47 makes clear that in cases such as Defendant's, the date of the felony conviction controls expungement eligibility, not any subsequent reduction. The majority of the Indiana Supreme Court agreed that the change in the law should apply retroactively to Defendant's case. While the legislation was not expressly retroactive, the majority read it as such, finding it remedial. “Here, the amendment to the misdemeanor expungement statute is remedial — it cured a defect in the prior law,” “And, given the broad goals behind Indiana’s expungement scheme, coupled with the urgency with which the legislature addressed this issue, we find that applying the remedial law retroactively to Defendant effectuates its purpose.” The change in law,

the majority held, “cured a mischief that existed in the prior statute, namely, confusion on when the waiting period begins for certain ex-offenders seeking expungement. … In short, we find that the remedial amendment is aimed at making expungement immediately available for individuals who (1) successfully petition for conversion of a minor felony to a misdemeanor and (2) wait five years from their felony conviction date before seeking expungement." Justice Slaughter dissented, believing the Court's analysis requires Court to speculate about legislative motives.

Mishra v. State, (03/09/2021) 165 N.E.3d 602 (Ind. Ct. App.) **Expunged conviction treated as if it never occurred, even in subsequent expungement proceeding**

The trial court erred in considering Petitioner’s expunged conviction when it denied his expungement on the grounds that he had been convicted of a crime during the previous five years. The prosecutor in Monroe County consented to the filing of an expungement petition before the expiration of the five-year statutory waiting period for a 2016 class A misdemeanor conviction. Petitioner filed to expunge that conviction and to expunge his 2007 class A misdemeanor in this case. Before the Monroe Circuit Court granted that petition, the trial court denied his petition for expungement, finding that Petitioner had failed to meet all the other statutory requirements under Indiana Code section 35-38-9-2(e) because he had been convicted of a crime within the previous five years, namely the 2016 Monroe County conviction. A week after the Monroe Circuit Court granted his petition to expunge the 2016 conviction, Petitioner re-filed his expungement petition, noting the expungement of the 2016 conviction. The trial court again denied the petition on grounds that Petitioner had been convicted of a crime within the previous five years. The Court of Appeals found that because his Monroe County conviction has been expunged, the plain language of the statute commands that he be treated as if that 2016 conviction had never occurred, and he is entitled to expungement of his 2007 conviction. Held, judgment reversed.

Allen v. State, (12/22/2020) 159 N.E.3d 580 (Ind.) **Expungement prohibition for those convicted of felonies resulting in serious bodily injury (SBI) only applies if SBI is an element of the offense**

Because Indiana's Permissive Expungement Statute excludes from eligibility persons convicted of certain offenses but vests in the court discretion to either grant or deny a petition, a trial court should engage in a two-step process when considering a petition for expungement. First, trial court must determine whether the conviction is eligible for expungement and the petitioner has met the requirements. Ind. Code §§ 35-38-9-4(b), -4(e). If the conviction is ineligible, the inquiry ends there. But if the court determines that the conviction is eligible for expungement, it must then collect enough information to determine whether it should grant or deny the petition. In issuing its decision, a trial court may consider a broad array of information, including the nature and circumstances of the crime and the character of the offender. Here, Defendant's conviction for Class B felony conspiracy to commit burglary was eligible for expungement even though the facts incidental to his conviction involved serious bodily injury. A person may be eligible for expungement unless the felony for which he stands convicted "resulted in serious bodily injury to another person." I.C. § 35-38-9-4(b)(3). That the facts of

the incident leading to the conviction show serious bodily injury is not enough to exclude a person from eligibility for expungement. *See Trout v. State*, 28 N.E.3d 267 (Ind. Ct. App. 2015).

In this case, significant evidence supported Defendant's expungement petition: testimony about his role as a committed father, husband, and provider; letters of recommendation from family, friends, and coworkers; and support from the victims themselves. But the trial court did not articulate its reasons for denying his expungement petition. It may have entirely failed to consider the evidence favoring expungement based on a mistaken belief that Defendant was ineligible for expungement. Thus, the Court reversed the trial court's order denying the petition for expungement and remanded with instructions for the court to reconsider its decision consistent with this opinion. Held, transfer granted, Court of Appeals' opinion at 142 N.E.3d 488 vacated, judgment reversed and remanded.

Ball v. State, (02/23/2021) 165 N.E.3d 130 (Ind. Ct. App.) **Abuse of discretion to deny petition for expungement**

Petitioner committed two felony offenses when he was sixteen years old but has been a law-abiding citizen for the past twenty years. He tendered letters to the trial court attesting to his good character and strong work ethic. He is married and has four children, but his convictions prevented him from volunteering at the children's schools. He has owned a real estate business for eighteen years and a heating and air conditioning business for twelve years, but his convictions prevent him from servicing certain clients. He is also an active volunteer in his community, but certain organizations do not allow him to volunteer because of his convictions. The trial court denied his petition for expungement, relying on the fact the value of the stolen guns was more than $16,000, and the Court of Appeals reversed. Noting that while the trial court had the discretion to consider that fact in determining whether to grant or deny the petition, that fact alone was simply not enough to support the denial of the petition when all the other evidence supported expungement. The court also observed that the expungement statute, IN Code 35-38-9-7, should be liberally construed to advance the remedy for which it was enacted. *Cline v. State*, 61 N.E.3d 360, 363 (Ind. Ct. App. 2016), abrogated in part on other grounds in *Allen*, 159 N.E.2d at 585. Held, judgment reversed and remanded with instructions.

Kelley v. State, (03/26/2021) 20A-XP-1413 (Ind. Ct. App.) **Expungement statute prohibits expungement of murder conviction**

Petitioner, incarcerated in another State, filed a petition to expunge his criminal record in Indiana arguing he was eligible for expungement of his Indiana felony convictions because, due to his continuous incarceration, he has not engaged in any criminal activity since his 2011 arrest. Court of Appeals upheld the trial court's denial of expungement because neither I.C. 35-38-9-3 nor I.C. 35-38-9-4 allow murderers to petition for expungement.

INDIANA PUBLIC DEFENDER COUNCIL LEGISLATIVE UPDATE

June 18, 2021

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Legislative Liaison

Contents:

Introduction:

The Indiana General Assembly convened for business on January 4, 2021. The Public Defender Council staff pursued a legislative agenda adopted by the IPDC Board, specifically:

Adult:

- Require indigent persons to be represented at initial hearing (2nd year pursued)
- Remove Home Detention violations as a basis for an Escape (2nd year pursued)
- Reduce Maintaining a Common Nuisance to a Class A misdemeanor (2nd year pursued)
- Amend Synthetic ID Deception, False ID, and False informing to reduce prosecutorial abuse (1st year pursued)
- Amelioration for pre-2014 convicted and serving a sentence (1st year pursued)
- Restoration of 50% credit time (1st year pursued)

Juvenile:

- End Direct File (1st year pursued)
- Abolish Juvenile Life Without Parole (1st year pursued)
- Minimum ages and statutory guidance for competency determinations (1st year pursued)
- End Jailing of Children in County Jails (1st year pursued)
- Automatic Expungement (1st year pursued)
- Increase Training for School Police Officers (1st year pursued)
- Make possession of Marijuana a status offense (1st year pursued)
- End costs and fees for juvenile prosecution (1st year pursued)

IPDC staff lead the advocacy efforts, seeking legislators to author bills as well as seeking out stakeholders who support each initiative. Chris Bandy is the newest staff member to IPDC and serves as the Legislative Liaison. This year's legislative efforts were aided by board members, chief public defenders, and individual IPDC attorneys who stepped up by providing testimony, contacting legislators, and supporting public defense legislative priorities in coordination with Council staff.

This year was a successful legislative session. IPDC secured funding to continue its juvenile delinquency work. And it's juvenile justice reform bill, the first of future efforts, SEA 368, was signed into law. Additionally, many bills IPDC opposed failed to pass.

IPDC's Legislative Agenda and the associated bill numbers with authors:

IPDC Policy	Bill Number / Author
End Direct File	HB 1579 – Rep. Hatcher
Abolish Juvenile Life Without Parole	SB 368 – Sen. Tallian
Statutory Guidance for Juvenile Competency Determinations	SB 368 – Sen. Tallian
End Jailing of Children in County Jails	SB 368 – Sen. Tallian
Automatic Expungement	SB 191 – Sen. Taylor SB 368 – Sen. Tallian
Possession of Marijuana as a Status Offense	SB 368 – Sen. Tallian
Use of Summons instead of Arrests	HB 1023 – Rep. Pryor
Legalize Marijuana	HB 1028 – Rep. Lucas, HB 1117 – Rep. VanNatter HB 1154 – Rep. Summers SB 104 – Sen. Taylor SB 223 – Sen. Tallian
Addressing Police Brutality	HB 1006 – Rep. Steuerwald HB 1066 – Rep. Bartlett HB 1210 – Rep. Porter HB 1297 – Rep. V. Smith HB 1480 – Rep. Pryor HB 1502 – Rep. Summers SB 308 – Sen. Taylor SB 410 – Sen. J.D. Ford
Credit Time for Pretrial Home Detention	SB 193 – Sen. Taylor
Restoring 50% Credit	SB 221 – Sen. Tallian
Abolish of the Death Penalty	SB 252 – Sen. Boots
Synthetic Identity Deception	SB 197 – Sen. Young
Reduce Fines, Fees, and Court Costs	HB 1208 – Rep. Porter

Highlights of Legislative Trends

1. Juvenile offenders and waiver:

   Multiple bills were offered with the goal of severally limiting or abolishing the practice of direct file, and the raise the minimum ages for waiver of children to adult court. The only bill that received a committee hearing was SB 368, authored by Senator Tallian, but the provisions regarding direct file and waiver were stripped out of the bill at the initial hearing. Three bills were authored that would have expanded direct file: HB 1256, which reinstated the pathway to direct file for felony level children and firearms offenses, I.C. 35-47-10; HB 1369, which would have altered direct file as a part of the bills larger objective to remove the requirement of a license to carry a handgun; and HB 1198, which would have added child molest to the list of direct file offenses, but only where the alleged defendant had aged out of juvenile court jurisdiction.

   In response to the Indiana Criminal Justice Institute reports on juveniles under adult court jurisdiction, which show an extreme level of disproportionate number of black male youth who are direct filed into adult court, the Black Legislative Caucus has embraced the issue of ending or severally limiting direct file. Additionally, current juvenile justice system review, conducted under the umbrella of the Commission on Improving the Status of Children, with the aid of the Council for State Governments, has identified the pathways of sending children to adult court as an area in need of attention, and hopefully in turn, revision.

2. Marijuana:

   Several bills were filed in the House and Senate to either decriminalize or legalize small amounts of marijuana for personal use, or to allow medical marijuana prescriptions. This move was opposed by many, including temperance organizations, traffic safety groups, and the Indiana Chamber of Commerce, which sees it as a workplace safety and worker fitness issue. None of those bills received a hearing in committee.

   Currently, 33 states allow for medical use of marijuana, and 11 have legalized it for personal recreational consumption. In the Midwest, Ohio, Illinois and Michigan permit some form of legal marijuana. Federal law continues to prohibit marijuana, designating it as a Schedule I controlled substance.

   In 2019, Operating with any amount of a Schedule I controlled substance, including marijuana, is a *per se* OWI violation in Indiana and many other states. An individual who has no impairment is subject to criminal liability for driving after consuming cannabis products. IPDC, advocated for amending operating while intoxicated law to address this issue. Several bills were introduced to establish a minimum permissible limit for THC in the blood, similar to how alcohol is treated, however, non-prevailed. In 2020, Sen. Mike Young attempted to move this issue forward. He found great resistance in his caucus. While he did not prevail in the language he advanced originally, he was successful in

amending IC 9-30-5-1(c) to provide that the controlled substance or its metabolites must be found in the blood, not just in the body.

This Session, Senator Young was successful in creating a defense to operating a vehicle with a controlled substance in a person's body when that substance is THC or its metabolite and when: (1) the person is not impaired; (2) the person did not cause an accident; and (3) the substance was detected via a chemical test.

Legislative Issues Expected in Upcoming Sessions:

Although IPDC was successful in preventing some enactments that could negatively affect criminal defense in Indiana, some defeated initiatives are very likely to return in upcoming sessions:

SB 198 (IPDC opposed). Had this bill passed, it would have given the Attorney General's office concurrent jurisdiction over actions of unlawful gathering. Would have permitted the seizure of real or personal property used to finance or facilitate the financing of an unlawful assembly. Prevented anyone arrested for unlawful assembly from being released on bail until a hearing was held and provided factors for which the court could impose a higher bail amount than the bail schedule.

SB 200 (IPDC opposed). Had this bill passed, it would have given the Attorney General authority to appoint a special prosecutor, at the cost of the county in question, if an elected prosecutor categorically refuses to prosecute certain offenses. The scope of the special prosecuting attorney's authority may be expanded. This is the second session this type of language has been pursued.

HB 1176 (IPDC opposed). This bill sought to define "consent." It also sought to add an element to the offense of rape by fraud.

HB 1198 (IPDC opposed). Introduced in response to D.P., et. al. v. State, 151 N.E.3d 1210 (Ind. 2020), which held that juvenile courts do not possess jurisdiction over adults for the purpose of filing a delinquency petition and seeking waiver of the case to criminal court. HB 1198 was introduced to amend the direct file statute (I.C. 31-30-1-4) to allow for the prosecution of adults for sex offenses that they committed before reaching eighteen (18), but the State did not learn about in time to file on before they reached the age of twenty-one (21). It would have allowed for the resulting sentence to be fully suspended, but all other consequences of the felony level charges would remain the same—such as sex offender registry and sex offender parole requirements.

HB 1200 (IPDC opposed). This bill sought to expand the protected person statute (IC sec. 35-37-4-6) to extend beyond the age of 14. Additionally, it would have created a Level 4 human trafficking offense if the trafficked person is under 18 years of age. Expressly barred as a defense consent by the trafficked person or belief that the person was 18 or older. The topic of human trafficking is being studied during the interim study.

HB 1202 (IPDC supported). This bill sought to give people convicted of non-violent offenses, pre-2014, who are still serving a sentence in DOC the benefit of reduced reform sentences. This ameliorative relieve would have occurred through a review by the parole board. If the person was approved for the relief, the person would have been discharged and able to use DOC re-entry services.

HB 1376 (IPDC opposed). This bill was instigated by the bail industry to end the operation of the Bail Project in Indiana. Had the bill passed, it would have defined "charitable bail organization" and limit the function thereof. The bill failed to receive a committee hearing. When this bill died, the bail industry attempted an amendment to HB 1405 which would have allowed a bail that is set as cash to be treated as a surety bond.

HB 1369 (IPDC opposed). This bill would have repealed laws requiring a person to obtain a license to carry a handgun in Indiana. However, it would have created new offenses prohibiting certain persons from carrying a handgun.

Interim Study Committees

During the interim between legislative sessions, the Legislative Council authorizes committees composed of members of both houses and often lay members to examine issues requiring more study than can be conducted during the legislative session. On May 13, the Legislative Council authorized the following topics of interest to public defense:

INTERIM STUDY COMMITTEE ON CORRECTIONS AND CRIMINAL CODE

THE COMMITTEE IS CHARGED WITH STUDYING THE FOLLOWING TOPICS:

(A) Human trafficking, including topics specified in HB 1018 (2021). (Source: Letter: Bartlett; HB 1018 (2021))
(B) Assignment of counsel at the initial hearing in criminal cases, the capacity of the public defender system to provide counsel, and the impact of providing counsel on jail overcrowding. (Source: Letter: Steuerwald; Frye)
(C) Jurisdiction over adults for sex offenses committed while a child. (Source: Letter: GiaQuinta)
(D) Juvenile sentencing to life without parole. (Source: Letter: GiaQuinta)
(E) Costs and fees for juvenile prosecution. (Source: Letter: GiaQuinta)
(F) Multi-year review of current trends with respect to criminal behavior, sentencing, incarceration, and treatment. (Source: IC 2-5-1.3-13)

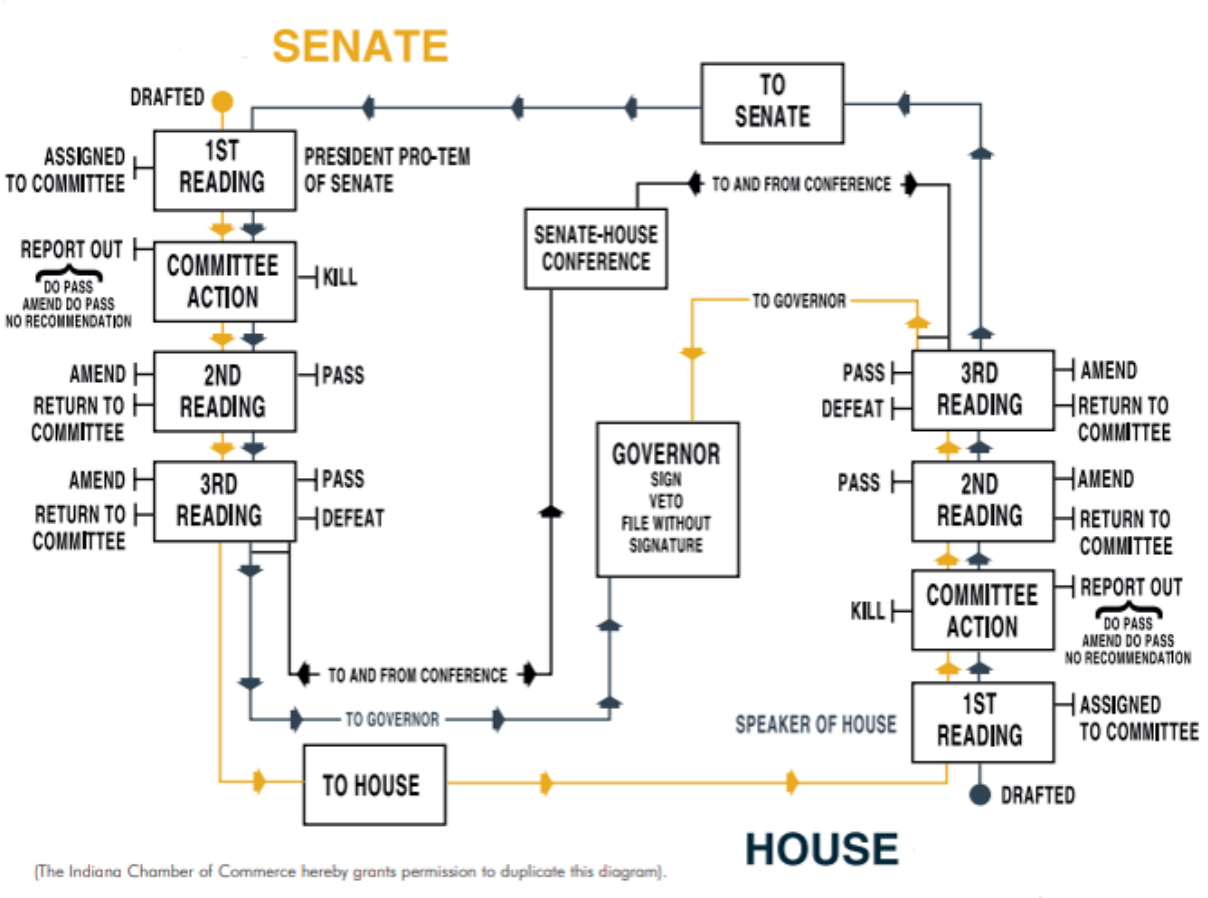
STATUTORY STUDY COMMITTEES NOT ASSIGNED TOPIC. No topics are assigned in this Resolution to any of the following study committees established by IC 2-5-1.3-4:

(1) The Interim Study Committee on Agriculture and Natural Resources.
(2) The Interim Study Committee on Commerce and Economic Development.
(3) The Interim Study Committee on Courts and the Judiciary.
(4) The Interim Study Committee on Elections.
(5) The Interim Study Committee on Environmental Affairs.
(6) The Interim Study Committee on Financial Institutions and Insurance.
(7) The Interim Study Committee on Government.
(8) The Interim Study Committee on Public Safety and Military Affairs.

(Source: Legislative Council Resolution 21-01 – adopted May 10, 2021)

The Legislative Process

How a bill becomes law in Indiana is governed by the Constitution, statutes, and the General Assembly's rules. The Indiana Chamber of Commerce created this graphic depiction of the flow of the legislative process:



Bills Tracked by IPDC:

This section includes the bills tracked by IPDC during the legislative session. An additional number of bills were initially tracked at the beginning of the session, but many did not get a hearing in the assigned committee in the first house. Those bills are not included in this report.

HB1006 **LAW ENFORCEMENT OFFICERS** (STEUERWALD G) Requires the Indiana law enforcement training board to establish mandatory training in de-escalation as part of the use-of-force curriculum and requires de-escalation training to be provided as a part of: (1) pre-basic training; (2) mandatory in-service training; and (3) the executive training program. Establishes a procedure to allow the Indiana law enforcement training board to decertify an officer who has committed misconduct. Defines "chokehold" and prohibits the use of a chokehold under certain circumstances. Specifies that a law enforcement officer who turns off a body worn camera with the intent to conceal a criminal act commits a Class A misdemeanor. Requires an agency hiring a law enforcement officer to request the officer's employment record and certain other information from previous employing agencies, requires the previous employing agency to provide certain employment information upon request, and provides immunity for disclosure of the employment records. Makes an appropriation to the Indiana law enforcement training academy for making capital improvements.

Current Status: 4/1/2021 - Public Law 12

HB1028 **OPERATING WHILE INTOXICATED** (LUCAS J) Provides a defense to prosecution for a person who operates a vehicle with marijuana or its metabolite in the person's blood under certain conditions.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by Senate 3rd reading deadline for House bills (Rule 79(b))

HB1032 **NEWBORN SAFETY DEVICES** (FRYE R) Provides for placement of a newborn safety device at any facility that is staffed by an emergency medical services provider on a 24 hour per day, seven day per week basis, provided the newborn safety device: (1) is located in an area that is conspicuous and visible to staff; and (2) includes a dual alarm system that is connected to the facility and is tested at least one time per month to ensure the alarm system is in working order. Provides for placement of a newborn safety device at any fire department, including a volunteer fire department that: (1) meets the minimum response time established by the county, not to exceed four minutes; (2) is located within one mile of a hospital, police station, or emergency medical services station that meets certain requirements; (3) is equipped with an alert system that, when the newborn safety device is opened, automatically connects to the 911 system and transmits a request for immediate dispatch of an emergency medical services provider to the location of the newborn safety device and is tested at least one time per month to ensure the alert

system is in working order; and (4) is equipped with an independent video surveillance system that allows at least two members of a fire department to monitor inside the newborn safety device at all times. Provides that a person who in good faith voluntarily leaves a child in a newborn safety device located at such a facility or fire station is not obligated to disclose the parent's name or the person's name. Makes conforming amendments.

Current Status: 4/29/2021 - Public Law 170

HB1033 **RESIDENCY OF POLICE OFFICERS AND FIREFIGHTERS** (FRYE R) Revises residency requirements for members of police and fire departments to require that members: (1) have adequate means of transportation into the jurisdiction served by the member's department; and (2) maintain telephone service to communicate with the department.

Current Status: 4/8/2021 - Public Law 28

HB1060 **OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS** (STEUERWALD G) Allows a petition for review of an agency administrative action to be filed by mail, personal service, or electronic mail. (Current law requires a petition for review to be filed by mail or personal service.) Provides that the filing of a document in an administrative proceeding is considered complete on the date of electronic submission if the document is sent by electronic mail. Allows the ultimate authority of an agency to request that the office of administrative law proceedings (office) review a motion to disqualify an administrative law judge. Allows the department of child services to request that the office conduct administrative proceedings on certain administrative actions related to child support and certain substantiated reports of child abuse or neglect. Requires the office to maintain confidentiality in administrative proceedings concerning actions by the department of child services.

Current Status: 4/1/2021 - Public Law 13

HB1064 **COURTS AND MAGISTRATES** (CHERRY R) Adds a superior court in Hamilton County. Provides that the first judge of Hamilton superior court No. 7 shall: (1) be elected at the November 2022 general election; (2) take office January 1, 2023; and (3) serve a term of six years. Allows the judges of the Decatur circuit and superior courts to jointly appoint a magistrate to serve the Decatur County courts. Allows the judges of the Huntington circuit and superior courts to jointly appoint a magistrate to serve the Huntington County courts. Allows the judge of the Lake Superior Court Division No. 4 to appoint a magistrate to serve the Lake Superior Court Division No. 4. Allows the Marion County superior courts to appoint 27 full-time magistrates after December 31, 2021, not more than 14 of whom may be from the same political party. Removes the sixth circuit court in Delaware County. Provides a full-time magistrate for Hancock County.

Current Status: 4/26/2021 - Public Law 123

HB1068 **LOCAL OR REGIONAL JUSTICE REINVESTMENT ADVISORY COUNCILS** (FRYE R) Establishes a local or regional justice reinvestment advisory council (local or regional advisory council) in each county in Indiana. Provides that the purpose of a local or regional advisory council is to review local or regional criminal justice systems, policies, and procedures. Provides that the justice reinvestment advisory council shall assist local or regional advisory councils with promoting: (1) the use of evidence-based practices; and (2) certain best practices of community-based alternatives and recidivism reduction programs. Sets forth duties of local or regional advisory councils.

Current Status: 4/8/2021 - Public Law 30

HB1082 **HIGH TECH CRIMES UNIT PROGRAM** (STEUERWALD G) Establishes the high-tech crimes unit fund for the purpose of establishing up to 10 high tech crimes units that collectively represent the north, south, east, west, and central geographic areas of Indiana to enhance the ability of prosecuting attorneys to investigate, collect evidence, and prosecute high tech crimes.

Current Status: 4/1/2021 - Public Law 16

HB1095 **TRESPASSING AND AGGRESSIVE HARASSMENT** (MOED J) Establishes the low barrier homeless task force. Provides that a person commits the offense of criminal trespass if: (1) the person, who does not have a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is designated by a municipality or county enforcement authority to be an unsafe building or premises; or (2) the person knowingly or intentionally enters the property of another person after being denied entry by a court order that has been issued to the person or issued to the general public by conspicuous posting on or around the premises in areas where a person can observe the order when the property has been designated by a municipality or county enforcement authority to be an unsafe building or premises; unless the person has the written permission of the owner, the owner's agent, an enforcement authority, or a court to come onto the property for purposes of performing maintenance, repair, or demolition. Provides that an individual who harasses another person with the intent to obtain property from the other person commits aggressive harassment, a Class C misdemeanor. Defines "harasses". Repeals the chapter concerning panhandling.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by Senate 3rd reading deadline for House bills (Rule 79(b))

HB1097 **CRIMINAL PENALTIES** (ABBOTT D) Provides that a person who uses a vehicle to commit the offense of resisting law enforcement or interfering with public safety and has a

prior conviction for either offense that involved the use of a vehicle, commits a Level 5 felony.

Current Status: 4/26/2021 - Public Law 124

HB1115 **INTERFERING WITH PUBLIC SAFETY** (MILLER D) Provides that a person who enters a marked off area after having been denied entry by a firefighter commits interfering with public safety. (Under current law, the offense is committed only if the person is denied entry by an emergency medical services provider or a law enforcement officer.) Increases the penalty for obstruction of traffic under certain circumstances.

Current Status: 4/29/2021 - Public Law 174

HB1120 **JUDICIAL NOMINATING COMMISSION** (STEUERWALD G) Makes certain changes to the election procedures for the attorney commissioners of the judicial nominating commission.

Current Status: 4/8/2021 - Public Law 33

HB1125 **DECEPTIVE LEAD GENERATION** (LEHMAN M) Makes false, misleading, or deceptive advertisements for claims related to medical devices and legend drugs and certain other actions a deceptive act.

Current Status: 4/29/2021 - Public Law 176

HB1127 **MENTAL HEALTH AND ADDICTION FORENSIC TREATMENTS** (STEUERWALD G) Removes a provision that allows a: (1) delinquent child's; or (2) person's; Medicaid participation to be terminated following a two-year suspension due to certain adjudications or incarceration. Adds competency restoration services to the list of treatment and wraparound recovery services made available to certain persons in the criminal justice system. Adds competency restoration services to the list of services that qualify a person for mental health and addiction forensic treatment services. Adds: (1) recovery community organizations; and (2) recovery residences; certified by the division of mental health and addiction (division) or its designee to the list of organizations eligible for certain funds and grants from the division. Requires demographic data concerning race and ethnicity to be included in certain demographic research performed by the division.

Current Status: 4/15/2021 - Public Law 57

HB1156 **PROHIBITION ON MICROCHIPPING EMPLOYEES** (MORRISON A) Provides that the definition of an "employer" subject to the prohibition against requiring the implantation of devices includes the state or any individual, partnership, association, limited liability

company, corporation, business trust, or other governmental entity or political subdivision that has one or more employees.

Current Status: 4/8/2021 - Public Law 35

HB1176 **ELEMENTS OF RAPE** (NEGELE S) Provides that a person commits rape if: (1) the person engages in sexual activity with another person and the other person submits to the sexual activity under the belief that the person committing the act is someone the victim knows, other than the person committing the act, and such belief is intentionally induced by any artifice, pretense, or concealment practiced by the person; or (2) the person engages in sexual activity with another person and the other person has expressed a lack of consent, through words or conduct, to sexual intercourse or other sexual conduct.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by Senate 3rd reading deadline for House bills (Rule 79(b))

HB1177 **STRATEGIC PLAN ON DEMENTIA** (PORTER G) Requires the division of aging (division) to develop a strategic plan concerning dementia in Indiana. Requires the division to submit an annual report to the general assembly concerning the dementia strategic plan and the outcomes of implementing the dementia strategic plan.

Current Status: 4/8/2021 - Public Law 36

HB1198 **ADULT AND JUVENILE COURT JURISDICTION** (MCNAMARA W) Provides that a complaint, indictment, or information for child molesting shall be filed in adult criminal court if the accused person: (1) was at least 14 years of age but less than 18 years of age at the time of the offense; and (2) is at least 21 years of age at the time of filing the complaint, indictment, or information. Provides that under certain circumstances an adult criminal prosecution for child molesting must be commenced not later than one year after specified information is discovered if: (1) the accused person was less than 18 years of age at the time of the offense; and (2) the evidence was discovered before the accused person becomes 21 years of age. Provides that a court may suspend any part of a sentence for child molesting if the person: (1) was at least 14 years of age but less than 18 years of age at the time of the offense; and (2) was at least 21 years of age at the time of filing the complaint, indictment, or information. Requires a person who: (1) commits child molesting before the age of 18; and (2) who is charged as an adult after reaching the age of 21; to register as a sex offender but permits a court to reconsider requiring the person to register at any time after the person completes court ordered sex offender treatment.

Current Status: 4/22/2021 - DEAD BILL: Fails to advance by Spring adjournment of the 2021 legislative session

HB1199 **DRIVING PRIVILEGES** (MCNAMARA W) Provides that the bureau of motor vehicles (bureau) shall stay a suspension of a person's driving privileges, and terminate that

suspension, upon a showing of proof of future financial responsibility, and provides that an individual whose suspension has been terminated because the individual submitted proof of future financial responsibility is not required to pay a reinstatement fee. Requires that the bureau terminate a suspension of a person's driving privileges if the bureau does not receive proof that financial responsibility is not in effect after 180 days. Provides that a suspension may be stayed and then terminated if a person fails to pay the judgment. Provides that a warrant may be issued for failing to appear in a traffic violation case if the charge is a misdemeanor or a felony. Provides that a person whose support obligation is enforced by the Title IV-D agency may have the obligor's driving privileges reinstated. Provides that the bureau shall place in forbearance license reinstatement fees of individuals who: (1) are nonviolent offenders; (2) have completed a criminal sentence or are serving terms of probation or parole; and (3) are enrolled in job training or maintain consistent employment for at least three years following completion of job training. Provides that the bureau shall waive all reinstatement fees and reinstate the driving privileges of an individual who has had reinstatement fees placed in forbearance after the individual maintains consistent employment for at least three years. Provides that the bureau, in collaboration with the department of correction, shall administer programs and activities to facilitate the reinstatement of driving privileges for convicted offenders not later than July 1, 2021. Extends the traffic amnesty program for one year to permit certain persons owing unpaid traffic fines, or who may be required to pay a fee for reinstatement of driving privileges, to obtain a reduction in the amount owed or amount payable.

Current Status: 4/20/2021 - Public Law 86

HB1200 **HUMAN TRAFFICKING** (MCNAMARA W) Modifies the definition of "protected person" for purposes of the admission of a statement or videotape of an individual who is less than 14 years of age at the time of the offense but less than 18 years of age at the time of trial. Removes the requirement that money paid for a human trafficking victim or for an act performed by a human trafficking victim be paid to a third party and specifies that a person commits the offense if the person knows or reasonably should know that the victim is a human trafficking victim. Increases the penalty if the person knows or reasonably should know that the human trafficking victim is less than 18 years of age. Specifies that consent by the human trafficking victim is not a defense to a prosecution. Requires law enforcement agencies to report human trafficking investigations to the attorney general within 30 days after an investigation begins.

Current Status: 4/22/2021 - DEAD BILL: Fails to advance by Spring adjournment of the 2021 legislative session

HB1202 **SENTENCING** (MCNAMARA W) Establishes a procedure to allows certain inmates in the department of correction (department) an additional opportunity to request sentence modification from the sentencing court if the department has recommended sentence modification. Makes conforming amendments.

Current Status: 4/22/2021 - DEAD BILL: Fails to advance by Spring adjournment of the 2021 legislative session

HB1224 **CRAFT HEMP FLOWER AND HEMP PRODUCTION** (EBERHART S) Excludes craft hemp flower from the definition of "hemp product". Removes references to smokable hemp. Provides that the state seed commissioner may not adopt or enforce a rule that is stricter than required under federal law or regulation. Removes an exemption to a person who knowingly or intentionally grows or handles smokeable hemp without a license from the penalty of growing or handling hemp without a license. Repeals a law that requires that a hemp bud or a hemp flower be sold only to a processor licensed in Indiana. Provides that a food is not considered adulterated for containing low THC hemp extract or craft hemp flower. Creates contaminant testing and packaging requirements for the distribution and sale of craft hemp flower. Establishes penalties for selling or distributing craft hemp flower in violation of the requirements. Makes it a Class C infraction if a person knowingly: (1) sells or distributes craft hemp flower to a person less than 21 years of age; and (2) purchases craft hemp flower for delivery to another person who is less than 21 years of age. Provides that a retail establishment that sells or distributes craft hemp flower to a person less than 21 years of age commits a Class C infraction. Makes it a Class C infraction if a person less than 21 years of age: (1) purchases craft hemp flower; (2) accepts craft hemp flower for personal use; or (3) possesses craft hemp flower on his or her person. Provides that a person who, while a motor vehicle is in operation or located on the right-of-way of a public highway, possesses a container that contains craft hemp flower, and: (1) the container does not have tamper evident packaging; or (2) the tamper evident packaging has a broken seal; commits a Class C infraction. Provides that a violation is not considered a moving violation. Defines "craft hemp flower". Provides that craft hemp flower is not included in the definition of "controlled substance analog", "hashish", "low THC hemp extract", or "marijuana". Repeals the definition of "smokable hemp" and criminal penalties concerning smokable hemp. Makes conforming changes. Makes technical corrections.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by Senate 3rd reading deadline for House bills (Rule 79(b))

HB1230 **SAFE HAVEN 911** (LAUER R) Provides that due to extenuating circumstances, if a child's parent or a person is unable to give up custody of a child under the procedure set forth in Indiana's safe haven law, the child's parent or the person may request that an emergency medical services provider (provider) take custody of the child by: (1) dialing the 911 emergency call number; and (2) staying with the child until a provider arrives to take custody of the child. Provides that the emergency medical dispatch agency or the provider shall inform the child's parent or the person giving up custody of the child of the ability to remain anonymous. Provides that a provider, shall, without a court order, take custody of a child who is, or who appears to be, not more than 30 days of age if the child is voluntarily left: (1) in a newborn safety device that is located at an emergency medical services station; or (2) with medical staff after delivery in a hospital or other medical facility when the child's parent notifies the medical staff that the parent is voluntarily relinquishing the child. Allows a child's parent to remain anonymous if the child is voluntarily relinquished in a hospital or other medical facility after delivery of the child.

Provides that an emergency medical services station is immune from civil liability for an act or omission relating to the operation of the newborn safety device.

Current Status: 4/22/2021 - Public Law 105

HB1256 **JUVENILE COURT JURISDICTION** (MCNAMARA W) Provides that a child who: (1) commits indecent display by a youth; or (2) commits dangerous possession of a firearm or provides a firearm to another child in certain circumstances; has committed a delinquent act subject to the jurisdiction of a juvenile court.

Current Status: 4/19/2021 - Public Law 84

HB1270 **DEPARTMENT OF HOMELAND SECURITY** (FRYE R) Amends the administrative orders and procedures act to allow for an initial notice of determination to be served by electronic mail or any other method approved by the Indiana Rules of Trial Procedure. (Under current law, the initial notice of determination may be served only by United States mail or personal service.) Repeals provisions concerning the division of planning and assessment, division of preparedness and training, division of emergency response and recovery, and division of fire and building safety (divisions). Assigns all duties of the divisions to the executive director of the department of homeland security (department) or the department generally. Establishes a fire chief executive training program (executive training program). Provides that after January 1, 2022, a newly appointed fire chief of a political subdivision must successfully complete the executive training program within one year of appointment. Provides that a volunteer fire chief is not required to complete the executive training program. Provides that the department of homeland security may allow any of the following individuals to enroll in the executive training program if there is available space in the course: (1) A chief officer. (2) Management level personnel. (3) A volunteer fire chief. (4) A volunteer chief officer. (5) Volunteer management level personnel. Provides that an applicable high school shall comply with all rules of the fire prevention and building safety commission applicable to the primary use of the building. Provides that schools with one or more employees shall create an emergency operations plan regarding unplanned fire alarm activations.

Current Status: 4/29/2021 - Public Law 187

HB1293 **CRIMINAL APPEALS** (JETER C) Provides that an order granting a motion to discharge a defendant before trial may be appealed to the supreme court or the court of appeals. Provides that the state may appeal an interlocutory order if the trial court certifies the appeal and the court on appeal makes certain findings.

Current Status: 4/23/2021 - Public Law 112

HB1369 **FIREARMS MATTERS** (SMALTZ B) Effective March 30, 2022: (1) Repeals the law that requires a person to obtain a license to carry a handgun in Indiana; (2) Specifies that

certain persons who are not otherwise prohibited from carrying or possessing a handgun are not required to obtain or possess a license or permit from the state to carry a handgun in Indiana; (3) Prohibits certain individuals from knowingly or intentionally carrying a handgun; (4) Creates the crime of "unlawful carrying of a handgun"; (5) Provides that a prohibited person who knowingly or intentionally carries a handgun commits a Class A misdemeanor; (6) Specifies that the unlawful carrying of a handgun is a Level 5 felony if a person: (A) is less than 23 years of age; and (B) has an adjudication as a delinquent child for an act described by IC 35-47-4-5 (unlawful possession of a firearm by a serious violent felon); (7) Allows a resident of Indiana who wishes to carry a firearm in another state under a reciprocity agreement entered into by Indiana and the other state to obtain from the superintendent of the state police department a reciprocity license; (8) Requires law enforcement agencies to make use of certain data bases when issuing reciprocity licenses; (9) Specifies the following fees for reciprocity licenses: (A) $0 for five year reciprocity licenses, and (B) $75 for lifetime reciprocity licenses; (10) Provides that a person who knowingly or intentionally exerts unauthorized control over a firearm of another person with the intent to deprive the person of any part of its value or use commits theft, a Level 5 felony; and (11) Allows for the imposition of an additional fixed term of imprisonment when a person knowingly or intentionally: (A) points; or (B) discharges; a firearm at someone the person knew, or reasonably should have known, was a first responder. Effective July 1, 2021: (1) Provides that the following must develop a process that allows law enforcement officers the ability to quickly access information about whether a person is a prohibited person who may not knowingly or intentionally carry a handgun: (A) The state police department; (B) The bureau of motor vehicles; (C) Local law enforcement agencies; and (D) Any other state entity with access to information related to persons who may not knowingly or intentionally carry a handgun; (2) Provides that the information made available to law enforcement officers must meet all state and federal statutory, constitutional, and regulatory requirements; and (3) Allows state entities to enter into a memorandum of understanding to ensure that all legal requirements are met. Defines certain terms. Makes conforming amendments.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by Senate 3rd reading deadline for House bills (Rule 79(b))

HB1383 **JUDICIAL OFFICERS** (COOK A) Provides that a person commits battery on a public safety official if the offense is committed against a retired judicial officer while the retired judicial officer is serving as a judge and allows a retired judicial officer to carry a handgun in the same manner as a judicial officer while the retired judicial officer is serving as a judge. Adds current and former probation officers and community corrections officers to the list of persons whose residential addresses may not be disclosed on a public property database website operated by a unit.

Current Status: 4/23/2021 - Public Law 115

HB1448 **ADOPTION** (TORR J) Permits an individual who seeks to adopt a child less than 18 years of age to file a petition for adoption in any county in Indiana if either of the following is filed with the petition: (1) A written consent to the adoption from each individual whose

consent to the adoption is required under Indiana law; (2) A certified copy of a court order terminating the parental rights of each parent whose consent to the adoption is required under Indiana law. Requires notice of an adoption petition to be delivered to imprisoned or detained individuals. Specifies certain requirements when delivering notice of a petition for adoption to an individual whose address is unknown. Provides that certain notice requirements concerning petitions for adoption are met even when the recipient of the notice refuses to accept the offer or tender of the notice. Requires that the notice of an adoption must be given to the local office of the department of child services, if the child is the subject of an open or pending child in need of services proceeding. Mandates that the notice of an adoption must be given to the entity, facility, or individual of which the child is a ward if the child is a subject of an open or pending juvenile delinquency proceeding. Specifies certain other requirements concerning notice for petitions for adoption. Requires the setting aside of an adoption decree if notice is not properly effectuated and the adoption decree is challenged within 45 days of when it was entered. Allows the court to set aside a dismissal of a motion to contest under certain circumstances. Allows the court to consider, in the context of a motion to contest, (1) the parent's substance abuse; (2) the parent's voluntary unemployment; or (3) instability in the parent's household, if the parent has made substantial and continuing progress and it appears reasonably likely that progress will continue. Makes conforming amendments.

Current Status: 4/29/2021 - Public Law 203

HB1453 **JUDICIAL SELECTION IN LAKE AND ST. JOSEPH COUNTIES** (AYLESWORTH M) Provides that the judicial nominating commission (commission) for the Lake and St. Joseph superior courts consists of seven voting members, with three voting members appointed by the governor and three voting members appointed by the county board of commissioners, and the chief justice of Indiana or the chief justice's designee serving ex officio as a voting member only to resolve tie votes and as chairperson of the commission. (Current law provides that the commission for the Lake superior court consists of nine members.) Provides that the governor must appoint to the commission one attorney member, one non-attorney member who has never been licensed to practice law, and one member that is a woman. Provides that the county board of commissioners must appoint to the commission one attorney member, one non-attorney member who has never been licensed to practice law, and one member that is from a minority group. Provides that the chairperson of the commission shall have standing to dispute the validity of an appointed member. Provides that a voting member of the commission for: (1) the Lake superior court shall reside in Lake County; and (2) the St. Joseph superior court shall reside in St. Joseph County. Provides that a voting member may not have a prior felony conviction. Repeals provisions concerning the appointment of non-attorney commissioners and the election of attorney commissioners to the commission. Provides that after the commission has nominated and submitted to the governor the names of five persons to fill a vacancy in the Lake or St. Joseph superior court, the governor shall select the most qualified person to fill the vacancy. (Current law provides that the commission for the Lake superior court nominate and submit to the governor the names of three people to fill a vacancy in the superior court.) Makes conforming changes.

Current Status: 4/29/2021 - Public Law 204

HB1467 **COMMUNITY MENTAL HEALTH CENTER MATTERS** (DAVISSON S) Requires the office of the secretary of family and social services (office) to apply for a Medicaid state plan amendment or Medicaid waiver for the following: (1) Reimbursement of Medicaid rehabilitation option services for a Medicaid eligible recipient who is undertaking an initial assessment, intake, or counseling in a community mental health center. (2) Reimbursement for Medicaid rehabilitation option services concurrently with reimbursement under the residential addiction treatment program. (3) The inclusion of video conferencing and audio services as telehealth for community mental health centers. Amends the definition of "telehealth services" for the Medicaid program. Requires at least two members of the division of mental health and addiction planning and advisory council to be community mental health center chief executive officers or designees. Requires the department of child services to accept certain criminal history checks and fingerprinting performed by community mental health centers for specified professionals if the process used by the community mental health center at least meets or exceeds the department's procedures. Amends the required graduate level courses and clinical experience that an applicant is required to obtain for a license as a clinical addiction counselor. Adds two members to the justice reinvestment advisory council. Makes a conforming change.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by Senate 3rd reading deadline for House bills (Rule 79(b))

HB1478 **BATTERY AGAINST EMERGENCY ROOM STAFF** (ENGLEMAN K) Amends the definition of "emergency medical services provider" for the offense of battery to include a staff member in the emergency department of a hospital.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by Senate 3rd reading deadline for House bills (Rule 79(b))

HB1531 **DCS AND THE EDUCATION COMMUNITY** (DEVON D) Defines "exigent circumstances" for purposes of action taken by the department of child services (DCS) with respect to a child. Allows DCS to interview a child at the child's school, except for at a nonaccredited nonpublic school with less than one employee, without parental consent if: (1) the DCS employee presents their credentials upon arrival at the school; and (2) DCS presents a written statement that DCS has parental consent, a court order, or exigent circumstances. Requires that the written statement shall not be maintained in the child's file and must protect the child's and child's family's confidentiality. Mandates that DCS provide assurances that the child's school, or its representative, has been invited to participate in the case plan process.

Current Status: 4/29/2021 - Public Law 213

HB1558 **INDIANA CRIME GUNS TASK FORCE** (STEUERWALD G) Establishes the Indiana crime guns task force (task force) to address violent crime in Boone, Hamilton, Hancock,

Hendricks, Marion, Morgan, Johnson, and Shelby counties by delivering, in cooperation with state and federal officials, a uniform strategy to trace firearms used to commit crimes. Establishes an executive board to direct and oversee the task force. Requires the Indiana criminal justice institute to establish and administer the task force fund. Makes conforming amendments.

Current Status: 4/29/2021 - Public Law 217

SB8 **TRAFFIC ENFORCEMENT IN RESIDENTIAL COMPLEXES** (BUCHANAN B) Reenacts and extends the ability of a unit to enforce moving traffic ordinances on the property of a residential complex under certain circumstances. (This provision expired December 31, 2020.) Extends the requirement that the office of judicial administration submit reports to the legislative council relating to the enforcement of moving traffic ordinances on the property of residential complexes.

Current Status: 4/29/2021 - Public Law 135

SB19 **REQUIRED INFORMATION ON STUDENT ID CARDS** (FORD J) Requires a public school that issues, after June 30, 2022, a student identification card to a student in grade 6, 7, 8, 9, 10, 11, or 12 to include on the student identification card a local, state, or national: (1) suicide prevention hotline telephone number; and (2) human trafficking hotline telephone number; that provides support 24 hours a day, seven days a week. Provides that the information may be printed on the student identification card or printed on a sticker that is affixed to the student identification card.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB28 **TAX SALES** (NIEMEYER R) Prohibits a person who is delinquent in the payment of personal property taxes or is subject to an existing personal property tax judgment from bidding on or purchasing a tract at a tax sale. Prohibits a business entity from bidding on or purchasing a tract at a tax sale when a person who is prohibited from bidding on or purchasing a tract at a tax sale: (1) formed the business entity; (2) joined with another person or party to form the business entity; (3) joined the business entity as a proprietor, incorporator, partner, shareholder, director, employee, or member; (4) becomes an agent, employee, or board member of the business entity; or (5) is not an attorney at law and represents the business entity in a legal matter. Requires a person to acknowledge that providing false information relating to a prohibited bid or purchase is perjury. Creates a new section of code with revised requirements for the forfeiture of a tax sale purchase by an ineligible bidder. Requires a county treasurer, except for in a county containing a consolidated city, to pay all taxes and assessments that accrue on the tract of real estate through the time the record owner is divested of title from the tax sale surplus fund for the tract. Permits a county legislative body to adopt an ordinance prohibiting the assignment of a certificate of sale prior to the issuance of a tax title deed. Adds requirements that

must be met within 150 days of the date a court grants a petition to issue a tax deed before a county auditor can issue or record a tax deed.

Current Status: 4/19/2021 - Public Law 66

SB39 **PRIVATE CARD GAMES** (YOUNG M) Defines "private low stakes card game" and provides a defense to certain gambling crimes if the gambling was a private low stakes card game. Defines "cheating" and makes cheating at gambling a Class A misdemeanor and increases the penalty for the offense based on the gain obtained by cheating. Provides that the definition of "electronic gaming device" does not include an amusement device that rewards a player with a ticket or coupon redeemable for noncash merchandise that has a wholesale value of not more than the greater of 10 times the amount charged to play the amusement device one time or $250. Makes conforming amendments.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB63 **MENTAL HEALTH TREATMENT FOR INMATES** (GLICK S) Permits, under certain circumstances, an offender committed to the department of correction to be held within a treatment facility operated by the department for not more than 14 days beyond the offender's mandatory release date if: (1) the offender consents; or (2) a court has ordered the offender to be committed to a treatment setting outside the department.

Current Status: 4/1/2021 - Public Law 6

SB69 **SCHOOL BUS STOP ARM VIOLATION ENFORCEMENT** (NIEMEYER R) Specifies that a registered owner of a motor vehicle commits an infraction if the owner's vehicle is used to violate the school bus stop arm law. Provides a defense for a registered owner who provides certain information to law enforcement and fully cooperates with law enforcement, if: (1) the vehicle was stolen; (2) the registered owner routinely engages in the business of renting the vehicle; or (3) the registered owner provided the vehicle for the use of an employee. Specifies that: (1) the bureau of motor vehicles may not assess points for the infraction; and (2) an adjudication for the infraction does not create a presumption of liability in a civil action.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB78 **HOSPITAL POLICE DEPARTMENTS** (CRIDER M) Provides that a police officer of a hospital police department (department) has county wide territorial jurisdiction only while the hospital police officer is on duty and in the performance of or engaged in the officer's normal duties. Provides that the governing board of a hospital may limit the department's jurisdiction. Requires the department to notify certain entities if the governing board of the hospital has limited the department's jurisdiction. Provides public access to certain records

created by the department. Provides certain conditions under which a department officer may act regarding a crime in progress.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB79 **PROTECTION ORDERS AND DOMESTIC BATTERY** (CRIDER M) Provides that if a petition for an order for protection is filed by a person or on behalf of an unemancipated minor, the court shall determine, after reviewing the petition or making an inquiry, whether issuing the order for protection may impact a school corporation's ability to provide in-person instruction for the person or the unemancipated minor. Creates a procedure that requires a school corporation to receive notice if the court determines that issuing the order for protection may impact the school corporation's ability to provide in-person instruction for the person or the unemancipated minor. Enhances the penalty for domestic battery to a Level 6 felony if the offense is committed against a family or household member: (1) who has been issued a protection order that protects the family or household member from the person and the protection order was in effect at the time the person committed the offense; or (2) while a no contact order issued by the court directing the person to refrain from having any direct or indirect contact with the family or household member was in effect at the time the person committed the offense. Enhances the penalty for domestic battery to a Level 5 felony when the offender has a prior conviction for strangulation against the same family or household member.

Current Status: 4/19/2021 - Public Law 67

SB81 **TRAINING FOR INVESTIGATORS OF SEXUAL ASSAULT CASES** (CRIDER M) Requires certain training for sexual assault investigators. Mandates that the law enforcement training board set specialized standards for training and investigating sexual assault cases involving adult victims.

Current Status: 4/1/2021 - Public Law 8

SB82 **MENTAL HEALTH DIAGNOSIS** (CRIDER M) Defines "mental health diagnosis" and sets forth requirements that must be met in order for certain licensed professionals to provide a mental health diagnosis. Requires certain mental health professionals who are making a mental health diagnosis and who determine that the patient may have a physical condition that requires medical attention or has not been examined by a physician, an advanced practice registered nurse, or a physician assistant in the preceding 12 months to: (1) advise the patient to schedule, and offer to assist the patient with scheduling, a physical examination for the patient; (2) provide the patient with a list of practitioners and certain information concerning the practitioners; and (3) coordinate patient care with the practitioner as appropriate. Requires documentation of the actions of the licensed professional in the patient's medical record.

Current Status: 4/29/2021 - Public Law 138

SB98 **INTERSTATE COMPACT TRANSPORTATION FUND** (SANDLIN J) Allows a community corrections agency to access funds from the county offender transportation fund to defray the cost of transporting offenders and delinquent children as requested by a court, a probation department, a community corrections agency, or a county sheriff.

Current Status: 4/15/2021 - Public Law 47

SB122 **DRUG SCHEDULES** (YOUNG M) Adds new scheduled drugs to the statutory drug schedules.

Current Status: 4/1/2021 - Public Law 10

SB133 **SENTENCING** (FREEMAN A) Provides that a court may suspend only that part of a sentence that is in excess of the minimum sentence for a person convicted of a Level 2 or Level 3 felony who has a prior unrelated felony conviction, other than a conviction for a felony involving marijuana, hashish, hash oil, or salvia divinorum. (Current law provides that a court may suspend any part of a sentence for certain Level 2 and Level 3 felony convictions, including drug related convictions.)

Current Status: 4/26/2021 - Public Law 119

SB134 **LICENSE SUSPENSION AND TRANSPORT OF PASSENGERS DURING PROBATIONARY PERIOD** (FREEMAN A) Increases the penalty for operating a motor vehicle containing passengers during the initial 180-day probationary period after issuance of a driver's license and permits license suspension for a violation. Allows a court to suspend the license of a person convicted of operating a motor vehicle after failing to take a prescribed medication.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB167 **THEFT AND SALE OF CATALYTIC CONVERTERS AND VALUABLE METALS** (SANDLIN J) Provides that the theft of a component part of a motor vehicle, including a catalytic converter, is a Level 6 felony. Expands qualifying prior convictions for Level 6 felony theft to include robbery and burglary. Provides that a valuable metal dealer who: (1) knowingly or intentionally fails to comply with certain statutes regulating the purchase of a valuable metal; and (2) purchases a stolen valuable metal; commits a Level 6 felony.

Current Status: 4/19/2021 - Public Law 70

SB177 **VICTIM'S RIGHTS AND INVESTIGATIONS** (MESSMER M) Establishes a procedure permitting an immediate family member of a deceased individual to request the superintendent of the state police department to conduct a new investigation into the death of the individual if: (1) a local law enforcement agency has determined that the death was not the result of a criminal act by a third party; (2) the individual was not under the care of a physician or the victim of medical malpractice; and (3) the family member has a reasonable suspicion that the death was the result of a criminal act by a third party.

Current Status: 4/19/2021 - Public Law 71

SB186 **PROSECUTING ATTORNEYS** (KOCH E) Permits a prosecuting attorney to purchase a crime insurance policy instead of executing a surety bond. Allows a prosecuting attorney or deputy prosecuting attorney to solemnize a marriage. Permits the department of child services (DCS) or a prosecuting attorney to file a paternity action if the mother, the person with whom the child resides, the alleged father, or DCS has applied for services under Title IV-D of the federal Social Security Act. Requires a prosecuting attorney to investigate information received about the commission of a felony, a misdemeanor, acts of delinquency, or an infraction. Allows a prosecuting attorney to issue subpoenas or ask a court with jurisdiction to issue subpoenas, search warrants, or any other process necessary to support or aid an investigation. Broadens the types of expenses a county auditor pays for in connection with a criminal case. Allows a prosecuting attorney to appoint employees with the approval of the county council. Allows the prosecuting attorneys council of Indiana (council) to call two conferences each year and specifies who may attend the conferences. Requires the council to conduct training for prosecuting attorneys and their staffs. Renames the drug prosecution fund as the substance abuse prosecution fund. Makes other changes and conforming amendments.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB187 **PROTECTION OF MONUMENTS, MEMORIALS, AND STATUES** (KOCH E) Requires the state police department to prioritize the investigation and prosecution of persons who destroy, damage, vandalize, or desecrate a monument, memorial, or statue. Requires the state police department to assist political subdivisions in the investigation and prosecution of persons who destroy, damage, vandalize, or desecrate a monument, memorial, or statue. Provides that discretionary funding for a political subdivision may not be withheld from a political subdivision in certain circumstances. Provides that a state agency may provide discretionary funding to a political subdivision for a respective grant program after considering whether the political subdivision has taken all appropriate enforcement actions to protect public monuments, memorials, and statues from destruction or vandalism. Defines "discretionary funding". Adds enhanced penalties to the crime of rioting.

Current Status: 4/22/2021 - Public Law 94

SB194 **OBSTRUCTION OF TRAFFIC** (BALDWIN S) Increases the penalty for obstruction of traffic under certain circumstances.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB197 **CRIMINAL LAW ISSUES** (YOUNG M) Specifies that a conviction for certain sex offenses requires mandatory revocation of a teaching license. Provides that bail provisions that apply to persons on probation and parole also apply to persons on community supervision. Removes and replaces certain references to "official investigations", "official proceedings", and methods of reporting. Adds to the crime of resisting law enforcement the act of forcibly resisting, refusing, obstructing, or interfering with a law enforcement officer's lawful: (1) entry into a structure; or (2) order to exit a structure. Provides that all Level 1 and Level 2 felonies may be prosecuted at any time. Repeals synthetic identity deception and consolidates it with identity deception. Makes attempted murder a predicate offense for the use of a firearm sentence enhancement. Makes certain changes to the definition of "substantially similar" for purposes of the controlled substance law. Adds controlled substance analogs to certain statutes prohibiting controlled substances in penal facilities. Replaces references to delta-9 THC with THC. Repeals and consolidates various fraud and deception offenses. Defines "financial institution" for purposes of crimes involving financial institutions. Defines "pecuniary loss" for purposes of fraud in connection with insurance. Repeals or decriminalizes certain infrequently charged misdemeanors. Makes fraud a Level 4 felony if the amount involved is at least $100,000. Defines attempted murder as a "serious violent felony". Amends the definition of "emergency medical services provider" for the offense of battery to include a staff member in the emergency department of a hospital. Provides a procedure for a law enforcement officer to request a blood sample if the law enforcement officer has probable cause to believe that a person has committed the offense of operating a vehicle or motorboat while intoxicated causing: (1) serious bodily injury; or (2) death or catastrophic injury. Provides that the law enforcement training board may establish certain standards for training programs. Resolves technical conflicts with SEA 81, HEA 1006, and HEA 1564. Makes technical corrections. Makes conforming amendments.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB198 **RIOTING** (YOUNG M) Grants, until January 1, 2025, the attorney general concurrent jurisdiction with the prosecuting attorney to prosecute an action in which a person is accused of committing a criminal offense while a member of an unlawful assembly. Permits the chief executive officer of a political subdivision to establish a curfew under certain circumstances. Makes refusing to leave a location in violation of a curfew, after having been informed of the curfew and ordered to leave by a law enforcement officer, a Class B misdemeanor. Allows for the civil forfeiture of property that is used by a person to finance a crime committed by a person who is a member of an unlawful assembly. Prohibits a person from being released on bail without a hearing in open court, establishes a rebuttable presumption that money bail shall be required, and requires a court to consider

whether bail conditions more stringent than the local guidelines should be imposed. Adds enhanced penalties to the crimes of: (1) rioting; and (2) obstruction of traffic. Allows a conspiracy charge for a misdemeanor committed while a member of an unlawful assembly. Provides that a person may recover actual damages in a civil action against a county, city, or town (unit) for loss of property proximately caused by an unlawful assembly, if the unit recklessly fails to exercise reasonable diligence to prevent or suppress the unlawful assembly.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB199 **SELF-DEFENSE** (YOUNG M) Specifies that "reasonable force" includes the pointing of a loaded or unloaded firearm for purposes of arrest or to prevent an escape, or for self-defense when used to
prevent or terminate an unlawful entry of or attack on a dwelling, curtilage, fixed place of business, motor vehicle, or aircraft in flight.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB200 **NONCOMPLIANT PROSECUTING ATTORNEY** (YOUNG M) Permits the attorney general to request the appointment of a special prosecuting attorney if a prosecuting attorney is categorically refusing to prosecute certain crimes and establishes a procedure for the appointment of a person to serve as a special prosecuting attorney to prosecute cases that the county prosecuting attorney is refusing to prosecute.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB201 **OPERATING WHILE INTOXICATED** (YOUNG M) Provides a defense to prosecution for a person who operates a vehicle with marijuana or its metabolite in the person's blood under certain conditions.

Current Status: 4/15/2021 - Public Law 49

SB218 **TOWNSHIP HOMELESS ASSISTANCE** (SANDLIN J) Establishes the low barrier homeless shelter task force. Beginning July 1, 2022: (1) allows a township trustee to place a homeless individual temporarily in a county home or provide temporary township assistance; and (2) requires the township trustees within a county to collaborate and prepare a list of public and private resources available to the homeless population that is distributed and published on the county's Internet web site, if the county has a web site, not later than March 1 of each year. Provides that a person commits the offense of criminal trespass if: (1) the person, who does not have a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another

person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is designated by a municipality or county enforcement authority to be an unsafe building or premises; or (2) the person knowingly or intentionally enters the property of another person after being denied entry by a court order that has been issued to the person or issued to the general public by conspicuous posting on or around the premises in areas where a person can observe the order when the property has been designated by a municipality or county enforcement authority to be an unsafe building or premises; unless the person has the written permission of the owner, the owner's agent, an enforcement authority, or a court to come onto the property for purposes of performing maintenance, repair, or demolition. Provides that an individual who harasses another person with the intent to obtain property from the other person commits aggressive harassment, a Class C misdemeanor. Defines "harasses". Repeals the chapter concerning panhandling.

Current Status: 4/19/2021 - Public Law 75

SB238 **DESIGNATED OUTDOOR REFRESHMENT AREAS** (BROWN L) Modifies the term "entertainment complex." Allows a county or municipality to designate an area of the county or municipality as an outdoor refreshment area (refreshment area) with the approval of the alcohol and tobacco commission (commission). Provides that if a refreshment area is approved, the commission designates retailer permittees (designated permittees) located within the refreshment area. Allows a consumer to exit a designated permittee's premises with one open container of an alcoholic beverage at a time to consume within the refreshment area. Limits the volume of an open container (based upon the type of alcoholic beverage) that a designated permittee may sell or furnish to a consumer for a refreshment area. Requires a consumer to wear a wristband in order to exit a licensed premises into a refreshment area with an open container. Allows a minor to be present in a refreshment area. Allows a county or municipality to adopt an ordinance at any time to dissolve a refreshment area. Makes the following acts a Class C infraction: (1) A person who exits a designated permittee's premises with an open container of an alcoholic beverage without wearing a wristband identification. (2) A designated permittee who allows a person with an open container of an alcoholic beverage to exit the premises without wearing a wristband identification. (3) A designated permittee who sells or furnishes a person with: (A) an open container of an alcoholic beverage that exceeds the container volume limitations; or (B) two or more open containers of alcoholic beverages at a time. (4) A person who consumes an open container of an alcoholic beverage purchased from a designated permittee outside the refreshment area. (5) A person who brings an alcoholic beverage into a refreshment area that was not purchased from a designated permittee.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB239 **REMOTE PROVISION OF CHILD AND FAMILY SERVICES** (BROWN L) Requires the department of child services (department) to establish before October 1, 2021, policies and procedures to allow for child and family services to be provided remotely. Specifies factors

that a child and family services provider and the department may consider in deciding as to whether remote provision of services is appropriate for a child. Provides that a child and family services provider's first meeting with a family, or with a child who lives with the child's family, must be conducted in person unless a declared health emergency makes an in person meeting unsafe. Provides that after a child and family services provider's first meeting with a family or with a child who lives with the child's family, or for purposes of providing services to a child who does not live with the child's family, the provider has the discretion to provide services to the family or child remotely for up to 14 days after the initial request for consultation if providing services remotely is in the best interest of the child and family, unless: (1) a decision is reached on the use of remote services at a child and family team meeting less than 14 days after the request for consultation; or (2) the department communicates to the provider a preliminary determination as to the role of remote services pending the child and family team meeting.

Current Status: 4/29/2021 - Public Law 144

SB240 **FEMALE GENITAL MUTILATION** (BROWN L) Requires the office of women's health to perform certain actions relating to female genital mutilation. Provides that a child is a child in need of services if before the child becomes 18 years of age the child is a victim of female genital mutilation. Provides that a person who: (1) knowingly or intentionally performs the act of female genital mutilation on a child who is less than 18 years of age; (2) is a parent, guardian, or custodian of a child and consents to, permits, or facilitates the act of female genital mutilation to be performed on the child; or (3) knowingly transports or facilitates the transportation of a child for the purpose of having the act of female genital mutilation performed on the child; commits the offense of female genital mutilation, a Level 3 felony. Provides a defense to prosecution of female genital mutilation. Provides certain circumstances where a defense to prosecution of female genital mutilation does not apply. Defines "female genital mutilation". Provides that the license of a physician or a licensed health care professional shall be permanently revoked if the physician or licensed health care professional commits the offense of female genital mutilation. Provides that a person who has reason to believe that a child may be a victim of female genital mutilation has a duty to report the child abuse or neglect. Provides that an action for civil female genital mutilation must be commenced not later than 10 years after the eighteenth birthday of the child. Provides that a victim may seek certain remedies in an action against the defendant for civil female genital mutilation.

Current Status: 4/16/2021 - Public Law 51

SB252 **DEATH PENALTY** (BOOTS P) Urges the legislative council to assign to the appropriate interim study committee the topics of: (1) death sentences; (2) life imprisonment without the possibility of parole; and (3) circumstances justifying the imposition of: (A) a death sentence; or (B) life imprisonment without the possibility of parole.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB255 **EXPUNGEMENT** (FREEMAN A) Specifies that a "criminal history provider" includes certain persons who regularly publish criminal history information on the Internet, for purposes of the law requiring criminal history providers to periodically review their criminal history records for expunged convictions.

Current Status: 4/15/2021 - Public Law 52

SB301 **CHILD SERVICES OVERSIGHT** (HOUCHIN E) Establishes the interim study committee on child services (committee). Provides that the committee: (1) shall review the annual reports submitted by local child fatality review teams and by the statewide child fatality review committee and shall report to the legislative council regarding the committee's review of the reports; and (2) may make recommendations regarding changes in policy or statutes to improve child safety; in addition to reporting to the legislative council regarding any other issue assigned to the committee by the legislative council. Provides that a local child fatality committee may meet at the call of members of the local child fatality committee other than the county prosecutor for purposes of the first meeting of the local child fatality committee. Requires the summary information included in the department's annual report regarding child fatalities to indicate, with regard to a child fatality that was the result of abuse or neglect, whether the child was a ward of the department at the time of the event that led to the child's death. Requires the department to provide the annual report to the committee. Urges the legislative council to assign the following topics to the committee, or to another appropriate study committee, for study during the 2021 legislative interim: (1) Amending the Indiana Code to provide for a structured, limited, confidential process by which members of the general assembly may, in the regular course of legislative duties, individually request and view reports and other materials regarding cases of child abuse or neglect and child fatalities resulting from abuse or neglect, while protecting personally identifying information and confidentiality. (2) The child fatality review process, including recommendations from the department and the state department of health with regard to improving reporting and data collection. Requires a local child fatality review committee that has not held its first meeting as of the effective date of the bill to hold its first meeting not later than December 31, 2021.

Current Status: 4/29/2021 - Public Law 148

SB311 **USE OF FORCE AND SELF DEFENSE** (BALDWIN S) Prohibits a state or local law enforcement officer (officer) from firing warning shots. Allows a guard, official, or officer in a state or local penal facility to fire warning shots to prevent the escape of a person. Prohibits a law enforcement agency or merit board from taking an adverse employment action against a law enforcement officer who lawfully exercises the officer's right of self-defense and requires a law enforcement agency to indemnify a law enforcement officer for reasonable expenses incurred by the officer in successfully contesting an adverse employment action.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

SB368 **JUVENILE JUSTICE** (TALLIAN K) Provides for the automatic expungement of certain juvenile offenses. Prohibits a juvenile arrestee who meets certain requirements from being housed with adult inmates prior to trial, with certain exceptions. Establishes a procedure for determining juvenile competency. Provides that after a juvenile court has determined that a child is a dual status child, the juvenile court may refer the child to be assessed by a dual status assessment team under certain circumstances.

Current Status: 4/29/2021 - Public Law 157

SB380 **COURT MATTERS** (KOCH E) Adds a superior court in Hamilton County. Allows the judges of the Decatur circuit and superior courts to jointly appoint a magistrate to serve the Decatur County courts. Allows the judges of the Hancock circuit and superior courts to jointly appoint a magistrate to serve the Hancock County courts. Allows the judges of the Huntington circuit and superior courts to jointly appoint a magistrate to serve the Huntington County courts. Allows the judges of the Knox circuit and superior courts to jointly appoint a magistrate to serve the Knox County courts. Allows the judge of the Lake Superior Court Division No. 4 to appoint a magistrate to serve the Lake Superior Court Division No. 4. Makes clarifying changes to the powers and duties of the Marion superior court executive committee. Provides that an appointed judicial officer shall be vested by the judges of the family division of the Marion superior court with suitable powers for the handling of all probate matters of the court. Removes or reallocates the powers and duties of a probate hearing judge, probate commissioner, juvenile referee, bail commissioner, and master commissioner from the Marion superior court. Provides that the Marion County judicial selection committee nomination procedure shall be followed when filling a vacancy that occurs in a court. Provides that the: (1) clerk of a circuit court; (2) clerk of a city or town court; or (3) judge of a city or town court that does not have a clerk; may retain as an administrative fee an amount of up to $3 from the excess amount collected by the clerk for general court costs. Makes conforming changes.

Current Status: 4/13/2021 - DEAD BILL; Fails to advance by House 3rd reading deadline for Senate bills (Rule 148.1)

Additional Resources:

Indiana General Assembly (general legislative information, and links to pages on bills, legislators, and other relevant information): http://iga.in.gov.

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Criminal Law Breakout
(Legislative & Case Law Update)

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IGNORANCE IS NO EXCUSE !
BUT I DIDN'T KNOW THAT.
IT CERTAINLY WORKS IN POLITICS.


INDIANA PUBLIC DEFENDER COUNCIL
BILL of RIGHTS

Updated IPDC Publications

- Motions (5/21)
- Pretrial Manual (2/26/21)
- Evidence Manual (8/20)
- Search & Seizure (8/20)
- Confessions (11/20)
- Expungement (11/20)
- Performance Guidelines (8/20)
- Defending a Capital Case (2/21)
- Alibi Defense Guide (2/21)
- CHINS/TPR (uploaded 1/21)
- Self-defense guide (1/21)
- Defending child molest & other sex offenses (1/21)
- Mental Health Manual (Indiana Law Section, ch. 6) (1/21)

IPDC
CONTACT INFO

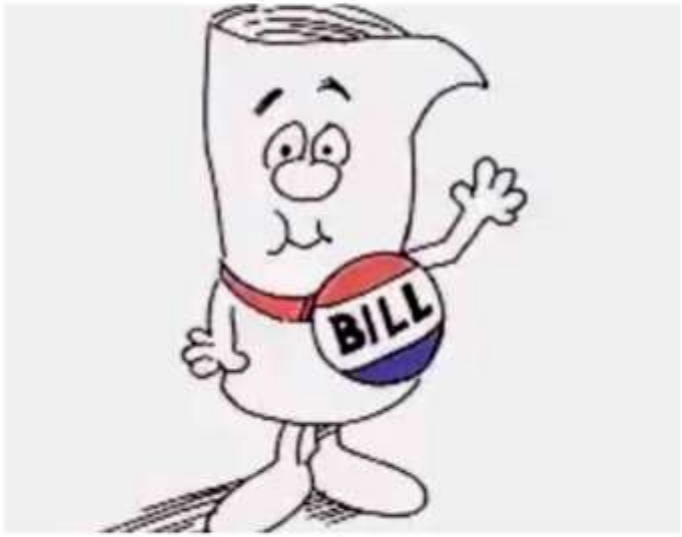
- Researchhelp@pdc.in.gov
- (317) 232-5505
- Juvenile Delinquency Questions: Jwieneke@pdc.in.gov


News +++ Information +++ News +++ Information +++ News +++ Information +++ News
Changes in legislation

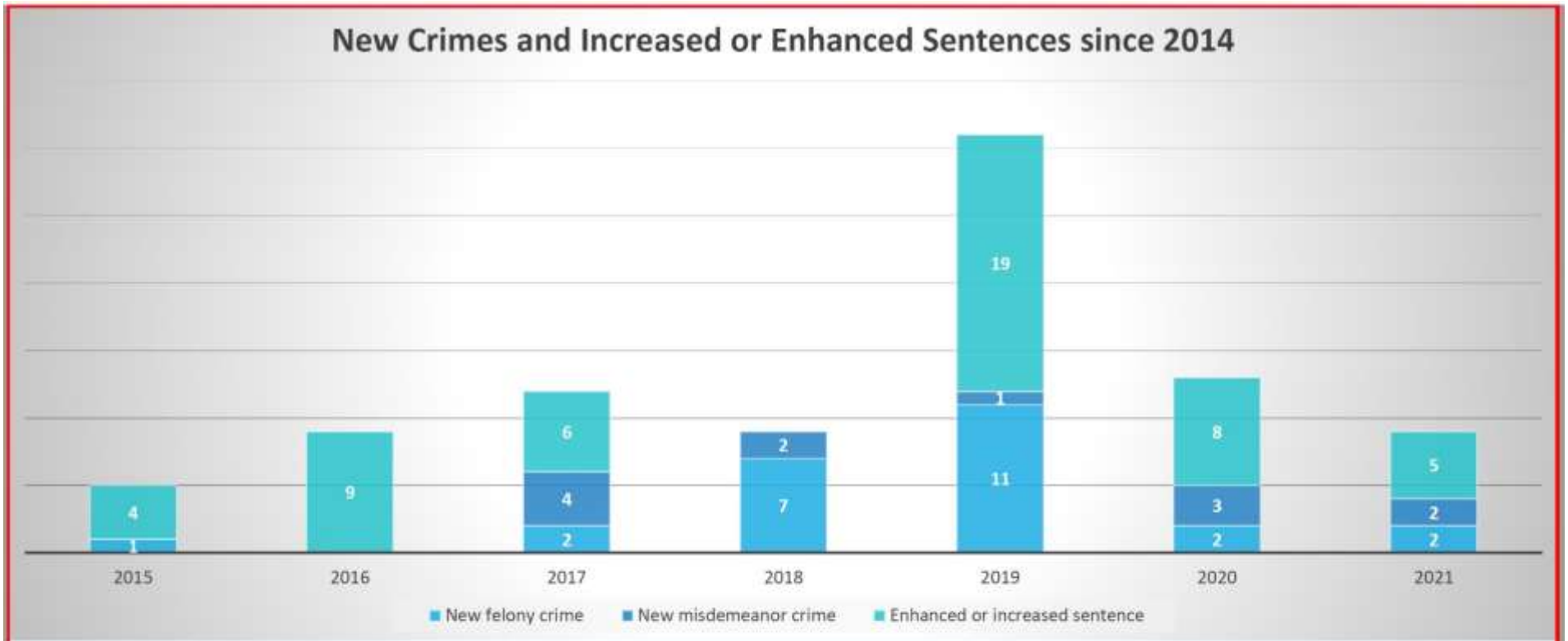
Bills and Resolutions

- Legislation filed:
  - House: 580
  - Senate: 421

- Legislation passed:
  - House: 120
  - Senate: 102



- Passage Rates:
  - House: 20.7%
  - Senate: 24.2%
  - Overall: 22.2%



	New felony crime	New misdemeanor crime	Enhanced or increased sentence
2015	1		4
2016			9
2017	2	4	6
2018	7	2	
2019	11	1	19
2020	2	3	8
2021	2	2	5

NOTABLE LEGISLATIVE TRENDS

- Response to civil unrest
- Expansion of “crime fighting infrastructure”
- Marijuana legalization and defenses
- Centralizing Government Power
- Mental Health

Response to Civil Unrest

- SB 34: Unlawful Assembly
- SB 96: Rioting
- SB 102: Historical Property Criminal Mischief
- SEA 187: Protection of Monuments, Memorials, and Statutes
- SB: 194 Obstruction of Traffic
- SB: 198 Rioting
- SB 199: Self-Defense
- SB 391: Prohibited Crowd Control Practices
- HEA 1006: Law Enforcement Officers
- HB 1205: Rioting

Expansion of "Crime Fighting Infrastructure"

- SB 168: IMPD Study Committee
- SB 192: Law Enforcement Training
- HEA 1006: Law Enforcement Officers
- HEA 1068: Local or Regional Justice Reinvestment Advisory Councils
- HEA 1082: High Tech Crimes Unit Program
- HEA 1558: Indiana Crime Guns Task Force

Marijuana Legalization and Defenses

- SB 87: Cannabis Regulation
- SB 104: Possession of Medical Marijuana or Paraphernalia
- SEA 201: Operating while Intoxicated
- SB 223 Marijuana Legalization
- SB 273: Craft Hemp Flower and Hemp Production
- SB 321: Marijuana and Medical Cannabis Matters
- HB 1026: Medical Marijuana
- HB 1028: Operating while Intoxicated
- HB 1117: Decriminalization of Marijuana
- HB 1154: Cannabis Legalization

Mental Health

- SEA 63: Mental health Treatment for Inmates
- SEA 82: Mental health Diagnosis
- SB 217: Determination of Competency to Stand Trial
- HEA 1118: Mobile Integrated Healthcare Programs and Safety Plans
- HEA 1127: Mental Health and Addiction Forensic Treatments
- HB 1128: Mental Health Assessments of Law Enforcement Officers

Civil Unrest

HEA 1006: Law Enforcement (This Act is declared an Emergency)

citations affected: 5-2-1-2; 5-2-19; 5-2-1-12.5; 5-14-3-2.2; 34-30-2-10.5; 35-41-3-3; 35-44.1-2-2.5; 36-8-2-2

- Requires min standards for de-escalation training as part of existing use of force training. De-escalation must be included during Inservice training;
- Expands the authority of law enforcement training board to disciple an officer to include: suspension, modification, or restrict certification (previous law only permits revocation of certification) for:
- Conviction of a single misdemeanor (previous law permitted 2 or more misdemeanor convictions before discipl :) which would lead a reasonable person to believe dangerous/violent or propensity to violate the law;
- The name of decertified officers will be listed on the Indiana Law Enforcement Academy and will be listed on the Inter'l Assoc of Directors of Law Enforcement Standards and Training;
- Adds a new crime, and officer who disables body or vehicle cams to conceal the commission of a crime faces a Class A misdemeanor;
- Choke hold is defined and designated as "deadly force"

SEA 187: Protection of monuments, memorials, and statues

citations affected: 10-10.7 (new); 35-31.5-2-341; 35-45-1-2;

- Directs ISP to prioritize the investigation and prosecution of any person who destroys, damages, etc. a private or government memorial, statute, or other commemorative property; and anyone who participates in inciting violence, rioting, or other illegal activity in connection with public/private monuments
- Any political subdivisions face loss of "discretionary funds" for failure to investigate and prosecute those responsible for crimes against monuments, statutes, or other commemorative property

SEA 187: Protection of monuments, memorials, and statues

citations affected: 10-10.7 (new); 35-31.5-2-341; 35-45-1-2;

- Amends the Rioting statute as follows:

SECTION 3. IC 35-45-1-2, AS AMENDED BY P.L.158-2013, SECTION 521, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. A person who, being a member of an unlawful assembly, recklessly, knowingly, or intentionally engages in tumultuous conduct commits rioting, a Class A misdemeanor. However, the offense is:

(1) a Level 6 felony if it:

(A) is committed while armed with a deadly weapon;

(B) results in serious bodily injury; or

(C) causes property damage of at least seven hundred fifty dollars ($750) and less than fifty thousand dollars ($50,000); and

(2) a Level 5 felony if it:

(A) results in catastrophic injury or death; or

(B) causes property damage of at least fifty thousand dollars ($50,000).

Crime Fighting Infrastructure – Local Structure

HEA 1068 Local or regional justice reinvestment advisory councils (This Act is declared an Emergency)

citations affected: 33-38-9.5-1; 33-38-9.5-3; 33-38-9.5-4; 33-38-9.5-5; 33-38-9.5-6;

- Creates local advisory councils to review policies, promote state and local collaboration, and provide assistance for use of evidence based practices and best practices in community based alternatives and recidivism reduction programs;
- The composition of the local/regional advisory councils must include the chief public defender (designee), a defender who practices in that county;
- The work of each local/regional advisory council will result in an annual report to the State advisory council;
- JRAC will study community corrections code provisions and make recommendations to improve operations with evidence based practices. JRAC shall submit the final report to DOC by 12/1/2021. This charge expires Jan. 1, 2022.

HEA 1082 High Tech Crimes Unit Program:

Adds: I.C. 33-39-8-7

Effective 7/1/2021: Establishes the High Tech Crimes Unit Program to assist prosecuting attorneys with the prosecution of high tech crimes.

- Defines "high tech crime" as a criminal act that is either: committed with or assisted by digital evidence, network or communications technology.
- Up to 10 counties can be selected to represent the North, South, East, West, and Central geographic areas of the state to receive funding from the High Tech Crimes Unit Fund for:

1. Provide for personnel costs, training, technical assistance, and technical support to establish the units; and

2. Enhance the ability of prosecuting attorneys to investigate, collect evidence and prosecute high tech crimes.

HEA 1558 Indiana Crime Guns Task Force:

Amends: I.C. 5-2-6-3; Adds: I.C. 36-8-25.5-8

Effective 7/1/2021: Establishes the Indiana Crime Guns Task Force to address violent crimes in Boone, Hamilton, Hancock, Hendricks, Marion, Morgan, Johnson, and Shelby counties and to develop strategies to trace firearms used to commit crimes.

The task force's purpose is to reduce violent crime and bring violent criminals to justice by delivering, in cooperation with state and federal officials, a uniform strategy to trace firearms used to commit crimes.

Mental Health – Addiction - Reentry

HEA 1127 Mental health and Addiction Forensic Treatments

(citations affected:12-15-1-20.4; 12-23-19-2; 12-23-19-4; 12-23-19-7)

- Current law provides that any juvenile/adult who will be in confinement and is on Medicaid, participation in Medicaid is to be suspended for up to 2 years before terminating the person. This language has been amended to remove the 2 year language. Seems to permit suspension indefinitely.
- "Mental Health and Addiction Forensic Treatment Services Grants" – aka "Recovery Works" has been amended to permit the providing of competency restoration services. Conforming changes have been made to provide a person is eligible if they are in need to competency restoration.
- Expands the use of Recovery Works Funds for "Recovery community organizations" and "Recovery residences certified by DMHA;

SEA 63: IDOC 14-day extension of commitment in certain circumstances.

citations affected: 11-10-12-5.7; Effective July 1, 2021

Allows IDOC to hold a person for an additional 14 days past release date when:

- The person has a serious physical or mental disorder/disability;
- The person is being held in an IDOC operated treatment facility;
- IDOC makes a good faith effort to timely place the person in a treatment setting on or before release date; AND
- The person:
  - Consents; or,
  - Is the subject to a court-ordered commitment to a treatment setting outside IDOC.


That's an old photo

Driving while suspended--some Staggering Statistics

Approx:

- 440,000 individuals are currently suspended
- 1.15 million active suspensions are currently suspended
- 830,000 people or 83% of the suspensions were for:
  - Failure to appear—330,000 or 35%;
  - Failure to pay tickets and fines—270,000 or 28%
  - No insurance/failure to maintain financial responsibility—200,000 or 21%
  - Delinquent child support—30,000 or 3%
- All others: criminal, admin and civil penalties

1.15 million active suspensions impacting 440,000 individuals

HEA 1199: Suspended Driver's Licenses.

citations affected 9-25-4-3, 9-25-5-1, 9-25-6-3, 9-30-16-4.5; 9-33-4-6; 9-25-6-15.5 (NEW), 9-30-3-8.5 (NEW), 27-7-5.1-4 (NEW), 31-25-4-33.5, NEW CHAPTER 9-33-5 ; **Effective January 1, 2022**

Highlights

- Extends the Traffic Amnesty Program until July 1, 2022
- Reduces Failure to Pay suspensions
- Only applies to pointable offenses
- Terminates after 3 years
- Reinstatement program for to convicted person obtain driving privileges
- Eliminates most no-insurance progressive penalties for prior violations
- Allows a stay of administrative suspensions if the driver shows proof of future financial responsibility (SR 22 insurance)
- Allows for automatic reinstatement of license suspended for child support reasons upon a payment of two months support

Noteworthy Miscellaneous Legislation

SEA 240 Female Genital Mutilation

(citations affected: 16-19-13-3; 16-19-13-8; 31-34-1-2; 34-11-2-16; 34-24-3-5; 35-31.5-2-130.4; 35-42-2-10)

- Office of Women's Health will serve as a clearinghouse on data, services, etc. on female genital mutilation and provide information to educators and law enforcement on recognizing signs of victims and the criminal penalties;
- Creates a civil action for female genital mutilation for actual, compensatory, punitive, and treble damages. Attorney's fees are also recoverable;
- Creates a Level 3 felony for the knowing/intentional act of female genital mutilation on a person less than 18 years of age. The person performing the act, the parents permitting the act, and a person who provides transportation to facilitate the act are all able to be charged with the offense.
- It is a defense if the person performing the act is a medical professional and the act was done for medical purposes.
- It is not a defense that: parents consented; it is a custom/stand practice of a particular group; or that it is performed in connection with a religious ritual;
- A person who has reason to believe that a child may be a victim of female genital mutilation shall make a report required under Child Abuse or Neglect statute;

SEA 167: Theft and sale of Catalytic Converters & valuable metals

cites affected: 9-13-2-34; 25-37.5-1-7; 35-43-4-2;35-52-25-61.5

- Amends the definition of "component part" to include catalytic converter. Impact of this change is the theft of a catalytic converter is a Level 6, rather than an A misdemeanor;
- Amends the Theft statute providing an enhancement from an A misdemeanor to a Level 6, if the Def has a prior unrelated conviction for robbery or theft;
- Adds a Level 6 felony for a valuable metal dealer who knowingly, intentionally fail to comply with Regulation of Valuable Metal statues and purchases stolen valuable metal.

SEA 201: New Defense—OVWI with Marijuana (THC) in blood or body

Citations Affected: IC 9-30-5-1 (Effective 7/1/2021)

Provides a defense to the charge of operating a vehicle with a controlled substance when all below apply:

- The controlled substance is THC (or its metabolite);
- The person is not intoxicated;
- The person did not cause a traffic accident; and,
- Marijuana was identified by a chemical test under I.C. 9-30-7

Anticipatory Legislation for Future Sessions

- Noncompliant Prosecutors
  - Granting the Attorney General local prosecutory power
- Constitutional Carry
- Crippling Charitable Bail Organizations
- Centralizing Governmental Powers
- Limiting Defense Access to Witnesses
- Expanding Policing Powers during Protests

For More Information

Indiana General Assembly website:

www.iga.in.gov

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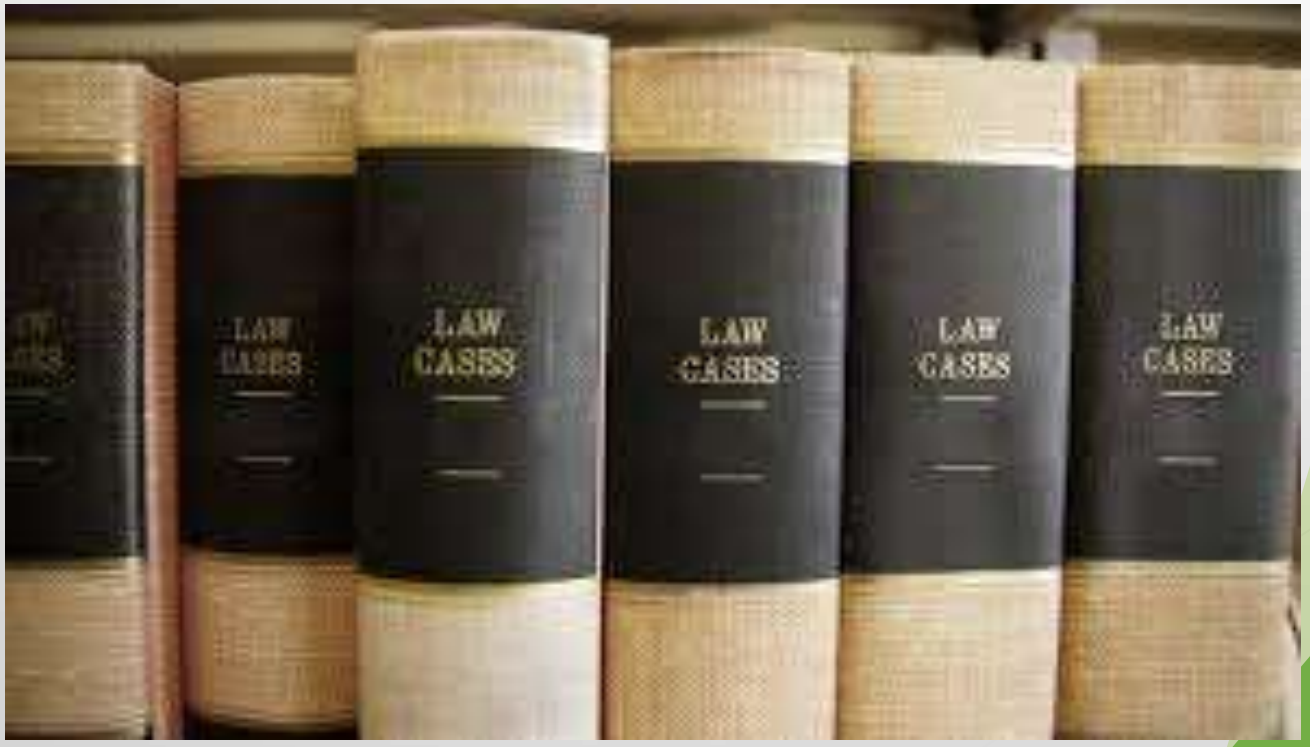
Case Law

(or is it caselaw . . . ?)



CONFESSIONS

Crabtree v. State, (09/02/2020) 152 N.E.3d 687 (Ind. Ct. App.)

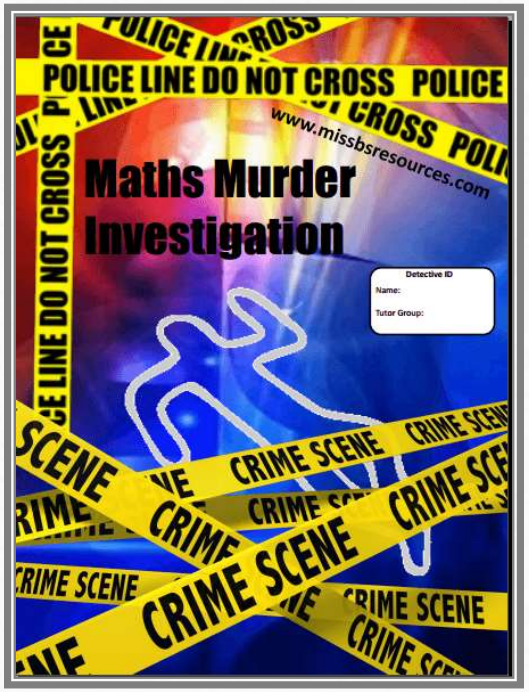
Defendant who voluntarily went to police station, took polygraph examination and spoke to police officers was not in custody for *Miranda* purposes.

Ross v. State, (09/02/2020) 151 N.E.3d 1287 (Ind. Ct. App.)

- Custodial statements given to police were voluntary and Ch. did not violate *Miranda*
- J. Mathias found police conduct of showing the container content to D was reasonably likely to elicit an incriminating response from him. However, because response was merely cumulative of his previous volunteered statement, any error in admission was harmless.

Johnson v. State, (06/24/2020) 150 N.E.3d 647 (Ind. Ct. App.)

Insufficient evidence of corpus delicti to support admission of confession



BAIL

Criminal Rule 26

John Yeager,
Appellant,

v.

State of Indiana,
Appellee.

Supreme Court Case No.
21S-CR-265

Court of Appeals Case No.
20A-CR-121

Trial Court Case No.
39C01-1911-F3-1322

Published Order

After the trial court denied the appellant's motion to reduce the amount of his pretrial bail, the Court of Appeals reversed in *John Yeager v. State*, 148 N.E.3d 1025 (Ind. Ct. App. 2020). The appellee sought transfer, and this Court held oral argument on the appellee's transfer petition. The Court is now informed that the trial court recently entered a judgment of conviction and sentencing, disposing of the underlying case. Thus, the question of the appellant's pre-trial bail is moot. *See Hill v. State*, 592 N.E.2d 1229, 1230 (Ind. 1992); *Partlow v. State*, 453 N.E.2d 259, 274 (Ind. 1983).

Being duly advised, the Court GRANTS transfer, thus vacating the Court of Appeals' opinion. *See* Ind. Appellate Rule 58(A). The Court DISMISSES this appeal as moot.

Done at Indianapolis, Indiana, on 5/26/2021.

CJ Rush dissented in part:

- Would have preferred to deny transfer in order to **"leave valuable Court of Appeals precedent intact."**

DeWeese v. State, (02/15/2021)

~~163 N.E.3d 357 (Ind. Ct. App.)~~

TRANSFER GRANTED (Oral argument 10/21/21)

- Defendant who was not a flight risk entitled to pre-trial release regardless of alleged victim's testimony of that he feared defendant's release
- Indiana Code section 35-33-8-4(b)
- Facts relevant to risk of nonappearance

Sentence Modifications

State v. Stafford, 128 N.E.3d 1291 (Ind. 2019)

Rodriguez v. State, 129 N.E.3d 789 (Ind. 2019)

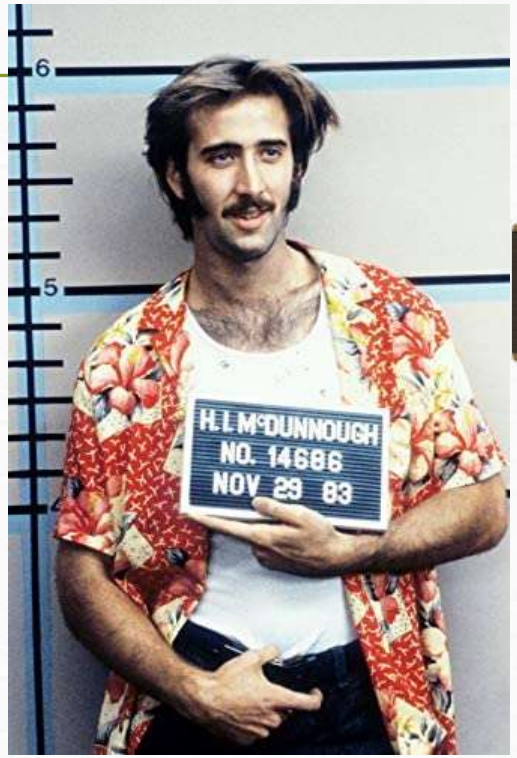
Trial courts may not modify sentences Entered under a fixed-term plea agreement.

Criminal Procedure

IMPROPER AMENDMENT – Habitual Offender charge

***Campbell,* 161 N.E.3d 371 (App. 2020)**

- Belated habitual offender charge requires State to affirmatively demonstrate good cause.
- Tr.Ct. allowed H.O. enhancement filed 1 business day before trial. Nine months before, State filed Notice of Intent to File H.O. Enhancement if good faith plea negotiations were unsuccessful.
- State argued the belated filing was due to ongoing plea negotiations & that it waited until last minute to file H.O. Enhancement to give D opportunity to accept a plea offer.
- In finding abuse of discretion in allowing the late filing, Ct. App. (2-1) found the State's tendering of the same plea offer several times and then asking D if he wanted to make a counteroffer is not a bona fide ongoing plea negotiation.



SPEEDY TRIAL – Constitutional Violations

***Watson*, 155 N.E.3d 609 (Ind. 2020)**

- CR 4(C) inapplicable to retrial of habitual offender determinations, but constitutional speedy trial violation found from 6.5-year delay in retrying D following reversal of his 30-yr habitual offender enhancement (*Barker v. Wingo* factors weighed in favor of D)
- **FN:** Article 1, Section 12 is different/ more protective than 6th Amend. test., because it is a "directive" rather than a "right." "Thus, D need not assert his right to a speedy trial in making a claim under the Ind. Constitution because "the speedy trial demand is effectively made for him."

SPEEDY TRIAL – D speaks to court through counsel (after appointment)

***Anderson*, 160 N.E.3d 1102 (Ind. 2021)**

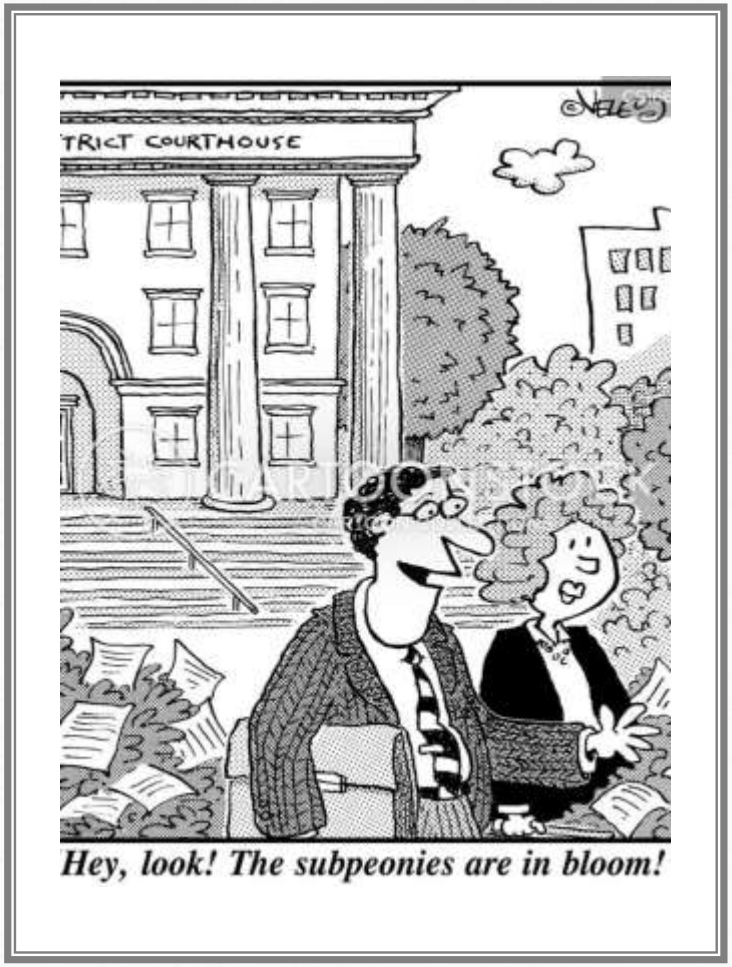
- Clarified view that once counsel has been appointed, even if appearance not yet entered, a defendant speaks to the court through counsel.

- When Def. files a *pro se* motion for early trial after counsel has been appointed, judge is not required to consider that request. Before counsel's appointment, Tr. Ct. must consider *pro se* motions, but after counsel's appointment, this consideration is left to judge's discretion.

Right to self-representation

***Wright*, Ind. (5/4/21)**

- Affirmed denial of D's equivocal request for self-representation.
- Judges should focus on State's interest in heightened reliability/fairness of capital/LWOP cases b/c of serious consequences for criminal defendants (presumption against waiver)
- DISSENT: Majority's decision contradicts *Faretta v. California* & D here clearly, unequivocally invoked his right.



Right to Depose Witnesses

- ***Sawyer v. State*, Ind. Ct. App. 5/19/21**
- ***Church v. State*, Ind. Ct. App. 6/28/21**
- ***State v. Riggs*, Ind. Ct. App. 7/29/21**
- ***Pate v. State*, Ind. Ct. App. 8/9/21**
- Ind Code § 35-40-5-11.5 (eff. 3/18/20) restricts D's ability to take depositions of alleged child victims of sex offenses by requiring prosecutor consent or showing "extraordinary circumstances"
- Because statute is procedural in nature and conflicts w/ Ind. TRs 26 & 30, the Trial Rules govern & statutory provisions in conflict are a nullity.

Right to Depose Witnesses

Four unanimous published opinions striking down this statute is a defense friendly check on legislative intrusion into deposition procedures spelled out in our Trial Rules.

PREDICTION: these holdings will survive but SCOIN will likely grant transfer since this is a significant issue of first impression.

If transfer granted, pursue the fight; the arguments are still valid for those pursuing depositions in pending cases.

Sufficiency Winners

"There was 'reasonable doubt,' Ma'am, so we're hanging a few lawyers."

DRUG CASES – MAINTAINING COMMON NUISANCE

***Dowell*, 155 N.E.3d 1284 (App. 2020)**

- Single instance of drug dealing/possession insufficient to support conviction
- "one or more times" language in statute repealed in 2016 – now, the State has to prove D used house/car to deal drugs more than one time
- Text messages suggested multiple drug transactions, but not clear from those messages what vehicle, if any, Def. was driving to complete those transactions.

Carrying Handgun w/o License

***B.R. v. State*, 162 N.E.3d 1173 (App. 2021)**

- D seated close to hidden compartment behind dashboard by steering wheel had capability to maintain dominion & control over handgun found therein
- But State failed to provide any "additional circumstances" to show BRD that juvenile **knew** of concealed handgun
- delinquency adjudication reversed as State failed to prove constructive possession
- *See* IPDC "Guide to Constructive Possession" (2020)

THEFT
Lost/Mislaid Property

***Williams*, 158 N.E.3d 817 (Ind. Ct. App. 2020)**

- D took change a previous unidentified customer accidentally left behind in grocery-store self-checkout station
- Ct. App. found that it could reverse D's theft conviction solely on basis of State's failure to prove ID of customer
- But more fundamental problem w/conviction is that Indiana's theft statute no longer criminalizes the taking of lost or mislaid property. Statute criminalizing failure to take reasonable measures to restore mislaid property to its owner was repealed over 40 years ago

CASINO EXCEPTION?

- **I.C. 4-33-10-2 (10)**: A person who knowingly or intentionally does any of the following commits a Level 6 felony:
- (10) Claims, collects, or takes an amount of money or thing of value of greater value than the amount won in a gambling game.
- Rule of Lenity? Ambiguity in liability/punishment
- Proportionality? Identical conduct of "theft" only class A misdemeanor if value is under $700

Domestic Battery Enhancement

***Gibbs*, 157 N.E.3d 562 (Ind. Ct. App. 2020)**

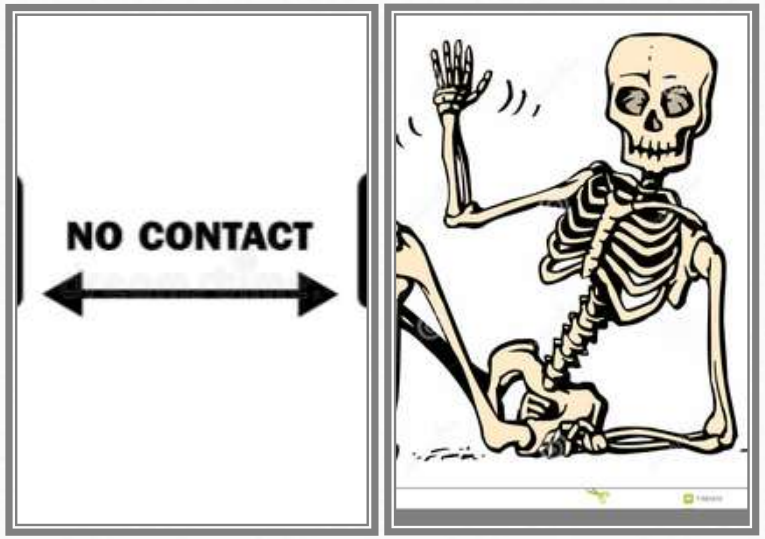
- C.W. was obese, had bad knees, struggled to stand, & used an electric scooter; but no evidence she was in anyone's care or that she needed or wanted care
- Even if C.W. did need some level of care because of her disability, the fact Def. entered a romantic relationship with her does not mean that he necessarily/voluntarily assumed care over her (no authority to support such proposition)
- Remanded to vacate F5 bodily injury to family member & enter conviction as Class A misd. battery

DISORDERLY CONDUCT

***McCoy*, 157 N.E.3d 28 (Ind. Ct. App. 2020)**

- Neighbor briefly yelling at police as they intervened in a domestic disturbance constituted political speech protected by art. 1 sec. 9 of Ind. Const.
- No evidence that yelling rose to level of unreasonable noise or infringed upon peace/tranquility of neighbors; loud criticism of government action does not constitute D.C.
- evidence insufficient to support disorderly conduct conviction

Attempted Invasion of Privacy/Probation Revocation



***Mosley,* (Ind. Ct. App. 5/21/21)**

- No-contact order cannot be issued to protect a dead person & probation cannot be revoked based on violation of that void order.
- Victim died 2 years before D's sentencing, when judge entered the no-contact order. VoP - 3 yrs. imprisonment based on apology letter to V/disdain for court
- Regardless of State's attempt to argue "impossibility is not a defense," probation revocation cannot be based on violating a void condition of probation; no authority to seek or issue a void no-contact order from the outset

Sufficiency Loser

Domestic battery – "dated or has dated"

***Jackson*, 165 N.E.3d 641 (Ind. Ct. App. 2021)**

- "**Dated or has dated**" language in statutory definition of "family or household member" for purposes of Indiana's domestic battery statute is not unconstitutionally vague, though it "encompasses the mundane to the intimate."
- **"Dating"** is within range of activities included in the statute, which as applied to the totality of facts & circumstances of this case is sufficiently clear to have informed D of prohibited conduct.

SEARCH & SEIZURE

Protective Patdown Search for Weapons

***Johnson* , 157 N.E.3d 1199 (Ind. 2020) (4-1)**

- Verified report/video of drug activity inside casino early in a.m. + Gaming Enforcement Agent was about to interview D alone in small room was reasonable basis standing alone to believe D was armed & dangerous
- During patdown, agent felt & removed a "giant ball" in D's pocket which he immediately believed was drugs. "Plain feel"doctrine applied, L5 dealing in a look-a-like substance affirmed
- Justice Slaughter dissent: suspected drug activity + time/location of encounter + being alone in a room with D not enough to suggest D armed & dangerous.

Protective Patdown Search for Weapons

***Triblet v. State*, App, 5/25/21**

- Officer can rely on D's criminal history to determine if he is armed and dangerous
- Here, officer knew D's status as a SVF preluded him from legally possessing a firearm & size/shape of bulge in D's pocket as well as his attempts to conceal the firearm all support the officer's reasonable belief he was armed and dangerous

"Community caretaking" exception does not apply to warrantless home entry/searches

- *Caniglia v. Strom*, U.S.S.Ct. (5/17/21)
- CC exception does not extend to homes: "What is reasonable for vehicles is different from what is reasonable for homes"-- police cannot legally enter homes w/o a warrant, exigency or consent.
- Unlawful warrantless home entry/removal of firearms after husband expressed suicidal thoughts & had been taken to hospital for psychiatric evaluation.
- Concurring opinions: decision does not affect "exigent circumstances" doctrine & ability to take "reasonable steps to assist those who are inside a home & in need of aid"; also "red flag" laws allow police to seize guns pursuant to court order to prevent harm to self or others.

Scope of search pursuant to search warrant

***Hardin*, 148 N.E.3d 932 (Ind. 2020)**

- 4th Am. allowed police to search D's vehicle which he drove up & parked on his driveway while they were executing a search warrant, which permitted police to search areas of D's yard, curtilage, & interior of his home.
- Balancing *Litchfield* factors, a 3-2 majority found no violation of Ind. Const. Art. 1, Section 11 because the high degree of law-enforcement concern & moderate L.E. need outweighed the moderate intrusion caused by the reasonable search.
- J. David/C.J. Rush, dissenting, would suppress evidence from D's vehicle under Art 1, Sec 11 b/c search was "highly intrusive" & law enforcement needs were "extremely low." Because police could have & should have obtained a warrant to search D's vehicle, the search was unreasonable under Ind. Constitution
- J. Slaughter, concurring, urges Court to reconsider *Litchfield* given the "widely varying conclusions" and "ongoing uncertainty among litigants and lower courts" in applying its three factors.

… Another Warrantless Vehicle Search in Driveway Upheld

***Combs*, Ind., 6/3/21**: Van was instrumentality of D's class-B misdemeanor leaving the scene of an accident.

- Inventory search at scene pursuant to police department written policy.
- Goff, J., dissenting because State failed to show that officers needed the van itself to solve the OWI or leaving accident scene investigation & evidence obtained during the inventory search should have been excluded as fruit of the poisonous tree.
- Court's decision "will unnecessarily extend the government's reach into our private lives."

Traffic Stops for Failure to Signal

***State v. Torres*, 159 N.E.3d 1018 (Ind. Ct. App. 2020)**

D properly stopped for not signaling until they reached stop sign-- failed to signal a turn at least 200 feet in advance as required by IC 9-21-8-25

Trial judge found compliance with statute is impossible "within a normal city block."

Traffic Stops for Failure to Signal

- Judge Mathias, concurring, requests legislative review of this statute:
- "[a]ll Hoosiers will appreciate and benefit from a traffic code that reduces the opportunity for arbitrary enforcement. . . . this precise statute appears to be employed often to make arbitrary traffic stops."

Challenging Arbitrary Traffic Stops

- If the principal value of art. I, § 11 of the Ind. Constitution, is to "protect Hoosiers from unreasonable police activity in private areas of their lives," "… the standards for its application must "reduce the opportunities for official arbitrariness, discretion, and discrimination . . . ." *State v. Bulington*, 802 N.E.2d 435, 440 (Ind. 2004)

Evidentiary Issues

Foundation for Social Media Evidence

***Parker v. State*, 151 N.E.3d 1269 (App. 2020)**

- Facebook messages properly authenticated & admitted as being authored by D
- Admissibility does not require "Indisputable proof" D wrote messages
- Under I.R.E. 901, authentication can be established by either direct or circumstantial evidence that the item is what it is claimed to be by a witness with knowledge, which was sufficient here

Foundation for Social Media Evidence

***Wisdom v. State*, 162 N.E.3d 489 (App. 2020)**

- Instagram & Facebook posts showing photos/videos of D admissible--
- Detective testified she recognized D in photos & believed other individuals in the photos were gang members who had been convicted of gang-related activities, one of the accounts was registered in D's name, had a gang-related nickname as a username, & photos/videos referred to gang activity.

Surveillance Videos – Silent Witness

***Flowers*, 154 N.E.3d 854 (App. 2020)**

Officer's testimony about what he knew re: security cameras at apartment complex where he worked part-time security provided sufficient grounds to admit surveillance video as substantive evidence under silent witness theory.

When cross-examining officer, D opened door to his opinion testimony re: contents & ID of person in video

Confrontation Clause

"Honestly Madam, do you expect this court to believe that *all* of your husbands mysteriously disappeared at this same time in November?"

Admission of "Forensic Interviews"

- Error to admit both a child C.W.'s live testimony **&** consistent prior videotaped statements. ***Tyler***, 903 N.E.2d 463 (Ind. 2009) (cumulative, unfairly prejud.)
- But F.I. video may be admissible under "recorded recollection" hearsay except. if CW cannot remember what she said. ***Gorby***, 152 N.E.3d 649 (App. 2020)
- OR refuses to testify live re: facts underlying the charge b/c she had already told forensic interviewer & sexual assault nurse. ***Williams***, App., 3/12/21"
- Also, may be admissible as statement for purpose of medical diagnosis or treatment hearsay exception under IRE 803(4) even if CW testifies at trial. ***Velasquez***, 944 N.E.2d 34 (App. 2011)

Erroneous admission of victim's hearsay statement in domestic violence case

***Hurt v. State*, 151 N.E.3d 1256 (App. 2020)**

Statements to police offered to prove truth of matter asserted, that D struck C.W. & caused her injuries

- **Not recorded recollection exception**: C.W. did not vouch for accuracy of her statement recorded on officer's body cam (was heavily intoxicated & could not recall)
- **Not excited utterance**: 15 minutes elapsed b/t 911 call & statements to police, C.W. made statement in response to officer's questioning & deliberated (albeit drunkenly) about her responses, thus, C.W. was no longer under stress from suffering startling or stressful event
- **Not present sense impression:** C.W. did not make her statements to police either during or immediately after she was injured & had time to deliberate before speaking to police (she had multiple explanations for how she suffered the injuries); ability to deliberate was hindered by her intoxicated state but she was still able to consider her responses to officer's questions

Exclusion of Victim's Statements Offered by Defendant

***Stewart*, App., 4/9/21**

Erroneous exclusion of murder D's testimony recounting "very aggressive" statements victim made to her before she shot him (harmless)

Statements made by a victim offered to show reasons why a person acted in the way he/she did are not hearsay

Even if truth of statement is at issue, may still be admissible under then existing mental, emotional or physical condition hearsay exception, Ind. R. Evid. 803(3), relevant to show D's fearful state of mind in self defense cases

Kubsch, 838 F.3d 845 (7th Cir. 2016)

- Due process requires admission of hearsay statement that neighbor saw young boy alive at a certain time. Exclusion violated Due Process because:
  - Circumstances surrounding statement were reliable
  - If believed, the statement exonerates the defendant

Expungement

Gulzar v. State, (06/24/2020) 148 N.E.3d 971 (Ind.)

- **Change in law that makes date of conviction controlling as to expungement eligibility is remedial and applies retroactively.**

- **The change in law, the majority held, "cured a mischief that existed in the prior statute, namely, confusion on when the waiting period begins for certain ex-offenders seeking expungement. . . . In short, we find that the remedial amendment is aimed at making expungement immediately available for individuals who (1) successfully petition for conversion of a minor felony to a misdemeanor and (2) wait five years from their felony conviction date before seeking expungement."** Justice Slaughter dissented, believing the Court's analysis requires Court to speculate about legislative motives.

Expunged conviction treated as if it never occurred, even in subsequent expungement proceeding

The trial court erred in considering Petitioner's expunged conviction when it denied his expungement on the grounds that he had been convicted of a crime during the previous five years.

Plain language of the statute commands that he be treated as if that 2016 conviction had never occurred, and he is entitled to expungement of his 2007 conviction.

Mishra v. State, (03/09/2021)
165 N.E.3d 602 (Ind. Ct. App.)

Expungement prohibition for those convicted of felonies resulting in serious bodily injury (SBI) only applies if SBI is an element of the offense

Defendant's conviction for Class B felony conspiracy to commit burglary was eligible for expungement even though the facts incidental to his conviction involved serious bodily injury.

That the facts of the incident leading to the conviction show serious bodily injury is not enough to exclude a person from eligibility for expungement.

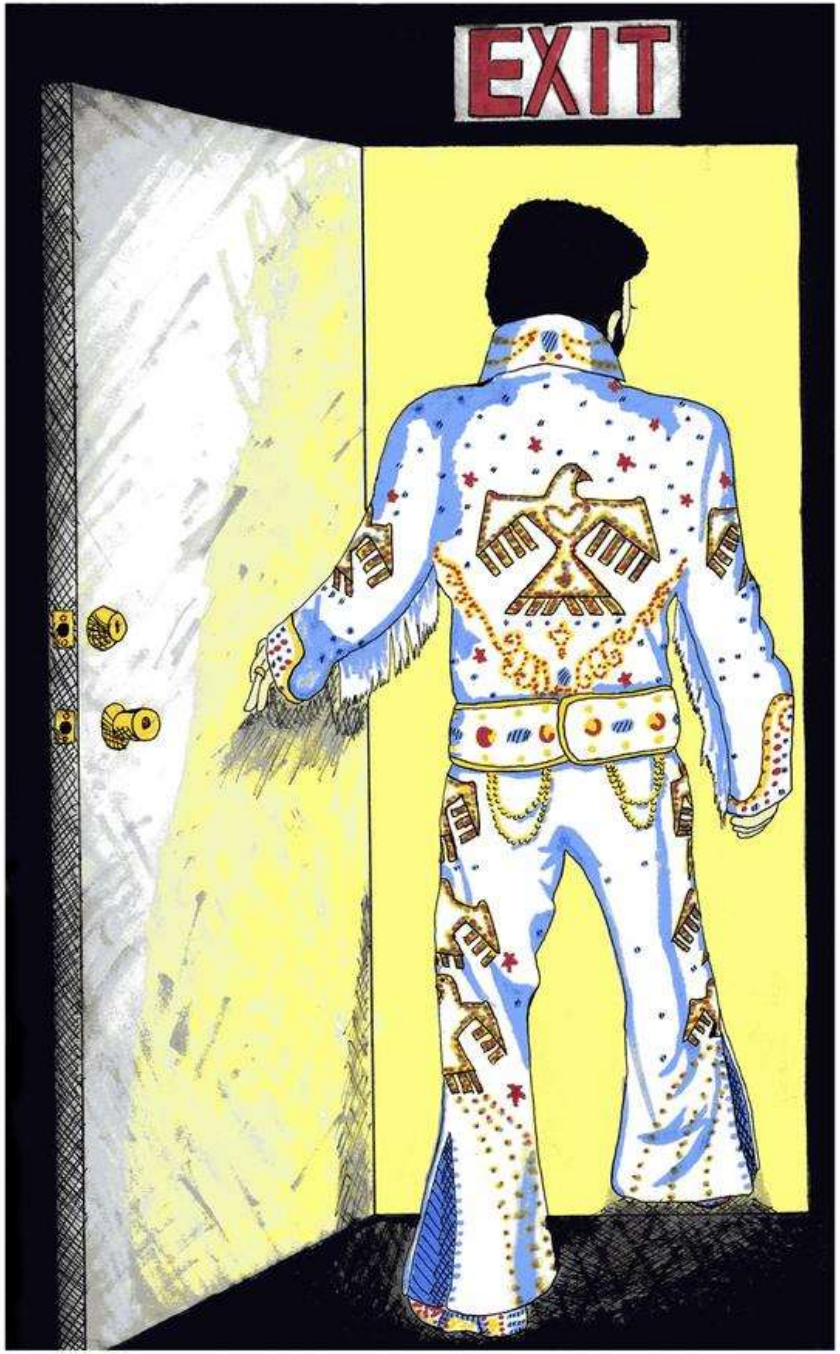
Allen v. State, 159 N.E.3d 580 (Ind. 2020)

Ball v. State, (02/23/2021) 165 N.E.3d 130 (Ind. Ct. App.)

Abuse of discretion to deny petition for expungement

The court also observed that the expungement statute, IN Code 35-38-9-7, should be liberally construed to advance the remedy for which it was enacted. *Cline v. State*, 61 N.E.3d 360, 363 (Ind. Ct. App. 2016), abrogated in part on other grounds in *Allen*, 159 N.E.2d at 585.

"Your Honor, we feel the trial failed to deliver on its pretrial publicity."


EXIT

Section Three

Reality CLE
Estate Planning and Elder Law

Keith P. Huffman
Dale, Huffman & Babcock
Bluffton, Indiana

Michael J. Huffman
Dale, Huffman & Babcock
Bluffton, Indiana

Section Three

Reality CLE
Estate Planning and Elder Law…….. Keith P. Huffman
Michael J. Huffman

REALITY CLE: ESTATE PLANNING AND ELDER LAW

OCTOBER 28TH, 2021

DALE, HUFFMAN & BABCOCK LAWYERS

Real Life Elder Law and Estate Planning

DALE, HUFFMAN & BABCOCK LAWYERS

Presenters:
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- **Medicaid Planning Basics:**
  - **Medicaid Penalties/Snapshot Date**
  - Married Couple or Single Individual
    - Gift Loan Strategy
    - Annuity
    - Non-Negotiable Loan
  - Waiver Program
  - Medicaid Estate Recovery
- **Power of Attorney:**
  - "General Authority" issues
- **Health Care Representative:**
  - P.L. 50-2021 (SEA 204) Major Updates

A ROAD MAP

TODAY'S PRESENTATION

A ROAD MAP

TODAY'S PRESENTATION

- **Special Needs Trust Planning**
  - Self-Settled vs. Third Party
- **Probate Avoidance**
  - Tools to Avoid Probate
- **Digital Estate Planning**
  - New Frontier
- **Secure Act:**
  - Planning for Qualified Retirement Accounts

A ROAD MAP

TODAY'S PRESENTATION

- **Family Farm Planning**
  - LLC or Trust
  - "Fair and Equitable"
- **Guardianships in Indiana**
  - Britney Spears Saga
  - Benefits and Abuse
- **Medicaid Shortcuts and Tips**
  - Disabled Children, Home Gifting, and other options
  - Forms

MEDICAID BASICS

MEDICAID—MARRIED COUPLES

- Medicaid Catastrophic Coverage Act of 1988
  - Institutionalized Spouse
  - Community Spouse
- Different treatment of Assets and Income
  - Qualified Income Trust/Miller Trust
    - $2,382 current

ESTABLISHING A SNAPSHOT DATE

- A “Snapshot” of a Couple’s total assets to determine how to qualify for Medicaid in the future.
- Continuous stay in a facility, for more than thirty (30) days, after September 30, 1989, establishes the “Snapshot Date.”
  - The “Snapshot Date Valuation” will determine how much the Community Spouse can retain and qualify for Medicaid.
- Mom and Dad will almost always have a different snapshot date.
- Eligible for Medicaid once Countable Resources are “half” of Snapshot Value, subject to Maximum and Minimum of 26,076/130,380 now.

COUNTABLE RESOURCES—MARRIED

- Exempt:
  - Home
  - Automobile
  - Prepaid Funeral Arrangements
  - Income-Producing Real Estate
  - Retirement accounts in the name of the CS
- Countable:
  - Bank Accounts
  - Investment Accounts
  - Retirement Accounts in name of IS
  - Annuities
  - Life Insurance
  - Extra Vehicles

MEDICAID GIFT PENALTIES

- Gifts are subject to a Five (5) year lookback period under the Medicaid rules
  - No limit to how long a penalty can run once established
- Length of the Penalty is determined by the amount gifted away, divided by the monthly cost of nursing home care in Indiana (established by the State each year) (currently $6,873)
- Exempt Gifts and Planning Options
- Non-Qualified Annuities
- Conditional Sale Contracts

THE MEDICAID PENALTY START DATE 60 MONTH LOOK BACK

Beginning Date of Penalty	When otherwise eligible for Medicaid with an approved application or month in which transfer occurred, whichever is later
Multiple Transfers	Add together
Partial Month Penalties	Can have partial month penalties. Calculated as number of months and days.

MARRIED COUPLE PLANNING OPTIONS

- Once Snapshot Date is established, the family will likely need to shift assets to qualify for Medicaid.
- Income vs. Asset
  - Income to Community Spouse is NOT considered an asset.
- Non-Negotiable Promissory Note:
  - Allows for the community spouse to loan money within the family, to be repaid each month until all the funds returned, with small interest attached.
- Annuity Purchase:
  - Similar to the loan, but certain Medicaid Compliant Annuities can achieve the same result without involving family.
- Real Estate Purchase:
  - Real Estate owned by the Community Spouse not an asset.
- Other Options:
  - Funeral Planning, Vehicle Purchase, Pay off Debts, and Attorney Fees

SINGLE INDIVIDUAL PLANNING

- Single Individual must be under $2,000 in Assets to qualify for Medicaid in the Nursing Home.
  - Exempt: Income producing Real Estate, Funeral Plans, Vehicle
- Gift and Loan Strategy:
  - A gift is made using roughly 50%-60% of client's total countable resources. A penalty period is established based upon the total amount gifted.
  - The remaining funds are loaned to a family member, to pay the individual's cost of care while the penalty period is running.
  - Once the penalty is over, the client will be eligible for Medicaid, and all of the gifted funds are now protected for the family.
- Low Asset Options:
  - Pay for Funeral (limited options to pay for funerals for children)
  - Vehicle Purchase
  - Attorney Fees

MEDICAID WAIVER PROGRAM

- A “Waiver” of the traditional Medicaid requirements, to allow an Individual to receive Medicaid services at Home, or in qualified Assisted Living Facilities
- Same Financial Rules Apply
- Level of Care determined by Local Area Agencies on Aging
- Different Income Treatment

THE INDIANA PLAN TO AGE IN PLACE

- Projected Waiver recipients for the Aged and Disabled Waiver

2019	27,167
2020	31,888
2021	35,501
2022	37,604
2023	39,201

- **Cost savings to Indiana of $560 Million!!!**

MEDICAID ESTATE RECOVERY

- Indiana Medicaid allows for an individual to own Income Producing Property and qualify for Medicaid
  - Income will help pay for your care while on Medicaid
- Indiana has the right to collect against the asset after the Medicaid recipient has passed.
- Estates for individuals over age 55 are required to notify FSSA to determine if Medicaid claim available
  - Avoid probate at all costs for Medicaid recipients
  - Time limits for the State to collect against non-probate assets (provided asset disclosed in Medicaid application)
- Hardship Exemptions, Spousal Recovery, and Disabled Children

POWER OF ATTORNEY AND HEALTH CARE UPDATES

GENERAL POWER OF ATTORNEY

- Can discover information about assets
- Can cash in assets
- Change beneficiaries
- Make gifts
- Transfer assets out of spouse's name

POWER OF ATTORNEY MOST USEFUL WHEN IT IS:

- Durable
- Immediately Effective
- Unlimited
- Contains a Gifting Clause
- Digital Authority for Online Assets




SPECIFIC CLAUSES

- **gift transactions** (including authority to make gifts on my behalf from time to time to any one or more of my children, either outright or in trust, without any annual or other limitation in value, for any purposes my Attorney-In-Fact considers to be appropriate);
- My Attorney-In-Fact shall **NOT** have any authority under this power of attorney:
  - to make gifts, whether outright or in trust, to my Attorney-In-Fact, to the spouse, a child, or other descendant of my Attorney-In-Fact, to the spouse of a child or other descendant of my Attorney-In-Fact, or to any person my Attorney-In-Fact is obligated to support or customarily supports, except in furtherance of a plan adopted by me or recommended to me in writing by my professional advisor for the preservation or disposition of my estate, or in furtherance of a plan or pattern of gift-making established by me, whether adopted, recommended, or established before or after I sign this power of attorney;

SEA 204: ADVANCE DIRECTIVES

ADVANCE DIRECTIVES LEGISLATION

Why did Indiana's advance directive statutes need updating?

- Conflicting statutes
- Outdated language
  - 29 years old!
- Multiple methods to appoint a legal representative
- Unclear decision standards for legal representatives
- Inhibiting innovation

WHAT CHANGED?

- Combined and simplified 3 statutes in order to eliminate vague and conflicting cross-references.
- Eliminate the separate power of attorney for health care and current health care representative and establish just one mechanism to appoint a legal representative with clear standards of conduct.
- Establish general standards for advance directives expressing preferences that include more flexible formalities and eliminate the mandatory use of inflexible forms.

WHAT IS THE NEW ADVANCE DIRECTIVE?

- No official or mandatory form for the Advance Directive
- Advance Directive Components:
  - Name 1 or more health care representatives (HCRs)
  - State specific health care decisions and/or treatment preferences, including preferences for life-prolonging procedures or palliative care
  - Guidelines to assist in family in decision making process
  - Includes ability for Health Care Representative to possibly access Financial Records
  - Audit of Health Care Representative
- Signing Procedures Updated

GENERAL PROVISIONS

- Proxy if no Advance Directive
- Most current version revokes prior (w/some limitations)
- Documents okay as written until **1/1/2023**
- After 1/1/2023, any health care provision in a Power of Attorney is void
- Declarant required to put Advance Directive into electronic medical record and give full copy to immediately effective health care representative
- Out of State forms are valid
- Health care provider is not responsible for determining validity of an advance directive

HEALTH CARE PROXY DECISION MAKING IF YOU DO NOT HAVE AN ADVANCE DIRECTIVE

- Priority System:
  - 1. Judicially appointed guardian of the person
  - 2. Spouse
  - 3. Adult Child
  - 4. Parent
  - 5. Grandparent
  - 6. Adult Sibling
  - 7. Adult Grandchild
  - 8. Nearest Relative not listed in 2-7
  - 9. Friend Who:
    - Has maintained regular contact with individual and;
    - Is familiar with individual's activities, health, and religious or moral beliefs
  - Religious Superior, if a member of a religious order
  - Majority of a class

RESPECTING CHOICES: ADVANCE CARE PLANNING

- First Steps: 50+
- Next Steps: 70+
- Last Step: Medically Fragile

- Have the documents and start the conversation
- Get the Documents in the Medical File
- Consider goals of care if your condition gets worse, POST

INDIANA'S POST FORM

- Physician's Order for Scope of Treatment (POST)
- For Qualified Individuals
- Documents procedures for End-of-Life Health Care
- Doctor's Order

www.indianapost.org

SPECIAL NEEDS PLANNING

ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACT

- Allows use of tax-free savings accounts for disabled individuals
  - Can accumulate over the $2,000 Medicaid and SSI Asset Limit for public benefits
  - $15,000 per year per beneficiary is limit of funding
  - Over $100,000 in account will suspend SSI benefits
  - Subject to Medicaid Estate Recovery
  - Must be disabled prior to age 26 (Automatic eligibility if SSI/SSDI eligible, otherwise self-certification required)
- Helpful to allow recipient the ability to manage some of their own funds, and to save for purchases such as a vehicle or home

FIRST PARTY OR THIRD PARTY SNT

- First Party SNT:
  - Established with individual's own assets
    - Often from settlement, inheritance, etc.
    - Cannot be established after age 65
  - REQUIRES MEDICAID PAYBACK

- Third Party SNT:
  - Established with Third Party funds
    - Established as standalone trust or testamentary
    - Established at any age
  - NO MEDICAID PAYBACK
  - Testamentary Trust for spouse in Nursing Home Required to shelter assets if Community Spouse is first to pass

ARC OF INDIANA/POOLED TRUSTS

- Organizations that are equipped to handle establishing and administering Trusts for disabled individuals
  - Ensures disabled individual can maintain their Medicaid eligibility and have access to funds
- Generally, more useful for smaller amount of money
- Money can be either first-party or third-party, and first party shares are subject to the same state Medicaid payback requirements as other self-settled SNTs

PROBATE AVOIDANCE

PROBATE AVOIDANCE

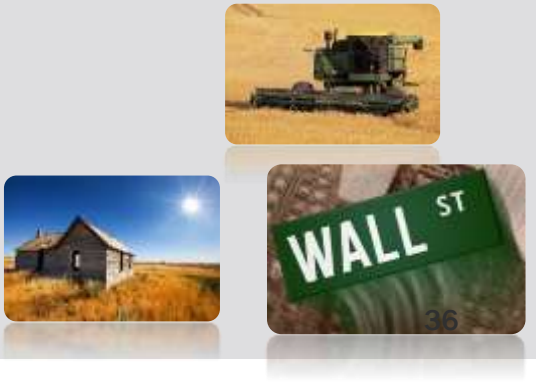
"You just can't talk to that bunch. They all avoided probate."

NON-PROBATE ASSETS

- What is a probate asset?
  - Generally speaking, something that is owned in individual name that is not transfer/pay on death or beneficiary-designated
- Most common types of non-probate assets:
  - Life insurance
  - Qualified retirement accounts
  - Pensions
  - Jointly-owned property
  - Transfer/pay on death ("TOD" and "POD")

TOD/POD

- Common: Transfer on Death (TOD) or Payable on Death (POD)
  - TOD and POD used interchangeably
  - Savings accounts, checking accounts, certificates of deposit (CDs); most anything at a financial institution
- Transfer on Death Property Act
  - Allows you to add TOD to just about anything
    - Real Estate
    - Titled Vehicles
    - Securities
- Qualified Retirement Accounts
  - Tax implications for Beneficiaries



DIGITAL ASSET PLANNING

WHAT DOES YOUR POWER OF ATTORNEY SAY ABOUT YOUR DIGITAL ASSETS?

Ours includes broad authority concerning:

Electronic records, reports, and statements (including authority to (i) gain access to and exercise control over my digital assets, (ii) access my user accounts with online service providers, (iii) access, retrieve, copy, or store electronic communications sent or received by me, and (iv) perform any acts in connection with the use of electronic records pertaining to my affairs)

TRUSTEE/PR ACCESS LANGUAGE

TRUST/TRUSTEE

Any trustee of any trust created under this instrument shall have all power to access, use, modify, delete or control digital assets that I can access, use, modify, delete or control. "Digital Assets" means electronic information that is inscribed on a tangible medium or that is stored in electric or other medium and is retrievable in perceivable form. It includes contents or electronic communications and catalog of electronic communications. "Digital Assets" includes but is not limited to emails, digital videos, digital pictures, digital music, software licenses, cryptocurrencies, social network accounts, file sharing accounts, financial accounts, domain registrations, web hosting accounts, on-line stores, tax preparation, frequent flyer and similar bonus programs and digital assets or similar assets which exist now or in the future. I consent to the trustee's access to all such digital assets.

WILL/PERSONAL REP

My personal representative shall have all power to access, use, modify, delete or control digital assets that I can access, use, modify, delete or control during my lifetime or in the future. "Digital Assets" means electronic information that is inscribed on a tangible medium or that is stored in electric or other medium and is retrievable in perceivable form. It includes contents or electronic communications and catalog of electronic communications. "Digital Assets" includes but is not limited to emails, digital videos, digital pictures, digital music, software licenses, cryptocurrencies, social network accounts, file sharing accounts, financial accounts, domain registrations, web hosting accounts, on-line stores, tax preparation, frequent flyer and similar bonus programs and digital assets or similar assets which exist now or in the future. I consent to my personal representative's access to my digital assets.

DIGITAL ASSETS EVERYWHERE

- Personal
- Social Media
- Financial Accounts
- Cyrptocurrency
- Business Accounts
- Domain Names
- Loyalty Program Benefits
- Other

PLANNING SUGGESTION

- Inventory Your Digital Assets
  - Update Your Inventory Quarterly
  - Consider an Online Information Storage Service
  - A Bank Lock Box
  - Where does your will say your cryptocurrency goes?

SECURE ACT

THE SECURE ACT

- Eliminated stretch payouts for many beneficiaries
- Any beneficiary who is not an "eligible" designated beneficiary now must withdraw assets within 10 years
- Spousal stretch/roll-over preserved
- Unique planning opportunity: disabled (or chronically-ill) individuals and special needs trusts
  - Consider leaving a higher proportion of qualified retirement assets to a special needs trust and distributing a higher proportion of other assets among other beneficiaries
- Natalie Choate – Life and Dealth Planning for Retirement Benefits (Book and article on SECURE available at www.ataxplan.com)
- Application for folks dying after 12/21/2019

FAMILY FARM PLANNING

PROTECTING THE FAMILY FARM

- Medicaid Treatment of Real Estate
  - General Rule: Must offer for Sale or for Rent
- Income Producing Real Estate:
  - Exempt Asset upon applying for Medicaid
  - Net income derived from the Real Estate is part of the “Liability” at the facility
  - Subject to Medicaid Estate Recovery

FAMILY FARM PLANNING: LLC

- The Children (or other intended beneficiaries) form the LLC and are the sole members of the LLC.
- Mom and Dad (or the survivor) will deed the property to the LLC but retain a Life Estate Interest.
- Transfer begins a five-year "Penalty" in which Mom or Dad would be ineligible for Medicaid if they apply during the five-year period.
- If Medicaid is needed after the five-years has lapsed, the net income from the property will help pay for their care, but the underlying asset is fully exempt from Medicaid Estate Recovery.

BENEFITS OF THE MEDICAID LLC

- Mom and Dad maintain control of the Farm:
  - They will continue to receive all the income and pay all the expenses of the farm.
- Stepped-Up Basis:
  - The LLC receives a step-up in basis to full FMV upon passing of Mom and Dad.
  - No imposition of Capital Gains Taxes for Mom or Dad, or for children if sold after passing.
- Creditor Protection:
  - If any of the children are subjected to Creditors, they are unable to reach through to the underlying assets.
- Future Farm Ownership:
  - Issues relating to buyouts and valuation can be discussed and negotiated, before any disagreements arise.

FUTURE FARM MANAGEMENT

- Transfer on Death Designations:
  - TOD designations for each member's shares of the LLC help ensure Farm is kept within the family.
- Restrictive Voting Interests:
  - Help ensure the Farm is managed by the appropriate individuals.
- Family Discounting:
  - Discounts in sales price can encourage retention of the Farm, discourage "ILI" (In-Law-Involvement)
- Buyouts:
  - Need very specific language regarding valuations, financing requirements, length of buyout, etc.

ISSUES IN LLC PLANNING

- Return of Gift:
  - While the LLC can return the farm back to Mom and Dad and eliminate any penalty period, the LLC must agree to do so.
  - Sale of Property:
    - As the remainder interest owned by the LLC has an IRS valuation, if the property is sold during Mom or Dad's lifetime, the LLC will receive a portion of the proceeds and the entire sale can be subject to Capital Gains.
- Typically advise families to survey off home from adjoining farm ground.
  - Allows retention and sale of homeplace by Mom and Dad.
- Annual Requirements for LLC in Indiana
- Cannot fix dysfunctional families, but can help guide them.

FAMILY FARM PLANNING: TRUSTS

- The Standard Revocable Trust will not protect against Medicaid, Federal Estate Tax, or other issues
- Certain transfers to an Irrevocable Trust will constitute gifts, starting 5-year penalty period under Medicaid Rules
  - Must ensure the trust is drafted properly to qualify as a completed gift
  - Issue arises if care is needed within 5-year penalty period; options for undoing the gift can be difficult through an Irrevocable Trust
- "Fairness" in Farm Families
  - Consider other options to make family members feel "equal"
- Cannot "Dead hand" control the Real Estate forever

GUARDIANSHIPS AND MEDICAID PLANNING IN INDIANA

GUARDIANSHIP

- If someone has lost capacity and lacks a POA, a guardianship may be needed.
- Generally, a guardianship is a last resort.
  - Takes away autonomy and personal control to a point that basic self-determination is cut down.
- Could take a matter of a week, if in an emergency, or a couple ofmonths.
  - Procedure: Petition, Notices, G.A.L. appointment, hearing, Letters, Oath and Instructions, Inventories, Accountings, Future Proceedings, etc.
- Possible Avenue for Abuse

CONSIDERATIONS BEFORE SEEKING GUARDIANSHIP

- POAs, trusts, joint accounts.
- Less restrictive alternatives; IC 29-3-1-7.8
  - Supported Decision-Making Agreements.
  - Technology
- These must ultimately be referenced in your petition, so good to start considering

PLANNING IN A GUARDIANSHIP

- Ind. Code § 29-3-9-4.5 This code specifically allows for estate planning which would otherwise not generally be allowed so long as the court considers:

  (1) the financial needs of the protected person and the needs of individuals who are dependent on the protected person for support;

  (2) the interests of creditors;

  (3) the possible reduction of income taxes, estate taxes, inheritance taxes, or other federal, state, or local tax liabilities;

  (4) the eligibility of the protected person for governmental assistance;

  (5) the protected person's previous pattern of giving or level of support;

  (6) the protected person's existing estate plan, if any;

  (7) the protected person's life expectancy and the probability that the guardianship will terminate before the protected person's death; and

  (8) any other factor the court considers relevant

ELDER LAW HOT TIPS AND TRICKS

REMAINING AT HOME

- Personal Services Agreements allow a person to pay a caregiver for services without creating Medicaid Gift Penalty
  - Keeps Mom and/or Dad at Home
  - Creates Unity in Family
  - Passes Assets to the Next Generation
  - Pay Taxes: No Penalty if Medicaid is Needed Later
- "Granny Addition"
  - If moving in with a child, individual can document that expenses associated with renovating the home are done with the expectation to remain in the home

PENALTY FREE GIFTING

- Certain Transfers are exempt from Medicaid Gifting Penalties:
  - Transfers to disabled Children
  - Child living in Home with Mom/Dad for over 2 years
  - Assets Protected by Long Term Care Insurance
  - De Minimus $1,200 per year

LONG TERM CARE INSURANCE

- Shift away from Traditional "Use it or lose it" benefits
  - Hybrid Policies: Lincoln Money Guard
- Partnership Program and Asset
- Protection
  - Total or Dollar for Dollar disregard

AMERICAN ASSOCIATION FOR LONG-TERM CARE INSURANCE

- 350,000 people purchased long-term care insurance policies in 2018.
- 16% bought traditional long-term care policies.
- 84% bought hybrid linked policies.

Lincoln Financial

MoneyGuard®

- A universal life insurance policy with optional long-term care benefit riders.
- Similar products are available from other companies.

Nancy, in good health, at age 65 puts $100,000 into a policy

Nursing Home Insurance	• $6,934/mo for 6 years • Up to $500,000
Life Insurance	• Heirs Receive Death Benefit of $166,000 • Income and Inheritance Tax Free
Withdrawal Right	• Your original policy premium of $100,000 is there if you need it.

QUESTIONS?

Sample Forms

1. General Power of Attorney

2. Healthcare Representative

3. Transfer on Death Deed

4. Qualified Income Trust

5. Shared Expense Agreement

6. Affidavit/Doctor letter to gift the home without a penalty

7.Medicaid Planning forms in a Guardianship

8. POST Form

NOTICE: **This Power Of Attorney is an adaptation of a form copyrighted by the firm with which the Grantor's legal counsel is associated. It has been prepared in a manner which specifically addresses the Grantor's circumstances and wishes. Its provisions may not be suitable for anyone else.**

GENERAL POWER OF ATTORNEY

OF

CLIENT NAME
("Grantor")

1. Single Attorney-In-Fact

I hereby appoint my (relation), "**ATTORNEY-IN-FACT #1"**, as my **"Attorney-In-Fact"**. If she fails or ceases to serve as my Attorney-In-Fact, I appoint my (relation), "**ATTORNEY-IN-FACT #2"**, as my **"Attorney-In-Fact"**. If he/she fails or ceases to serve as my Attorney-In-Fact, I appoint my (relation), "**ATTORNEY-IN-FACT #3"**, as my **"Attorney-In-Fact"**.

2. Effective Immediately

This power of attorney shall take effect at the time it is signed by me.

3. Powers Granted

Except as limited by the provisions of this power of attorney, I empower my Attorney-In-Fact to do and perform for me and in my name, at any time and from time to time, **ALL ACTS** which I could perform lawfully if personally present and capable. However, I reserve the right to act for myself at all times and to revoke any or all of the authority granted to my Attorney-In-Fact by this power of attorney. Any lawful act performed by my Attorney-In-Fact under the authority of this power of attorney shall be binding on me and my heirs, legatees, devisees, successors in interest, and legal representatives.

Except as limited by the provisions of this power of attorney, I intend for the powers hereby granted to my Attorney-In-Fact to include general authority with respect to:

(1) real property transactions;

(2) tangible personal property transactions;

(3) **bond, share, and commodity transactions** (including authority to purchase and redeem United States Series I and Series EE savings bonds);

(4) **retirement plans** (including authority to establish, make contributions to, and elect a form of payment of benefits from, any retirement plan of which I am a participant or beneficiary);

(5) **banking transactions** (including authority to enter at any time any safe deposit box or vault which I could enter if personally present; and including authority to conduct banking transactions of any nature over the Internet or otherwise; but provided that signature authority of my Attorney-In-Fact, in and of itself, with respect to any account of mine, shall not cause my Attorney-In-Fact to be deemed a "party" with respect to that account, nor shall it otherwise be deemed to create in my Attorney-In-Fact any beneficial interest in that account);

(6) **business operating transactions** (including authority to perform any acts my Attorney-In-Fact considers desirable or necessary for the furtherance or protection of my interests in a business);

(7) **insurance transactions** (including authority to exercise options to purchase or otherwise acquire additional coverage under contracts of insurance under which I am insured or in which I am otherwise interested, and including authority to perform any acts in connection with procuring, supervising, managing, modifying, enforcing, or terminating contracts of insurance, or contracts for the provision of health care services, under which I am insured or in which I am otherwise interested);

(8) **transfer on death or payable on death transfers** (including authority to, on my behalf, **(i)** establish transfer on death and payable on death transfers, **(ii)** designate and change beneficiaries of transfer on death and payable on death transfers (including existing transfers), and **(iii)** terminate transfer on death and payable on death transfers (including existing transfers);

(9) **beneficiary transactions** (including authority to perform any acts in connection with the administration or disposition of any trust, probate estate, guardianship, escrow, custodianship, or other fund in which I have, or claim to have, an interest as a beneficiary; including authority

to disclaim gifts, inheritances, and other transfers to me, and any power or discretion which I may hold, considered by my Attorney-In-Fact to be burdensome, unnecessary, or unwise; and including authority to transfer part or all of any interest I have in real property, stocks, bonds, bank accounts, insurance, or other property of any kind, to the trustee of any revocable trust made by me as grantor);

(10) **gift transactions** (including authority to make gifts on my behalf from time to time, either outright or in trust, without any annual or other limitation in value, for any purposes my Attorney-In-Fact considers to be appropriate);

(11) **fiduciary transactions** (including authority to perform any acts with respect to a fund of which I am a fiduciary);

(12) **claims and litigation** (including authority to perform any acts in connection with a claim by or against me or in connection with litigation to which I am a party);

(13) **family maintenance** (including authority to perform any acts for the welfare of any persons customarily supported by me, or for the preservation and maintenance of other personal relationships of mine to relatives, friends, or organizations, as are appropriate);

(14) **benefits from military service** (including authority to perform any acts my Attorney-In-Fact considers desirable or necessary to assure to me and to my dependents the maximum possible benefits from any military service performed by me or by a person related to me by blood or marriage, whether performed before or after I sign this power of attorney);

(15) **records, reports, and statements** (including authority to perform any acts in connection with the preparation, signing, filing, storage, or other use of records, reports, or statements of or concerning my affairs, and including authority to prepare, sign, and file **(i)** tax returns of every description required by the laws of the United States, a state, a subdivision of a state, or a foreign government, and **(ii)** any tax related documents my Attorney-In-Fact considers to be appropriate, including Internal Revenue Service Form 2848, Power of Attorney and Declaration of Representative);

(16) **<u>estate transactions</u>** (including authority to make and amend revocable trusts, for any purposes my Attorney-In-Fact considers to be appropriate, which terminate before, at, or after my death, and including authority to have access to and copy my will, trust agreements (if any), and personal records to the extent necessary for my Attorney-In-Fact to act in my best interests under this power of attorney);

(17) **<u>electronic records, reports, and statements</u>** (including authority to **(i)** gain access to and exercise control over my digital assets, **(ii)** access my user accounts with online service providers, **(iii)** access, retrieve, copy, or store electronic communications sent or received by me, and **(iv)** perform any acts in connection with the use of electronic records pertaining to my affairs); and

(18) **<u>all other matters</u>** (including authority to perform any and all acts on my behalf, with respect to all possible matters and affairs affecting me or my property, which can be performed lawfully through an attorney-in-fact, including but not limited to authority to perform any and all acts on my behalf with respect to benefits from Social Security, Medicare, Medicaid, or other governmental programs, and authority to establish and fund an irrevocable qualified income trust if such a trust is necessary for me to receive public benefits).

Except as limited by the provisions of this power of attorney, I intend for my Attorney-In-Fact to have the broadest possible authority with respect to me and my affairs, including, but not limited to, **(i)** all of the authority specified in Chapter 30-5-5 of the Indiana Code for each of the underlined terms appearing in the foregoing list, and **(ii)** any additional authority noted parenthetically in the foregoing list following such terms. None of the parenthetical notations shall be construed to limit the authority of my Attorney-In-Fact.

4. <u>Powers Withheld</u>

My Attorney-In-Fact shall **NOT** have any authority under this power of attorney:

(1) with respect to **health care powers**, as defined in Section 30-5-5-16(b) of the Indiana Code, or to act as my health care representative under Chapter 16-36-1 of the Indiana Code or any similar law unless I have named my attorney-in-fact as my health care representative or health care attorney-in-fact in a separate instrument;

(2) to make or change my will, to make or change my living will, or to appoint a health care representative for me;

(3) to designate my Attorney-In-Fact, the spouse, a child, or other descendant of my Attorney-In-Fact, the spouse of a child or other descendant of my Attorney-in-Fact, or any person my Attorney-In-Fact is obligated to support or customarily supports, as **(i)** a beneficiary of any contract of life, accident, health, or disability insurance, **(ii)** a beneficiary of any contract for the provision of health care services, or **(iii)** a beneficiary of any transfer on death or payable on death transfer, unless such person is designated as a beneficiary under a contract procured or transfer made by me, whether procured or made before or after I sign this power of attorney, in which event such person may continue to be designated as a beneficiary under the contract or transfer, or an extension or renewal of, or substitute for, the contract, to the same extent designated by me, or unless doing so is consistent with written recommendations made to me by my professional advisors for the preservation or disposition of my estate, whether made before or after I sign this power of attorney;

(4) to make gifts, whether outright or in trust, to my Attorney-In-Fact, to the spouse, a child, or other descendant of my Attorney-In-Fact, to the spouse of a child or other descendant of my Attorney-In-Fact, or to any person my Attorney-In-Fact is obligated to support or customarily supports, except in furtherance of a plan adopted by me or recommended to me in writing by my professional advisors for the preservation or disposition of my estate, or in furtherance of a plan or pattern of gift-making established by me, whether adopted, recommended, or established before or after I sign this power of attorney;

(5) to make or amend a revocable trust in any manner which benefits, directly or indirectly, my Attorney-In-Fact, the spouse, a child, or other descendant of my Attorney-In-Fact, the spouse of a child or other descendant of my Attorney-In-Fact, or any person my Attorney-In-Fact is obligated to support or customarily supports, unless the benefits provided to such persons are consistent with a plan made by me or recommended to me in writing by my professional advisors for the preservation or disposition of my estate, whether made or recommended before or after I sign this power of attorney;

(6) which, even if not exercised, would cause my Attorney-In-Fact to be treated as the owner of any interest in any property of mine for any purpose, or which, even if not exercised, would cause any such interest in property to be taxed to my Attorney-In-Fact for any purpose; or

(7) to assume custody of my will, my trust agreements (if any), or any personal records of mine other than this power of attorney, if in the custody of a lawyer, accountant, or other professional consulted by me, unless and to the extent that such professional believes it to be in my best interests to transfer custody thereof to my Attorney-In-Fact.

5. Liability Limited

My Attorney-In-Fact is **NOT** required to exercise any power granted by this power of attorney or to assume control of or responsibility for any of my property or affairs, regardless of my physical or mental condition. My Attorney-In-Fact shall be liable only for acts performed in bad faith.

6. Delegation Of Authority

My Attorney-In-Fact may delegate, revocably or irrevocably, to one or more persons or entities, any or all of the powers granted to my Attorney-In-Fact by this power of attorney. To be effective, any such delegation of authority must be in writing and, if irrevocable, must be attached to this power of attorney. If not stated clearly to be irrevocable, any such delegation of authority may be revoked by my Attorney-In-Fact at any time.

7. Compensation

My Attorney-In-Fact shall be entitled to reasonable compensation for services performed as my Attorney-In-Fact, and to reimbursement of all reasonable expenses incurred as my Attorney-In-Fact; provided that, to the extent not paid for such services or reimbursed for such expenses, my Attorney-In-Fact shall notify me in writing, within twelve (12) months after such services are performed or such expenses are incurred, of the amounts claimed which remain unpaid.

8. Guardian

If protective proceedings are commenced with respect to my person or property, or if a guardian otherwise is requested to act on my behalf, I nominate my Attorney-In-Fact

for appointment as my guardian or to act on my behalf. Notwithstanding the appointment of a guardian for me, I intend for my Attorney-In-Fact to continue to hold all of the powers granted by this power of attorney, except to the extent that the court appointing the guardian specifically and effectively orders otherwise.

9. Records

My Attorney-In-Fact shall keep complete records of all acts performed by my Attorney-In-Fact under this power of attorney. However, my Attorney-In-Fact shall **NOT** be required to render an accounting unless ordered by a court or requested by me; by a guardian appointed for me; or (following my death) by the personal representative or a beneficiary of my estate.

10. Use Of Copies In Lieu Of An Original

Any photographic or facsimile copy of this power of attorney shall be of the same force and effect as an original, **IF** my Attorney-In-Fact certifies in writing under the penalties for perjury that the copy is a true and correct copy.

11. Termination

This power of attorney shall continue in effect until it has been revoked in writing by me in the manner provided by law, or until my death, whichever occurs first. The validity of this power of attorney shall **NOT** be affected by any incapacity of mine, or by the lapse of time. In the absence of actual knowledge of my death or my revocation of this power of attorney, each person or entity to whom this power of attorney (or a duly certified photographic or facsimile copy thereof) is presented shall assume that it has not been terminated in any respect and that it remains in full force and effect.

12. Prior Powers of Attorney

The authority granted by me in this power of attorney supersedes all authority granted by me in any power of attorney made prior to my signing of this power of attorney, except for authority (granted by me in a prior power of attorney) which is withheld by Paragraph 4 of this power of attorney. However, this power of attorney does **NOT** revoke any prior power of attorney made by me.

13. Indiana Law

This power of attorney is being signed and delivered in contemplation of Indiana law, and it shall be interpreted and governed in accordance with Indiana law.

14. Delivery of Power of Attorney

I may deliver this power of attorney to my Attorney-In-Fact immediately or, for convenience and safekeeping, I may deliver it to my legal counsel's firm, Dale, Huffman & Babcock, as my agent for delivery to my Attorney-In-Fact on my behalf at a later date. If I choose to deliver this power of attorney to my legal counsel's firm, I hereby authorize any lawyer now or hereafter associated with such firm (or any successor to such firm) to deliver it to my Attorney-In-Fact, upon the request of my Attorney-In-Fact, at any time such lawyer believes it to be in my best interests to do so. In the absence of actual knowledge to the contrary, each person or entity to whom this power of attorney (or a duly certified photographic or facsimile copy thereof) is presented shall assume that it was duly delivered to my Attorney-In-Fact, and its delivery shall not be questioned. My legal counsel's firm (and the lawyers from time to time associated with such firm) shall not incur any liability to anyone by reason of the delivery of this power of attorney to my Attorney-In-Fact as herein provided. I assume full responsibility for notifying my Attorney-In-Fact that I have made this power of attorney, and my legal counsel shall not have any obligation to do so (but he or she may do so at any time he or she believes it to be in my best interests to do so).

[The remainder of this page has been left blank intentionally.]

Signed in the presence of the undersigned Notary Public this _____ day of _____, 2021.

_____

Client Name

STATE OF INDIANA)
)
COUNTY OF _____)

Before me, a Notary Public in and for the State of Indiana, this _____ day of _____, 2021, personally appeared ***CLIENT NAME***, who signed the foregoing power of attorney in my presence, or in my presence authorized and directed another individual to sign the foregoing power of attorney, and acknowledged the execution of it to be a voluntary act and deed for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

A resident of _____ County

_____
Notary Public (Signature)

My commission expires:
_____

_____
Notary Public (printed name)

This instrument was prepared by **Keith P. Huffman**, Attorney at Law, Indiana Bar No. 8028-90, Dale, Huffman & Babcock, 1127 North Main Street, Bluffton, Indiana 46714.

I affirm, under the penalties for perjury that I have taken reasonable care to redact each Social Security number in the document, unless required by law—Keith P. Huffman

NOTICE: **This Appointment of Health Care Representative is an adaptation of a form copyrighted by the firm with which the Grantor's legal counsel is associated. It has been prepared in a manner which specifically addresses the Grantor's circumstances and wishes. Its provisions may not be suitable for anyone else.**

APPOINTMENT OF HEALTH CARE REPRESENTATIVE

OF

JANE DOE
("Grantor")

1. Single Representative

I hereby appoint my spouse, **JOHN DOE**, as my health care representative (hereinafter referred to as my "Representative").

2. Substitute Representative [Single Successor(s) in Order]

If my Representative named in Paragraph 1 of this instrument fails or ceases to serve as my Representative, or during any periods of time in which my Representative named in Paragraph 1 is not reasonably available (as determined by my attending physician) to exercise the authority granted by this instrument, I appoint my [], [], as my Representative. If [] is not reasonably available (as determined by my attending physician) to exercise the authority granted by this instrument, I appoint my [], [], as my Representative.

2. Substitute Representative [Multiple Concurrent Successors]

If my Representative named in Paragraph 1 of this instrument fails or ceases to serve as my Representative, or during any periods of time in which my Representative named in Paragraph 1 is not reasonably available (as determined by my attending physician) to exercise the authority granted by this instrument, I hereby appoint [] and [], either one of whom may act alone, as my Representative. In the event of an emergency, a health care provider can rely upon the decision of the first of my Health Care Attorneys-In-Fact that is reasonably available to make health care decisions for me if I am incapable of consenting to my own health care.

2. Substitute Representative [Successors By Majority]

If my Representative named in Paragraph 1 of this instrument fails or ceases to serve as my Representative, or during any periods of time in which my Representative named in Paragraph 1 is not reasonably available (as determined by my attending physician) to exercise the authority granted by this instrument, I hereby appoint [], [], and [], acting by majority action, as my health care representative. In the event that any one of [], [], and [] is not reasonably available (as determined by my attending physician) to serve as my health care representative, then the remaining two individuals shall act together as my health care representative. In the event that two of [], [], and [] are not reasonably available (as determined by my attending physician) to serve as my health care representative, then the remaining individual shall act alone as my health care representative.

3. Effective Immediately

This instrument shall take effect at the time it is signed by me, and at all times thereafter my Representative shall have authority to communicate with my health care providers and participate in my medical decision making. However, at any time that my health care providers believe that I am not mentally incapacitated, and in the event of a disagreement between me and my Representative as to the course and scope of my medical care, my health care providers shall follow only my direction and instruction and not that of my Representative.

4. Determination of Incapacity

In determining whether or not I am incapacitated as set forth in IC 16-36-1-4 by a physician, psychologist, or other health care professional, the following evidence shall be considered, as reported to my health care providers by my spouse, family members, and/or friends:

1. Changes in my personal hygiene and my motivation to care for myself;

2. Changes in the degree to which I care for and order my living space and surroundings;

3. Changes in my personal affect, mood, and interactions with others;

4. Changes in my ability or willingness to interact with health care providers and direct my own health care; and

5. Changes in my enthusiasm for recreational activities that previously interested me.

5. Powers Granted

Except as limited by the provisions of this instrument, I empower my Representative to act as my health care representative under Chapter 16-36-7 of the Indiana Code, as amended (or replaced) from time to time. I intend for the authority hereby granted to my Representative to include authority to do for me and in my name the following:

(1) employ or contract with companions, caregivers, and health care providers to care for me;

(2) consent to or refuse health care for me in accordance with IC 16-36-7, as amended (or replaced) from time to time;

(3) admit me to or release me from any hospital or other health care facility;

(4) have access to records, including medical records, concerning my condition;

(5) make anatomical gifts on my behalf;

(6) request an autopsy of my body; and

(7) make plans for the disposition of my body, including (but not necessarily limited to) the making of funeral and burial or cremation arrangements, both before and after my death, which are in keeping with my station in life and any wishes of mine known to my Representative.

6. Specific Authority to Withdraw or Withhold Health Care

In furtherance of the authority granted to my Representative to consent to or refuse health care for me (item (2) of Paragraph 5), I empower my Representative to ask, in my name, for health care to be withdrawn or withheld when it is not beneficial or, even if my death may result, when any benefit is outweighed by the demands of the treatment.

I authorize my Representative to make decisions in my best interests concerning withdrawal or withholding of health care. If at any time, based on my previously expressed

preferences and the diagnosis and prognosis made by my health care providers, my Representative is satisfied that certain health care is not or would not be beneficial, or that such health care is or would be excessively burdensome, then my Representative may express my will that such health care be withdrawn or withheld and may consent on my behalf that such health care be discontinued or not instituted, even if my death may result.

My Representative must try to discuss any such decision with me. However, if I am unable to communicate, my Representative may make such a decision for me after consulting with my physicians and my other health care providers. To the extent appropriate, my Representative shall also discuss any such decision with my family and other interested individuals.

7. Medical Information Access

In furtherance of the authority granted to my Representative to have access to all records concerning my condition (item (4) of Paragraph 5), I intend for my Representative to be treated as I would be treated with respect to my rights regarding the use and disclosure of my medical records and my other individually identifiable health information. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, other covered health care provider, or insurance company, to give, disclose, and release to my Representative, without restriction, all of my medical records and my other individually identifiable health information regarding any past, present, or future medical or mental health condition.

The authority given to my Representative under this Paragraph shall supersede all prior agreements that I may have made with, and all prior instructions that I may have given to, my health care providers to restrict access to or disclosure of my medical records and my other individually identifiable health information.

8. Liability Limited

My Representative is **NOT** required to exercise any power granted by this instrument, even though I become incapable of consenting to my own health care. However, if at any time (while I am incapable of consenting to my own health care) my Representative is reasonably available but unwilling to make timely decisions with respect to the authority granted by this instrument, they shall be deemed to have resigned as my Representative. My Representative shall be liable only for acts performed in bad faith.

9. Delegation of Authority Permitted

My Representative shall be permitted to delegate authority pursuant to this instrument and IC § 16-36-7-33, but only to the following person(s) or class of persons:

1.) An adult descendant of mine;

2.) An adult sibling of mine; and

3.) The adult child or adult descendant of a sibling of mine.

10. No Compensation; Reimbursement Permitted

My Representative shall not be entitled to a fee for services under this instrument. However, my Representative shall be entitled to reimbursement for reasonable expenses incurred on my behalf and reasonable travel costs in connection with attending to my medical needs.

11. Use of Copies in Lieu of an Original

Any photographic or facsimile copy of this instrument shall be of the same force and effect as an original, IF my Representative certifies in writing under the penalties for perjury that the copy is a true and correct copy.

12. Revocation

Any oral revocation or amendment of this instrument by me pursuant to IC § 16-36-7-32(a)(3) shall only be valid if witnessed and approved by my attending physician.

13. Prior Instruments Revoked

My execution of this instrument shall be deemed to revoke any and all prior appointments of health care representative executed by me.

14. No Oversight by Health Care Proxies

No person who would otherwise act as a proxy for my health care decisions pursuant to IC §16-36-7-42 and IC §16-36-7-43 (if an advance directive did not otherwise exist) may make written demand for a narrative description or other accounting of the actions taken and decisions made by my Representative pursuant to this instrument.

15. No Authority to Access Financial Records or Apply for Public Benefits

My Representative shall not have the authority to apply for public benefits on my behalf pursuant to IC §16-36-7-36(6), and shall not have access to information regarding my income, assets, and banking and financial records for any purposes pursuant to this instrument.

16. Exclusion of Certain Individuals

I hereby exclude _____ and _____ from acting as my Representative, my health care proxy pursuant to IC §16-36-7-42 and IC §16-36-7-43, and from receiving delegated authority to act as my Representative.

17. Indiana Law

This instrument is being signed and delivered in contemplation of Indiana law, and it shall be interpreted and governed in accordance with Indiana law.

[The balance of this page intentionally left blank]

Signed in the presence of the undersigned Notary Public this _____ day of _____, 2021.

_____

Jane Doe
123 Main Street
Anywhere, USA 00000

STATE OF INDIANA)
)
COUNTY OF _____)

Before me, a Notary Public in and for the State of Indiana, this _____ day of _____, 2021, personally appeared **JANE DOE**, who signed the foregoing power of attorney in my presence, or in my presence authorized and directed another individual to sign the foregoing power of attorney, and acknowledged the execution of it to be a voluntary act and deed for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

A resident of _____ County

_____
Notary Public (Signature)

My commission expires:
_____

_____
Notary Public (printed name)

This instrument was prepared by **Keith P. Huffman**, Attorney at Law, Indiana Bar No. 8028-90, Dale, Huffman & Babcock, 1127 North Main Street, Bluffton, Indiana 46714.

Mail tax bills to (Grantor's Address):
JOHN DOE
123 Fake Street
Bluffton, IN 46714

TRANSFER ON DEATH DEED

THIS INDENTURE WITNESSETH that **JOHN DOE** ("the Owner"), **RELEASES and QUITCLAIMS** to himself, **JOHN DOE** the following described real estate in Wells County, Indiana ("the **Real Estate**"):

PARCEL NO.:

(Legal Description)

TRANSFER ON DEATH TO: John Doe Jr., child of the Owner, LDPS.

Subject to all rights-of-way, easements, zoning and subdivision control ordinances, conditions and restrictions of record, and flood zones affecting the Real Estate.

RECITAL #1: JANE DOE and the Grantor received title to the Real Estate by the deed, recorded in Deed Record 1, page 1, January 1, 2001, in the Records of _____ County. **JANE DOE** and the Grantor were married to each other prior to that date and remained married to each other continuously thereafter until her death on October 31, 2001.

RECITAL #2: This deed is being executed and delivered on behalf of JOHN DOE pursuant to the authority conferred by the power of attorney dated January 1, 20221, executed and delivered by him to the undersigned Attorney-In-Fact and recorded in as Document No. _____ in the Records of _____ County, Indiana. So far as the undersigned Attorney-In-Fact is aware, that power of attorney has not been revoked by the death of the principal, nor has any of the authority conferred by that power of attorney been amended or revoked.

Dated this _____ day of _____, 2021

JOHN DOE

_____

By: John Doe Jr. Attorney-In-Fact
under the Power of Attorney recorded
as Document No. _____ in the
Records of Wells County, Indiana

STATE OF INDIANA)
)
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for the State of Indiana, this _____ day of _____, 20___, personally appeared **John Doe Jr.**, as attorney-in-fact of **John Doe**, who, under the penalties for perjury, affirmed the truth of the representations contained in the foregoing Recitals and acknowledged his execution of the foregoing deed.

IN WITNESS WHEREOF, I have subscribed my name and affixed my official seal.

A resident of _____ County

_____
Notary Public (signature)

My commission expires:
_____

_____
Notary Public (printed name)

* * * * * * * * * * * * *

This instrument was prepared by **Michael J. Huffman**, Attorney at Law, Indiana Bar No. 31350-90 Dale, Huffman & Babcock, 1127 North Main Street, Bluffton, IN 46714.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this instrument, unless required by law –Michael J. Huffman

QUALIFIED INCOME TRUST
FOR
JOE D. SMITH DATED _____ ___, 20___

THIS TRUST AGREEMENT made this ___ day of _____, 20___, by **JOE D. SMITH**, (hereinafter referred to as the "**SETTLOR and/or BENEFICIARY**"), regarding the income of **JOE D. SMITH**, and **JANE D. SMITH** as **TRUSTEE**.

ARTICLE ONE
NAME OF TRUST

THIS TRUST shall for convenience be known as the "**JOE D. SMITH QUALIFIED INCOME TRUST DATED _____ ___, 20__**" and it shall be sufficient that it be referred to as such in any instrument of transfer, deed, assignment, bequest or devise.

ARTICLE TWO
PURPOSE OF THIS TRUST

2.01. A. The **SETTLOR**'s intention in maintaining this Trust is to create a fund that qualifies as a trust described under 42 U.S.C § 1396p(d)(4)(B) to enable the **BENEFICIARY** to seek and obtain support and resources for the **BENEFICIARY** from all available public resources, including, but not limited to, state medical benefits, Medicaid, Social Security Administration benefits, Veterans Administration benefits, Supplemental Security Income (SSI), U.S. Civil Service Commission benefits, and federal Social Security Disability Insurance (SSDI) despite having available income in excess of the amount which such benefits would otherwise be available to the **BENEFICIARY**.

B. In the event the **TRUSTEE** is requested or required to release principal or income of the Trust to or on behalf of the **BENEFICIARY** to apply against the cost of services which such public assistance is otherwise authorized to provide, were it not for the existence of this Trust, or in the event the **TRUSTEE** is required or requested to release principal or income of the Trust to pay for equipment, medication or services which any state or federal agency is authorized or required to provide (were it not for the existence of this Trust) or if the **TRUSTEE** is requested to petition the Court or any other administrative agency for the release of Trust principal or income for such purposes, the **TRUSTEE** is authorized to deny such request. The **TRUSTEE** is further authorized, as the **TRUSTEE** may in the **TRUSTEE**'s discretion deem appropriate, to take whatever administrative or judicial steps which may be necessary to continue the **BENEFICIARY**'s eligibility for such public assistance programs, including obtaining instructions from a court of competent jurisdiction and obtaining a ruling that the Trust principal is not available to the **BENEFICIARY** for such eligibility purposes. All costs incurred by the **TRUSTEE** in relation to these matters, including reasonable attorney's fees, shall be a proper charge to the Trust unless payment of such costs or fees would result in rendering the **BENEFICIARY** ineligible for any public benefits to which **BENEFICIARY** would otherwise be entitled.

C. If the existence of this Trust has the effect of rendering the **BENEFICIARY** ineligible for Social Security Administration benefits, Veterans Administration benefits, Supplemental Security Income (SSI), U.S. Civil Service Commission benefits, state medical benefits, Medicaid and federal Social Security Disability Insurance (SSDI) or other public assistance program which the **TRUSTEE**, in the **TRUSTEE**'s sole and non-reviewable discretion determines essential to provide the **BENEFICIARY** the level of care and dignity which the **SETTLOR** desires for **BENEFICIARY** and that the consequences of such ineligibility would defeat the **SETTLOR**'s purposes, then the **TRUSTEE** is authorized, but not required, to initiate either administrative or judicial proceedings, or both, for the purposes of determining eligibility. All costs relating to these matters incurred by the **TRUSTEE** in relation to these matters, including reasonable attorney's fees, shall be a proper charge to the Trust.

2.02. **MODIFICATION OR TERMINATION**

During the **BENEFICIARY**'s lifetime, this Trust shall only be subject to modification or termination in such a manner as necessary to assure the **SETTLOR**'s intent to provide for the needs of the **BENEFICIARY** as set forth above and to assure that the **BENEFICIARY**'s eligibility for such assistance programs is maintained. Any such modification may be effected by the **SETTLOR**, if living and having capacity (determined under 4.08 below), otherwise, by the **TRUSTEE**. Any such modification shall be in writing signed by the **SETTLOR**, if living, and the **TRUSTEE**.

ARTICLE THREE
TRUST ESTATE

SETTLOR hereby covenants and agrees to deliver or cause to be delivered to the **TRUSTEE** the **BENEFICIARY**'s monthly unearned income described in "Schedule A" attached hereto and incorporated herein by reference. The **TRUSTEE** acknowledges receipt, in trust, of said property. No property other than the **BENEFICIARY**'s monthly unearned income (and the earnings thereon) shall be used to fund this Trust.

ARTICLE FOUR
APPOINTMENT OF THE TRUSTEE

4.01. **APPOINTMENT**

SETTLOR hereby nominates and appoints **JANE D. SMITH** as **TRUSTEE** of this Trust.

4.02. **RESIGNATION**

Any **TRUSTEE** hereunder (whether originally designated herein or appointed as successor) shall have the right to resign at any time by giving thirty (30) days' notice to that effect to the current income beneficiary (or beneficiaries) of the Trust and the Successor **TRUSTEE** named in 4.03 below.

4.03. **APPOINTMENT OF SUCCESSOR**

Upon the death, resignation or incapacity of **JANE D. SMITH**, **JOHNNY D. SMITH** shall serve as Successor **TRUSTEE**. Upon the death, resignation or incapacity of **JOHNNY D. SMITH** to serve as **TRUSTEE**, then the **BENEFICIARY** or the **BENEFICIARY**'s children shall appoint a Successor **TRUSTEE** and shall notify such **TRUSTEE** and/or **BENEFICIARY** of such appointment. Such Successor **TRUSTEE** may accept the account rendered and the property received as a full and complete discharge to a predecessor **TRUSTEE** without incurring any liability for so doing.

4.04. **BOND**

To the extent that any such requirement can be legally waived, no **TRUSTEE** shall ever be required to give bond, or to qualify or make accountings to any court or courts under the provision of any existing or future statutes of Indiana or any other state or territory, or to obtain the order or approval of any court in the exercise of any power or discretion herein given.

4.05. **MERGER OF CORPORATE TRUSTEE**

If a Corporate **TRUSTEE** shall, subsequent to its commencing to serve hereunder, merge or consolidate with any other entity authorized to serve as a Corporate **TRUSTEE**, then the successor corporation created pursuant to said merger or consolidation shall act as **TRUSTEE** and shall possess all of the rights, powers, duties and discretions conferred or imposed on the **TRUSTEE** originally named herein.

4.06. **COMPENSATION**

Every **TRUSTEE** shall be entitled to receive compensation for services rendered hereunder commensurate with the time and expertise required; provided, however, that in the event a bank or trust company becomes at **TRUSTEE** hereunder, such bank or trust company shall be entitled to reasonable compensation based upon its then standard charge for other trusts of similar size. Further, every **TRUSTEE** shall be reimbursed for all reasonable expenses incurred in the management and protection of the Trust Estate.

4.07. **ACCOUNTING AND REPORTING**

A. The **TRUSTEE** shall render to the **BENEFICIARY** statements of account or receipts and disbursements as **TRUSTEE** hereunder at least annually.

B. Periodic reports to any court shall not be made unless required by court order or the regulations of **State of Indiana's Division of Family Resources** or the agency charged with administration of the medical assistance program(s) of which the **BENEFICIARY** is receiving or is entitled to receive benefits. The trust records shall be open at all reasonable times to inspection by the beneficiaries of the trust and their accredited representatives.

C. To the extent the **TRUSTEE** receives any Social Security Administration benefits, Veterans Administration benefits or other governmental benefits which are, under the regulations or law applicable to such program, prohibited to be commingled with other assets of the Trust, the **TRUSTEE** shall segregate such receipts as a separate share of this Trust and administer same independently of the balance of the Trust estate.

4.08. **DETERMINATION OF CAPACITY**

For the purpose of this Trust, an individual shall be deemed to be incapable of managing his or her own affairs upon being adjudicated incapacitated by a Court of competent jurisdiction, or upon the receipt by the **TRUSTEE** or Successor **TRUSTEE** of a certificate signed by one (1) licensed physician that such individual is mentally incapable of attending to his or her business affairs. Such status of incapacity for purposes of this Trust shall continue until receipt by the **TRUSTEE** of a certified copy of a Court Order restoring such individual's competency, or until receipt by the Successor **TRUSTEE** of a certificate signed by one (1) licensed physician stating that in the opinion of such physician such individual is mentally capable of attending to his or her business affairs. Until the Successor **TRUSTEE** receives such a certified copy of a Court Order or physician's statements, it shall be fully protected in assuming that such individual's capacity has not changed.

ARTICLE FIVE
TRUST ADMINISTRATION DURING BENEFICIARY'S LIFETIME

5.01. **DISTRIBUTIONS OF INCOME AND PRINCIPAL**

A. During the term of this Trust, the **TRUSTEE** shall distribute to the **BENEFICIARY** the allowances described in paragraph B.1 below and as to other items set forth below, on behalf of the **BENEFICIARY** (or where applicable, the **BENEFICIARY**'s spouse or other family members) so much of the net income (as defined in subparagraph D below) or corpus of this Trust as the **TRUSTEE** shall determine equal to the "Distribution Amount" as defined in Paragraph B following.

B. For purposes of this Trust, the term "Distribution Amount" shall mean the amount equal to the sum of the following amounts, as from time to time adjusted:

1. a monthly personal needs allowance available to the **BENEFICIARY** as provided under SSA 1902(q)(1)(A), as amended, as well as other amounts allowed as special needs allowances under the rules and regulations of the Medicaid Waiver or Institutional Care Program as administered by the **State of Indiana**; and,

2. specified health insurance costs and special medical services provided under Title XIX of the federal "Social Security Act," 42 U.S.C. § 1396a(r), as amended, and any other deduction provided in the rules of the Medicaid Waiver or Institutional Care Program of the **State of Indiana**; and,

3. amounts needed to pay the **BENEFICIARY**'s share of the costs (currently described as the "Patient Liability") of nursing facility services rendered to the **BENEFICIARY**, or for services at a level of care in any institution equivalent to that of nursing facility services, or for home and community-based services provided under 42 U.S.C. § 1396 n(c) or (d), to the extent same are not covered by other sources, including but not limited to benefits through Hospice, provided such payments are allowed or required under the rules and regulations of the Medicaid Waiver or Institutional Care Program as administered by the **State of Indiana** without jeopardizing the **BENEFICIARY**'s Medicaid qualification.

C. In no event shall the amount distributed in any one calendar month exceed the greater of (i) the applicable Medicaid reimbursement rate distributable to the nursing facility providing Medicaid reimbursable services on behalf of the **BENEFICIARY** or (ii) such amount determined by the State of Indiana as required to be disbursed and not cause the **BENEFICIARY**'s Medicaid qualification to thereby be jeopardized.

D. In determining the amount of net income of this Trust distributable in accordance with the preceding provisions, the **TRUSTEE** shall first make, or make provision for, the following deductions therefrom: amounts reasonable necessary to establish and maintain the existence of this Trust, the costs and expenses of managing and administering this Trust, including Trustee fees and commissions and reasonable attorneys' fees and such sums necessary to comply with federal requirements. Nevertheless, unless the **TRUSTEE** receives written certification from the **SETTLOR** or the **BENEFICIARY**'s legal representative that the **BENEFICIARY**'s "patient liability" for the costs of care as determined by the State of Indiana in the amount of such deductions will be covered from funds not held in this Trust, no deduction for such amounts shall be made.

E. If any money remains after the monthly distributions and deductions from the Trust, such funds shall be retained and be added to the principal of the Trust.

5.02. DISTRIBUTIONS OF PRINCIPAL

No part of the principal or undistributed income of the Trust shall be considered available to nor be distributed to the **BENEFICIARY** except as provided in 5.01 above.

ARTICLE SIX
TERMINATION OF TRUST

6.01. DISTRIBUTION OF CORPUS UPON DEATH OF BENEFICIARY

This Trust shall terminate upon the death of the **BENEFICIARY** and any portion of the Trust estate remaining after payment of the amounts described in Section 6.02 below shall be distributed to the **BENEFICIARY**'s heirs.

6.02. REPAYMENT TO THE STATE FOR MEDICAID PROVIDED

Upon the death of the **BENEFICIARY**, the **TRUSTEE** shall distribute and deliver to the State of Indiana all amounts remaining in the Trust up to an amount as certified by its appropriate agency equal to the total medical assistance paid on behalf of the **BENEFICIARY** under Medicaid.

ARTICLE SEVEN
TRUST ADMINISTRATION

7.01. SPENDTHRIFT

A. The **TRUSTEE** is herein vested with full and complete title to all property and the estate embraced within the Trust hereof, both as to principal and income therefrom, subject only to the execution of the Trust herein.

B. No disposition, charge or encumbrance of either the income or principal of any of the Trust or any part thereof, by any beneficiary hereunder by way of anticipation shall be of any validity or legal effect or be in any way regarded by the **TRUSTEE**.

C. No beneficiary hereunder shall have any power to sell, assign, transfer, encumber or in any other manner anticipate or dispose of his or her interest in the Trust Estate or the income produced thereby. Neither the principal nor the income of the Trust Estate shall be liable for the debts of any beneficiary hereunder.

D. Because this Trust is to be conserved and maintained for the special needs of the **BENEFICIARY**, who may be disabled or impaired throughout life, no part of the Trust Estate shall be construed as part of the **BENEFICIARY**'s estate or be subject to the claims of voluntary or involuntary creditors of the **BENEFICIARY**, nor shall the same be subject to seizure by any creditor of any beneficiary hereunder, nor any writ or proceedings at law or in equity.

E. This provision shall not bar any remedy sought by either the **State of Indiana**, or any other state or county for the purpose of obtaining amounts payable thereto in accordance with this Trust Agreement.

7.02. DISABILITY

Whenever income or principal is distributable, at the discretion of the **TRUSTEE**, to or for the benefit of any person who is under a legal disability or who is not adjudicated incompetent but who by reason of illness or mental or physical disability, is in the opinion of the **TRUSTEE** unable to properly administer such amounts, then the **TRUSTEE**, in the **TRUSTEE**'s sole and absolute discretion, as done of a power, may distribute all or any part of such property (a) to or for the benefit of such person even though such distribution may result in an incidental benefit to the person with whom such person resides or such person's guardian; (b) to the guardian of such person's property wherever appointed without the requirement of ancillary appointment; or, (c) to the person with whom such person is residing for such person's benefit without the requirement of a bond or security.

7.03. **ACCRUED INCOME**

Any income accrued or undistributed at the termination of any estate or interest under this Trust or any share thereof, shall be paid by the **TRUSTEE** as income to the persons entitled to the next successive interest in the proportions in which they take such interest.

7.04. **ALLOCATIONS OF RECEIPTS**

All allocations of items of receipts or disbursements to either corpus or income of the Trust Estate shall be made by the **TRUSTEE**, as the **TRUSTEE** in the exercise of its best judgment deems to be proper, without thereby doing violence to clearly established and generally recognized principles.

7.05. **MISCELLANEOUS**

Until the **TRUSTEE** receives written notice of any birth, marriage, death or other event upon which the right to distribution of the income or principal of any Trust depends, the **TRUSTEE** may rely on the information available to the **TRUSTEE** and will not be held accountable for so acting.

ARTICLE EIGHT
TRUSTEE POWERS

The **TRUSTEE** shall have the following powers, in addition to those provided by applicable statute, which shall be incorporated herein by this reference, with respect to the Trust hereunder, to be exercised as the **TRUSTEE**, in the **TRUSTEE**'s sole and absolute discretion, determines to be in the best interests of the beneficiaries.

8.01. To sell any Trust property, for cash or on credit, at any public or private sales; to exchange any Trust property for other property to grant options to purchase or acquire any Trust property; and to determine the prices and terms of sales, exchanged and options.

8.02. To take any action with respect to conserving or realizing upon the value of any trust property, and with respect to foreclosures, reorganizations or other changes affecting the Trust property: to collect, pay, contest, compromise, or abandon demands of or against the Trust Estate, wherever situate and to execute any contracts, notes, conveyances, and other instruments, including instruments containing covenants and warranties binding upon or creating a charge against the Trust Estate, and containing a provision excluding personal liability.

8.03. To keep any property in the name of a nominee with or without disclosures of any fiduciary relationship.

8.04. To employ agents, attorneys, accountants, depositaries and proxies, with or without discretionary powers.

8.05. To determine the manner of ascertainment of income and principal, and subject to the specific discretions hereunder, to determine the apportionment between income and principal of all receipts and disbursements, and to select an annual accounting period.

8.06. To enter into any transaction authorized by this Article with Trustees or legal representatives of the **SETTLOR** or any other Trust or Estate in which any beneficiary hereunder has any beneficial interest, even though any such Trustee or legal representative is also Trustee hereunder.

8.07. To make any distribution or division of the Trust property in cash or in kind, or both, and to allot different kinds or disproportionate shares of property or undivided interests in such property among the beneficiaries and to determine the value of any such property; and to continue to exercise any power and discretion herein given for a reasonable period after the termination of the Trust, but only for so long as no rule of law relating to perpetuities would be violated.

ARTICLE NINE
MISCELLANEOUS

9.01. The laws of the State of Indiana shall govern the validity and interpretation of the provisions of this declaration.

9.02. The Trustee may consolidate any separate Trust with any other Trust for such beneficiary created by **SETTLOR**, which Trust contains provisions similar to those herein contained for the same beneficiary.

9.03. The masculine, feminine or neuter gender, wherever used herein shall be deemed to include the masculine, feminine and neuter. The terms “child,” “children,” and “issue” shall embrace adopted children as well as natural-born children and the term “parent” shall embrace an adopting parent as well as a natural parent. Whenever “Trustee” or “Trustees” is used herein, the same shall be deemed to include any singular Trustee or Successor Trustee or Trustees. Any reference in this Trust to the **State of Indiana’s Division of Family Resources** shall include any successor public agency or program which becomes vested with the responsibility for providing publicly supported nursing home care to eligible Indiana residents or the residents of the State in which the **BENEFICIARY** resides.

9.04. To the same effect as if it were the original anyone may rely upon a copy of this instrument certified by a Notary Public. In addition, anyone may rely upon a statement of facts certified by anyone who appears from the original document or a certified copy to be a Trustee hereunder.

9.05. In disposing of any Trust property subject to a power to appoint by Will, the Trustee may rely upon an instrument admitted to probate in any jurisdiction as the will of the done or may assume that he or she died intestate if the Trustee has no notice of a Will within three months after his or her death.

9.06. No one dealing with the Trustee need inquire concerning the validity of anything it purports to do nor need see to the application of the monies paid or any property transferred by it upon the order of the Trustee.

9.07. This Agreement and the Trusts hereby created shall be governed by and construed in all respects in accordance with the laws of the **State of Indiana**.

9.08. The **SETTLOR** and **TRUSTEE** hereby relinquish all power to alter, amend or revoke any provisions of this Trust Agreement, except such amendments as shall be authorized under Section 2.02. **THIS TRUST AGREEMENT SHALL BE IRREVOCABLE.**

In Witness Whereof, I have signed this instrument in duplicate at _____, Indiana, this _____ day of _____, 20___.

_____

Joe D. Smith, Settlor by Jane D. Smith His Attorney-In-Fact

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for the State of Indiana, this ___ day of _____, 20__, personally appeared **JANE D. SMITH,** and acknowledged the execution of the foregoing instrument as Attorney-In-Fact for Joe D. Smith for and on behalf of Joe D. Smith.

_____

A resident of _____ County

Notary Public (signature)

My commission expires:
_____

_____

Notary Public (printed name)

The trust created by the foregoing instrument is accepted as of the day and year last above written.

_____
Jane D. Smith, Trustee

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for the State of Indiana, this ___ day of _____, 20__, personally appeared **JANE D. SMITH,** as trustee of the Joe D. Smith Qualified Income Trust dated _____ ___, 20___, and acknowledged her execution of the foregoing instrument.

_____
A resident of _____ County Notary Public (signature)

My commission expires:
_____
_____
Notary Public (printed name)

* * * * * * * * * * * * * *

This instrument was prepared by **Attorney**, Attorney at Law, Indiana Bar No., _____,
Dale, Huffman & Babcock, 1127 North Main Street, Bluffton, Indiana 46714

SCHEDULE "A"

The **SETTLOR** hereinabove named of the **JOE D. SMITH QUALIFIED INCOME TRUST DATED _____ ___, 20___** intends to deliver or cause to be delivered to the **TRUSTEE**, for deposit to this Trust, the monthly income of Joe D. Smith above the Indiana Special Income Level.

EXPENSE SHARING AGREEMENT

This agreement made effective this _____ day of _____, 20____, between _____ ("Homeprovider") and _____ ("Homesharer").

Homeprovider is the homeowner of the premises located at _____, Indiana. Homeprovider agrees to share such premises with Homesharer, on the following terms.

TERMS: A. Expense payment of $_____ per month in advance;
B. Expense payment due on the _____ day of each month.

UTILITIES: Utilities are included as part of the expense payment.

FOOD COSTS: Food is included as part of the expense payment.

REAL ESTATE TAXES AND INSURANCE: Real estate taxes and insurance are included as part of the expense payment.

TRASH REMOVAL: Trash removal is included as part of the expense payment.

MAINTENANCE: Maintenance of the home and yard are included as part of the expense payment.

DUTIES OF HOMESHARER: Homesharer agrees to the following rules and regulations:

A. No alterations, additions and/or modifications shall be made to the premises without prior written consent from the Homeprovider (i.e. closets, painting, fixtures, etc.).

B. Damage to the shared premises or personal property of the Homeprovider caused by the Homesharer shall be repaired by or at the expense of the Homesharer.

DUTIES OF HOMEPROVIDER: The Homeprovider agrees to the following:

A. Homeprovider shall keep the shared premises in a clean and neat condition.

B. Repairs or improvements to the premises shall be at the obligation of the Homeprovider except those required of the Homesharer as described above.

C. Homeprovider shall keep the shared premises in a safe condition and provide adequate heat.

TERMINATION:

A. Either party may terminate this agreement by giving a 30-day written notice to the other party.

B. Homeprovider has the option to terminate this agreement by giving five days written notice to Homesharer if Homesharer fails to pay rent, destroys property, maintains any nuisance upon or about the premises, or if the Homesharer continues to breach any material provision of this agreement after written notice is given to the Homesharer to discontinue such breach.

C. Homesharer shall have the right to terminate this agreement upon five days written notice to Homeprovider, if Homeprovider breaches any material provisions of this agreement.

D. This Agreement shall automatically terminate at the end of the month in which Homesharer has been absent from the home for more than 30 consecutive days for health reasons.

We, the undersigned, do hereby execute and agree to be bound by this agreement.

HOMEPROVIDER:

_____

Date: _____

_____
Witness

HOMESHARER:

_____

Date: _____

_____
Witness

RE: CLIENT; DOB

To Whom It May Concern:

I and the physician for CLIENT. Based on Mr/Ms. CLIENT's medical condition, he/she has needed twenty-four (24) hour a day care since DATE. Mr/Ms. CLIENT's son/daughter, NAME, has been living with him/her since prior to DATE, and has provided assistance to him/her with regard to:

- Transportation to and from medical appointments;
- Grocery shopping;
- Taking medications;
- Preparing meals;
- Bathing; and
- Providing general support for his/her care and safety.

CLIENT would have been institutionalized in DATE, if his/her son/daughter did not live with him/her. The care provided by NAME to CLIENT allowed Mr/Ms. CLIENT to remain at home until DATE, when he/she was admitted to a long-term care facility.

_____ _____

Date Physician Signature

_____

Physician Printed Name

STATE OF INDIANA	)	IN THE _____ CIRCUIT COURT
	) SS:	
COUNTY OF _____	)	CAUSE NO.: _____

IN THE MATTER OF THE	)
GUARDIANSHIP OF	)
_____, ADULT	)

CONSENT TO EXECUTE ESTATE PLAN
ON BEHALF OF PROTECTED PERSON

I, _____, heir apparent of the estate of _____, a protected person, hereby join the petition of _____, as guardian of the estate and person of _____, to have an order entered directing the guardian to execute the proposed estate plan on behalf of _____. I freely consent to and understand the significance of the above—and understand that an **ORDER TO EXECUTE ESTATE PLAN ON BEHALF OF PROTECTED PERSON** will grant to the guardian of _____ the power to carry out the proposed estate plan.

I affirm under the penalties for perjury that the foregoing representations are true.

_____
_____

STATE OF INDIANA	)	IN THE _____ COURT
	) SS:	
COUNTY OF _____	)	CAUSE NO.: _____

IN THE MATTER OF THE)
GUARDIANSHIP OF)
_____, ADULT)

ORDER TO EXECUTE ESTATE PLAN ON BEHALF OF PROTECTED PERSON

Comes now _____ ("the Guardian"), the duly appointed and acting guardian of the person and estate of _____, having filed his/her/their Petition to Execute Estate Plan on Behalf of Protected Person and the consents of _____ to the relief requested therein.

The Court, being duly advised in the premises, now finds that the facts stated in said petition are true and that: (1) it would be in the best interest of _____ if the guardian was authorized to execute the proposed estate plan on her behalf, to gift property to her heirs in accordance with her wishes expressed in her trust, and as authorized by Ind. Code § 29-3-9-4.5.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED BY THE COURT THAT:

1. The Guardian is authorized and directed to execute an estate plan on behalf of _____;

2. The Guardian is further authorized and directed to lease and gift property to **_____** heirs in accordance with her wishes expressed in her trust; and

3. The Guardian is further authorized and directed to make those transactions enumerated in Ind. Code § 29-3-9-4.5 while executing the estate plan of **_____**.

So ordered this _____ day of _____, 2015.

_____
Judge, _____ Court

NOTICE GIVEN BY:

_____ COURT _____ CLERK _____OTHER:

PROOF OF NOTICE UNDER TRIAL RULE 72 (D)

A copy of the entry was served either by mail to the address of record, deposited in the attorney's distribution box, or personally distributed to the following persons:

PARTIES NOTIFIED BY: _____ DATE PARTIES NOTIFIED: _____

STATE OF INDIANA	)	IN THE _____ CIRCUIT COURT
	) SS:	
COUNTY OF _____	)	CAUSE NO.: _____

IN THE MATTER OF THE	)
GUARDIANSHIP OF	)
_____, ADULT	)

PETITION TO EXECUTE ESTATE PLAN
ON BEHALF OF PROTECTED PERSON

Comes now _____, the duly appointed and acting guardian of the person and estate of _____, who being duly sworn upon her, oath files her verified Petition to Execute Estate Plan on Behalf of Incapacitated Person, and respectfully shows the court as follows:

1. That _____ was by order of this Court entered on _____, appointed guardian of the person of _____, and duly qualified as such guardian and has continued in such capacity since the appointment.

2. That _____ is incapacitated by reason of the fact that he suffers from the affects of Alzheimer's and Advanced Dementia.

3. That _____, by reason of his particular incapacitation, lacks testamentary capacity as defined by Ind. Code § 29-1-5-1 and his conditions prevent him from knowing the extent and value of his property, those who are the natural objects of

his bounty, and their deserts, with respect to their treatment and conduct toward him.

4. That the estate of _____ has more than adequate funds to provide for _____**'s** future care, maintenance, and support and that it would be in the best interests of his estate and his heirs at law, if the guardian is authorized to execute the proposed estate plan on her behalf, to transfer property to his heirs in accordance with their wishes expressed in his will, and as authorized by Ind. Code § 29-3-9-4.5.

5. That devisees under the Last Will and Testament of _____, are his children, _____, _____, and _____, and his grandchildren, _____; each of the foregoing beneficiaries have been provided with a copy of this petition as contemplated by Ind. Code § 29-3-9-4.5(a), and have consented to the requested relief therein.

6. That the proposed estate plan is as follows: The purpose of the estate plan is to first qualify _____ and his wife, _____, for the Veterans Affairs Aid and Attendance Award, which will pay them up to $1,945 each month to help pay for their care after gifts are made. The second purpose of this plan is to allow them to gift property as permitted by law. Such gifts will allow them to apply for Medicaid benefits and will start a period of time they are both ineligible for Medicaid. As a result, the gifts will ultimately allow them to qualify for Medicaid

while permitting them to leave some inheritance to their children and grandchildren in accordance with testamentary intentions expressed in their wills.

7. If _____ were competent and able to handle his financial affairs he would, in all probability execute the estate plan, to increase his own income for his care while preserving some of his assets to leave some inheritance for his heirs.

8. That _____ is presently unrepresented by counsel. Attorney _____, _____, Indiana _____, is fully competent to understand and protect the rights of _____, has no interest adverse to that of _____, is not employed by or professionally associated with any adverse party or counsel for any adverse party, and has indicated a willingness to act as Guardian Ad Litem for _____.

WHEREFORE, _____, prays that the court:

1. Find that _____ lacks testamentary capacity as defined by Ind. Code § 29-1-5-1,

2. Enter an order setting a hearing on this petition, consistent with the preservation of the rights of _____,

3. Appoint _____ as guardian ad litem to represent _____;

4. Enter an order directing _____ to execute the proposed estate plan on behalf of _____,

5. Grant all other relief which is proper in the premises.

I affirm under the penalties for perjury
that the foregoing representations are true.

December ____, 2011

_____
_____, Guardian

Appointment of Lay Caregiver

I, _____ , hereby appoint my _____, _____ , as my Lay Caregiver. If he or she is not reasonably available or declines to act, I appoint my _____, _____ , as my successor Lay Caregiver.

The purpose of this Appointment is to assist me with my recovery from a hospital stay. The hospital shall consult with my Lay Caregiver for my care needs and issue an at home care plan that describes my after care needs following my discharge from the hospital to my home. The address of my Lay Caregiver is _____, telephone number_____. The best way to contact my Lay Caregiver is_____.

HIPAA Release Authority:

I intend for my Lay Caregiver to be treated as I would be treated with respect to my rights regarding the use and disclosure of my medical records and my other individually identifiable health information. This release authority applies to all information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, other covered health care provider, insurance company, and the Medical Information Bureau, Inc. or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose, and release to my Lay Caregiver, without restriction, all of my medical records and my other individually identifiable health information regarding any past, present, or future medical or mental health condition including, but not limited to, all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse.

The authority given to my Lay Caregiver under this instrument shall supersede all prior agreements that I may have made with, and all prior instructions that I may have given to, my health care providers to restrict access to or disclosure of my medical records and my other individually identifiable health information. The authority given to my Lay Caregiver under this section of this Appointment shall be effective immediately, even though I am capable of consenting to my health care.

The Appointer can be the patient, the patient's health care representative, or the patient's health care attorney-in-fact. The Appointer may revoke this appointment at any time.

Dated this _____ day of _____, 20_____.

Signature:_____ Printed:_____

INDIANA PHYSICIAN ORDERS FOR SCOPE OF TREATMENT (POST)

State Form 55317 (R3 / 5-18)
Indiana State Department of Health – IC 16-36-6

INSTRUCTIONS: This form is a physician's order for scope of treatment based on the patient's current medical condition and preferences. The POST should be reviewed whenever the patient's condition changes. A POST form is voluntary. A patient is not required to complete a POST form. A patient with capacity or their legal representative may void a POST form at any time by communicating that intent to the health care provider. Any section not completed does not invalidate the form and implies full treatment for that section. HIPAA permits disclosure to health care professionals as necessary for treatment. The original form is personal property of the patient. A facsimile, paper, or electronic copy of this form is a valid form.

Patient Last Name	Patient First Name	Middle Initial
Birth Date *(mm/dd/yyyy)*	Medical Record Number	Date Prepared *(mm/dd/yyyy)*

DESIGNATION OF PATIENT'S PREFERENCES: The following sections (A through D) are the patient's current preferences for scope of treatment.

A *Check One*

CARDIOPULMONARY RESUSCITATION (CPR): Patient has no pulse AND is not breathing.

☐ Attempt Resuscitation / CPR ☐ Do Not Attempt Resuscitation / DNR

When not in cardiopulmonary arrest, follow orders in **B, C** and **D.**

B *Check One*

MEDICAL INTERVENTIONS: If patient has pulse AND is breathing OR has pulse and is NOT breathing.

☐ Comfort Measures (Allow Natural Death): Treatment Goal: Maximize comfort through symptom management. Relieve pain and suffering through the use of any medication by any route, positioning, wound care and other measures. Use oxygen, suction and manual treatment of airway obstruction as needed for comfort. Patient prefers no transfer to hospital for life-sustaining treatments. Transfer to hospital only if comfort needs cannot be met in current location.

☐ Limited Additional Interventions: Treatment Goal: Stabilization of medical condition. In addition to care described in Comfort Measures above, use medical treatment for stabilization, IV fluids (hydration) and cardiac monitor as indicated to stabilize medical condition. May use basic airway management techniques and non-invasive positive-airway pressure. Do not intubate. Transfer to hospital if indicated to manage medical needs or comfort. Avoid intensive care if possible.

☐ Full Intervention: Treatment Goal: Full interventions including life support measures in the intensive care unit. In addition to care described in Comfort Measures and Limited Additional Interventions above, use intubation, advanced airway interventions, and mechanical ventilation as indicated. Transfer to hospital and/or intensive care unit if indicated to meet medical needs.

C *Check One*

ANTIBIOTICS:

☐ Use antibiotics for infection only if comfort cannot be achieved fully through other means.

☐ Use antibiotics consistent with treatment goals.

D *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION: Always offer food and fluid by mouth if feasible.

☐ No artificial nutrition.

☐ Defined trial period of artificial nutrition by tube. (Length of trial: _____ Goal: _____)

☐ Long-term artificial nutrition.

OPTIONAL ADDITIONAL ORDERS:

SIGNATURE PAGE: This form consists of two (2) pages. Both pages must be present. The following page includes signatures required for the POST form to be effective.

Patient Name:_____ Date of Birth *(mm/dd/yyyy)*:_____

	SIGNATURE OF PATIENT OR LEGALLY APPOINTED REPRESENTATIVE: In order for the POST form to be effective, the patient or legally appointed representative must sign and date the form below.
E	**SIGNATURE OF PATIENT OR LEGALLY APPOINTED REPRESENTATIVE** My signature below indicates that my physician or physician's designee discussed with me the above orders and the selected orders correctly represent my wishes.

Signature ***(required by statute)***	Print Name ***(required by statute)***	Date ***(required by statute)*** *(mm/dd/yyyy)*

F	**CONTACT INFORMATION FOR LEGALLY APPOINTED REPRESENTATIVE IN SECTION E *(IF APPLICABLE)*:** If the signature above is other than patient's, add contact information for the representative.

Relationship of representative identified in Section E if patient does not have capacity ***(required by statute)***	Address *(number and street, city, state, and ZIP code)*	Telephone Number

PHYSICIAN ORDER:

A POST form may be executed only by an individual's treating physician, advanced practice registered nurse, or physician assistant, and only if:

(1) the treating physician, advanced practice registered nurse, or physician assistant has determined that:
  (A) the individual is a qualified person; and
  (B) the medical orders contained in the individual's POST form are reasonable and medically appropriate for the individual; and
(2) the qualified person or representative has signed and dated the POST form

A qualified person is an individual who has at least one (1) of the following:

(1) An advanced chronic progressive illness.
(2) An advanced chronic progressive frailty.
(3) A condition caused by injury, disease, or illness from which, to a reasonable degree of medical certainty:
  (A) there can be no recovery; and
  (B) death will occur from the condition within a short period without the provision of life prolonging procures.
(4) A medical condition that, if the person were to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or within a short period the person would experience repeated cardiac or pulmonary failure resulting in death.

G **DOCUMENTATION OF DISCUSSION: Orders discussed with *(check one)*:**

☐ Patient (patient has capacity) ☐ Health Care Representative ☐ Legal Guardian
☐ Parent of Minor ☐ Health Care Power of Attorney

H **SIGNATURE OF TREATING PHYSICIAN / ADVANCED PRACTICE REGISTERED NURSE / PHYSICIAN ASSISTANT**

My signature below indicates that I or my designee have discussed with the patient or patient's representative the patient's goals and treatment options available to the patient based on the patient's health. My signature below indicates to the best of my knowledge that these orders are consistent with the patient's current medical condition and preferences.

Signature of Treating Physician / APRN / PA ***(required by statute)***	Print Treating Physician / APRN / PA Name ***(required by statute)***	Date ***(required by statute)*** *(mm/dd/yyyy)*

Physician / APRN / PA office telephone number ***(required by statute)***	Physician / APRN / PA License Number ***(required by statute)***	Health Care Professional preparing form if other than the physician / APRN / PA

I **APPOINTMENT OF HEALTH CARE REPRESENTATIVE:** As patient you have the option to appoint an individual to serve as your health care representative pursuant to IC 16-36-1-7. You are not required to designate a health care representative for this POST form to be effective. You are encouraged to consult with your attorney or other qualified individual about advance directives that are available to you. Forms and additional information about advance directives may be found on the ISDH web site at http://www.in.gov/isdh/25880.htm.

Section Four

Introduction to Family Law

Elizabeth Eichholtz Walker
Becker Bouwkamp Walker, PC
Indianapolis, Indiana

Section Four

Introduction to Family Law…….…. Elizabeth Eichholtz Walker

PowerPoint Presentation

Order Amending Indiana Parenting Time Guidelines – October 5, 2021

Introduction to Family Law

ELIZABETH EICHHOLTZ WALKER

B²W ATTORNEYS AT LAW

“If it takes a family apart, puts it together, or deals with it before or after the fact, it’s family law.”

Easy?

Overview of Topics

- Divorce
- Custody
- Parenting Time
- Child Support
- Third Party & Grandparent Visitation
- Adoption
- CHINS / Juvenile Court
- Discovery
- Local Rules & E-filing
- Taxes
- Relocation
- Collaborative Law
- Parenting During Pandemics

Divorce

Spousal Support

Occupational

Disabled Child

Indiana Code 31-15-7-2 provides for the 3 scenarios where a court will order spousal maintenance

Alimony is allowed by agreement, but has fallen out of favor due to tax reforms

Safety Issues

Protective Orders

Property Division

Legal presumption + Deviation Arguments

Forensic/Business Valuations

Appraisals:

- Personal Property
- Real Estate

Pension Valuations

Custody

- Paternity Presumptions
- Divorce
- Custody Evaluations
- Guardian Ad Litem / CASA
- Ind. Code 31-17
- Ind. Code 31-14-13

Parenting Time

Indiana Parenting Time Guidelines

- Available at

  https://www.in.gov/judiciary/rules/parenting/
- Parenting Time Restrictions
- Parenting Coordination – Section V

Child Support

- Income shares model with credit for certain expenses and overnights
- Imputing Income
- Emancipation Issues

  Ind. Code 31-16-6-6
- Support Master v. the State's online calculator
  - Online Calculator available at https://public.courts.in.gov/csc#/practitioner-financials

Third Party & Grandparent Visitation

- Parents will always have the upper hand
- When can a 3rd party obtain custody?
- Grandparent Visitation Statute
  - Ind. Code 31-17-5

Adoption

- Step-parent Adoption
- Post-adoption visitation contracts
- Interstate Compact
- Ind. Code 31-19
- International adoptions (Hague Convention)

CHINS / Juvenile Court

- DO NOT DABBLE IN CHINS WORK
  - All or Nothing
- Juvenile Cases are Special Cases
- Driven by statute
  - Always be sure to read the code carefully
  - Ind. Code 31-34

Discovery

- Don't wait!
  - Get it out the door right away
- You can always send additional requests later if you need to
- Depositions
- Requests for Admission

Local Rules & E-Filing

- E-filing confidential information
- Co-Parenting classes (In person? Online? Choices?)
- Financial Declaration forms
  - Do you file them?
  - Offer them as exhibits?
- Mandatory mediation
- Know your judge!

Taxes: Tax Cuts and Jobs Act

- Personal Exemption not available from 2018 to 2025
- Change in tax brackets
- Standard deductions are higher
- Be aware of allowed deductions when calculating income for child support purposes
- Child tax credits are available until child reaches 17
- Family tax credits - $500 nonrefundable credit for qualifying dependents other than qualifying children (a 17 year-old child or elderly parent)
- Alimony – orders issued after 12/31/2018 are no longer tax deductible to the payor (or taxable income to the payee)

Relocation

- History of the Indiana Relocation Statute
- Where Relocation Currently Stands
- Ind. Code 31-17-2.2

Collaborative Law

- Paradigm Shift
- Must be trained (CIACP)

Parenting During Pandemics

- What if there are travel restrictions?
- What if the child gets ill?
- What if a parent is exposed?
- Encourage logic, safety, and fairness
- Discourage hysteria, recklessness, and vindictiveness

Final Tips

- Read the applicable code sections
- Make a checklist/timeline for each case
- Know your limits (local counsel, etc.)

Elizabeth Eichholtz Walker

ATTORNEY

GUARDIAN AD LITEM

REGISTERED DOMESTIC RELATIONS MEDIATOR

TRAINED COLLABORATIVE PROFESSIONAL

EWALKER@B2WLAW.COM

BECKER BOUWKAMP WALKER PC

ATTORNEYS AT LAW

In the
Indiana Supreme Court

Cause No. 21S-MS-19

Order Amending Indiana Parenting Time Guidelines

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

…

GUIDELINES

…

PREAMBLE

…

B. PURPOSE OF COMMENTARY FOLLOWING GUIDELINE.

…

Commentary

1. ***Use of Term "Parenting Time."*** *Throughout these Guidelines the words "parenting time" have been used instead of the word "visitation" so as to emphasize the importance of the time a parent spends with a child. The concept that a non-custodial parent "visits" with a child does not convey the reality of the continuing parent-child relationship.*
2. ***Minimum Time Concept.*** *The concept that these Guidelines represent the minimum time a non-custodial parent should spend with a child when the parties are unable to reach their own agreement. These guidelines should not be interpreted as a limitation of time imposed by the court. They are not meant to foreclose the parents from agreeing to, or the court from granting, such additional or reduced parenting time as may be in the best interest of the child in any given case. In addressing all parenting time issues, both parents should exercise sensibility, flexibility and reasonableness.*
3. ***Parenting Time Plans or Calendars.*** *It will often be helpful for the parents to actually create a year-long parenting time calendar or schedule~~s~~. This may include a calendar in which the parties have charted an entire year of parenting time. Forecasting a year ahead helps the parents anticipate and plan for holidays, birthdays, and school vacations. The parenting time calendar may include agreed upon deviations from the Guidelines, which recognize the specialized needs of the children and parents. ~~Parenting Time Calendars may be helpful in arranging holidays, extended summer, and/or when the parents live at a distance and frequent travel arrangements are needed. Indiana's family resource website, which includes information to develop Parenting Time Plans is http://courts.in.gov/selfservice/2332.htm.~~ An online calendar to assist parents in creating a parenting time schedule may be found at: https://public.courts.in.gov/PTC/#/*

…

C. Scope of Application

…

2. Amendments. Existing parenting time orders on the date of adoption of these amendments shall be enforced according to the parenting time guidelines that were in effect on the date the most recent parenting time order was issued. Changes to the Indiana Parenting Time Guidelines do not alone constitute good cause for amendment of an existing parenting time order; however, a court or parties to a proceeding may refer to these guidelines in making changes to a parenting time order after the effective date of the guidelines.

…

SECTION I. GENERAL RULES APPLICABLE TO PARENTING TIME

A. COMMUNICATIONS

…

3. With A Child By Telephone.

…

Whether~~If~~ a parent uses an answering machine, voice mail, ~~or a pager~~ text, or email, messages left for a child shall be promptly communicated to the child and the call returned.

Commentary

…

Examples of unacceptable interference with communication include a parent refusing to answer a phone or refusing to allow the child or others to answer; a parent recording phone conversations between the other parent and the child; turning off the phone or using a call blocking mechanism or otherwise denying the other parent telephone contact with the child. A parent may restrict access from a telephone, tablet, or other device used to communicate with the other parent as punishment for a child, but such punishment shall not prevent communications with the other parent.

4. With A Child By Mail. A parent and a child shall have a right to communicate privately by text, e-mail and faxes, and by cards, letters, and packages, without interference by the other parent.

…

7. Communication between parent and child. Each parent is encouraged to promote a positive relationship between the children and the other parent. It is important, therefore, that communication remain open, positive and frequent. Regular phone contact is an important tool in maintaining a parent/child relationship as well as other forms of contact such as letter, e-mail and other more technologically advanced communications systems such as video chat and Skype. No person shall block reasonable phone or other communication access between a parent and child or monitor or record such communications. A parent who receives a communication for a child shall promptly deliver it to the child. Both parents shall promptly provide the other parent with updated cell and landline phone numbers and e-mail addresses when there has been a change.

…

B. IMPLEMENTING PARENTING TIME

1. Transportation Responsibilities. …

Commentary

1. Presence Of Both Parents. *Both parents should be present at the time of the exchange and should make every reasonable effort to personally transport the child. On those occasions when a parent is unable to be present at the time of the exchange or it becomes necessary for the child to be transported by someone other than a parent, this should be communicated to the other parent in advance if possible. In such cases, the person present at the exchange, or transporting the child, should be a responsible adult with whom the child is familiar and comfortable. In the event a parent chooses to bring a third party to the exchange, care should be taken to ensure the person selected does not serve to increase the level of conflict at the exchange.*

…

3. Parental Hostility. *In a situation where hostility between parents makes it impracticable to exchange a child at the parents' residences, the exchange of the child should take place at a neutral site. The use of a law enforcement facility for exchanges is an extreme measure which should only be considered in cases where protective orders between the parents exist or in cases where there is a history of repeated acts of physical violence or intimidation between the parents. In lieu of a law enforcement facility, parties are encouraged to use other public places (i.e., gas station, restaurant, grocery store) to ensure the safety and smooth transition of the child.*

…

3. Clothing. The custodial parent shall send an appropriate and adequate supply of clean clothing with the child and the non-custodial parent shall return such clothing in a clean condition. Each parent shall advise the other, as far in advance as possible, of any special activities so that the appropriate clothing may be available to the child.

Commentary

It is the responsibility of both parents to ensure their child is properly clothed. The non-custodial parent may wish to have a basic supply of clothing available for the child at his or her home.

C. CHANGES IN SCHEDULED PARENTING TIME

…

2. Adjustments to Schedule/"Make Up" Time. Whenever there is a need to adjust the established parenting schedules because of events outside the normal family routine or the control of the parent requiring the adjustment, the parent who becomes aware of the circumstance shall notify the other parent as far in advance as possible. Recurring events which may require an adjustment, such as military drill obligations or annual work obligations, should be communicated as soon as those scheduled events are published. Both parents shall then attempt to reach a mutually acceptable adjustment to the parenting schedule.

If an adjustment results in one parent losing scheduled parenting time with the child, "make-up" time should be exercised as soon as possible. If the parents cannot agree on "make-up" time, the parent who lost the time shall select the "make-up" time within one month of the missed time. "Make-up" time is not an opportunity to deny the other parent of scheduled

holidays or special days, as defined within the Guidelines, and should not interfere with previously scheduled activities.

"Make-up" parenting time is intended to help maintain a parent-child relationship, while taking into consideration everyday life demands. "Make-up" parenting time may not be used routinely due to a parent's failure to plan in advance, absent a true emergency.

Commentary

There will be occasions when scheduled parenting times should ~~may need to~~ be adjusted because of events or activities outside of a parent's control, such as illnesses, mandatory work, or military obligations, or special family events such as weddings, funerals, reunions, and the like. Each parent should accommodate the other in making the adjustment so that the child may attend the family event or receive "make-up" parenting time with a parent, when adjustments are needed. After considering the child's best interests, the parent who lost parenting time may decide to forego the "make-up" time.

Decisions made by a parent that are voluntary in nature and prevent their regular exercise of parenting time, such as vacations or participation in other, voluntary activities, should not be subject to "make-up" parenting time, absent an agreement by both parents to accommodate the adjustment and subsequent "make-up" time. These events may result in the opportunity for additional parenting time for the other parent.

3. Parties who exercise equal periods of parenting time may not exercise more than three (3) additional days of "make-up" parenting time at any one time, in conjunction with regularly scheduled parenting time, so the parent does not exercise more than ten (10) consecutive days of regular and make-up parenting time. These additional days should be exercised outside of those holidays and special days as designated within the Guidelines when possible.

~~3~~4. Opportunity for Additional Parenting Time. …

…

D. EXCHANGE OF INFORMATION

…

3. Other Activities. Each parent shall promptly notify the other parent of all organized events in a child's life which permit parental and family participation. A parent shall not interfere with the opportunity of the other parent to volunteer for or participate in a child's activities. If the child's activities occur during one parent's time with the child, that parent shall have the first opportunity to provide transportation to the activity.

Commentary

Each parent should have the opportunity to participate in other activities involving the child even if that activity does not occur during his or her parenting time. This includes activities such as church functions, athletic events, scouting and the like. It is important to understand that a child is more likely to enjoy these experiences when supported by both parents.

Parents should attempt to achieve a balance when scheduling extra-curricular activities. A reasonable amount of extra-curricular activities can enrich the child's life and strengthen the bond between parent and child through these shared experiences. On the other hand, excessive participation in these activities could

serve to diminish the quality of parenting time. Parents should take care to ensure these activities do not unreasonably infringe upon parenting time with either parent.

Extra consideration should be given to a child's participation in travel activities (i.e. basketball, baseball, softball, soccer, etc.). The cost, time away from home and demands on the child should be considered and balanced with the activity and social experience for the child.

…

4. Health Information. Under Indiana law, both parents are entitled to direct access to their child's medical records, Indiana Code § 16-39-1-7; and mental health records, Indiana Code § 16-39-2-9.

a. If a child is undergoing evaluation or treatment, the custodial parent shall communicate that fact to the non-custodial parent.

…

d. If required by the health care provider, the custodial parent shall give written authorization to the child's health care providers, permitting an ongoing release of all information regarding the child to the non-custodial parent including the right of the provider to discuss the child's situation with the non-custodial parent.

E. Resolution of Problems and Relocation

…

4. Relocation. When either parent or other person who has custody or parenting time considers a change of residence, a ~~90~~30 day advance notice of the intent to move must be provided to the other parent or person.

Commentary

…

2. Indiana Law. *Indiana law (Ind. Code § 31-17-2.2) requires all individuals who have (or who are seeking) child custody or parenting time, and who intend to relocate their residence to provide notice to an individual who has (or is seeking) child custody, parenting time or grandparent visitation. The notice must be made by registered or certified mail not later than ~~90~~30 days before the individual intends to move. The relocating party's notice must provide certain specified and detailed information about the move. This information includes: the new address; new phone numbers; the date of the proposed move; a stated reason for the move; a proposed new parenting time schedule; and must include certain statements regarding the rights of the non-relocating party. The notice must also be filed with the Court. The notice is required for* ***all proposed moves*** *by custodial* ***and*** *non-custodial parents in all cases when the proposed move involves a change of the primary residence for a period of at least sixty (60) days. The notice is not required to be filed with the court if a person's relocation will reduce the distance between the relocating and non-relocating person's home or will not result in an increase of more than 20 miles between the relocating and non-relocating parents' homes and allow the child to remain enrolled in the child's current school. ~~This is true even when a person plans to move across the street or across town, and when a party plans on moving across the state or the country, or to another country.~~*

…

F. CUSTODY AND PARENTING TIME DURING A PUBLIC HEALTH EMERGENCY

Introduction

Existing court orders regarding custody and parenting time shall remain in place during a public health emergency and shall be followed. Parties should be flexible and cooperate for the best interests and health of the children during this time.

1. School Calendar. For purposes of interpreting custody and parenting time orders, the school calendar as published at the start of the academic year or as amended during the academic year, from each child's school shall control. Custody and parenting time shall not be affected by the school's closure during a public health emergency.

2. Transportation. Transportation for parenting time shall follow the provisions of the custody order or agreement unless such transportation is restricted pursuant to Executive Order.

3. Temporary Modification. If both parents and any other parties to their court case ("the parties") believe there is a reason to temporarily modify or change the terms of a custody or parenting time court order effective for the duration of a public health emergency and modification is not prohibited by the terms of their existing order, they may agree in writing to temporarily modify their existing order; however, the agreement must be filed and approved by the court to be enforceable. If the parties cannot reach a temporary agreement or do not remain in agreement, any party may file a petition to modify the existing order.

4. Child Support. Many county child support clerk's offices may be closed or not accepting payments in person. Existing court orders for child support payments remain in place and shall be followed. Child support payments can be made online, by telephone, by mail, and at other locations, as described on the Indiana Department of Child Services, Child Support Bureau website. Parents who are unable to make their full or any child support payments as a result of a public health emergency may file a petition to modify child support with the court.

5. How to file documents. Agreements, petitions, or motions should be filed electronically, as documents sent by U.S. Mail or fax may not be reviewed as promptly by the judge. Filings with the court for a party represented by an attorney shall be made by the attorney.

Commentary

A parent's decision to forgo parenting time in order to protect the child's health and well-being or to insulate the health and well-being of household family members should not be considered a voluntary relinquishment of parenting time. If a parent is acting in a child's best interest due to dangerous conditions which make the exercise of parenting time unsafe, for example, during a global pandemic or due to dangerous travel advisories, and opts to forgo parenting time, a parent should be able to exercise "make-up" time in the future. The exercise of "make-up" time may not be feasible within 30 days of the missed time, depending upon the severity of those dangerous conditions and it may not be reasonable for "make-up" time to occur in a single block of time, if a significant period of parenting time was missed.

…

SECTION II. SPECIFIC PARENTING TIME PROVISIONS

A. INTRODUCTION

…

For identification purposes, the following provisions set forth parenting time for the non-custodial parent and assume the other parent has sole custody or primary physical custody in a joint legal custody situation. These identifiers are not meant to diminish or raise either person's status as a parent.

Commentary

Given the vast number of parenting plans which may exceed the minimum plan in these Guidelines and the particular needs and characteristics of each child and parent, it is impossible to impose any set of presumptions which will benefit almost all children and families.

The following is a list of factors which may be considered when determining whether a particular parenting plan exceeding the specific parenting time provisions herein is safe, secure, developmentally responsive, and, ultimately, in the best interests of the child. This list is not all-inclusive, and not all factors apply to any particular set of parental relationships. The factors are not listed in any order of priority. The list is meant to provide a framework for parents and other decision-makers to evaluate the potential for a proposed parenting plan to provide for healthy and continuing parenting relationships and promote the best interests of children.

Factors Related to the Child:

- *The age, temperament, and maturity level of the child*
- *The child's current routine*
- *The child's response to separations and transitions*
- *Any particular physical, emotional, educational, or other needs resulting from the developmental stage or characteristics of the child*

Factors Related to the Parent:

- *The temperament of each parent*
- *The "fit" of each parent's temperament with the child's temperament*
- *Each parent's mental health, including mental illness and substance use or abuse*
- *Each parent's sensitivity to the child's early developmental needs*
- *Each parent's capacity and willingness to be flexible as the child's needs change from day to day and over time*

Factors Related to the Parent-Child Relationship

- *Each parent's warmth and availability to the child*
- *Each parent's ability to correctly discern and respond sensitively to the child's needs*
- *Each parent's past experience living with the child and caregiving history*
- *Each parent's caregiving interest and motivation*
- *Each parent's history of perpetrating child physical or emotional abuse or neglect*

Factors Related to the Co-Parenting Relationship:

- *The parents' capacity and willingness to be flexible with each other as the child's needs get expressed in the moment and change over time*
- *The level and nature of conflict and/or domestic violence, including the history, recentness, intensity, frequency, content, and context (separation specific or broader)*
- *The parents' ability to compartmentalize any conflicts and protect the child from exposure to parental conflict*
- *The parents' ability to communicate appropriately and in a timely manner about the child*
- *The degree to which each parent facilitates contact and communication between the other parent and the child versus "gatekeeping" behavior intended to keep the other parent and the child apart*
- *The parents' capacity for cooperation about the child's developmental needs*

Environmental Factors:

- *The proximity of the parental homes*
- *The parents' work schedules and circumstances*
- *The presence of extended family members or close friends that participate in caregiving*
- *The availability of additional child care if needed and economic resources available to pay for it*
- *The mechanics in place to transfer the child from one household to the other*

B. Overnight Parenting Time.

Unless it can be demonstrated by the custodial parent that the non-custodial parent has not had regular care responsibilities for the child, parenting time shall include overnights. If the non-custodial parent has not previously exercised regular care responsibilities for the child, then parenting time shall not include overnights prior to the child's third birthday, except as provided in subsection C. below.

Commentary

1. Assumptions. *The provisions identify parenting time for the non-custodial parent and assume that one parent has sole custody or primary physical custody of a child, that both parents are fit and proper, that both parents have adequately bonded with the child, and that both parents are willing to parent the child. They further assume that the parents are respectful of each other and will cooperate with each other to promote the best interests of the child. Finally, the provisions assume that each parent is responsible for the nurturing and care of the child. Parenting time is both a right and a trust and parents are expected to assume full responsibility for the child during their individual parenting time.*

…

6. Factors in Determining the Exercise of "regular care responsibilities" *(See Section B., C.2. and C.3. (Children under Three (3) years of age))*

- *The length of time the parents resided together with the child(ren)*
- *Overnights previously exercised by the parents prior to court involvement (ability to incorporate the status quo for the parents and child(ren))*
- *Medical conditions, developmental issues, and/or neurological disorders relating to the child(ren), and the history and experience of the parent in providing the care necessary for the child(ren)*
- *The parents' provision of appropriate housing and sleeping arrangements for the child(ren)*

- *The frequency and involvement of the parent in the daily activities of the child(ren) such as feeding, cleaning, changing clothes and/or diapers, and bedtime routine, etc.*
- *Other factors affecting the regular care responsibilities of the child(ren)*

…

C. Infants and Toddlers

1. Introduction

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Commentary

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2. Frequency Versus Duration. *Infants and young children have a limited but evolving sense of time. These children also have a limited ability to recall persons not directly in front of them. For infants, short frequent visits are much better than longer visits spaced farther apart. From the vantage point of the young child, daily contact with each parent is ideal. If workable, it is recommended that no more than two days go by without contact with the noncustodial parent. A parent who cannot visit often may desire to increase the duration of visits, but this practice is not recommended for infants. Frequent and predictable parenting time is best.*

3. *Overnight contact between parents and very young children can provide opportunities for them to grow as a family. At the same time, when very young children experience sudden changes in their night-time care routines, especially when these changes include separation from the usual caretaker, they can become frightened and unhappy. Under these circumstances, they may find it difficult to relax and thrive, even when offered excellent care.*

…

3. Parenting Time in Later Infancy (age 10 months though Age 36 months)

…

(C) Age 19 Months through 36 months:

…

(4) If the non-custodial parent who did not initially have regular care responsibilities has exercised the scheduled parenting time under these guidelines for at least nine (9) continuous months, regular parenting time as indicated in section II. D. 1. below may take place.

Commentary

Parenting Time Guideline II. C. 3. (C) (4) is intended to provide a way to shorten the last age-based parenting time stage when the infant is sufficiently bonded to the non-custodial parent so that the infant is able to regularly go back and forth, and particularly wake-up in a different place, without development-retarding strain. If this is not occurring, the provision should not be utilized. The nine (9) month provision is applicable only within the 19 to 36 month section. Therefore, as a practical matter, the provision could not shorten this stage until the infant is at least 28 months old. The provision applies equally to all non-custodial parents.

D. PARENTING TIME - CHILD 3 YEARS OF AGE AND OLDER

1. Regular Parenting Time

(a) On alternating weekends from Friday at 6:00 P.M. until Sunday at 6:00 P.M. (the times may change to fit the parents' schedules);

(b) One (1) evening per week, preferably in mid-week, for a period of up to four hours but the child shall be returned no later than 9:00 ~~p.m~~P.M.; and,

…

Commentary

Where the distance from the non-custodial parent's residence makes it reasonable, the weekday period may be extended to an overnight stay. In such circumstances, the responsibility of feeding the child the next morning, getting the child to school or day care, or returning the child to the residence of the custodial parent, if the child is not in school, shall be on the non-custodial parent.

2. Extended Parenting Time (Child 3 through 4 Years Old)

The noncustodial parent shall have up to four (4) non-consecutive weeks during the year beginning at ~~4~~ 6:00 P.M. on Sunday until ~~4~~6:00 P.M. on the following Sunday. The non-custodial parent shall give at least sixty (60) days advance notice of the use of a particular week.

3. Extended Parenting Time (Child 5 and older)

One-half of the Summer Vacation. The summer vacation begins the day after school lets out for the summer~~,~~ and ends the day before school resumes for the new school year. The time may be either consecutive or split into two (2) segments. The noncustodial parent shall give notice to the custodial parent of the selection by April 1 of each year. If such notice is not given, the custodial parent shall make the selection and notify the other parent. All notices shall be given in writing and verbally. A timely selection may not be rejected by the other parent. Notice of an employer's restrictions on the vacation time of either parent shall be delivered to the other parent as soon as that information is available. In scheduling parenting time the employer imposed restrictions on either parent's time shall be considered by the parents in arranging their time with their child.

…

During any extended summer period of more than two (2) consecutive weeks with the non-custodial parent, the custodial parent shall have the benefit of the regular parenting time schedule set forth above, which includes alternating weekends and mid-week parenting time, unless impracticable because of distance created by out of town vacations.

Similarly, during the summer period when the children are with the custodial parent for more than two (2) consecutive weeks, the non-custodial parent's regular parenting time continues, which includes alternating weekends and mid-week parenting time, unless impracticable because of distance created by out of town vacations.

…

D. PARENTING TIME FOR THE ADOLESCENT AND TEENAGER

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2. Special Considerations. In exercising parenting time with a teenager, the non-custodial parent shall make reasonable efforts to accommodate a teenager's participation in his or her regular academic, extracurricular and social activities.

Commentary

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Example: The Student Athlete

Jim Doe and Jane Doe have been divorced for 3 years. Their oldest child, Jeremy, is beginning high school. Throughout his middle school years, Jeremy was active in football. Practices were held after school and games took place on weekends. Jeremy had spent alternating weekends and one night each week with his noncustodial parent. The parent who had Jeremy took him to practices and games during the time they

were together. On week-nights with the noncustodial parent, this usually consisted of dinner and conversation. Weekends with both parents included homework, chores, play, and family outings.

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F. HOLIDAY PARENTING TIME SCHEDULE

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2. Holiday Schedule. The following parenting times are applicable in all situations referenced in these Guidelines as "scheduled holidays" with the limitations applied as indicated for children under the age of three (3) years. If a child is three (3) years or older, but not yet enrolled in an academic child care program or educational facility, then the district school calendar of the district where the child primarily resides shall control for the purpose of determining holiday parenting time. If the parties equally share parenting time, then the district school calendar of the parent paying controlled expenses shall be used to determine holiday parenting time. If a child is three (3) years or older and enrolled in an academic child care program or educational facility, then the program or educational facility's calendar where the child is enrolled shall control for the purpose of determining holiday parenting time.

A. Special Days.

…

[3] Child's Birthday. In even numbered years the non-custodial parent shall have all of the children on each child's birthday from 9:00 A.M. until 9:00 P.M.; ~~H~~however, if the birthday falls on a school day, then from 5:00 P.M. until 8:00 P.M. The custodial parent shall have all of the children the day before each child's birthday from 9:00 A.M. until 9:00 P.M.; however, if such day falls on a school day, then from 5:00 P.M. until 8:00 P.M.

In odd numbered years the non-custodial parent shall have all of the children ~~on each child's birthday on~~ the day before ~~the~~ each child's birthday from 9:00 A.M. until 9:00 P.M.~~,~~; however, if such day falls on a school day, then from 5:00 P.M. until 8:00 P.M. The custodial parent shall have all of the children on each child's birthday from 9:00 A.M. until 9:00 P.M.; however, if the birthday falls on a school day, then from 5:00 P.M. until 8:00 P.M.

…

B. Christmas Vacation.

The Christmas vacation shall be defined as beginning on the last day of school and ending the last day before school begins again. Absent agreement of the parties, the first half of the period will begin at 6:00 P.M. ~~two hours after~~ the day the child is released from school. The second half of the period will end at 6:00 ~~p~~P.~~m~~M. on the day before school begins again.

Each party will receive one half (1/2) of the total days of the Christmas vacation, on an alternating basis as follows:

1. In even numbered years, the custodial parent shall have the first one half (1/2) of the Christmas vacation and non-custodial parent shall have the second one half (1/2) of the Christmas vacation.

2. In odd numbered years, the non-custodial parent shall have the first one half (1/2) of the Christmas vacation and custodial parent shall have the second one half (1/2) of the Christmas vacation.

…

4. No exchanges under this portion of the rule shall occur after 9:00 ~~p~~P.~~m~~M. and before 8:00 ~~a~~A.~~m~~M., absent agreement of the parties.

-New Year's Eve and New Year's Day shall not be considered separate holidays under the Parenting Time Guidelines.

C. Holidays.

The following holidays shall be exercised by the noncustodial parent in even numbered years and the custodial parent in odd numbered years:

[1] Martin Luther King Day. If observed by the child's school, from Friday at 6:00 P.M. until Monday at ~~7~~6:00 P.M.

[2] Presidents' Day. If observed by the child's school, from Friday at 6:00 P.M. until Monday at ~~7~~6:00 P.M.

[3] Memorial Day. From Friday at 6:00 P.M. until Monday at ~~7~~6:00 P.M.

[4] Labor Day. From Friday at 6:00 P.M. until Monday at ~~7~~6:00 P.M.

[5] Thanksgiving. From 6:00 P.M. on Wednesday until ~~7~~6:00 P.M. on Sunday.

The following holidays shall be exercised by the noncustodial parent in odd numbered years and the custodial parent in even numbered years:

[1] Spring Break. From ~~two hours after~~ 6:00 P.M. the day the child is released from school on the child's last day of school before Spring Break, and ending ~~7~~6:00 ~~p~~P.~~m~~M. on the last day before school begins again.

[2] Easter. From Friday at 6:00 P.M. until Sunday at ~~7~~6:00 P.M.

[3] Fourth of July. From 6:00 P.M. on July 3rd until ~~10~~6:00 ~~A~~P.M. on July 5th.

[4] Fall Break. From ~~two hours after~~ 6:00 P.M. the day the child is released from school on the child's last day of school before Fall Break and ending ~~7~~6:00 ~~p~~P.~~m~~M. of the last day before school begins again.

[5] Halloween. On Halloween evening from 6:00 P.M. until 9:00 P.M. or at such time as coincides with the scheduled time for trick or treating in the community where the ~~non-custodial~~ parent exercising parenting time resides.

3. Religious Holidays. Religious based holidays shall be considered by the parties and added to the foregoing holiday schedule when appropriate. The addition of such holidays shall not affect the Christmas vacation parenting time, however, they may affect the Christmas day and Easter parenting time.

…

SECTION III. PARENTING TIME WHEN DISTANCE IS A MAJOR FACTOR

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3. Priority of Summer Visitation. Summer parenting time with the non-custodial parent shall take precedence over summer extracurricular activities (such as Little League, summer camp, etc.) when parenting time cannot be reasonably scheduled around such events. ~~Under~~

~~such circumstances, the non-custodial parent shall attempt to enroll the child in a similar activity in his or her community.~~

…

5. Special Notice of Availability. When the non-custodial parent is in the area where the child resides, or when the child is in the area where the non-custodial parent resides, liberal parenting time shall be allowed. The parents shall provide notice to each other, as far in advance as possible, of such parenting opportunities.

SECTION IV. SHARED PARENTING

A. Introduction to Shared Parenting: An Alternate Parenting Plan

Many parents, who require a degree of separation in their personal relationship but wish for an organized sharing of responsibilities in their parenting relationship, find the Indiana Parenting Time Guidelines to be a helpful model. Some parents require less separation in their personal relationship and wish for a more seamless blending of child rearing practices in their two homes. The needs of these families may better be addressed by a model termed Shared Parenting.

In deciding whether or not a Shared Parenting plan meets the needs of their family, parents need to make a careful assessment of their family situation. The agreement and cooperation of the parents are essential elements of a successful shared parenting plan. In deciding whether or not to approve a Shared Parenting plan, judges need to conduct an independent inquiry to ensure the family meets standards predicting Shared Parenting success.

All Shared Parenting plans, by definition, make a deliberate effort to provide the child with two parents who are actively involved in that child's day to day rearing. As a consequence of an effectively implemented Shared Parenting plan, the child will spend time in the home of each parent as a resident, not a visitor. The home of each parent will be a place where the child learns, works, and plays. To effectively implement a Shared Parenting plan, each parent will need to do the work required to make his or her home a home base for the child.

The task of judging the capacity of parents for Shared Parenting is a complex one. The abilities of the individual parents and their ability to work together, the amount of work Shared Parenting would require of that unique family, and the costs to the child of both Shared Parenting and any alternative all require assessment. Successful Shared Parenting can insulate the child from most material and emotional losses which are frequently a consequence of parental separation. Unsuccessful Shared Parenting can accelerate the parental conflicts which are most predictive of emotional illness in children of separation / divorce.

B. Two Houses, One Home

The feeling that one is "at home" requires a degree of comfort and an element of routine. When children are "at home" they generally know what is expected of them. The patterns of day to day life in the home are understood and taken for granted. In this respect, day to day life requires less work "at home" than it does in more novel situations. Children often feel more relaxed. They are free to devote more energy to other things.

The rewards to the child who can naturally feel "at home" in the residences of both parents are significant. Day to day living can be focused more on growth and development, and less on adaptation. The task of providing two residences with a degree of consistency that makes them both feel like "home" to a child can be a substantial one. It is normally more challenging for two people whose relational conflicts cause them to decide to live separately. Longer term, children are more likely to enjoy living with both parents if the costs of doing so are small. They are less likely to shift to one home base, and simply visit with the other parent, as the demands of their academic and social lives increase.

Commentary

Factors Helpful in Determining the Capacity for Shared Parenting

Factors Related to the Child

1. Characterize the amount of joint work required in the rearing of the child.

Considerations:

- *The younger the child, the longer the period of time requiring joint work and the greater the number of decisions and accommodations required by the parents.*
- *Some children, from birth, are calmer and naturally better able to adapt to changes (easy temperament). Other children, from birth, naturally exhibit more distress in handling changes and daily discomforts (difficult temperament). These children require more time and more unified parental assistance in making transitions.*
- *Factors unique to the age and developmental needs of the child can require heightened degrees of accommodation on the part of parents. Examples include breastfeeding, time needed to develop special talents and interests, time needed to address educational limitations, and time needed for health-related therapies.*
- *Children with an established routine of being actively raised by both parents naturally need to make a smaller accommodation when transitioning to Shared Parenting. Children who have been raised by one parent predominantly can still benefit from Shared Parenting. However, the initial work required by the child to adjust to a routine involving both parents will be more substantial.*

2. What is the ability of the child to benefit from Shared Parenting?

Considerations:

- *The younger the child, the greater the number of years the child can receive the benefits of being actively raised by both parents. A well-executed Shared Parenting plan can thus be of greatest benefit when put into place early in a child's life.*

- *What are the needs of the child (physical, educational, emotional, other) that are impacted by the separation / divorce of the parents? Will Shared Parenting facilitate the ability of the parents to address these needs post-separation / divorce?*
- *In what significant ways does the child engage in the community outside the family? Will Shared Parenting facilitate this engagement post separation / divorce?*

Factors Related to the Parent

1. What appears to motivate the parent to take specific positions with respect to the rearing of the child? Perception of the needs, feelings, and interests of the child? The needs, feelings, and interests of the parent? Perception of what is fair to the parent? Desire to comply with rules or agreements?

Consideration:

- *A parent motivated by interests, agreements, or rules which are shared with the other parent is more likely to see things as the other parent sees them. A parent who is motivated by personal interests, or a need to maintain fairness when faced with competing interests, is less likely to see things as the other parent sees them.*

2. Does the parent show interest in the work of raising children? Examples include scheduling and attending appointments addressing educational or health-related needs, planning and sharing meals, engaging the children with extended family, athletics, or religious opportunities.

3. Does the parent have a generally peaceful relationship with the child?

Considerations:

- *Peaceful relationships do not require those involved to be highly similar or to be conflict-free.*
- *Peaceful living does require the ability to accommodate differences. For example, high energy children can be peacefully raised by lesser energy parents. The issue is one of accommodation. A lower energy parent may need to take steps to engage the high energy child in exercise activities outside the family.*
- *Peaceful living does require the ability to manage conflicts in a respectful way. Conflict erodes peace only when its expression causes pain and its resolution leaves that pain unaddressed.*

4. Are there factors in the life of the parent which detract from the time and attention needed to perform the tasks of Shared Parenting? Examples include addictions, medical problems, other relationships, and employment requirements.

Factors Related to the Parent-Child Relationship

1. What may the child gain from each parent if the parents have the high level of engagement necessitated by a Shared Parenting arrangement? Weigh that against what the child may gain from each parent if the parents have less engagement than that of parents who have adopted a Shared Parenting arrangement.

2. To what extent do either or both parents exhibit positive relational qualities such as warmth, availability, interest in the child, a shared positive history with the child, and an ability to discern the child's needs? Shared Parenting ensures a child access to those qualities.

3. Does a parent have a history which poses some risk to the child, such as a prior history of using cruel punishment or perpetrating child abuse, a model of parenting which does not require a sharing of responsibilities may provide an opportunity to dilute risk while maintaining parental access?

Factors Related to the Co-Parenting Relationship

1. How do the parents manage disagreements regarding matters pertaining to the child? Does their interpersonal style allow them to maintain a working connection when they see things differently? Does their interpersonal style / history of previous wounds cause them to establish distance at times of differing opinion which may sever their ability to work together?

2. Is there a history of parental collaboration, even in the midst of conflict, which needs to be protected by a Shared Parenting plan, i.e., a structure which allows the collaboration to continue?

3. Is there a potential for ongoing gate-keeping which could potentially be dampened by a Shared Parenting order?

4. Would Shared Parenting undermine the mental health of either parent?

Consideration:

A history of abusive behavior generally discourages a recommendation for Shared Parenting. Other variations of protracted parental misbehavior which do not rise to the level of being abusive can be so corrosive as to impact the emotional health of a parent and significantly work against the best interests of the child. Examples of behavior with such potential include:

- *the initiation of too frequent nonpurposeful text and email communication,*
- *the use of social media to criticize or embarrass the other parent, and*
- *violation of the reasonable physical boundaries that allow parents to lead separate lives.*

5. Do parents respond to each other in a conscientious manner?

Consideration:

In order for Shared Parenting to feel comfortable, parents need to respond to each other with an implicit agreement regarding what constitutes timely response. Delays invite frustration and heighten the opportunity for negative interpretation. Parents who do not require a court to define "timely response" tend to be more in synch, and more motivated to collaborate. Parents who require a court to define "timely response" are less likely to have an innate talent for working together.

6. Is there a history of highly regrettable behavior?

- *How is it best characterized? (recent/historic, addressed unaddressed, involving both parents/ just one parent, acknowledged by both/reported by just one)*
- *How is it best understood? (a means of controlling others, a chronic lack of emotional self-control, an isolated / circumstantial episode of emotional outburst)*

7. Have the children witnessed regrettable incidents? Have they done so on an isolated or frequent basis?

Consideration:

When a marriage is disintegrating, children commonly witness isolated events of poor parental conduct that the parents themselves may not have been able to adequately anticipate. Parents who make serious mistakes can still effectively share the work of raising the children. Children who frequently witness regrettable incidents many times have parents who do not recognize the child's need for shielding early on and take corrective steps to minimize risk of witnessing future events. Divorce / separation can provide a shield for children who have witnessed regrettable behavior when their parents are together. The increased need for parental contact which comes with Shared Parenting could inadvertently undermine the shield.

8. Characterize the degree to which the child is aware of parental conflicts.

Consideration:

Most children whose parents separate are aware of parental conflict. Children whose level of awareness rises to the level where they experience worry regarding the instability of their home have generally not been adequately shielded from conflict. In general, parents who lack insight or personal control to establish shielding boundaries in a disintegrating relationship also lack the ability to take the perspective of the child. This perspective is necessary for high quality Shared Parenting.

9. Do the parents provide the children with evidence they like each other? For example, do they engage in social banter at exchanges, support the children in choosing gifts for the other parent, refer to the other parent as "mom" / "dad"? Do they deliberately encourage the child's love for the other parent? Do the parents provide the child with evidence they dislike each other? For example, do they show a lack of cordial conduct at exchanges? Do they maintain physical separation at public gatherings? Do they criticize clothing, food, recreational opportunities chosen by the other parent? Does a parent refer to the other parent negatively or with a lack of respect? Is there evidence a parent would tolerate a child's hostility or disrespect toward the other parent? For example, "You will form your own opinions of your mom / dad when you are older."

Consideration:

The ultimate goal of Shared Parenting is to promote the healthiest bond possible between the child and both parents. *Parents who consistently demonstrate evidence of valuing this bond for their child are most likely to commit to the work of Shared Parenting. Parents who show little evidence of valuing this bond are less likely to commit to the work that Shared Parenting requires.*

Environmental Factors

1. Can Shared Parenting increase the amount of actual time a child is cared for by parent?

Consideration:

Shared Parenting is less a model of parental residence and more a model of parental care. High quality Shared Parenting plans (as opposed to parenting time plans) are constructed around the time when each parent is normally available to be with the child–committing the hands-on time that builds bonds.

2. Does Shared Parenting save the family money / increase the financial stability of the child?

3. Does Shared Parenting drain resources of the family (money, time, work schedule accommodations) to so great an extent that other needs of the child are significantly sacrificed?

~~SECTION IV. PARALLEL PARENTING~~

~~**Scope.** Parallel parenting is a deviation from the parenting time guidelines, Sections I, II, and III. Its application should be limited to cases where the court determines the parties are high conflict and a Parallel Parenting Plan Court Order is necessary to stop ongoing high conflict that is endangering the well being of the child. "High conflict parents" mean parties who demonstrate a pattern of ongoing litigation, chronic anger and distrust, inability to communicate about and cooperate in the care of the child, or other behaviors placing the child's well being at risk. In such cases the court may deviate from the parenting time guidelines to reduce the adverse effects on the children. The contact between high conflict parents should be minimized or eliminated, at least until the parental conflict is under control.~~

~~In parallel parenting, each parent makes day-to-day decisions about the child while the child is with the parent. With parallel parenting, communication between the parents is limited, except in emergencies, and the communication is usually in writing. Appropriate counseling professionals are recommended to help parents handle parallel parenting arrangements. Parallel parenting may also be appropriate to phase out supervised parenting time. Parallel parenting is not a permanent arrangement.~~

~~Commentary~~

~~High conflict parents constantly argue with each other in the presence of the children. They often blame the other parent for their problems. Some parents make negative comments to the children about the other parent. Children of high conflict parents may develop emotional and behavioral problems. For example, they may become fearful, develop low self esteem, think they are the cause of their parents' fighting, or find themselves having to choose between their parents. Parallel parenting may be used to bridge between supervised parenting time and guideline parenting time. Of course, the best interests and safety of the children are paramount in all situations.~~

~~The court should recognize the danger that one parent could unilaterally create a high conflict situation. This behavior should not be rewarded by limiting the parenting time of the other parent.~~

1. ~~**Limitations of Parallel Parenting.** Joint legal custody of children is normally inappropriate in parallel parenting situations. Rather, sole legal custody is the norm in parallel parenting cases. Additionally, mid-week parenting time is not usually proper in parallel parenting cases, due to the higher level of contact and cooperation that is required to implement mid-week parenting time. Similarly, in parallel parenting cases, "Make Up" time and the "Opportunity for Additional Parenting Time" are generally inappropriate.~~

2. ~~**Education.** In some communities, parents can attend high conflict resolution classes or cooperative parenting classes. In these classes, parents learn that any continuing conflict between them will likely have a long-term negative effect on their children. They also learn skills to be better co-parents.~~

3. ~~**Parallel Parenting Plan Court Order.** In ordering the parties to parent according to a parallel parenting plan, the court must enter a written explanation regardless if the parties agree, indicating why the deviation from the regular Indiana Parenting Time Guidelines is necessary or appropriate. The court order shall detail the specific provisions of the plan.~~

~~Commentary~~

~~The specific court order for parallel parenting in any individual case should include a consideration of the topics in the Appendix, which is a recommended model parallel parenting plan court order. This order should address "hot topic" issues for each family, and should also include any other provisions the court deems appropriate to the family. Several of the provisions in the model order would be applicable to nearly all cases where parallel parenting is appropriate. Other provisions would be applicable only in certain circumstances. Some of these provisions require the court to make and enter a choice among various options, including Section 2.2 of the model order. The court should modify the order to fit the circumstances of the parties and needs of the children.~~

~~**4. Mandatory Review Hearing.** In all cases, a hearing must be held to review a parallel parenting court order at least every 180 days. At this hearing, the court shall hear evidence and determine whether the parallel parenting plan order should continue, be modified or ended.~~

SECTION V. PARENTING COORDINATION

…

B. Qualifications

~~1.~~ The Parenting Coordinator shall be a registered Indiana Domestic Relations Mediator, with additional training or experience in parenting coordination satisfactory to the court making the appointment. A Parenting Coordinator, as a registered Indiana Domestic Relations Mediator under ADR Rule 1.5, has immunity in the same manner and to the same extent as a judge.

~~2. An individual who does not meet the mediation registration requirements of B(1), but has served as a Parenting Coordinator in an Indiana Circuit, Superior, or Juvenile Court prior to the effective date of these guidelines, may obtain a waiver from the court in which the person served. However, a person receiving such a waiver shall fully comply with all qualification requirements within (2) years from the date these guidelines are adopted.~~

…

APPENDIX. WILL SHARED PARENTING WORK FOR YOU?

QUESTIONS TO CONSIDER

Shared Parenting requires not just a sharing of time and responsibility for raising the child, but a conscious effort to create two homes that are highly unified when taking care of a child and making decisions for the child. The following questions should be seriously considered before deciding to work within a Shared Parenting agreement during the time that your child is being raised in your home.

1. Do you feel you have been thoroughly informed regarding all that is required of parents who practice Shared Parenting?
   - Do you understand all of the things a parent needs to do in one's own household and in coordination with the other parent's household when committing to Shared Parenting?
   - Do you understand what the court expects of parents who commit to Shared Parenting?
2. Do you feel all of your children would benefit from spending nearly equal amounts of time in the homes of both parents?
3. Do you feel you and your child's other parent make higher quality decisions when you make those decisions together?
4. Are there specific areas where one of you is better equipped to make decisions?
   - Do you and the other parent agree about this?

5. Are you willing to give greater weight or acknowledge the opinion of the parent with greater expertise?
6. Do you take steps to shield your child from disagreements?
   - Does the other parent take steps to shield your child from your disagreements?
   - Does your child believe you have significant disagreements in child-relevant areas?
7. Do you take steps to portray a positive relationship to your child?
   - Does the other parent take steps to portray a positive relationship to your child?
   - Does your child believe you and the other parent like each other?
8. Does the stress of working through differences with the other parent impact your daily life negatively?
9. Have you or the other parent relied on courts to resolve differences in this case?
10. Do you believe your child would be happiest in a Shared Parenting arrangement?
11. If other people assist you in caring for your child, do you believe they would willingly assist you in fulfilling the commitments of a Shared Parenting relationship?

~~APPENDIX. MODEL PARALLEL PARENTING PLAN ORDER~~

~~The following is a suggested Model Order For Parallel Parenting, which may be used in implementing these rules.~~

~~MODEL PARALLEL PARENTING PLAN ORDER~~

~~The court concludes the parties are high conflict parents, as defined in the Indiana Parenting Time Guidelines. The court finds high conflict because of the following behavior(s):~~

~~___ a pattern of ongoing litigation;~~
~~___ chronic anger and distrust;~~
~~___ inability to communicate about the child;~~
~~___ inability to cooperate in the care of the child; or~~
~~___ other behaviors placing the child's well being at risk:~~
~~_____~~
~~_____.~~

~~[OR The court finds parallel parenting is appropriate to phase out supervised parenting time.]~~

~~Accordingly, the court deviates from the Indiana Parenting Time Guidelines, and now Orders the following Parallel Parenting Plan.~~

~~1. RESPONSIBILITIES AND DECISION-MAKING~~

~~1.1 Each parent has a responsibility to provide for the physical and emotional needs of the child. Both parents are very important to the child and the child needs both parents to be active parents throughout their lives. Both parents must respect each parent's separate~~

role with the child. Each parent must put the child's needs first in planning and making arrangements involving the child.

1.2 When the child is scheduled to be with Father, then Father is the "on-duty" parent. When the child is scheduled to be with Mother, then Mother is the "on-duty" parent.

1.3 The on-duty parent shall make decisions about the day to day care and control of the child.

1.4 This decision making is not to be confused with legal custody decision making concerning education, health care and religious upbringing of the child. These more significant decisions continue to be the exclusive responsibility of the parent who has been designated as the sole custodial parent.

1.5 In making decisions about the day to day care and control of the child, neither parent shall schedule activities for the child during the time the other parent is on-duty without prior agreement of the on-duty parent.

1.6 Parents share a joint and equal responsibility for following parenting time orders. The child shares none of this responsibility and should not be permitted to shoulder the burden of this decision.

1.7 Unacceptable excuses for one parent denying parenting time to the other include the following:

The child unjustifiably hesitates or refuses to go.
The child has a minor illness.
The child has to go somewhere.
The child is not home.
The noncustodial parent is behind in support.
The custodial parent does not want the child to go.
The weather is bad.
The child has no clothes to wear.
The other parent failed to meet preconditions established by the custodial parent.

2. REGULAR PARENTING TIME

2.1 The parents shall follow this specific schedule so the child understands the schedule.

2.2 [ ] *Mother, or* [ ] Father has sole custody of the child. The noncustodial parent shall have regular contact with the child as listed below:

[ ] Every other weekend, from 6:00 p.m. on Friday until 6:00 p.m. on Sunday.
[ ] Every other Saturday, from _____ a.m. until _____ p.m.
[ ] Every other Saturday and Sunday from _____ a.m. until _____ p.m. each day.
[ ] _____
[ ] _____

3. SUMMER PARENTING TIME SCHEDULE *(use only if summer is different than the Regular Parenting Time outlined above.)*

3.1 Mother shall be on-duty and the child will be with Mother as follows:

_____

_____

3.2 Father shall be on-duty and the child will be with Father as follows:

_____

_____

4. HOLIDAY SCHEDULE

4.1 Holiday Schedule Priority. The below detailed holiday schedule overrides the above Regular Parenting Time Schedule. For listed holidays other than Spring Break and Christmas Break, when a holiday falls on a weekend, the parent who is on-duty for that holiday will be on-duty for the entire weekend unless specifically stated otherwise. It is possible under some circumstances that the holiday schedule could result in the child spending three (3) weekends in a row with the same parent.

4.2 On New Year's Eve/Day, **Martin Luther King Day, President's Day, Easter, Memorial Day, 4th of July, Labor Day**, Halloween, Fall Break, birthdays of the child and parents, and all other holidays / special days not specifically listed below, the child shall remain with the parent they are normally scheduled to be with that day, as provided in the Regular Parenting Time Schedule.

4.3 Spring Break. The child shall spend Spring Break with Father in odd numbered years and with Mother in even numbered years. This period shall be from two hours after the child is released from school before Spring Break, and ending at 7:00 pm of the last day before school begins again.

4.4 Mother's Day and Father's Day. The child shall spend Mother's Day weekend with Mother, and Father's Day weekend with Father each year. These periods shall be from Friday at 6:00 p.m. until Sunday at 6:00 p.m.

4.5 Thanksgiving. The child shall spend the Thanksgiving holiday, from two hours after the child is released from school Wednesday until Sunday at 7:00 p.m. with Father in odd numbered years, and with Mother in even numbered years.

4.6 Christmas.

a. The Christmas vacation shall be defined as beginning on the last day of school and ending the last day before school begins again. Absent agreement of the parties, the first half of the period will begin two hours after the child is released from school. The second half of the period will end at 6:00 p.m. on the day before school begins again.

Each party will receive one half (1/2) of the total days of the Christmas vacation, on an alternating basis as follows:

1. In even numbered years, the custodial parent shall have the first one half (1/2) of the Christmas vacation and non-custodial parent shall have the second one half (1/2) of the Christmas vacation.

2. In odd numbered years, the non-custodial parent shall have the first one half (1/2) of the Christmas vacation and custodial parent shall have the second one half (1/2) of the Christmas vacation.
3. In those years when Christmas does not fall in a parent's week, that parent shall have the child from Noon to 9:00 P.M. on Christmas Day.
4. No exchanges under this portion of the rule shall occur after 9:00 p.m. and before 8:00 a.m., absent agreement of the parties.

Or

b. The child shall celebrate **Christmas** Eve, December 24, from 9:00 a.m. until 9:00 p.m. with Mother in odd numbered years, and with Father in even numbered years. The child shall celebrate **Christmas** Day, December 25, from 9:00 p.m. on December 24 until 6:00 p.m. on December 25 with Father in odd numbered years, and with Mother in even numbered years. At 6:00 p.m. on December 25, the Regular Parenting Time Schedule resumes.

Or

c. Other:_____

5. TRANSPORTATION OF THE CHILD

5.1 The parents shall arrive on time to drop off and pick up the child. The parents shall deliver the child's clothing, school supplies and belongings at the same time they deliver the child. The parents shall always attempt to return the child's clothing in a clean condition.

5.2 When the child is scheduled to return to Father, then F*ather shall pick the child up at* [ ] *Mother's home or* [ ] _____.

5.3 When the child is scheduled to return to Mother, then Mother shall pick the child up at [ ] F*ather's home or* [ ] _____.

5.4 Special Provisions Regarding Exchange Participation: *(if necessary)*

Other than the parents, only _____ *shall be present when the child is exchanged.* _____
_____.

5.5 A parent may not enter the residence of the other, except by express invitation, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, the child shall be picked up at the front entrance of the appropriate residence or other location unless the parents agree otherwise. The person delivering the child shall not leave until the child is safely inside.

6. EMERGENCY CHANGES IN THE REGULAR PARENTING TIME SCHEDULE

6.1 Although the child needs living arrangements that are **predictable**, if an unexpected or unavoidable emergency comes up, the parents shall give each other as much notice as possible.

6.2 If unable to agree on a requested change to the schedule, the Regular Parenting Time Schedule shall be followed. If an emergency results in the need for child care, the on-duty parent shall make the child care arrangements and pay for the cost of child care, unless otherwise agreed.

6.3 Unless the parents agree, any missed parenting time shall not later be made up.

7. COMMUNICATION

7.1 Communication Book. The parents shall always use a "communication book" to communicate with each other on the child's education, health care, and activities. The communication book should be a spiral or hardbound notebook. The communication book will travel with the child, so that information about the child will be transmitted between the parents with minimal contact between parents.

7.2 Neutrality of the Child. To keep the child out of the middle of the parents' relationship and any conflict that may arise between the parents, the parents shall not:

Ask the child about the other parent.

Ask the child to give messages to the other parent.

Make unkind or negative statements about the other parent around the child.

Allow other people to make unkind or negative statements about the other parent around the child.

7.3 Dignity and Respect. The parents shall treat each other with dignity and respect in the presence of the child. The parents shall keep conversations short and calm when exchanging the child so the child will not become afraid or anxious.

7.4 Telephone Contact. The child may have private telephone access to the other parent [ ] at all times *or* [ ] between the hours of _____ and _____. The parents shall encourage and help the child stay in touch with the other parent.

7.5 The parents shall not interfere with communication between the child and the other parent by actions such as: refusing to answer a phone or refusing to allow the child or others to answer; recording phone conversations between the other parent and the child; turning off the phone or using a call blocking mechanism or otherwise denying the other parent telephone or electronic contact with the child.

7.6 Notice of Travel. Before leaving on out of town travel, the parents shall provide each other the address and phone number where the child can be reached if they will be away from home for more than 48 hours.

7.7 The parents shall at all times keep each other advised of their home and work addresses and telephone numbers. Notice of any change in this information shall be given to the other parent in the communication book at the next exchange.

8. SAFETY *(use the following provisions only as necessary)*

8.1 Neither parent shall operate a vehicle when impaired by use of alcohol or drugs.

8.2 [] Mother []Father [] Both parents shall not use alcohol or non-prescribed drugs when they are the on-duty parent.

8.3 The parents shall not leave the child _____ unattended at any time.

8.4 [] Mother []Father [] Both parents *shall not use, nor allow anyone else to use, physical discipline with the child.*

8.5 _____ *shall not use physical discipline with the child.*

8.6 *All contact between the child and _____ shall be supervised by _____.*

8.7 *Neither parent shall allow the child to be in the presence of* _____

9. EDUCATION

9.1 The custodial parent shall determine where the child attends school.

9.2 Both parents shall instruct the child's schools to list each parent and their respective addresses and telephone numbers on the school's records.

9.3 Each parent will maintain contact with the child's schools to find out about the child's needs, progress, grades, parent-teacher conferences, and other special events.

9.4 The parents shall use the "communication book" to share information about the child's school progress, behavior and events.

10. EXTENDED FAMILY

10.1 The child will usually benefit from maintaining ties with grandparents, relatives and people important to them. The parents shall help the child continue to be in contact with these people.

10.2 However, as provided above at "SAFETY," [ ] a*ll contact between the child and _____ shall be supervised by _____*

[ ] n*either parent shall allow the child to be in the presence of* _____

11. CHILD CARE

11.1 Arranging for normal, day-to-day work-related child care for the child is the responsibility of the [ ] custodial parent [ ] on-duty parent.

11.2 When occasional other situations require child care for the child when the child is with the on-duty parent, the on-duty parent is not required to offer the other parent the chance to provide this care before seeking someone else to care for the child. However, in such situations, the on-duty parent shall make any needed occasional child care arrangements, and the on-duty parent shall pay the cost of that child care.

11.3 Only the following listed persons may provide occasional child care for the child: _____.

11.4 If the [ ] Mother [ ] Father anticipates being unable to personally supervise the child during the parent's entire scheduled on-duty time, the [ ] Mother [ ] Father must notify the other parent as soon as possible, and that parent's on-duty time for that [ ] day [ ] weekend will be cancelled, and not made up at any later time.

12. HEALTH CARE

12.1 Major decisions about health care (such as the need for surgery, glasses, contacts, prescription medications, orthodontia, etc., and the need for regular, on-going medical appointments and treatments, etc.) shall be made by the custodial parent.

12.2 Each parent has a right to the child's medical, dental, optical and other health care information and records. Each parent will contact the child's heath care providers to find out about the child's heath care needs, treatments and progress. The custodial parent shall give written authorization to the child's health care providers, permitting an ongoing release of all information regarding the child to the non-custodial parent including the right of the provider to discuss the child's situation with the non-custodial parent.

12.3 The parents shall use the "communication book" to communicate with each other on all health care issues for the child.

12.4 The on-duty parent shall make sure the child takes all prescription medication and follow all prescribed health care treatments.

12.5 In medical emergencies concerning the child, the on-duty parent shall notify the other parent of the emergency as soon as it is possible. In such emergencies, each parent can consent to emergency medical treatment for the child, as needed.

13. RELOCATION FROM CURRENT RESIDENCE

13.1 When either parent considers a change of residence, a 90 day advance notice of the intent to move must be provided to the other parent and filed with the court.

13.2 The Indiana Parenting Time Guidelines have a more detailed discussion of the statutory notice requirements at Section I.E.4, "Relocation."

14. EVENT ATTENDANCE

14.1 When the child is participating in a sports team, club, religious, or other such event at school or elsewhere, [ ] only the on-duty parent [ ] both parents may attend the event.

14.2 The custodial parent is permitted to enroll the child in _____ extracurricular activity. The non-custodial parent shall encourage this participation.

15. A CHILD'S BASIC NEEDS

To insure more responsible parenting and to promote the healthy adjustment and growth of the child, each parent should recognize and address the child's basic needs. Those needs include the following:

15.1 To know that the parents' decision to live apart is not the child's fault.

15.2 To develop and maintain an independent relationship with each parent and to have the continuing care and guidance from each parent.

15.3 To be free from having to side with either parent and to be free from conflict between the parents.

15.4 To have a relaxed, secure relationship with each parent without being placed in a position to manipulate one parent against the other.

15.5 To enjoy consistent time with each parent.

15.6 To be financially supported by each parent, regardless of how much time each parent spends with the child.

15.7 To be physically safe and adequately supervised when in the care of each parent and to have a stable, consistent and responsible child care arrangement when not supervised by a parent.

15.8 To develop and maintain meaningful relationships with other significant adults (grandparents, stepparents and other relatives) as long as these relationships do not interfere with or replace the child's primary relationship with the parents.

16. RESOLVING DISPUTES

16.1 Because this is an Order of the court, both parents must continue to follow this Parallel Parenting Plan *even if the other parent does not.*

16.2 When the parents cannot agree on the meaning or application of some part of this Parallel Parenting Plan, or if a significant change (such as a move or remarriage) causes conflict between the parents, both parents shall make a good faith effort to resolve those differences before returning to the court for relief. In most situations, the court will require the parents to attend mediation before any court hearing will be conducted.

16.3 The parties shall attend _____ counseling / parenting education program.

17. MANDATORY REVIEW HEARING

17.1 A mandatory review hearing is set on _____, 20__, at _____ a.m./p.m. in this court. Both parents shall appear at this hearing with counsel of record. [Note: The date shall be set within 180 days of the entry of this order]

DATE: _____, 20__

_____

_____

COMMISSIONER/MAGISTRATE/JUDGE

The above entry is adopted as the Order of the Court on this same date.

_____

_____

_____

JUDGE

Copies to: Attorney for Petitioner,
Attorney for Respondent,

~~Mediator:~~

~~DATE OF NOTICE:~~
~~INITIAL OF PERSON WHO NOTIFIED PARTIES: COURT CLERK OTHER~~

This amendment is effective January 1, 2022.
Done at Indianapolis, Indiana, on 10/5/2021.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

Section Five

Insurance Needs for Your Practice, Including Cyber Security Coverage and Best Practice

Eric C. Redman
Ritman & Associates, Inc.
Noblesville, Indiana

Section Five

**Insurance Needs for Your Practice,
Including Cyber Security Coverage
and Best Practice…… Eric C. Redman**

PowerPoint Presentation

Insurance Needs for Your Practice, Including Cyber Security Coverage and Best Practice

Presented by Eric C. Redman, Ritman & Associates

Legal Malpractice Insurance

- **Rules of Professional Conduct 27(g):**

A professional corporation, limited liability company or limited liability partnership shall maintain adequate professional liability insurance or other form of adequate financial responsibility for any liability of the professional corporation, limited liability company, or limited liability partnership arising from acts of fraud, defalcation or theft or errors or omissions committed in the rendering of professional legal services by an officer, director, shareholder, member, partner, other equity owner, agent, employee or manager of the professional corporation, limited liability company or limited liability partnership.

(1) "Adequate professional liability insurance" means one or more policies of attorneys' professional liability insurance or other form of adequate financial responsibility that insure the professional corporation, limited liability company or limited liability partnership or both;

(i) in an amount for each claim, in excess of any insurance deductible or deductibles, of fifty thousand dollars ($50,000), multiplied by the number of lawyers practicing with the professional corporation, limited liability company or limited liability partnership; and

(ii) in an amount of one hundred thousand dollars ($100,000) in excess of any insurance deductible or deductibles for all claims during the policy year, multiplied by the number of lawyers practicing with the professional corporation, limited liability company or limited liability partnership.

The Top Ten Malpractice Traps

- Lack of adequate documentation
- Inappropriate involvement in client interests
- Overzealous pursuit of past due legal fees
- Stress and substance abuse
- Technology Malpractice
- Missing deadlines
- Conflicts of interest and matter
- Client relations that stink
- Ineffective client screening
- Inadequate research and investigation

Legal Malpractice Insurance

- Claims made and reported policy form.
- First made during policy period or extended reporting period
- No prior knowledge OR prior notice
- Act, error or omission AFTER the retro date
- All other terms and conditions of policy

What are considered Legal Services?

- Services performed by an Insured for other as a:
  - Lawyer, arbiter, mediator, expert witness, title agent, notary public, etc., etc.
  - Can also include administrator, conservator, receiver, executor, guardian, trustee or fiduciary capacity
  - Also author of legal papers, or legal seminars
  - No standard policy language – each policy is unique
  - REVIEW YOUR POLICY FOR DETAILS

Who is considered an insured?

- Current lawyers of the firm
- Current non-lawyer employees of the firm
- Former lawyers of the firm
- Former non-lawyer employees of the firm
- Current and Former Independent Contractor and Of Counsel Attorneys

Firm only vs. Career Coverage

What other coverages does the policy include?

- Disciplinary Defense Coverage
- Subpoena Assistance Coverage
- Loss of Earnings
- Cyber/EPLI (Endorsement)

Every policy has different limits and conditions for these ancillary coverages. Review your policy for details. Typically not subject to a deductible.

Common Exclusions

- Equity interest in a client
- Services as an Officer/Director/Manager
- Dishonest, Fraudulent, Criminal, or malicious act or omission
- Dispute of legal fees

Please review your policy for further exclusionary language!

Extended Reporting Period (Tail Coverage)

- Firm is closing
- Attorney is departing the firm
- Retirement from practice of law, or private practice of law
- Death or Total Disability

Endorsement covers claims that arise in the future based on prior legal services when no current policy is available to provide coverage.

Business Owner's Policy

- Can bundle property, liability and auto into one policy protecting you from fire, loss of business income and lawsuits due to a covered Loss.
- Can typically be tailored to meet specific needs of a law office. A Lawyers Broadening Endorsement can bulk up coverages important to law offices. (Valuable Papers, Accounts Receivable Records, Computers and Media, ect…)
- Endorsements for Cyber/EPLI/Employee Dishonesty

Important Considerations for Law Firm Business Owners Policy

- Does your lease require you to carry general liability and insure your contents? Do they require specific limits?
- **Hired & Non-Owned Auto** coverage. If you ever rent a vehicle while on law firm business or have an employee drive their own vehicle on law firm business this is a must have coverage!
- If you have a client, vendor, visitor, mailperson slip, trip and fall while visiting your office you need general liability and medical expenses coverage provided by BOP.
- Did you leave the coffee pot on in your office and damage your leased premises? You need “Damage to Premises Rented to You” coverage

General Liability and Property Pitfalls

- Moving office to home/virtual. You still need coverage!
- Notify your agent if you move your office
- Expanding or decreasing office space? Buying new equipment?
- Umbrella Liability
- #1 risk is driving your car on business ---Hired/Non-Owned Auto coverage

Workers Compensation

- You are required by the State of Indiana to carry Workers Compensation coverage if you have even one part time employee.
- Do you have an Independent Contractor instead of an employee? Unless they have their own policy or have filed a waiver with the State of Indiana, if they get injured while doing work for your firm, the State will look to you to pay for their injuries and lost wages.

HR/Workers Compensation Pitfalls

- Hiring first employee? Even part time requires Workers Compensation insurance
- Independent Contractor employees require WC unless they carry their own policy
- COVID considerations: Be aware of what is allowed in getting employees back into the office
- Employee injured while working remotely from home
- Adding remote/home locations to WC policy

Cyber Risk Insurance

Rules of Professional Conduct: 1.1.6 Amendment:

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with the technology relevant to the lawyer's practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

IT Security/Cyber Liability Pitfalls

- Massive increase in cyber attacks to include ransomware/extortion attacks and social engineering fraud attacks.
- Employees working remotely create an increased vulnerability to attacks
- Be careful using any public Wi-Fi!

Common Cyber Claims

- Disclosure of a client's Personally Identifiable Information or confidential attorney/client information
- Ransom and Extortion attacks
- Social Engineering Fraud attacks

Mitigating your Cyber Risk

- Continuous defense. This is an on-going process. Do not set it and forget it!
- Patch/Update software immediately and regularly
- Implement Multi-Factor Authentication
- Implement encryption
- Regular employee training
- Intrusion testing
- Regularly back up data

Cyber Liability Insurance!!

Cyber Risk Insurance: First Party Coverage

- **Computer Data Restoration**: Pays to replace or restore data and software due to malware, ransomware or virus resulting from a cyber attack.
- **Ransom/Extortion:** Pays ransom and related expenses resulting from threats to destroy or release protected information.
- **Social Engineering Fraud**: Reimburses the firm for money/securities lost through a social engineering or wire fraud scam.
- **Business Interruption**: Reimburses the firm for loss of income and operating expenses while unable to operate as a result of a cyber attack.

Cyber Risk Insurance: First Party Coverage

- **Forensic Services**: Pays costs to determine the cause of a cyber breach and to secure the firm's computer system.
- **Privacy Breach Notification**: Pays the costs to notify the affected parties whose personally identifiable information has been compromised. This also provides credit monitoring.

Cyber Risk Insurance: Third Party Coverage

- **Information and Privacy Liability**: Covers losses arising from claims against the firm related to the disclosure of Personally Identifiable Information or corporate/client confidential information.
- **Regulatory Fines & Penalties**: Pays the expenses associated with regulatory proceedings and violations of laws governing data protection and privacy.
- **Media and Privacy Liability:** Responds to claims of IP infringement, libel, plagiarism, defamation relating to the firm's website and social media content.
- **Network Security:** Pays for damages incurred by a third party as a result of your firm's unintentional infection of their network.

Reducing Cyber Risk: Best Practices

- **Keep your protection software updated.** Software companies track the new hacking methods and reverse engineer solutions. Once they release them to their subscribers, you need to install them to have the latest deterrents on your system.

Reducing Cyber Risk: Best Practices

- **Slow Down.** Most cyber issues occur because we are moving too fast. Review emails carefully for poor grammar, punctuation or odd word choices. Look closely at the email address of the sender. Ask yourself if it makes sense to be receiving this email.

Reducing Cyber Risk: Best Practices

- **Only use secure internet.** Your local coffee shop or conference hotel do not generally have secure internet connections.
- **Use strong passwords.** The more complicated and abstract the password, the better. Be sure to use different passwords for different accounts. Change them frequently if possible.

Reducing Cyber Risk: Best Practices

- **Back up your data frequently.** Test the backup to make sure that you can reload the data should you need to. Better to find out that your backups aren't working before you need them to keep your business open.
- **Make use of the risk management and informational tools available through your IT professional and/or insurance provider.**

Other Coverages

- Crime
- Fiduciary
- Employment Practices Liability
- Directors and Officers Liability
- ERISA Bond

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Specializing in Professional Liability Insurance for Attorneys

Section Six

Creating Systems to Run Your Law Practice Successfully

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Section Six

Office Systems and Procedures: Best Practices for Solos and Small Firms

Author:
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Written Materials for

Creating Systems to Run Your Practice Successfully

ICLEF Reality CLE

October 2021

For many years, lawyers were primarily concerned with the law and seeking a positive legal outcome for each client. Lawyers relied on legal expertise and knowledge to achieve these goals. Time and expense to the client was secondary. Each lawyer had his or her own way to achieve the results. It was also at a time when the supply of work outstripped the supply of lawyers. Whatever processes and procedures developed within a law firm is what they used.

As the supply and demand curve has changed to favor consumers, clients are seeking lower fees. With more competition among lawyers, clients are finding that fees are more competitive, and rates are not increasing as they once did. To better compete, lawyers have paid more attention to making changes in their firms to be more efficient and more productive in the delivery of legal services. While a positive legal outcome is still the primary goal, firms pay far more attention to the processes used to achieve it.

One of the best books for small firm lawyers to read is *The E-Myth Revisited* by Michael Gerber. The book is applicable to almost all small businesses, including solo and small law firms. There is even a version of this book titled *The E-myth Attorney*, which I also recommend if you have the time. In his book, Gerber explains the necessity of business processes and systems. A business is only as successful as the documented, organized, processes that define how it is run:

> "The work we do is a reflection of who we are. If we're sloppy at it, it's because we're sloppy inside. If we're late at it, it's because we're late inside. If we're bored by it, it's because we're bored inside, with ourselves, not with the work. The most menial work can be a piece of art when done by an artist. So the job here is not outside of ourselves, but inside of ourselves. How we do our work becomes a mirror of how we are inside."

Every business needs to have a set of systems and procedures to accomplish the work that needs to be done. Common systems in a law practice include time and billing systems to track expenses and bill clients for your services; calendar and docketing systems to keep you organized, on time, and to avoid missing important events; communications systems to interact with others in a timely, respectful, and efficient manner; file organization systems to keep documents where they should be; and human resource management to hire and maintain a great office team.

These systems, if properly implemented, will improve the efficiency of your practice, improve your legal services to your clients, help you to avoid problems that can lead to malpractice and disciplinary complaints, and reduce the stress in the day-to-day practice of law.

Clients, especially those who frequently use legal services, are more sophisticated about legal processes. Legal consumers are also aware of the growth and evolution of computer technology. They use it in their daily lives and expect their lawyers to do the same. With this expectation comes the expectation that technology use will create efficiencies that will help drive legal costs lower.

Bottom line? Lawyers who expect to compete and win business must place a greater emphasis on their office systems and procedures to deliver legal services in an efficient and cost-effective manner. The better the systems, the better chance a firm will meet client expectations on delivery, cost, and outcome.

Successful firms have processes and procedures to maximize every client matter and reduce the risks that sour attorney-client relationships. Better systems also mean less risk. Lower risk allows firms to price their services lower to attract even more clients. Better processes make for better productivity and a less frustrated staff.

It’s about doing the right things and doing those things right. It’s taking time to analyze the discrete tasks needed to provide outstanding legal and client service. It’s doing those things to deliver value consistently to each client and deliver profit to the firm. Without value, there is no client satisfaction: without profit, there is no law firm.

The most common types of law office systems and procedures are listed below. Use these to develop your own systems. Write down your systems and procedures step by step. Do this so you will have them in detail, but also for any new employee to refer to when learning how your office systems work.

Creating these systems does not have to be complicated. Actually, a simple system that works is better than a complicated one. The hard part is having the discipline to stick with your system until it is so well integrated into the way you do business that you cannot work without it.

Reviewing Your Current Office Systems

Given the evolution of technology and changing consumers, it is a good business practice to review your systems periodically to make sure they are working as you intend, are delivering the client service you expect, and are as efficient and effective as possible for your needs. The best place to start is with those systems that are client-facing, as they have the greatest impact on how clients view your firm and perceive value from it.

Continuous process improvement in a law firm should focus the systems and processes on establishing what the clients want. What can law firms do to meet and exceed client service expectations and ultimately deliver services that deliver client value?

Creating a Firm Manual

Designing and implementing law firm management policies and procedures is a huge step toward a productive, positive and profitable law practice. However, having these policies and procedures in writing makes for an even more successful firm.

Having clear written policies helps make for a more stable working environment, reduces employee frustration, and frees the lawyers to do their work rather than be constantly interrupted to answer questions about the policies and procedures. Furthermore, the policies and procedures become independent of the creators or the trusted office staffer who may not be available to answer questions as they arise. The manual—or some people refer to it as your law firm cookbook—becomes the employee manual and training guide. It is well worth the time and effort to invest in this endeavor.

The law firm need not start from scratch, however. The American Bar Association offers a digital download of the policy and procedures manual for solos and small firms. It is downloadable as a Microsoft word document, which then can be edited and tailored to each individual law firm. It is the *Policy and Procedures Manual for Solos and Small Firms*.

Know that if you cannot describe the process for getting your work done, then you don't know your systems. That's the beauty of this exercise. When the cookbook is finished—over the course of several months—you will have a far better understanding of how your firm works, and how each person and each procedure fits into the work you do.

Client Influences on Your Processes and Procedures

Don't be afraid to seek changes from clients as part of your systems and processes. Client behavior influences the attorney-client relationship and affects the costs and outcome of each legal matter. Start early in the relationship to influence client behavior. Let them know that their behavior (cooperation,

timeliness, etc.) impacts costs and outcomes. For example, if you do multiple or repetitive legal matters for a business, then work with them to understand each other's workflow processes to improve the efficiency of working back and forth across their business and your firm on legal matters.

Don't just look at the financial metrics to evaluate the value of your systems changes, but also the human metrics: Is your staff less frustrated? Are their interactions with clients more favorable? Is the client happier in the end?

Client Service Management

Although some might argue this point, the most important aspect of the attorney-client relationship is how the client is treated during the legal representation. Some lawyers will argue that the legal outcome of the matter is more important; however, clients who fail to achieve their legal goals, in litigation perhaps, will still be complimentary of their attorney based on how they were treated by the lawyer and law firm during the legal matter.

How the client was treated at every step of the attorney client interaction will be evaluated by each client, and will factor into whether they return for additional legal services, and refer their friends, neighbors, and colleagues. Remember, people will forget what you said, people may forget what you did, but people will never forget how you made them feel.

The best approach to learning this is to walk in your client's shoes. Walk through the front door of your firm as if you were walking in as a client for the first time. What do you see? What do you feel? Go step-by-step from the initial greeting through the end of that appointment. Are you satisfied with what you see, hear and feel? Pay special attention to those things you don't normally focus on, but clients do: How clean is the carpet? How loud is the reception area? How old are the waiting room magazines? What calming courtesy beverages are available? How long is the average wait from arrival to meeting the lawyer or paralegal? Are desks

messy or floors cluttered with files? Appearances matter, especially on the first visit. Are there interruptions during the meeting, and were they properly explained and then excused by the client? How comfortable is the client when they leave? How courteous and prompt were they greeted?

True, this may be hard for lawyers or firm personnel to do with the proper seriousness, so if it doesn't work for you, ask a good client to do it for you and give you honest feedback.

With this new view of your firm, what changes can be made to improve the client's experience? Make a list of improvements to make over the coming weeks or months.

Whether it is signed at the initial consult or thereafter, the representation agreement (too often called a fee agreement, but it is much more) is the foundation of your relationship with each client. It is part of your Client Service Management. Review your model representation agreements. Consider making changes as suggested in the companion article, *Ethical and Profitable Representation Agreements.* I can almost guarantee the article will save you multiple client headaches and improve your clients' understanding of their obligations in the attorney-client relationship.

Communication Processes

Client Communications: There is nothing more important to the attorney-client relationship than good communications. Effective and regular communication is the foundation of a positive and profitable relationship with your client. Communicate with your client throughout your relationship to build trust and avoid problems. Use these ideas to build or rebuild your client communication processes:

1. Listen to your client. Learn the client's initial goals for the relationship and put them in writing. Provide realistic advice and guidance. Continue to listen

to the client's goals and expectations throughout the relationship; note, in writing, to the client if the goals or expectations change.

2. Provide a written representation agreement, the foundation of your lawyer-client relationship. The written agreement should encompass the scope of the representation, the basis for the fee, the timing of your services, and any other issues negotiated.

3. If you decline to represent a prospective client, write a letter to confirm your “non-engagement” so the "client" doesn't wrongfully claim later that you were his or her attorney.

4. Disengagement letters should be sent with a final bill; an order of withdrawal may also still be necessary. [See Rule 1.16 of the Indiana Rules of Professional Conduct, and any local court rules if the matter is pending before the court.]

5. Schedule face-to-face meetings with each client periodically; use these meetings to build your relationship with your client, especially if circumstances of the case or the expectations of your client change.

6. Special communication problems with "difficult" clients: Learn to identify problem clients who may need more direct communications. These clients include lawyer shoppers, clients who are reluctant to pay a retainer or seek a reduced retainer, vengeful clients, and clients who have unreasonable expectations. Do not be afraid to terminate a client appropriately if the problems persist, for you may be the client’s next defendant.

7. The telephone is an important communication tool, and managing your calls is critical. Many clients choose solo practitioners and small firms because they want quick access to their lawyer. Have policies that keep you

accessible by email or phone, but do not infringe too deeply or often on your personal time.

8. Your receptionist is your "Manager of First Impressions." The way your receptionist welcomes and handles clients by telephone or in person will set the tone for how the client views your firm. Poor skills and attention will result in fewer clients. If you are unavailable to talk to a client, your receptionist must take clear and accurate messages and leave the client confident that the message will get to you. If you have an answering service or machine, make sure that the out-going message is clear, and that the system works properly (test it from time to time). If you retrieve your own messages, write them down on individual message slips so you have a record of each call. Use message slips on colored paper to make them easier to find on your desk or briefcase or use a digital note-taking or messaging system to receive and review your message. Try Google Voice or Ring Central or other service that automatically transcribes voice mail messages and emails them to you.

9. Respond to all telephone calls within 24 hours. If at all possible, respond the same day. If you cannot respond, assign a responsible staff member to call and take a detailed message.

10. If possible, set aside blocks of time each day to return telephone calls from clients. Prompt return calls are appreciated by clients and will help build your relationship with them.

11. Give your client a constant reminder of your progress in the client's case by sending copies of most, if not all written materials in the matter. Send a copy of all pleadings and motions to your client with a brief note of explanation, and a reminder to call you if he or she has any questions. Also send copies of correspondence to and from opposing counsel in the same manner. If

you are billing hourly, be sure to log this time. If you are billing on a flat fee basis, be sure to include this service in your quoted fee.

12. Give your client a legal file folder at the time he or she signs the written agreement. Put the client's copy of the written representation agreement in the file, and instruct your client to keep all written communications, pleadings and bills in the file for future reference.

13. Monthly bills are an excellent form of communication with your client. The bill should reflect your efforts on behalf of the client. Use descriptive terms that inform the client of your efforts. Avoid short descriptions such as “Services Rendered” or “Research.” A bill that projects effort and value is more likely to get paid!

14. Note that for 11-13 above you can create these as paper or digital processes. While paper processes feel comfortable for many, digital processes are faster and more efficient with a growing number of consumers expecting them. Now is the time to add more digital processes to your workflow systems.

15. Create written client communications policies based on the above. Create them both for staff use and for managing client expectations. Consider telephone policies for returning phone calls, protocols for leaving messages, and to prevent paralegals from giving legal advice without your knowledge. Consider e-mail policies, including proper use of your systems, maintaining confidentiality of client information, ensuring receipt of e-mails, checking spam filters, using disclaimers to prevent inadvertent disclosure, and requiring clients to update their contact information as soon as it changes. Although still not a recommended practice, if you use social media platforms as a way to communicate with clients, have similar written policies for those clients.

Evaluating Clients

Every firm should have a process for evaluating clients. Most lawyers have a process for weeding out “bad” clients at the initial consultation, and certainly non-paying clients fit that description, however, not every client is not worth the time and energy they require. So consider adopting this five-step process to better clients:

1. Review all your current client files to rate each client by assigning 0 to 5 points to each of the following statements. Five is the highest score, making each client matter worth up to 30 points.
   - I feel good about this client 0-5 points
   - The work is interesting and challenging 0-5 points
   - The rewards (financial, helping the cause, gaining experience, etc.) are worth my efforts 0-5 points
   - The client is cooperative and appreciative 0-5 points
   - The client pays my bill on a timely basis 0-5 points
   - I can competently conclude their legal matter 0-5 points
2. Rate the cases like school grades: Give your clients a grade based on your ratings. The “A” clients score 23-30; the “B” clients 18-22; the “C” clients 11-17; and the “F” clients 10 or less.

3. For better or worse, “C” clients are most lawyers bread and butter; the goal is to have mostly “A” and “B” cases, with a fair number of “C” clients and no “F” clients—at least not for long. A good mix would be 30 percent “A” clients, 30 percent “B” clients, 40 percent “C” clients and no “F” clients.

4. Ethically fire your “F” clients, and then spend the time with your family or begin looking for new and better clients.

5. Create client intake analysis that follows the above; and accept only those clients that share the characteristics important to you.

Practice Management

Practice management is all about your workflow processes. It is all about how the work is done and who does the work in your office. Understanding and controlling these functions will have a significant impact on your overall productivity and profitability. They must, of course, also meet the minimal ethical standards of our profession. Let's look at those different management processes one at a time:

A. Document Management: In the 1980's when I started practicing law, there was no Internet, word-processing was just reaching the desktops of some lawyers, mail, faxes, and bike couriers were the main forms of document transfer, because paper files ruled the day. The average lawyer touched 16 documents per day. Fast forward to 2015 and the average lawyer sent or received over 76 emails per day and touched 36 documents in several different formats.[1] Couple that with a reduction in administrative support on a per lawyer basis, and document management is and will continue to be an extremely important function within a firm.

Still, according to the ABA Legal Technology Resource Center, over half of law firms in the U.S. do not use a document management application (such as NetDocuments or Worldox) in most of those that do use document management functions. That means lawyers are creating their own processes for saving and recalling documents, whether through filing syncing sites such as Dropbox and Google Drive, even if they have practice management software (Clio, Rocket Matter, FirmManager, etc.)

[1] http://metajure.com/surprising-statistics-lawyer-information-overload/

Much of this reluctance stems from switching away from the file folder structure of Windows operating systems, first introduced decades ago. We have learned the linear folder and subfolder structure, and we are loath to part with it. Yet today's document management functions within practice management software and document management applications are much faster and more robust than just a few years ago. Documents can be "read" by computers, rather than annotated by staff; document search functions are so fast, "lost" documents can be found in nanoseconds. For the sake of firm productivity, now is the time to adopt modern document management techniques.

Start by learning what you have on your firm computers, and then research the marketplace to see if there are better solutions out there. Review the software, get insightful opinions from current users, and make a decision to begin to use document management within your firm.

B. Mail Handling: (U.S. Mail, express deliveries, hand deliveries, and email): One of the most important functions in a law office is how to handle incoming documents. From client correspondence to court notices, emails from opposing counsel to original contracts, proper and timely tracking and distribution of documents is a true key to success. Clear, written procedures with buy-in and participation from all lawyers and staff is crucial to proper functioning of a firm and avoiding risks.

1. Receiving, Opening, and Distributing U.S. Mail: Despite our reliance on email, many courts and businesses still use the U.S. Postal Service to deliver documents. Whatever the contents of the envelope, every law firm needs a formal process to make sure the mail is received by the firm, opened, logged in, and the distributed to the appropriate people to handle the document.

2. Mail should be opened in a centralized manner by the same person each day. This person must be given the respect to timely start and complete this process each day. This includes not allowing some lawyers to take mail and do this themselves. Opening and processing mail is an important “check and balance” in a law firm. Having a trusted person involved prevents a lawyer or other staff person from hiding problems or hiding overdue matters.

3. Envelopes should be opened, tagged, date stamped, or recorded in some manner for later tracking. Any events contained in the documents should be immediately noted on the calendar or on a separate form for lawyer review. The mail should then be distributed to the recipient.

4. Each recipient should check that their incoming documents were properly tagged/stamped, and all events checked on the firm calendar (computer/cloud-based in most offices today). Disputes over timely delivery of documents often arise weeks or months later, so checking this now can save many headaches.

5. Receiving, Opening, and Distributing Express/Hand Deliveries: This process deserves separate mention, as often the most important documents arrive outside the normal mail delivery. Be sure to have a similar but flexible process so documents are timely received by the recipient in the firm. FedEx and other express delivery companies digitize all records, so your process for capturing these incoming documents may be easier, but different from your mail handling process.

C. Email: Less formal and controllable than paper correspondence, email still needs to be respected as a form of communication. Valuable information is often transmitted in emails, and that information needs to be documented and saved just like U.S. mail, FedEx deliveries, and others mentioned above. If you use practice management software such as Clio, MyCase, Practice Panther, or similar, be sure

to use the email archiving functionality to save important emails to the client matter. If you use Outlook for email, consider using an add-on utility such as SimplyFile to organize and retain incoming and out-going emails. SimplyFile learns where you want these emails filed, and does it for you. When the client matter is over, use Adobe Acrobat Standard to archive all the saved emails from that relationship in one PDF document with any attachments also saved in their native format. (You'll need to enable the Adobe/Outlook functions within Outlook too.)

D. Docket and Calendar Control System: Even with today's computer-based calendaring systems, can you unequivocally state that every calendar entry on your calendar is accurately placed? Humans make scheduling errors and those errors need to be found before they become a serious problem. The key to a successful system is to have two independent calendars with two sets of eyes and two brains frequently comparing and updating the calendars. In the best of all possible worlds, you will control the entries on one calendar and a staff person will control the other. Compare the two calendars on a weekly or biweekly basis by reading aloud line-by-line through one calendar, while the other person is following on his or her calendar. Go through the calendar until the last event listed. Make sure you have not forgotten to add an event to both calendars, accidentally double-booked time, or recorded an event on the wrong day or time. Immediately resolve any discrepancies. Now if your computer-based calendar crashes or you lose your portable/pocket calendar, you have an accurate back-up calendar that avoids what would have been an almost certain disaster.

1. A proper Docket Control/Calendar system must have at least two separate calendars: One paper-based and one computer calendar system or two computer-based calendars on separate non-integrated systems. A print out of your computer calendar is not a separate calendar.

2. The controls must be maintained by separate individuals, with the lawyer being one: If you are a solo practitioner without employees, consider sharing

the task with a convenient, noncompeting colleague. Staff should be adequately trained to schedule calendar events properly and should understand the paramount importance of an accurate calendar.

3. What to calendar: Different practice areas will have different important events that must be calendared, but there should be at least two events scheduled for each client matter: A drop-dead date and a status update. The former is the date by which everything for the client must be done; the latter is at least one event to check the status of the client matter in the next 45 days. Other events to calendar should include: meetings/appointments, expected due dates, relevant time-bar dates, trial dates, litigation/discovery deadlines, status updates, return dates—dates when tasks are due from others including clients, experts and opposing counsel.

4. When a new event is scheduled, such as a client meeting, deposition, real estate closing, or discovery due date, the date and time of the event should be placed on both calendars. Develop a form (preferably digital) that is circulated to all lawyers in your firm or practice group.

One person should be charged to receive all incoming mail, faxes and emails from a court. Develop a further system to forward and share emails between you and the second person maintaining a separate calendar. The item should be placed on one calendar immediately. Then the original paper document or email should then be forwarded to the proper lawyer who will manage the calendaring for the second independent calendar.

If the event is set by telephone or in person, the person scheduling the event should give the details to the person in charge of the second calendar to update.

If the calendar item is court related (e.g. a notice of hearing, discovery), then the person receiving the document should make a copy for a tickler file, made up of

31 sections, and filed according to the date of the hearing, etc. (See next section for detail on creating a tickler system.)

The system must be cross-checked periodically—preferably weekly. Each Friday (or whatever day you choose each week), a weekly calendar for the following week showing all events for all lawyers (in the firm or practice group) should be distributed to each lawyer and appropriate staff. At that time, the tickler file should be cross-checked against the items on the calendar. Thereafter, the two calendars should be compared for the following week. At least once per month the two calendars should be compared for a 4-6 month time period.

E. Reminder (or Tickler) System: A tickler system is a way to remind you of upcoming events or deadlines. It is separate from your calendar and works as an independent system to make sure you never miss an important event or deadline. The tickler system can be part of a case management program on your computer or it can be a paper-based manual system you create yourself. The best one is whichever one works for you.

The manual system has many versions, but this one seems to work best: Create a file or purchase an accordion file with at least 31 subparts numbered 1 to 31. Make a copy of each important motion, notice, event, etc. and place it in the file according to the date of the month on the document. The date of the event should also be entered on your calendar system. You or a staff member should regularly check the tickler file at least several days or a week in advance. It is OK to file documents for different months in the same folder. Examples of what to place in the file include letters to opposing counsel for which you are waiting for a response, discovery notice filed according to the due date, hearing notices, and deposition notices.

Computer-based calendaring programs such as Outlook or in a practice management software application usually include some form of tickler system. Any

of these software programs can be helpful if used consistently. Apply the same discipline to events and appointments as you do to incoming hearing notices and other litigation documents. Get that appointment in your tickler/reminder system as soon as possible.

Because no system is foolproof, plan on physically reviewing each of your files at least four times per year. This will often catch an event you may have missed and maybe generate a new idea or tactic in the case.

F. Conflicts Checking System: Each firm should have a written policy on conflicts and how to check for client conflicts. The policy should include a process for maintaining aconflicts filing system, a procedure for checking conflicts before a prospective client is interviewed, and a procedure for checking conflicts before hiring new lawyers or staff. This is especially important in a litigation firm, but is still applicable to a transactional firm because of possible future hires of litigators or adding other practice areas later.

An alphabetical contact management system of all clients and opposing clients is needed for most practices, especially litigators, family lawyers, and similar. For each contact, list the type of legal service performed next to the client name. Also note the date the file was opened, the date closed, the lawyers in your office assigned to the case. If you do corporate work, include additional information about officers, directors, subsidiaries and parent companies, principal owners, and other professionals serving the entity. You will also have to keep track of the prospective clients you initially interview, but that do not engage your services.

Keeping your conflicts file on a computer can be very effective if the information is kept up-to-date and is well organized. Many lawyers use their time and billing program or practice management applications to enter all clients, even clients not retaining the firm. The program can then be searched to check conflicts. An inexpensive computer-based conflict system ca be created in a document in Word

or Excel that includes the names of all potential conflicts. You can then search that document for possible conflicts using the "Search" function in the word processing program.

The more complex the matters you handle, the more sophisticated and thorough your conflicts system should be. You can delegate this task, but you should not abdicate responsibility.

G. Case File Management System: After calendaring, file management creates the greatest opportunity for sloppy management. Sloppy files lead to sloppy cases. Sloppy cases lead to disgruntled clients. Disgruntled clients lead to — well, we don't need to go there!

Effective case file management includes a system for filing each client file and filing each document in each file. An organized file allows you to work more efficiently, and shows the client your level of commitment to the case.

Digital File Control: A long tradition of document management is to file computer/digital documents the same way as paper documents. That's the way Microsoft Windows is organized, so that is the way we continue to organize our digital files. Yet, as discussed in the section on Document Management, computers are so powerful, smart, and fast that it may no longer be necessary to organize digital files the same as paper files. Merely typing in several key words, such as client name and type of matter will instantly return results that includes the document we are looking for—all without ever carefully placing it into a sub-subfolder somewhere. It definitely improves productivity, but it may raise some lawyers' anxiety.

Paper File Control: Develop an easy system and stick to it. Start with centralized storage of all files: Alphabetical storage of files in a file cabinet will do. (Some lawyers swear by a numerical filing system that avoids rearranging file drawers

when new clients arrive, it requires you to memorize the file number for each client.) Even if you are a sole practitioner without administrative help, file the files correctly each time. Do not leave files on your desk unless you are working on the file. Each file should have the client name displayed on the file tab, but avoid file labels that include detailed client information; when you take the file to court, confidential information may be visible for all to see.

File Organization: Even firms that are “paperless” still often have a paper client file that is useful to have even if it is rarely physically accessed, so it is still necessary to have a file organization system.

Create a filing system for each file based on your particular practice area. Use files that have at least four inside surfaces with prongs to attach documents. Keep each client file organized the same way so that you know where each type of document (pleading, correspondence, discovery, etc.) is in each file. For example, file all documents related to your lawyer-client relationship inside the front cover, place all correspondence on one surface, all pleadings on another. Use the additional surfaces for discovery forms, evidentiary documents and reports. Standardization and repetitiveness are the keys to success.

H. Closing and Storing the Client File: Create a process to review each client file (both paper and digital) at the end of each case. Review your client's file for materials that can be returned to the client, such as original documents or anything of value. Make copies of briefs and memos that may be useful for your "forms file". If you agree to keep the client file, be sure to maintain the file in a safe, secure location for future reference. Let your client know that you will keep the file in storage for a minimum number of years. While it is true that your client may be more likely to return to your services knowing that you have a complete history and file, you are also taking on a responsibility to properly maintain and possibly ultimately destroy the file.

Knowing When Your Systems Need to Change

A process and procedure that worked well ten years ago may not work as well today. The reasons may vary, but often revolve around new technology, different lawyers, larger staff, and practice area shifts. Processes and procedures do not need to change drastically, but they do need to be analyzed for effectiveness and efficiency, and updated to fit the new paradigm. Think of an office frustration over the past week. What caused it? What change in process or procedure can reduce or eliminate that frustration?

A simple approach to improve your processes and procedures is to apply a root-cause analysis which is known as the “Five Whys.” Start with what office or workflow problem is bothering you, such as “I never can find the documents I need.” Why is that? Answer that and ask “Why?” until you get through five “whys”. Generally, you will reach some new insight about the problem that will lead you to finding a solution. Test the solution. If it works, adopt it in your firm cookbook/procedures manual.

Another approach to process improvement is to map your client matters one task, one phase, one case at a time. Start with an existing new client matter that is a common type of case in your office. Set an internal budget for each task and phase based on your experience. This is often just an experienced guess. Over the next weeks or months track the tasks and document the management steps in that case. How are these tasks linked to your existing workflow processes and procedures? What improvements can be made to the processes to make the case more efficient to handle the next time? Document those changes in your written office procedures.

Want to take it one step further to better understand the cost of handling that type of case? Analyze the costs and fees charged to the client over the course of the matter; break them down according to your case processes. Look at the client’s

costs. How can you offer these services for a flat fee, or as unbundled services available in stages for a set fee for each? Develop your flat fees based on this. There is a great misconception accompanied with fear about flat fees. Don't fear them. Learn to understand them. Learn to use them to help your firm.

Technology Management

For better or worse, part of managing a law firm or practice today includes understanding and managing technology. Knowledge of how to use all types of computing devices is helpful, but knowing how to avoid problems may be even more important. The ability to keep your technology and client information secure is an important part of protecting client data.

Many firms contract with IT companies to manage their computers and other technological needs. We rely on these companies to make sure our computers are kept up and running, and that the data them is kept confidential. At least one lawyer in every firm must have a good working relationship with the staff person or contractor that maintains the firm's technology. This is more important today because of the recent changes to Rule 1.1 of the Rules of Professional Conduct.

Following the lead of the ABA, more than 40 states, including Indiana, have adopted a new standard of competence that now includes technological competence. The change in the comment to Rule 1.1 states that to maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education in the areas of practice in which the lawyer is engaged. Attention should be paid to the benefits and risks associated with relevant technology.

The new standard is that of the reasonable lawyer. It requires all lawyers to have a minimum competence when using technology. No longer can a lawyer choose to be a luddite; all lawyers in a firm must be competent when using technology, including protecting information stored on the computers.

Written policies that address computer use, training (gaining competence), securely maintaining computing devices, and how to use technology to serve firm clients, are now a necessity. Although the administrative duties can still be handled by employees or contractors, the responsibility for handling them properly is now squarely on the lawyers in the firm.

The ability to keep your technology and client information secure is an important part of protecting client data. These are among the most issues firms must address today:

Phishing Scams: Phishing scams are taking law firms by storm. This is where criminals, trying to infiltrate your law firm computer files, using spoofed or fake email addresses to entice you into opening their email. Unfortunately, the link in the email is often a link to a spoofed website or to malware or ransomware that will cause your firm untold headaches. By using trusted brands and advertising logos of respected companies, these scammers trick a surprising number of smart people, including lawyers. The phishing email directs users to visit a website (that is fake) where the email recipient is asked to confirm or update personal information. Of course, the website is fake and the cyber criminals now have your personal information.

A variant on this scenario is the phone call supposedly from your bank or computer company like Microsoft, who will tell you that information is needed to correct a problem, or pay an outstanding invoice, or even collect a sweepstakes prize. No doubt you've also heard of the scam seeking money on behalf of a person supposedly trapped in a foreign country. The creativity of cyber criminals is almost endless.

The point is for you and everyone in your firm to know and understand how simply and easily these problems can arise. The key is knowledge. It's important to periodically remind lawyers, paralegals, and other staff, to be on the lookout for

these phishing scams, and to report them when they surface. Remember, no legitimate company will call you seeking confirmation of personal information. Nor will they call or email you for the same information.

Many law firms are now taking the precaution that any large financial transaction involving a firm client requires a personal phone call from the firm to the financial institution with a passcode before any funds can be transferred to anyone within the firm, or a person or entity outside the firm.

Ransomware: This is the name given to malicious software that will infect a single computer, then spread that virus across an entire company network, and then lock up all the computer files before launching a message that the files are being held for ransom. The malicious software almost always comes through a hyperlink in an email—not in the attachment, although that is still possible. An unsuspecting law firm lawyer or staff member clicks on a link in the email, but nothing happens. Wrong, it has already let the virus in the door. In a matter of just a few hours the computer virus is now attacking all files including your backup files that are stored off-site but are still linked to your network. Generally, the only way to avoid paying the ransom is to wipe your computers clean and restore from the previous days backed up computer files. However, firms are finding that their back up files are incomplete or nonexistent, so they're forced to pay the ransom often several thousand dollars.

Bottom line? No matter how interesting or enticing they appear to be (e.g., jokes, celebrity gossip or funny pictures), never open email attachments or click on hyperlinks in emails from strangers or sent unexpectedly from people you know.

Mobile Device Management: There was a time that law firms provided digital devices to their lawyers and staff; however, with the growth of personal smartphones, many firms now allow lawyers and staff to use the device(s) of their choosing. All these are most commonly smart phones such as the iPhone or

Android devices, they also can include tablets and laptops. However, there are security issues with all of these devices.

Law firms must have minimal policies in place for these devices which are attached to law firm information networks. Each portable device is a window into your confidential client and law firm data. That data needs to be protected. Prior to an employee connecting their portable device to the firm's computer network, they must engage minimal security protocols such as password protecting their device, two-factor authentication, document encryption, and other safeguards. Otherwise, if an authorized user loses their phone, the person finding it has a window into your law firm and its operations.

Cloud Security/Data Encryption: As law firms move from paper-based and file-based practices to digital practices, they are storing documents in the cloud—on computer servers that are located outside of your office, and controlled by third parties, it becomes more important to protect those documents. Lawyers often cite ABA Formal Opinion 11-459 as proof that they don't have to encrypt documents and emails. However, that opinion was written at a time before cloud-based document storage. It was also written at a time when encryption was very difficult. Not only to encrypt the documents but to decrypt the documents by the recipient. That has now changed. Document encryption is as easy as password protecting a document. Try it in Microsoft Word: Go to FileDocument >Document Protect. It's that easy.

With the concept of client confidentiality solidly embodied in our professions' conduct rules, maybe it's time we started encrypting.

Connectivity Management: Connecting to the Internet from wherever we may be has also become much easier over the past five to ten years. Whether it is an iPhone with data plans, or Wi-Fi hotspots available in so many businesses and public places, or broadband wireless plans for almost any portable device, we can

communicate with others and perform many office functions from just about anywhere. However, lawyers do need to be careful. Connecting to unsecured Wi-Fi hot spots can be an invitation to others to access documents and other information on your computer. Whether you're at a restaurant, hotel, or CLE conference, make sure you only use networks where a password is required to access that Wi-Fi network. Otherwise, you leave yourself (and your client files) open to criminals.

Financial Management: There was a time about 30 or 40 years ago when the profitability in the practice of law did not require the level of financial management required in firms today. Over the past several decades, the profitability in the practice of law has slowly been declining. No longer are firms merely raising their hourly rates to make a larger profit, they need to spend more time and effort controlling expenses that impact profitability. This is not to say that the practice of law is unprofitable. It's merely a recognition that hourly rate increases are slowing and smaller, and that our costs of doing business continue to increase at a faster rate.

Therefore, lawyers must spend more time managing the financial aspects of a practice than ever before. Good financial management starts with a budget. A budget is a forecast of what it costs to run your practice. Creating a budget and managing it for a full year will give you a better understanding of the true cost of doing business.

There are many expenses that law firms incur including office space, employee and contractor salaries, technology costs, insurance, telephone/Internet, and other operating costs for a small professional enterprise. Although boring to most lawyers, giving proper attention to financial issues is more important than ever.

While budgets help us to understand and control our business expenses, having a good timekeeping and billing system to bring in revenue is equally important.

Timekeeping and Billing System: An efficient timekeeping system will capture more billable time. An efficient billing system will help you collect your fees for the work performed. Consider these processes and procedures as you develop the right system for your firm:

1. Keep a time sheet or mobile time entry device on hand at all times. The time sheet can be a preprinted form or a “pop-up” timer on your computer. Decide what type of time-capturing device is best for you and stick to it.

2. When you are finished with a task for one client, log your time immediately. Studies are unanimous: The sooner you log your time after completing the task, the greater your financial return on the time billed. If you wait to log the time, you are likely to forget to bill it. And if you do remember later, you will often forget the actual amount of time spent on the task, and log less time for the client so as not to risk overcharging.

3. Periodically throughout the month, transfer your time sheets into your billing system so that at the end of the month all time logged is ready to be billed. If this is hard for you to do, hire someone to help you.

4. The primary goal of billing is to turn your legal services into financial compensation. Send monthly bills to every client whom you did work for that month and any client who still owes you money. The secondary goal of billing is to communicate with the client. A properly drafted bill will inform the client of the progress in the case. Even if you didn't do any work that month for an active client, getting your name and telephone number before the client keeps you in your client's mind. Use your firm letterhead or reasonable facsimile to print your bill.

5. Run your bills and mail them (or email them) on the same day each month. Clients will expect to receive a bill about the same time each month. Time your bills to reach your clients at the point in the month when they are most likely to have funds to pay.

6. Discuss expenses with your client and reach an understanding about discretionary expenses such as large-volume copying and overnight delivery charges.

7. Set up a Merchant Credit Account so you can accept client payments by credit card. (See Credit Card Processing below.)

8. If a bill to a client is going to be unusually large, place a call to the client to discuss the bill. Do not feel guilty and reduce the bill; make sure the client understands the value of your work, and your efforts to provide value to the client.

Getting Paid: A good timekeeping and billing system is very important, but it takes more than that to get paid. All lawyers must develop a reputation for not tolerating any nonsense around getting paid for your work. Make sure you fulfill your part of the bargain by setting fair and *reasonable* fees that have been fully and carefully discussed in advance and throughout the course of the file, and then insist that the client meets their obligations to you. Subject to your ethical obligations, don't keep working for clients who fail to pay. After a while, you will find that clients who don't want to pay your bills will screen themselves out of your client base. Remember, it is a myth that it is always better to have more clients; what is critical to success is to have more of the right clients.

Credit Card Processing: You can significantly increase your cash flow by accepting credit cards. By accepting credit cards, you can effectively shift your

receivables to the banks that issue the cards, reducing your financial risks. Taking credit cards can be a win-win situation for you and your clients. Clients going through a difficult situation can be hard pressed to have even one more thing on their plate. Instead of having to handle all the emotional difficulties, and also figure out how to take out a loan or borrow money from relatives for a retainer, allow them to "charge it." That way, they can have time to pay it all off and you get your money up front.

Because of a court settlement between retailers and credit card companies, merchants (that's you) can now place a surcharge on transactions up to the cost of their merchant credit fees charged by the credit card companies—usually 2-3%. Ten states prohibit adding those fees, but Indiana is not presently one of those.

It is important that merchant account providers have the ability to separate earned and unearned fees when processing credit cards payments from lawyers. Earned fees must go into your operating account and unearned into your trust account or IOLTA account. While there is no shortage of credit card processing companies, the advantage to using one such as LawPay is they understand how to handle transactions that are specific to lawyers.

Additionally, LawPay offers a Secure Payment Page option that makes credit card transactions more attractive to clients. LawPay will enable you to take secure credit card payments through your website but it is really their secure payment page made to look like your website. No need for you to handle or store sensitive client card information. Simply add the LawPay secure link into your website, invoices, or email. You'll need to exchange some information with LawPay about your website so they can create a payment portal on your website to have clients make secure payments.

Many lawyers have had clients chargeback their services after paying by credit card—usually for legal services performed at the last minute thereby ripping off the

lawyer. To prevent this, add a provision in your representation agreement that the client must first dispute the credit card charge with you rather than the credit card company. Have space for your clients to write their initials next to the payment provisions in your representation agreement. This shows they are aware of, and agreed to, your payment policies, including payment via credit card, making sudden chargebacks from clients less likely.

If possible, have a pre-signed Credit Card Pre-Authorization Form that lists an amount to be charged to the client, and the timing of each charge. For example, if your client agrees to monthly payments from a credit card, have that pre-authorization form signed at the time the representation agreement is signed. Your credit card processer can provide you with that form.

Finally, credit card processors are required to report gross credit card transactions to the IRS on an informational 1099-K form. Processors are required to verify and match each merchant's federal tax identification number and legal name with those on file with the IRS. If there is not an exact match, the IRS will impose a 28 percent withholding penalty on all credit card transactions, including deposits into a trust account. Make sure your merchant credit account is in the same name as your federal tax ID number.

Make all of these steps part of your firm procedures manual, so everyone in the firm knows how to properly and ethically process credit cards from clients.

Human Capital Management: Not every practitioner needs or can afford to hire professional support staff, but choosing the right personnel can help you maintain the systems and reduce the risks of law practice. If you decide to hire one or more support staff, keep the following ideas in mind:

Have a written job description for each position in your office. Spend time to make sure it is accurate and inclusive of all tasks and responsibilities. Consider having

the current job incumbent help you draft the job description. This description will help you post an accurate job listing (when the position opens), and help any new hire truly know what the position entails before they accept it.

No matter how experienced the person appears on a resume, if they make a mistake, it is your responsibility. So carefully select your staff. Look for individuals who are conscientious, reliable, and discreet. Thoroughly check references.

After hiring, spend the time necessary to train your employee. Even if your new employee has law office experience, take time to remind him or her of the special ethical responsibilities of a law practice. Review your confidentiality rules. Explain your risk management procedures, especially your docket/calendar and conflicts systems. Even when you feel comfortable handing over responsibility for office procedures, still remain involved. Too often, lawyers completely transfer responsibility to staff for calendars, trust funds, incoming fee payments, and personal finances, then later regret the total delegation of power. Keep a handle on your business, as well as your clients' business. Remember, it is your license on the line.

While it can get expensive to hire staff, it is more expensive to hire the wrong staff person. Spend a little more time and money to get qualified employees. Finally, retaining staff is usually cheaper than retraining a new employee. Keep staff compensation on pace with the marketplace. If money is tight, try to reward staff in creative ways; seek staff input to find the right ideas.

Conclusion

The practice of law is a profession, but a law practice is a business. A truly insightful statement that is even more true today. Whether we like it or not, the economic pressures, changes in ethics rules, and technological changes are pushing more law firms to focus more time on their business. Firms have to spend

more time improving productivity, reducing costs, reducing risks, and enhancing their bottom line. It may feel different, but don't ignore the feeling or run from it. To be successful today and in the future, all firm lawyers are going to need to be better business people. However, with this investment in better systems and processes, the positive benefits to the entire firm can be extraordinary.

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Marketing Your Brains Out--Without Losing Your Mind!SM

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Whether you are a seasoned lawyer or a newly minted one, marketing and client development are vital to your business. The flow of paying clients is the life-blood of every firm. Unfortunately, marketing is not taught in law school, and few lawyers have marketing degrees. So many of us try different activities to develop a stream of clients, but are unhappy with the total commitment of time and the ultimate results.

It doesn't have to be that way. Let's explore some of the concepts and secrets to efficiently and effectively create a practice full of paying clients, without losing your mind!

"The only place success comes before work is in the dictionary."
-Vince Lombardi

Marketing your practice is a crucial component in your success as a law practice entrepreneur. By definition, marketing is the total sum of activities to promote, sell and distribute a product or service. Many law practice entrepreneurs view marketing as just advertising and promotion when, in fact, it is much more. Marketing includes developing systems and procedures to service client needs in the marketplace, doing the legal work, charging the client and obtaining feedback about the legal services to improve those services for the next client. In this context, it is difficult to see how one can separate "marketing" from the other activities that make up the practice of law.

According to Michael Gerber, author of *The E-Myth Revisited*, most entrepreneurs are not entrepreneurs, just good "technicians" who decide to start a business so they can be a good technician. However, many "entrepreneurs" fail to understand they must consistently market the goods or services they offer, not just produce the product or provide the service. In other words, all law practice entrepreneurs must take time to develop new clients, analyze current client needs, and hone delivery of their services. Even lawyers who have a good client base must continue to market

their services to existing clients and to potential clients who will eventually replace clients whose need for legal services ends or diminishes.

> **"What you do with your billable time determines your current income, but what you do with your non-billable time determines your future."**
>
> **-- David Maister, *True Professionalism***

Marketing is an investment in your practice. It is this investment of time and creativity to raise public awareness of your law practice and develop systems and procedures to better serve clients who will sustain your practice over many years. While many other businesses have sales people that drive customers to the business, there is no separate sales force in a solo practice or small law firm--just lawyers and staff. However, lawyers and staff in solo practice and small firms can undertake numerous activities to market and develop a client base through existing clients and new clients.

The Nine Core Principals of Legal Marketing

1. **Understand Your Marketing Role.** Whether you are in a large or small firm, partner or associate or solo practitioner, you need to have a clear sense of your role in firm marketing. It today's environment, the differences in roles is truly just a matter of degree. Understand and accept that you are running a business, and that you must balance the roles of lawyer, entrepreneur and manager. Marketing will be forever.

2. **Have a Marketing Plan.** Keep it simple, and make it measurable. Use it to avoid a shotgun approach, which is the biggest waste of time and money. Approach marketing strategically. Do some simple market research, then act: What do I want my practice to look like? Where do my best clients come from? What is my most profitable type of client or work? Where can I find more of the work I want? Set goals that you can measure, such as "I will

review and update my LinkedIn profile in 30 days" or "I will review my client service delivery processes and update those processes within 90 days."

3. **Read Your Advertising Rules**: Legal advertising has certain limits that must be respected at all times. Learn to successfully market without getting close to the line known as "false, fraudulent, misleading, deceptive, self-laudatory or unfair statements or claims." Read the Indiana Rules of Professional Conduct advertising rules—numbered 7.1-7.5. Check your state bar for opinions, articles and publications to learn the limitations in Indiana.

4. **Understand your Marketplace.** Knowing who you serve (or want to serve) is the only way to target your marketing efforts. Who is your target market? What lawyer attributes are important to them? Does your marketing message fit the audience?

5. **Differentiate your firm from others in the marketplace.** This is also known as a Unique Selling Proposition. Common ways to differentiate include client service, practice area specialization, form of business model, and pricing; however, general claims and promises often are not effective. Be specific.

6. **Focus on client needs, not on the firm attributes.** When marketing to potential buyers of legal services, understand they are looking for a lawyer to solve *their* problem, not regal them with prior conquests. Make sure your marketing messages emphasize your understanding of their legal problems, not just how good you were for someone else. Follow-up by doing more listening than talking at the initial consultation.

7. **Leverage Technology**. Use common computer tools and emerging Internet services to increase the quantity and quality of your marketing efforts: Use a contact manager such as Outlook to organize your network and increase the frequency of contact with people in your network and simplify the process of meaningful communication. Build a blog that people find and use as a resource. Join and participate in social networking sites.

Buy a scanner that scans business cards and use it to build new relationships. If these are foreign concepts, start slowly, but start *now*.

8. **Know Who You Are**: Create, practice, and hone your own 5-second "sound bite" and 30-second "elevator" speech. These are your core personal marketing messages. Refine each one until they feel right. Develop variations based on different audiences/market segments.

9. **Develop an operational plan to handle your new client business.** Review your present ability to handle client work, and adapt or change process to handle more work. You may need new software, more administrative help, better work flow processes, and improved digital filing handling procedures just to name a few common operational changes.

Writing Your Marketing Plan

A marketing plan must be on paper. Period. There, I've said it as clear as I can. Why a plan? Because a goal without a plan is only a wish. A plan can be for a sole practitioner, an individual plan for one lawyer in a small firm, or a firm-wide plan for multiple lawyers. If your goal is to find and keep good clients, there must be a written plan. The plan does not have to be lengthy or full of marketing buzzwords, but it must contain concrete goals that are measurable.

So what's a marketing plan supposed to look like? In a nutshell, it should be a roadmap that has three to five separate roads that lead to groups of people from which some will emerge as paying clients. Clients for whom you will then do work and get paid, and who will then tell their friends, family and colleagues about your superb service. (Much more on that later.)

But before one can design the roadmap, you have to know where you are going. That takes a bit of analysis and goal-setting.

"If you don't know where you are going, what difference does it make what path you take?"

-- Lewis Carroll, Alice's Adventures in Wonderland

The start of the marketing plan is really the ending point. You should have a vision about how your practice fits into your personal and professional goals and what your practice will look like when it is built. It doesn't have to be a complete picture, but it should be more than just a few vague ideas. Even if you are currently in your own practice, ask yourself these questions to help get a more complete picture:

- What type of practice do I find the most personally and professionally fulfilling?
- What kind(s) of law do I want to practice? Is it enjoyable? Profitable? Exciting?
- What kinds of clients do I want? Who is my ideal client? Describe in detail.
- In what areas am I competent to practice with current resources and staff?
- What are the legal needs of the marketplace?
- How much do I want or need to earn?
- How many hours each week do I want to devote to my practice?
- Can I afford to take time to develop a "preferred" client base or do I need to start generating income more quickly?

Write the answers to these questions as part of your marketing plan. Then turn these thoughts into goals. (Yeah, this is the uncomfortable part; maybe a bit scary. Be assured this exercise will bring clarity to your plan.) The goals should create a picture of your practice. Be as definitive as possible. Be honest with yourself. Soar.

The goals could be sentences such as:

> I will represent international collegiate athletes who desire to become professional athletes. By choice, I desire to limit my practice to clients entering professional sports leagues--preferably no more than 20 clients annually so that I can concentrate on building quality relationships. I want to work no more than 45 hours each week with the assistance of a qualified paralegal and earn $150,000 annually.

Your goal may not be exclusivity as in this example; you may have totally different goals. It may take several thoughtful interludes (or discussions with partners) to complete your picture of your practice, but it will be worth it.

Now that we have an idea of where we are going, we can work on that roadmap to a practice full of loyal clients.

Developing Your Marketing Plan

Marketing studies tell us that personal referrals are the most significant source of business for the vast majority of practicing lawyers. Even publications that seek to educate legal consumers almost always instruct readers to ask friends and family for names of successful lawyers. In fact, all clients come from just five sources. Yep, just five.

• Family and Friends: Including spouses, law school classmates, neighbors, distant relatives, friends, and other lawyers who are friends, not necessarily business associates. These people can be the best source of referrals, especially when first starting in practice. In fact, these people should make up your initial marketing address list.

• Clients: Present and former clients who tell their friends, relatives and colleagues about their lawyer. Clients love to brag about their lawyer, sometimes to the level of "My lawyer can beat up your lawyer," but that's a story for another day.

• Repeat Clients: Former clients who are satisfied with your prior services will often return for additional legal work. One road in a good marketing plan is to periodically contact these satisfied clients to remind them you are appreciative of their trust; in turn your name will be "top of mind" when someone asks them for a lawyer referral.

• Other Professionals are a good source of referrals, including other lawyers whose clients also need your services (that they do not offer), CPAs, real estate agents, financial planners, etc. Often, these professionals are asked for the name of a good attorney by their clients. Examples include business lawyers who are asked by corporate clients for the name of a good tax or family law attorney as well as financial planners whose clients ask for trust and estate lawyers. According to law practice management expert, Paul McLaughlin, this referral is an important one because it often impacts on the relationship between the professional and the client; you must provide quality services to that mutual client or risk losing the other professional as a referral source.

• Self-referred Clients: These are clients who hear, see or read about your legal abilities and services through a vehicle other than a person; this includes social media platforms, TV and radio advertising and appearances, informative articles and news stories in newspapers and trade journals, law firm web sites, and lawyer networking sites. This type of referral also includes people who read about a seminar or other event you advertise and come to the event before engaging your services. Self-referred clients either do not have a trusted referral source or are dissatisfied with their present lawyer-a common theme in the legal marketplace today.

Often lawyers focus on attracting only self-referred clients, but the reality is that many lawyers find success just focusing on the first four sources. And with good reason.

Marketing experts agree that a consumer must usually have multiple contacts with a product or a service before they have enough confidence to take action. That usually means a consumer must hear or see information about a product or service six to eight times before being cognizant of it and willing to find out more and/or buy it. And it takes time to build this consumer trust. However, if another person whom that consumer trusts tells them to try the service, the trust in that person is transferred to the product or service, without having multiple exposures or contacts. Think Alex Trebek for Colonial Penn Life.

For example, a person seeking a good tax attorney receives a positive recommendation from a close friend to call Lawyer X. The inquiring person's trust in her friend is transferred to the recommended attorney, thereby bypassing the need for Lawyer X to have multiple contacts with that person because the trust is already there. (Although the lawyer must confirm, earn, and maintain that trust over time.)

All five sources can produce good clients, but the best are client referrals–people who have actually used and paid for your services and walked away satisfied. But in order to get these valuable referrals, you must provide a positive experience for the client that meets or exceeds all expectations.

The Top Ten Marketing Activities to Build Your Practice

1. Create a contact list, and then use it to prospect and mine for new business.

- Organize information about family members, friends, school classmates, business colleagues, etc.
- Decide what level of communication each contact should receive, such as a personal phone call, email newsletter, lunch meeting, holiday card, all of the above, etc.
- Schedule time on your calendar to complete these communications

2. Produce, Present, Distribute by writing, teaching and publishing. Create and present a seminar for your local bar, community organization or business group. Get a business card from all attendees and follow-up after with a note. Take the written materials and edit into two or three smaller articles. Submit your articles for publication to state bar magazines, business journals as well as national publications pertaining to the legal profession or those read by your target market. Send copies of the published article to clients and other interested people on your contact list.

3. Create a web site, then build traffic to it and referrals from it.
    - Make it education-based, client focused, and easy to find
    - Provide something of value for free in return for their contact information
    - Develop a companion blog and link to other informative sites
    - Consider Google AdWords and other web advertising but make sure you understand how it works before buying
    - Explore Facebook Live and YouTube videos as part of your educational-based marketing approach
    - Fully understand Search Engine Optimization before buying

4. Join and participate in several organizations.
    - Build your reputation in your target market
    - Get your name and abilities in front of decision-makers
    - Consider, bar associations, business groups, community and religious organizations

5. Find new services to offer to existing clients.
    - Inform clients of your total package of services
    - Become a problem-solver to all your clients
    - Offer preventive services to risk-proof business clients

6. Make your offices and services convenient for your intended market, such as:

- Office location
- Web-based intake forms
- Retail hours
- Free, no-hassle parking
- House calls

7. Join social media networks, then use them to prospect and mine new sources of clients:

- Pick 2-3 networks, such as LinkedIn, Facebook, or Instagram
- Don't just do a personal profile, add a separate page for your business
- Use connections to leverage introductions to potential clients
- Know that 70% of Facebook users are outside the US
- Use your posts and tweets to deepen relationships

8. Test on-line directories and referral services for your target market.

- Choose wisely among sites such as Avvo or one provided by your state bar
- Understand the multiplier effect of referrals—can help or hurt your practice

9. Publish a periodic e-newsletter.

- News about your firm, information on the law in your legal niche; include a personal touch too, if appropriate
- You must commit to a publishing schedule and keep it
- Send to your contact list and web visitors
- Consider web services such as Constant Contact to assist your efforts

10. Refer business out to others—no strings attached.

- Marketing is not cheap, so don't just turn away clients seeking your services—send them to your referral network

- Don't request reciprocity or *quid pro quo* unless your ethics rules allow it
- Search business journals and newspapers for business opportunities to forward to others in your network

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SOCIAL MEDIA MARKETING

Social media is no longer a new phenomenon. LinkedIn started in 2002; Facebook in 2004; Twitter in 2006. While social media may be a familiar concept, attorneys still grapple with how to use it as a marketing and communication tool. It is made all the more difficult by how rapidly the primary social media sites shift how they function. A social media presence is not something you can set up and simply let the status quo handle monitoring the profile, network, tools and settings for each account. When you are looking at your and your law firm's social media portfolio, the assumption is (or should be) that people are looking, reading and researching on a smartphone. They are not on a desktop or even a laptop; maybe an iPad, but more likely than not on a handheld device; your marketing strategies should be based on that assumption. But which social media platforms allow you to best reach your intended audience, and how do you engage with the people you are trying to reach? This paper will give an overview of current social media platforms, and make suggestions on how you can best engage in a social media marketing strategy.

LinkedIn

LinkedIn continues to be a critical component of marketing for business lawyers and most employees in the workforce—whether it is marketing yourself (which is really the primary part of the LinkedIn Empire) or marketing your practice. If you google yourself, LinkedIn will be no less than the 4th position in the search results as a result of LinkedIn's robust search engine optimization. Every non-retired adult should have a LinkedIn profile. Every law firm should have a LinkedIn page. You should make sure your profile paints the proper picture of you. Join the right groups (alumni associations, trade groups, areas of interest,

etc.). Build a connections library. Double-check your settings for privacy and visibility. LinkedIn is now owned by Microsoft, and you can expect some sort of integration into Microsoft's primary product line (Windows, Internet Explorer and Office products). When someone is checking you out online, many end-users prefer the data that a LinkedIn profile provides over the glossy, carefully crafted biography you present on your own website. Because LinkedIn is such a powerfully optimized site, your profile will often be at the top of a search for you or your business. A poorly crafted LinkedIn page can easily lead to a loss of business—or an increase if you do a good job with it.

Most experts will tell you the same thing about LinkedIn—that most professionals continue to underutilize the power its information provides. The site gleans key information on your contacts and shoots it to you in a variety of e-mails (perhaps more than you'd like, but interesting enough to avoid unsubscribing). It is a core competitive intelligence tool. And if you are a lawyer with a business-to-business practice, it is probably far and away the social media outlet of choice for your law firm. For a consumer-based practice, LinkedIn is not going to bring you your "typical" new client. It may bring you a better-educated consumer, someone in the B-to-B space or a lawyer-to-lawyer referral, but not so much a new client sought through marketing or advertising strategies.

Facebook

A lot has changed on Facebook in recent years. As Facebook has slowly evolved into being more about making money than serving the social good, the way it has functioned has changed accordingly. It is not as easy for a plaintiffs' firm to market for free on Facebook as it once was, but that does not mean it does not still offer a for-pay platform worth pursuing. Facebook algorithms continue to make it difficult for businesses to market

without paying a premium. It is hard to post in a way that creates the type of visibility you need to get in front of a prospect. However, some of those paid advertising services, based on sophisticated demographic and end-user information, are very powerful (and successful) advertising tools for the modern consumer. The Yellow Pages are dead, radio and TV are tougher platforms to succeed in—this is a way of finding tomorrow's client in much less of a scattershot method than any of those traditional media, and even better than equally uneven Google AdWord and related search engine optimization campaigns. Visibility of posts has a much shorter timeline. If you are a business trying to break into my news feed, you probably need to pay good money to do so.

The age of the average Facebook user continues to grow older. The old adage of being on Facebook to follow what your kid is doing has long gone out the window. You can tell just from my own (middle) age and the sites not referenced so far in this article that if I was looking to reach a younger audience, LinkedIn and Facebook would be somewhat irrelevant (Instagram and Twitter are the most likely established social media platforms to capture a greater age range). If this article was about reaching a younger audience through social media, it would be all about Instagram, Snapchat, TikTok, WhatsApp, along with whatever other apps I may have never heard of that are on my teenager's iPhone. The Facebook page for a young adult is now designed to tell parents what they want to see and hear—the real stuff gets Snapchatted.

The real value I've found for most attorneys on Facebook is in keeping themselves front and center to an array of clients and colleagues. It paints a picture of you as an interesting human being. Yes, you need to still worry about what you say in front of clients (which are

why I avoid political posts). But it also gives you the chance to more subtly market your practice—I'm teaching a CLE, I'm going to a law conference, here is an interesting article on changes in the tax laws—that has a greater impact than straight-shooting marketing. I've seen posts from lawyers that have led me to refer other lawyers—anyone know a family lawyer in Sacramento, CA?—or that simply create personal and professional bonds that may lead to business success. People ask me about my three sons all the time because that is what I prefer to post about on social media.

As is the case with LinkedIn, it is still very important that you periodically look at your Facebook privacy settings—they do change unexpectedly from time to time—and make sure they show the world what you want. But the Facebook picture you paint still has a lot of marketing value—even if many CLEs tell you otherwise. You can search my array of articles and CLEs on the related topic of social media marketing ethics. The lessons taught there are related to following the various state bar ethics rules as they apply to social media platforms, but I never that suggest you should not be participating in them.

Twitter

For me—after spending lots of time focused on Facebook and LinkedIn—I'd say Twitter finally became a daily tool in the last year. From the original thought and concept—keeping it short, with a 140-character limitation—to the increased use of links to more information and streaming video. Twitter is where you go for the most recent news and information. It's faster than a website or blog, in some cases an almost instantaneous feed of things that happened two seconds ago, if not live. The doubling of the character limit to 280 allows

for greater “detail.” More embedding of images, articles, and videos (including live streams) is allowed than ever before. Gone is the thought that the messaging was too limited. You can do a lot with an effective post, with a solid following and the right hashtags.

For marketing purposes, Twitter offers paid advertising and promotional options (like the aforementioned big social media networks, it wants to make money, not just offer a free public resource to the planet). The Twitter end-user demographic is wider than the others, and those that live on Twitter consider it a seemingly routine part of every hour of the day. For the entrepreneurial lawyer marketer, a news opportunity that equates to a related practice area provides that first-strike, quick-strike capability. The use of hashtags and developing an influential following combine to offer a network that can unquestionably bring in business—and often will get you exposure to media (to get yourself quoted as an expert), potential clients that like what you have to say and stand for, and put you on the map as a thought leader in a particular field.

If you are a Twitter user, you may just use it to follow others for information, or you might be more focused on being followed. Obviously, just following can provide lots of information and insight. But saying something to your followers (or getting noticed and retweeted by someone with a greater following) is the real power of Twitter. Nothing about Twitter should discourage you from participating in some way, shape or form. Twitter users can employ many strategies, and like everything else, it feels like they are changing daily.

Social media continues to engrain itself every day on our personal and professional lives. Knowing how it works is a model rule of its own (it is malpractice not to understand technology today). Every day brings a reminder of its power and impact. Clearly, something this entrenched in society offers audiences and visibility that every law firm business development staff needs to know and use. Unfortunately, many of the great automated tools for republishing on multiple web platforms are limited by the social media sites themselves—you need to post directly, not automate. But you still have ways to use such tools to do something once and get it published multiple times. The bottom line is to stay vigilant and cognizant of changes in social media use for marketing purposes—because they do deliver dividends for every lawyer in some manner. Here are some tips for engaging in social media for your practice:

1) **Know and Listen to Your Audience**

   Success with social media requires you to understand your target audience and what information they hope to gain from following you. It's not enough to just post on a specific topic; successful social media involves joining discussions to learn what's important to your clients. When you understand your audience, you can you create content which adds value rather than clutter to your audience's lives.

2) **Put the work in to see the rewards**

   To have a successful social media campaign, you must be consistent. Consistency does not mean you must post every hour of each day, but it does mean you should have a regular presence on the social media sites you choose to utilize. Crafting social media

messages daily, however, is time consuming and often something which gets shoved to the back burner. The trick to social media management is that when you don't have time, follow people that are extremely selective with their tweets, put these folks on a list and share their content. If you do this generously, they will in return be happy to promote your work.

3) Don't post for the sake of posting

Utilize social media when you have something to say; don't just post or tweet for the sake of posting. Sometimes it's nice to give your audience a break from the influx of social media if you don't have important content to convey.

4) Schedule Your Social Media Presence

We're all short on time so it's unlikely you have the ability to give over a set amount of minutes each day to further your social media presence. You don't have to hire a marketing professional to make up for your busy schedule; instead, consider scheduling your social media messages at a set time each week. Hootsuite (hootsuite.com) is a wonderful tool which allows you to schedule your social media posts on Twitter, Facebook, Google+ and LinkedIn. Simply compose your message and select the date and time you want it to be sent. Hootsuite will automatically post your message to your social media site at the scheduled time, making it appear you are engaging in social media at that moment even if you're not. While Hootsuite is a terrific tool, don't become too reliant on its use. Live posts should not be forgotten as the greatest impact of social media is felt by engaging our followers and responding to their posts.

5) **Double Your Presence**

You can double your social media outreach by including links to social media content on your firm webpage. Most webpages allow for the inclusion of social media widgets which post your Twitter or Facebook feeds on your website. This adds new content to your site every time you post on those platforms, optimizing your visibility on search engines without requiring you to do more work.

6) **Social Media Takes Patience**

Social media success doesn't happen overnight. Regular, sustained practice is necessary to build a following in the social media world.

7) **If You Publish, They Will Come**

If you publish good, quality content and work to build your online audience of followers, those followers will share your posts with their own audiences on Twitter, Facebook, LinkedIn, blogs and more. This type of sharing boosts your entry points on search engines like Google, and can move your company towards the front in a keyword search.

8) **Add Value**

You can't spend all your time on social media promoting your own products and services or people will stop listening. Rather than focusing only on you or your own firm's initiatives, add value to you audience by focusing on topics of interest to your followers.

9) Acknowledge Your Followers

You wouldn't ignore a client who calls or e-mails you so don't ignore someone who reaches out to you via social media. Building relationships is one of the most important parts of social media marketing success, so always acknowledge every person who reaches out to you.

10) Reciprocity Required

You can't expect others to share your content and talk about you if you don't do the same for them. A portion of the time you spend on social media should be focused on sharing and talking about content published by others. Your audience will appreciate knowing about other businesses or issues which may affect them or assist them with a need.

Section Seven

Client-Focused Business Development

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Section Seven

Client-Focused Business Development…….... Rebecca W. Geyer
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Marketing Your Brains Out--Without Losing Your Mind!SM

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Written Materials for

Client-Focused Business Development
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Whether you are a seasoned lawyer or a newly minted one, marketing and client development are vital to your business. The flow of paying clients is the life-blood of every firm. Unfortunately, marketing is not taught in law school, and few lawyers have marketing degrees. So many of us try different activities to develop a stream of clients, but are unhappy with the total commitment of time and the ultimate results.

It doesn't have to be that way. Let's explore some of the concepts and secrets to efficiently and effectively create a practice full of paying clients, without losing your mind!

"The only place success comes before work is in the dictionary."
-Vince Lombardi

Marketing your practice is a crucial component in your success as a law practice entrepreneur. By definition, marketing is the total sum of activities to promote, sell and distribute a product or service. Many law practice entrepreneurs view marketing as just advertising and promotion when, in fact, it is much more. Marketing includes developing systems and procedures to service client needs in the marketplace, doing the legal work, charging the client and obtaining feedback about the legal services to improve those services for the next client. In this context, it is difficult to see how one can separate "marketing" from the other activities that make up the practice of law.

According to Michael Gerber, author of *The E-Myth Revisited*, most entrepreneurs are not entrepreneurs, just good "technicians" who decide to start a business so they can be a good technician. However, many "entrepreneurs" fail to understand they must consistently market the goods or services they offer, not just produce the product or provide the service. In other words, all law practice entrepreneurs must take time to develop new clients, analyze current client needs, and hone delivery of their services. Even lawyers who have a good client base must continue to market

their services to existing clients and to potential clients who will eventually replace clients whose need for legal services ends or diminishes.

> **"What you do with your billable time determines your current income, but what you do with your non-billable time determines your future."**
>
> **-- David Maister, *True Professionalism***

Marketing is an investment in your practice. It is this investment of time and creativity to raise public awareness of your law practice and develop systems and procedures to better serve clients who will sustain your practice over many years. While many other businesses have sales people that drive customers to the business, there is no separate sales force in a solo practice or small law firm--just lawyers and staff. However, lawyers and staff in solo practice and small firms can undertake numerous activities to market and develop a client base through existing clients and new clients.

The Nine Core Principals of Legal Marketing

1. **Understand Your Marketing Role.** Whether you are in a large or small firm, partner or associate or solo practitioner, you need to have a clear sense of your role in firm marketing. It today's environment, the differences in roles is truly just a matter of degree. Understand and accept that you are running a business, and that you must balance the roles of lawyer, entrepreneur and manager. Marketing will be forever.

2. **Have a Marketing Plan.** Keep it simple, and make it measurable. Use it to avoid a shotgun approach, which is the biggest waste of time and money. Approach marketing strategically. Do some simple market research, then act: What do I want my practice to look like? Where do my best clients come from? What is my most profitable type of client or work? Where can I find more of the work I want? Set goals that you can measure, such as "I will

review and update my LinkedIn profile in 30 days" or "I will review my client service delivery processes and update those processes within 90 days."

3. **Read Your Advertising Rules**: Legal advertising has certain limits that must be respected at all times. Learn to successfully market without getting close to the line known as "false, fraudulent, misleading, deceptive, self-laudatory or unfair statements or claims." Read the Indiana Rules of Professional Conduct advertising rules—numbered 7.1-7.5. Check your state bar for opinions, articles and publications to learn the limitations in Indiana.

4. **Understand your Marketplace.** Knowing who you serve (or want to serve) is the only way to target your marketing efforts. Who is your target market? What lawyer attributes are important to them? Does your marketing message fit the audience?

5. **Differentiate your firm from others in the marketplace.** This is also known as a Unique Selling Proposition. Common ways to differentiate include client service, practice area specialization, form of business model, and pricing; however, general claims and promises often are not effective. Be specific.

6. **Focus on client needs, not on the firm attributes.** When marketing to potential buyers of legal services, understand they are looking for a lawyer to solve *their* problem, not regal them with prior conquests. Make sure your marketing messages emphasize your understanding of their legal problems, not just how good you were for someone else. Follow-up by doing more listening than talking at the initial consultation.

7. **Leverage Technology**. Use common computer tools and emerging Internet services to increase the quantity and quality of your marketing efforts: Use a contact manager such as Outlook to organize your network and increase the frequency of contact with people in your network and simplify the process of meaningful communication. Build a blog that people find and use as a resource. Join and participate in social networking sites.

Buy a scanner that scans business cards and use it to build new relationships. If these are foreign concepts, start slowly, but start *now*.

8. **Know Who You Are**: Create, practice, and hone your own 5-second "sound bite" and 30-second "elevator" speech. These are your core personal marketing messages. Refine each one until they feel right. Develop variations based on different audiences/market segments.

9. **Develop an operational plan to handle your new client business.** Review your present ability to handle client work, and adapt or change process to handle more work. You may need new software, more administrative help, better work flow processes, and improved digital filing handling procedures just to name a few common operational changes.

Writing Your Marketing Plan

A marketing plan must be on paper. Period. There, I've said it as clear as I can. Why a plan? Because a goal without a plan is only a wish. A plan can be for a sole practitioner, an individual plan for one lawyer in a small firm, or a firm-wide plan for multiple lawyers. If your goal is to find and keep good clients, there must be a written plan. The plan does not have to be lengthy or full of marketing buzzwords, but it must contain concrete goals that are measurable.

So what's a marketing plan supposed to look like? In a nutshell, it should be a roadmap that has three to five separate roads that lead to groups of people from which some will emerge as paying clients. Clients for whom you will then do work and get paid, and who will then tell their friends, family and colleagues about your superb service. (Much more on that later.)

But before one can design the roadmap, you have to know where you are going. That takes a bit of analysis and goal-setting.

"If you don't know where you are going, what difference does it make what path you take?"

-- Lewis Carroll, Alice's Adventures in Wonderland

The start of the marketing plan is really the ending point. You should have a vision about how your practice fits into your personal and professional goals and what your practice will look like when it is built. It doesn't have to be a complete picture, but it should be more than just a few vague ideas. Even if you are currently in your own practice, ask yourself these questions to help get a more complete picture:

- What type of practice do I find the most personally and professionally fulfilling?
- What kind(s) of law do I want to practice? Is it enjoyable? Profitable? Exciting?
- What kinds of clients do I want? Who is my ideal client? Describe in detail.
- In what areas am I competent to practice with current resources and staff?
- What are the legal needs of the marketplace?
- How much do I want or need to earn?
- How many hours each week do I want to devote to my practice?
- Can I afford to take time to develop a "preferred" client base or do I need to start generating income more quickly?

Write the answers to these questions as part of your marketing plan. Then turn these thoughts into goals. (Yeah, this is the uncomfortable part; maybe a bit scary. Be assured this exercise will bring clarity to your plan.) The goals should create a picture of your practice. Be as definitive as possible. Be honest with yourself. Soar.

The goals could be sentences such as:

> I will represent international collegiate athletes who desire to become professional athletes. By choice, I desire to limit my practice to clients entering professional sports leagues--preferably no more than 20 clients annually so that I can concentrate on building quality relationships. I want to work no more than 45 hours each week with the assistance of a qualified paralegal and earn $150,000 annually.

Your goal may not be exclusivity as in this example; you may have totally different goals. It may take several thoughtful interludes (or discussions with partners) to complete your picture of your practice, but it will be worth it.

Now that we have an idea of where we are going, we can work on that roadmap to a practice full of loyal clients.

Developing Your Marketing Plan

Marketing studies tell us that personal referrals are the most significant source of business for the vast majority of practicing lawyers. Even publications that seek to educate legal consumers almost always instruct readers to ask friends and family for names of successful lawyers. In fact, all clients come from just five sources. Yep, just five.

• Family and Friends: Including spouses, law school classmates, neighbors, distant relatives, friends, and other lawyers who are friends, not necessarily business associates. These people can be the best source of referrals, especially when first starting in practice. In fact, these people should make up your initial marketing address list.

• Clients: Present and former clients who tell their friends, relatives and colleagues about their lawyer. Clients love to brag about their lawyer, sometimes to the level of "My lawyer can beat up your lawyer," but that's a story for another day.

• Repeat Clients: Former clients who are satisfied with your prior services will often return for additional legal work. One road in a good marketing plan is to periodically contact these satisfied clients to remind them you are appreciative of their trust; in turn your name will be "top of mind" when someone asks them for a lawyer referral.

• Other Professionals are a good source of referrals, including other lawyers whose clients also need your services (that they do not offer), CPAs, real estate agents, financial planners, etc. Often, these professionals are asked for the name of a good attorney by their clients. Examples include business lawyers who are asked by corporate clients for the name of a good tax or family law attorney as well as financial planners whose clients ask for trust and estate lawyers. According to law practice management expert, Paul McLaughlin, this referral is an important one because it often impacts on the relationship between the professional and the client; you must provide quality services to that mutual client or risk losing the other professional as a referral source.

• Self-referred Clients: These are clients who hear, see or read about your legal abilities and services through a vehicle other than a person; this includes social media platforms, TV and radio advertising and appearances, informative articles and news stories in newspapers and trade journals, law firm web sites, and lawyer networking sites. This type of referral also includes people who read about a seminar or other event you advertise and come to the event before engaging your services. Self-referred clients either do not have a trusted referral source or are dissatisfied with their present lawyer-a common theme in the legal marketplace today.

Often lawyers focus on attracting only self-referred clients, but the reality is that many lawyers find success just focusing on the first four sources. And with good reason.

Marketing experts agree that a consumer must usually have multiple contacts with a product or a service before they have enough confidence to take action. That usually means a consumer must hear or see information about a product or service six to eight times before being cognizant of it and willing to find out more and/or buy it. And it takes time to build this consumer trust. However, if another person whom that consumer trusts tells them to try the service, the trust in that person is transferred to the product or service, without having multiple exposures or contacts. Think Alex Trebek for Colonial Penn Life.

For example, a person seeking a good tax attorney receives a positive recommendation from a close friend to call Lawyer X. The inquiring person's trust in her friend is transferred to the recommended attorney, thereby bypassing the need for Lawyer X to have multiple contacts with that person because the trust is already there. (Although the lawyer must confirm, earn, and maintain that trust over time.)

All five sources can produce good clients, but the best are client referrals–people who have actually used and paid for your services and walked away satisfied. But in order to get these valuable referrals, you must provide a positive experience for the client that meets or exceeds all expectations.

The Top Ten Marketing Activities to Build Your Practice

1. Create a contact list, and then use it to prospect and mine for new business.

- Organize information about family members, friends, school classmates, business colleagues, etc.
- Decide what level of communication each contact should receive, such as a personal phone call, email newsletter, lunch meeting, holiday card, all of the above, etc.
- Schedule time on your calendar to complete these communications

2. Produce, Present, Distribute by writing, teaching and publishing. Create and present a seminar for your local bar, community organization or business group. Get a business card from all attendees and follow-up after with a note. Take the written materials and edit into two or three smaller articles. Submit your articles for publication to state bar magazines, business journals as well as national publications pertaining to the legal profession or those read by your target market. Send copies of the published article to clients and other interested people on your contact list.

3. Create a web site, then build traffic to it and referrals from it.
    - Make it education-based, client focused, and easy to find
    - Provide something of value for free in return for their contact information
    - Develop a companion blog and link to other informative sites
    - Consider Google AdWords and other web advertising but make sure you understand how it works before buying
    - Explore Facebook Live and YouTube videos as part of your educational-based marketing approach
    - Fully understand Search Engine Optimization before buying

4. Join and participate in several organizations.
    - Build your reputation in your target market
    - Get your name and abilities in front of decision-makers
    - Consider, bar associations, business groups, community and religious organizations

5. Find new services to offer to existing clients.
    - Inform clients of your total package of services
    - Become a problem-solver to all your clients
    - Offer preventive services to risk-proof business clients

6. Make your offices and services convenient for your intended market, such as:

- Office location
- Web-based intake forms
- Retail hours
- Free, no-hassle parking
- House calls

7. Join social media networks, then use them to prospect and mine new sources of clients:

- Pick 2-3 networks, such as LinkedIn, Facebook, or Instagram
- Don't just do a personal profile, add a separate page for your business
- Use connections to leverage introductions to potential clients
- Know that 70% of Facebook users are outside the US
- Use your posts and tweets to deepen relationships

8. Test on-line directories and referral services for your target market.

- Choose wisely among sites such as Avvo or one provided by your state bar
- Understand the multiplier effect of referrals—can help or hurt your practice

9. Publish a periodic e-newsletter.

- News about your firm, information on the law in your legal niche; include a personal touch too, if appropriate
- You must commit to a publishing schedule and keep it
- Send to your contact list and web visitors
- Consider web services such as Constant Contact to assist your efforts

10. Refer business out to others—no strings attached.

- Marketing is not cheap, so don't just turn away clients seeking your services—send them to your referral network

- Don't request reciprocity or *quid pro quo* unless your ethics rules allow it
- Search business journals and newspapers for business opportunities to forward to others in your network

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Reid F. Trautz is a lawyer, author, and practice management advisor who helps lawyers improve their businesses and the delivery of legal services to their clients. He serves as Director of the American Immigration Lawyers Association's Practice & Professionalism Center. He is frequent speaker at legal conferences throughout North America on the issues of management, technology, legal ethics, and attorney-client communications. Reid is co-author of the book *The Busy Lawyer's Guide to Success: Essential Tips to Power Your Practice*, published by the ABA. In 2012, he served as the chair of ABA TECHSHOW, the legal profession's premier technology conference. Today he serves as Co-Chair of the ABA Law Practice Division Futures Initiative and co-authors the *Future Proofing* column for *Law Practice* magazine.

Section Eight

Employment Law Basics and Update 2021

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Section Eight

Employment Law Basics and Update 2021…… Jeffrey B. Halbert

PowerPoint Presentation

Indiana Continuing Legal Education Forum

Employment Law Basics and Update 2021

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APPLICABLE EMPLOYMENT-RELATED LAWS

Number of Employees	Statute	Protection
1	Employee Retirement Income and Security Act	employee benefit rights
1	Fair Labor Standards Act	minimum wage/overtime
1	Occupational Safety and Health Act	occupational safety and health
6	Indiana Civil Rights Act	race, color, religion, gender, disability, national origin, ancestry
15	Title VII, ADA, GINA	race, color, gender, religion, national origin, disability, age, genetic information
20	ADEA	age discrimination (federal)
20	COBRA	health benefit continuation – federal law
50	FMLA	family and medical leave
100	WARN	advance notice of plant closings and mass layoffs

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Required Postings

- Most entities need to post:
  - OSHA poster (Job safety and health protection)
  - Equal Employment Opportunity (poster that contains GINA provisions)
  - FLSA poster
  - FMLA poster (public entities and private with 50 or more employees)
  - USERRA (uniformed services employment and reemployment rights act)
  - Employee polygraph protection act

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Hiring

- **I-9 Process – Common Issues**
  - ❖ Not taking sufficient or right documents
  - ❖ Specifying which documents must be presented or asking for too many documents
  - ❖ Taking expired documents
  - ❖ Not processing within 3 business days
  - ❖ Not fully completing the form

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Hiring

- **Applications**
  - ❖ No need to retain non-solicited applications
  - ❖ Retain solicited applications for at least 1 year
  - ❖ Include Equal Employment Opportunity Statement
  - ❖ No questions that reveal protected status
  - ❖ Don't rely on arrest records
  - ❖ Be sure that application complies with Indiana Expungement Law (i.e., have you been arrested for or convicted of a crime that has not been expunged by a court)
  - ❖ Sign-off on truth and accuracy

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Hiring

- **Background Checks**

  - ❖ Consistency
  - ❖ Avoid reliance on social media
  - ❖ Fair Credit Reporting Act
    - ○ If conducted by third party
    - ○ Written Consent (separate from application)
    - ○ Notice of FCRA rights
    - ○ Notice of adverse action (if relying on information obtained)
  - ❖ Responses: Privilege for truthful information

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Hiring

- **Job Descriptions**

  - ❖ Check essential functions
  - ❖ Discuss with employee
  - ❖ Update

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Hiring

- **Job Interviews**

  - **Discuss:** Educational background and work experience

  - **Do not discuss:** Family status, financial status, ownership of property, health (self or family), childcare issues, plans for family, etc.

  - **Discuss at-will employment:**

  - **Note taking:** Discoverable

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Hiring

- **Medical Information**
  - ❖ Not pre-offer
  - ❖ Post-offer only if all offerees and job-related
  - ❖ Separate confidential file
  - ❖ Drug testing (not considered medical inquiry)
  - ❖ Disability issues (reasonable accommodation)

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Workplace Drug Testing Rules

- In general, employers may continue to enforce drug-free workplace and drug testing rules
  - Pre-employment drug screens
  - Random testing
  - "Reasonable suspicion" testing following workplace accident or injury
- Due to shortages of qualified workers, many employers are choosing to relax drug testing standards or eliminate pre-employment testing
  - Risks must be assessed in safety sensitive positions
  - Co-worker liability limited to worker's compensation, but not customers or members of the public

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Discipline and Discharge

- **Discipline**
  - ❖ At-will employment
  - ❖ Clear policies
  - ❖ Consistent application of policies and discipline
  - ❖ Document
  - ❖ Honest evaluations

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Discipline and Discharge

- **Discharge**
  - ❖ Progressive discipline, as applicable
  - ❖ Triggering factor
  - ❖ Consider comparators
  - ❖ Final pay (vacation/PTO issues)
  - ❖ COBRA notice (if applicable; 20 or more employees on plan)
  - ❖ Confidentiality/non-compete
  - ❖ Severance issues (ADEA/OWBPA +/- 40 years of age)

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Sexual Harassment

- Sexual Harassment is form of prohibited sex discrimination under Title VII and the Indiana Civil Rights Act
- Defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment" – U.S. Equal Employment Opportunity Commission

Elements of Sexual Harassment

- Conduct may be *verbal or physical* (including visual)
- Conduct must be *sexual in nature*
- Conduct must be *unwelcome*
- Conduct must be *intimidating, hostile, or offensive* – both objectively and subjectively
- Conduct must be *sufficiently severe or pervasive* to affect the victim's work environment
- The harasser can be a supervisor, a co-worker, or a non-employee of the same or opposite gender

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Sexual Orientation/Gender Identity Discrimination

- *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (June 15, 2020): Title VII prohibits discrimination against an employee or applicant on the basis of such individual's sexual orientation or transgender status
  - Three consolidated cases from the Second, Sixth, and Eleventh Circuits which resolved a circuit split on this issue
  - The Court found that discrimination on the basis of sexual orientation or transgender status is a form of sex discrimination: "That's because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

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Types of Harassment Claims

- *Quid Pro Quo*: Required to submit to sexual advances as a condition of employment
- *Hostile Work Environment*: Severe or pervasive behavior of a sexual nature that interferes with the employee's ability to perform his or her job

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Other Types of Harassment

- Other Hostile Environment Claims (not *quid pro quo*):
  - Gender (including sexual orientation or transgender status)
  - Race
  - National origin
  - Religion
  - Age
  - Disability

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Affirmative Defense To Liability

- Strict liability for employers in *quid pro quo* sexual harassment cases
- Affirmative defense available in hostile environment cases if:
  - Employer exercises reasonable care to prevent and correct promptly any sexually harassing behavior (*e.g*. sexual harassment policy and reporting procedure with prompt remedial action)
  - Victim unreasonably failed to take advantage of any preventative or corrective opportunities (*e.g.*, knew about the anti-harassment policy but failed to report)

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Workplace Harassment

- **Investigating Discrimination/ Harassment Complaints**

  - ❖ Designate two alternative people to address complaints
  - ❖ Investigate (prompt, thorough, impartial)
  - ❖ Confidentiality (not absolute)
  - ❖ Pitfalls
  - ❖ Document

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Disability

- **Medical Inquiries**
- Americans with Disabilities Act issues
  - 15 or more employees
  - No pre-employment medical questions
  - After job offer: but only if ask all offerees and job-related
  - Drug tests are not medical inquiries
  - Maintain all medical information separate from personnel file

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Reasonable Accommodation

- Reasonable Accommodations
  - To enable individual to perform the essential functions of his/her position
  - Interactive process
  - Alternative accommodations permitted if reasonable
  - Undue hardship

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Indiana Pregnancy and Childbirth Accommodations

- Effective July 1, 2021, Ind. Code 22-9-12: Employers with 15 or more employees permits an employee to request (in writing) an accommodation relating to employee's pregnancy and employer must provide a response within a reasonable amount of time.
- Any such request does not require the employer to provide the accommodation or make an exception to the employer's policies unless existing state or federal law requires the accommodation be made.
- Employer may not discipline, terminate, or retaliate against an employee for making a request for or using an accommodation.

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Paid Military Leave Under USERRA

- Uniformed Services Employment and Reemployment Rights Act (USERRA) provides job protections to employees who serve in the military.
- Includes a mandate that public employers pay for employees' short-term military leave, but is silent as to the issue of pay by private employers.
- Long been interpreted that private employers are not similarly obligated to pay employees on military leave.
- Recent cases addressing USERRA's anti-discrimination provision, which mandates that military leave be treated that same or similar to non-military leave, indicates a trend towards requiring private employers to provide paid military leave to the same extent as other types of paid leave.

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Paid Military Leave

- ***White v. United Airlines, Inc.* 987 F.3d 616 (7th Cir. 2021)**: the Seventh Circuit held that USERRA's mandate that military leave be accorded the same "rights and benefits" as comparable nonmilitary leave does require a private employer to provide paid military leave to the same extent it provides paid leave for other absences.
- Would require offering equivalent level of paid leave to employees on military leave as provided under other voluntary paid leave (i.e., sick leave, jury duty and bereavement). For example, if an employer offer up to 3 days paid bereavement per year, it would be required to offer up to 3 days paid military leave per year as well.
- Similar holding in ***Travers v. Federal Express Corp*. 8 F.4th 198 (3d Cir. Aug. 10, 2021) (**relying on *White* and holding that USERRA "does not allow employers to treat servicemembers differently by paying employees for some kinds of leave while exempting military service")

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Indiana Non-Compete Law

- *Heraeus Medical, LLC v. Zimmer, Inc.*, 135 N.E.3d 150 (December 3, 2019):
  - Indiana continues to follow the blue-pencil rule in enforcing restrictive covenants (i.e., non-competition/non-solicitation provisions); courts cannot "reform" an overbroad covenant even if the parties included a reformation provision in their agreement
  - Employee non-solicitation provisions must be limited to those employees who "have access to or possess any knowledge that would give a competitor an unfair advantage."

Indiana Non-Compete Law

- Physician Non-Compete Agreements
  - I.C. §25-22.5-5.5-2 (eff. July 1, 2020) requires certain provisions be included for a physician noncompete agreement to be enforceable:
    - employer must provide physician a redacted copy of any notice sent to patients of the physician seen or treated during the two years prior to the termination of the physician's employment or the end the physician's contract concerning the physician's departure from the employer;
    - employer must provide physician's last known contact and location information to patients the physician has seen or treated during the two years prior to the termination of the physician's employment or the end the physician's contract if requested by such a patient;
    - physician must have access to or copies of any medical records associated with a patient the physician has seen or treated during the two years prior to the termination of the physician's employment or the end the physician's contract upon receipt of patient consent;
    - physician must be given an option to purchase a release from the terms of the non-compete agreement at a reasonable price; and
    - A provision prohibiting the employer from providing patient medical records to the physician in a format materially different from the ordinary course of business, unless the records are produced in paper, portable document format, or as otherwise mutually agreed upon by the parties.

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Wage and Hour

- **<u>Wage Assignment/Deductions (Indiana)</u>**
- Must have valid wages assignment form <u>and</u> deduct only for one of the reasons specified in the wage assignment statute.
- Strict requirements and violations can lead to treble damages, attorneys fees and costs.

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Wage and Hour

- **<u>Wage Assignment/Deductions (Indiana)</u>**
- Valid Wage Assignment:
  - in writing;
  - signed by the employee personally;
  - revocable by its terms at any time by the employee upon written notice to the employer; and
  - agreed to in writing by the employer.
- <u>Can only cover those items specifically identified in statute.</u>

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Wage and Hour

- **Wage Payments (Indiana)**
  - **Timing of Wage Payments**
    - Within 10 business days of end of payroll period
  - **Wage Over-Payments**
    - Must give employee two weeks notice
    - Limit: 25% (after taxes)
    - Exception: If the single gross wage overpayment is equal to 10 times the employee's gross wages and was due to an inadvertent misplacement of a decimal point, the entire overpayment may be deducted immediately.

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Wage and Hour

- **Wage Payments (Indiana)**
  - **Final Wage Payment**
    - Must pay on or before next regularly scheduled pay date after termination.
    - Cannot hold back (e.g., for return of property etc.).

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Wage and Hour

- **FLSA**
  - **Potential Liability Under the FLSA**
    - Back pay for two years
    - Statutory double damages
    - Attorneys' fees and litigation expenses
    - Three years' liability for "willful" violations
      - Employer knows or shows reckless disregard for whether its conduct violates FLSA
    - Civil penalties
      - Up to $1,000 per violation for repeated or willful violations
    - Criminal penalties
      - Up to $10,000 fine or six months in prison

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Wage and Hour

- **FLSA (Common Mistakes)**
- **Not or Miscalculating Overtime for Salaried Non-Exempt Employees**
  - General requirement: Overtime must be paid at rate equal to one and one-half times employee's regular hourly rate
  - One common mistake is for employers to pay non-exempt employees on a salaried basis, but not pay overtime in any work weeks in which employee works over 40 hours
  - No work off-the-clock
  - Cannot prohibit overtime work and must be paid; can have disciplinary rule prohibiting unauthorized overtime

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Wage and Hour

- **FLSA (Common Mistakes)**
- **Calculating Overtime for Non-Exempt Employees**

  - Regular rate is determined by dividing weekly compensation by total number of hours worked
  - Overtime (i.e., over 40 hours) is paid at 1.5 times employee's regular rate
  - Overtime is based on work week (not pay period)

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Wage and Hour

- **FLSA (Common Mistakes)**
  - **Failing to Pay Overtime on Commissions, Bonuses or Premiums**
    - Generally, employers must include such items as commission payments, non-discretionary bonuses, and shift premiums in computing an employee's regular rate of pay for weeks in which overtime compensation is due.
    - Amounts should generally be allocated to each workweek for which the commission or bonus is paid or, if circumstances warrant, may be allocated to each hour worked.
    - Bonuses paid as a percentage of total earnings are not subject to inclusion in regular rate because it is assumed that overtime has already been included in that calculation.

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Wage and Hour

- **FLSA (Common Mistakes)**
  - **Failing to Keep Accurate Records of Hours Worked**
    - It is the employer's duty to keep accurate records of all hours worked by employees under FLSA
    - There is no required method for recording hours; the only requirement is that the record be accurate

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Salary Threshold for "White Collar" Exemptions

- **FLSA Overtime Exemptions: Executive, Administrative, Professional, Computer, Outside Sales**
  - One criterion for most executive, administrative, professional, and some computer employee exemptions is a minimum weekly salary (the salary basis test)
  - Effective January 1, 2020, minimum weekly salary increased from $455/week (23,660/year) to $684/week ($35,568/year)
  - Highly Compensated Employee salary threshold increased from $100,000/year to $107,432/year
  - Nondiscretionary bonuses and incentive payments may be considered to satisfy up to 10 percent of salary level

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Salary Threshold for "White Collar" Exemptions

- **Executive Employees**
  - Paid on salary basis at least $684 per week
  - Primary duty consists of management of enterprise or of a department or subdivision
  - Regularly directs the work of two or more full-time employees (or equivalent)
  - Has authority to hire, fire, promote or make similar changes of status for others, or can recommend such changes and recommendations are given "particular weight"

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Salary Threshold for "White Collar" Exemptions

- **Administrative Employees**
  - Paid on salary fee basis at least $684 per week
  - Primary duty consists of office or non-manual work directly related to management or general business operations of employer or its customers
  - Primary duty includes exercise of discretion and independent judgment regarding matters of significance
    - Most misused
    - Requires significant discretion /independent judgment
    - High-level decisions
    - Authority to set policy or deviate from it, bind the company, negotiation for the company, provide advice/consultation etc.
    - E.g., customer service, internal sales, accounts clerks, secretaries etc. generally not exempt

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Salary Threshold for "White Collar" Exemptions

- **Professional Employees**
  - Paid on salary or fee basis at least $684 per week
  - Learned professionals
  - Primary duty consists of performance of work requiring advance knowledge in field of science or learning customarily acquired by prolonged course of specialized intellectual instruction
    - Generally requires 4 year degree in are of work (specialized)
    - Retain judgment and discretion
    - Ex. Lawyers, doctors, accountants etc.

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Salary Threshold for "White Collar" Exemptions

- **Creative Professionals**
  - Primary duty consists of performance of work requiring invention, imagination, originality or talent in a field of artistic or creative endeavor such as music, writing, acting and graphic arts
  - Unlike learned professionals exemption, there is no specific educational requirement related to creative professionals exemption

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Salary Threshold for "White Collar" Exemptions

- **Computer Employees**
  - Paid on salary basis at least $684 per week or on an hourly basis of at least $27.63 per hour
  - Primary duty consists of
    - application of systems analysis techniques and procedures;
    - the design, development, documentation, analysis, creation, testing or modification of computer systems or programs;
    - the design, development, documentation, analysis, creation, testing or modification of computer programs related to operating systems; or
    - a combination of the above duties requiring the same level of skills
  - Not "help desk" employees!

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Salary Threshold for "White Collar" Exemptions

- **Outside Sales Employees**
  - Primary duty consists of making sales, obtaining orders or contracts for services or use of facilities
  - Customarily and regularly engaged away from employer's place of business (and employee's home)
    - Must be selling outside the office; can still have home base of operations.
  - No salary level requirement

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Salary Threshold for "White Collar" Exemptions

- **Highly Compensated Employees**
  - Total annual compensation of at least $107,432 per year
  - Paid at least $684 per week on salary basis
  - Customarily and regularly performs office or non-manual work consisting of any one or more exempt duties in the executive, administrative or professional duties tests

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Salary Threshold for "White Collar" Exemptions

- **Potential Loss of Exempt Status**
  - Improper deductions from salary
    - Limited deductions that may be made from exempt employee salary
    - Need for inclusion of FLSA Safe Harbor Statement/Policy

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Impact of COVID-19 on Employers

- Challenges in managing increasingly remote workforce
- Reallocation/restructuring of physical workspaces
- Managing employee absences/requests for leave
- Developing/enforcing vaccination, testing, and masking rules
- Maintaining productivity while protecting employees
- Keeping up with constantly changing regulations/guidance
- Employee morale/mental health: fear/anger/frustration/ fatigue/depression
- Shortage of available workers across many industries

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Families First Coronavirus Relief Act

- FFCRA became effective April 1, 2020
- Covers employers of fewer than 500 employees
- Required employers to provide leaves of absence reimbursed through payroll tax credit for certain reasons related to COVID-19 (up to 10 days paid sick leave and up to 10 weeks paid emergency family leave for school/daycare closures)
- Mandatory leave expired December 31, 2020
- Extended on a voluntary basis through March 31, 2021
- Has not led to significant litigation as some anticipated

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American Rescue Plan Act (March 2021)

- Extended FFCRA tax credits through September 30, 2021 (unless extended or new legislation)
- Paid leave remained voluntary on part of employer
- Reasons for leave include:
  - Federal, state, or local quarantine or isolation order
  - Directive by health care provider to quarantine
  - Covid testing and awaiting test results/diagnosis
  - Covid vaccination and recovery
  - Care for child whose school/day care is closed
- https://www.irs.gov/newsroom/tax-credits-for-paid-leave-under-the-american-rescue-plan-act-of-2021-for-leave-after-march-31-2021

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Federal Unemployment Benefits

- American Rescue Plan provided enhanced federal unemployment benefits that ended September 5, 2021
  - Federal Pandemic Unemployment Compensation – additional $300 per week
  - Pandemic Emergency Unemployment Compensation – extended state U/C benefits by 13 weeks (from 26 weeks to 39 weeks)
  - Pandemic unemployment assistance – provided benefits for some workers not eligible for state U/C (i.e., independent contractors)

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OSHA Requirements

- General Duty clause – employers must furnish "employment and a places of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm."
- In general, employers must take reasonable precautions to protect employees from risks associated with COVID-19 exposure
- Employers must report Covid cases in their OSHA 300 logs if:
  - Confirmed case of COVID-19
  - Reasonable basis to conclude it is work-related
  - Illness is otherwise reportable (i.e., medical treatment, lost time, etc.)

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OSHA Requirements

- Employee death related to workplace COVID exposure must be reported to OSHA immediately
- On June 21, 2021, OSHA issued an Emergency Temporary Standard (ETS) addressing workplace safety requirements and guidance in healthcare settings in light of COVID-19
  - ***Anticipated that this will serve as the basis for OSHA's ETS to be issued pursuant to President's September 9, 2021 directive.
- On July 7, 2021, OSHA issued an Interim Enforcement Response Plan for worksites not covered by the ETS
- https://www.osha.gov/SLTC/covid-19/standards.html

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President Biden's COVID-19 Action Plan

- Six Pronged Strategy Announced by President Biden on September 9, 2021
- Key component of plan is mandatory vaccinations (with limited exceptions) for certain employees:
  - All federal employees and contractors (~4 million workers)
    - Federal contractors must comply by December 8, 2021
  - Health care workers in hospitals, clinics, and nursing homes that accept Medicare and Medicaid payments (~17 million workers)
  - Employees of Head Start early childhood education and other federal education programs (~300K workers)

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President Biden's COVID-19 Action Plan

- Employees of private sector employers with 100 or more workers (~80 million workers)
  - If employees are not vaccinated, they must be tested weekly for Covid
  - Paid time off for vaccination and recovery will also be required
- Fines of up to $14,000 for noncompliance
- OSHA will implement emergency temporary standard to implement these rules
- The private sector vaccine mandate and paid time off requirements are likely to face significant legal challenges

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Employee Health Screening/Testing

- Americans with Disabilities Act (ADA) considerations
  - Medical exams/inquiries under ADA (employees only) must be "job-related and consistent with business necessity"
  - Employers may require negative CV19 test as condition of entering the workplace
  - Test results are confidential medical records under ADA
  - Identity of CV19-positive employee also must remain confidential
  - HIPAA does not apply to most employers as non-covered entities, but does apply to contract nurses or health care professionals

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Workplace Vaccine Mandates

- EEOC Guidance on COVID-19 in the Workplace (Updated May 28, 2021)
- New guidance specifically addresses vaccine mandates
  - Employers may require vaccinations as a condition of employment for all employees entering the workplace, with two exceptions
  - Under the ADA, employers must accommodate employees whose medical condition prevents them from being vaccinated
  - Under Title VII, employers must accommodate the "sincerely held religious beliefs" of employees who are opposed to vaccination on religious grounds, as well as employees who are pregnant

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Workplace Vaccine Mandates

- Reasonable accommodation may include:
  - Remote work
  - Socially distanced work space
  - Mandatory Covid testing
- Vaccination records are considered confidential medical records under the ADA and should be kept in a separate medical file
- Employers may also create incentives for employees to be vaccinated, as long as those incentives are not coercive
  - Common incentives include extra PTO/holidays, vaccination bonuses, and gifts/prizes

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Workplace Vaccine Mandates

- Health care premium surcharges for non-vaccinated plan participants have not been addressed by the EEOC
- https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws

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COVID-19 and Disability Accommodation

- COVID-19 usually will not be considered a “disability” under the ADA because of its short-term nature; long COVID may be considered a disability, however
- Underlying health conditions that make employee at higher risk of CV19 illness may be a disability (e.g., diabetes, auto-immune disorders, etc.)
- If potential disability is identified, may need to evaluate reasonable accommodation
- Reasonable accommodation may include remote work, extended leaves of absence, modified work schedule
- Age is not a disability so no accommodation is required

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Vaccines and Employer Policy

- Considerations in implementing vaccine policy
  - Soft mandate v. hard mandate
  - Will proof of vaccination be required?
  - How to handle disability and/or religious accommodations?
  - Will you or your clients be impacted by OSHA emergency temporary standard(s) or subsequent modifications? Risk of penalties for noncompliance?
  - Testing v. vaccination
  - Impact on employee retention
  - Internal safety protocols and application of requirements to visitors
  - Viability of remote work options

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Thank You!

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9th ICLEF "Reality" CLE Seminar
October 28-29, 2021

Mediation Panel

PART I: TOP TEN TIPS FOR MEDIATION SUCCESS

(in no particular order)

1. **PREPARE.**

- Prepare yourself. Reacquaint yourself with the facts and the law. Resist the urge to skip the preparation of a confidential statement. The preparation of a confidential statement forces you to succinctly outline and organize the case.
- Prepare your client. Start by explaining to your client what mediation is and how it works. Don't assume the client knows the difference between mediation and litigation. If your client believes he or she is only attending the mediation because they have been ordered to do so, clearly explain their obligation to participate in good faith and to come prepared to: 1) make offers, and 2) compromise.
- Prepare the mediator. A skilled mediator can quickly assimilate the facts. What the mediator needs in addition to the facts is an understanding of the party relationships, personalities, and attachment to (or fixation on) certain assets.

Many more mediations settle by understanding and capitalizing on a party's personality and tendencies than by capitalizing on law or facts.

- Prepare your persuasive nuggets. Identify and bullet point not less than five and not more than ten compelling nuggets of law (with citations and brief case quotes) and/or facts that define the strengths of your case. Identify and bullet point five to ten weaknesses of the opponent's case.

2. **TIMING.**

Choose the timing of the mediation carefully. The likelihood of settlement goes up significantly if substantial discovery has been conducted such that each party feels sufficiently educated to make proposals confidently. Fear of the unknown can have a negative impact on settlement. If parties don't feel like they know and understand the other party's case, they tend to conclude they are giving too much away. By litigating for awhile before mediation, parties also get a sense of the time, stress and cost of litigation. That sense lays a foundation to promote mediation as a wise alternative to continued litigation. On the other hand, if you wait too long to mediate, parties can entrench and their out-of-pocket expenses and fees can create an impediment to settling a case that otherwise would have settled.

3. **THE SUMMARY JUDGMENT CURSE.**

Try to avoid mediating cases that are pending a ruling on a motion or cross-motions for summary judgment. Because the work has already been finished once summary judgment motions have been filed, briefed and argued, parties are often very reluctant to make aggressive settlement attempts until they receive a ruling on pending summary judgments.

4. **DISCOVERY.**

If discovery is outstanding, respond to it before mediation, even if it isn't yet due. Information promotes settlement. The lack of information promotes suspicion. If you have important evidence, share most of it in advance even if discovery is not complete. A "smoking gun" can sometimes be effective if revealed only at mediation, but is usually more effective if revealed before mediation so unreasonable expectations can be avoided.

5. **BANK RECORDS/ASSET INFORMATION/APPRAISALS.**

- Inventory/Financial Statement. Provide them in advance.
- Accountings. Many estate, trust and guardianship disputes include contested accountings. Even those that don't often include some disputed transactions. Be prepared to eliminate baseless claims by bringing bank records, receipts and cancelled checks or check images. Without documentation, parties cannot make informed decisions and automatically conclude that information is being hidden.
- Ups and downs. The time value of money, appreciation, depreciation, earned interest, rents and profits are often components of settlement proposals. It is unreasonable and naïve to believe that cases will be settled based on fixed values.
- Appraisals and "I have to have it" premiums. If key non-publicly traded assets (farms, commercial real estate, closely held stock, valuable personal property) are in dispute, come prepared with objective, third party appraisals. If your client insists on receiving a particular asset, prepare him or her for the fact that: 1) he or she will invariably have to pay a premium to get it, and 2) if your client promotes an unreasonably low value or appraisal of that asset, the opposing party will seek to obtain that same asset at your client's unreasonably low value.

6. **CALCULATE BEFORE AND DURING.**

Mediated disputes often involve multiple assets and multiple parties. Parties and their attorneys often make calculation errors that are not discovered until after a mediated settlement agreement is signed. Ideally, you should create Excel or similar spreadsheets so every offer can be promptly and accurately analyzed.

7. **DEFINE YOUR ROLE.**

You know your client better than opposing counsel and the mediator. Determine what your role will need to be. If your client is overly aggressive, unreasonable or emotional, are you willing to control your client or be an agent of reality by keeping your client on task? If your client is passive, are you willing to advocate for him or her? If your client is resigned to settlement failure, are you willing to make them continue to mediate?

8. **ATTORNEY FEES.**

Settlements, rarely, rarely (did I mention rarely?) include the payment of another party's attorney fees unless: 1) that fee is paid from a trust, estate or guardianship corpus, or (2) everyone gets their fees paid from some pot. Therefore, if recovery of attorney fees is a condition precedent to settlement: 1) make sure all parties, attorneys and the mediator know it in advance, and 2) don't say it if it isn't true. If you have a statutory or contractual basis to demand fees, publish it to all counsel. If you have a viable claim to demand fees, don't dilute it by asserting ridiculous hourly rates or fee totals.

9. **PERSONALITIES DRIVE BEHAVIOR.**

- **The Bully.** The Bully has always gotten his way; he has to. He will not, I repeat, will not, settle unless the terms are: 1) his idea, and 2) accepted as part of his offer, which must be the last offer made. How do you manage the Bully? Let him be in charge. Let him define proposals. Ask him questions. Don't tell the Bully what to do. Instead, plant seeds that will lead to settlement as though they are the Bully's idea. To make proposals acceptable to the Bully, phrase them in a form that uses words the Bully has used during the course of the mediation. You know you have successfully managed the Bully when he or she repeats your, or the other opponents, words and phrases as though they are his own.

- **The Downtrodden Young Sibling ("DYS").** This sibling has been getting the short end of the stick since the Bully threw sand in his face in the sand box. The Bully may not even be a participant; it doesn't matter. The DYS will react in one of two ways. He will either: 1) remain downtrodden and resigned to the fact that he can't win, or 2) overreact with unproductive venting, *e.g.* "I'm not going to put up with it this time." If the DYS continues to act downtrodden, explain how mediation can even the playing field in large part because, unlike the rest of life, including in court, the DYS does not have to meet face to face with his oppressor. Tell the DYS you are working for him in the other room; every DYS needs an ally. If the DYS is overreacting, side with him. Agree with him to help him make a fair and productive proposal to "get what he is due, for once" but don't be afraid to add a dose of realism. The DYS may not recognize a good offer because he is used to getting the short end of the stick and assumes every offer is bad. Slowly encourage the DYS to be more analytical and less emotional. Use phrases such as, "Let's break this offer down to see what you are getting" or "Let's list the pros and cons of this offer to see how it benefits you." Use positive words.

- **The Martyr.** There are two kinds of Martyrs; Real Martyrs and Self-Proclaimed Martyrs. Real Martyrs really have earned what they believe they are entitled to.

Self-proclaimed Martyrs don't deserve what they claim to have earned; they have a sense of entitlement.

There are also family martyrs and corporate martyrs. The family martyr is a mediation participant in a family law, will and trust or closely held business dispute who believes he has done all the work and not been fairly compensated. The corporate martyr represents a corporate participant and feels like he has taken on an unfair burden in the corporate structure.

The key to settling with a Real Martyr is to get them to understand that life is not always fair and that even though they deserve more, they are best served, in a global sense, by accepting somewhat less than they deserve. A good phrase for a real Martyr is "this is not your fault, but it is your problem. Think about how we can get an acceptable deal for you, given the reality of what we are dealing with." At times it may also be helpful to tell the Real Martyr, "I know there is an economic part of this negotiation, but I feel like you didn't do what you did because you expected to be paid. You did it because you are a caring person and it was the right thing to do."

The key to settling with a Self-Proclaimed Martyr is to agree that they deserve much and then to convince them that what they are offered legitimizes and values their martyrdom. A good phrase for a self-proclaimed martyr is, "look, it is intense in the other room. Every dollar I bring over here is an acknowledgement that you deserve a dollar more."

- **The Bitter Participant ("BP").** Bitterness defines and consumes the BP. The BP is bitter, plain and simple. He may be bitter about his lot in life, a lack of success or a failed relationship. Unlike many other personality traits that impact mediations, it really is important to understand why the BP is bitter and when it happened. It may be the case that a certain result in a mediated settlement can address the why and the when. The party opposite to the BP should be told why the BP is bitter and when it happened, not so much to pursue the cliché and usually unrealistic "group hug", but to creatively devise non-economic proposals

to acknowledge the bitterness and, at least for one day, move past it. The BP needs to understand that neither mediation nor settlement will eliminate the bitterness and that it is simply unproductive and self defeating to negotiate as though the day after settlement (or trial) will erase the fact that the seminal bitter causing event occurred.

- **The Agent of Anger ("AA").** The AA is distinguishable from the Bully and the Bitter Participant. Identifying those distinctions is essential because the negotiation behavior of these three traits is different. The Bully negotiates to impose his will. The Bitter Participant negotiates to achieve retribution. The AA often will not negotiate, sometimes refusing to make an offer. There are three steps to managing the AA. First, let the AA be angry. Let the AA vent his anger, sometimes even at the mediator. Legitimize the anger without promoting it. Say things like "I understand you are angry and I understand why."

  Second, tell him it is time to briefly set anger aside to focus on what is best for him. Say things like, "I know you are angry and I don't blame you, but now we need to focus on an offer." The AA will often understand that the other side wins if he shuts down, purely out of anger. The AA's counsel also understands that the AA makes a terrible witness, so there is extra incentive for the AA's counsel to press the AA to settle.

  Third, let the AA know there will be many highs and lows during the course of the mediation and he will have to weather through them. He will fall off the anger management wagon more than once. The key is to skillfully get the AA back on that wagon through time outs, leading questions and tough love.

- **The Gambler.** To the Gambler, mediation really is a contest; it's a game. Many mediation participants think they are gamblers, but few really are. There is a huge difference between a negotiator or bargainer, and the Gambler. Most parties have negotiated to buy a car, a house or a garage sale item. All negotiators have their limits because they possess some amount of realism, practicality and risk aversion. Gamblers are neither realistic nor practical. Gamblers embrace risk.

They are fearless and unyielding because they honestly believe they will not lose. Gamblers are the most difficult of all mediation participants. A mediator, opposing party or counsel often cannot confirm the personality of the Gambler until late in the mediation process. Once that occurs, the opposing party must understand they have only two viable choices: 1) concede to the Gambler's inflexible wishes, or 2) call his bluff and be prepared to go home without a settlement. Tell the Gambler's opposition, "This guy really will walk away."

- **The Technician.** The Technician often has a technical background (engineer, scientist, computer scientist, actuary). They are highly analytical, sometimes to the point of abstraction. They can get lost in non-essential detail. The key to working with the Technician is to: 1) be patient, 2) agree on what information is critical, and 3) know when to call for the question.

- **The Corporate.** The Corporate participant comes in three versions:
  - **The Upper Level Executive.** The first version is the high level corporate executive. This participant can be long on ego and short on patience. He or she has often risen to a lofty position because of drive, talent and intellect. Those traits are very helpful in climbing the corporate ladder but can get in the way of patient productive mediation participation. The daily routine of The Upper Level Executive is fast moving and does not involve routine challenges by those who work for The Upper Level Executive. The Upper Level Executive (and ego) is not used to being pushed. So, don't overtly push The Upper Level Executive; nuance is the key. Instead, let The Upper Level Executive know you NEED his or her a. insight, b. negotiating skill and c. instinct. Tap The Upper Level Executive on the head with a baton, not a sledge hammer. Also let The Upper Level Executive know the mediation process is dynamic, not linear, because you will need to promote patience. It is a marathon, not a sprint.
  - **The Entrepreneur.** The Entrepreneur needs little introduction. They are self-made, successful, hard driving, creative thinking, risk takers. They usually have experienced success and failure. That makes them more risk tolerant. That risk tolerance has to be taken into consideration, not dismissed. Let The

Entrepreneur know her time is better spent on exploring new opportunities and making money than by litigating. Suggest The Entrepreneur knows business and needs to make a business decision.

- **In-House Corporate Counsel.** For whatever reason, In-House Corporate Counsel often feel like they have to prove themselves to outside counsel and that outside counsel and mediators somehow feel In-House Counsel aren't "real attorneys" because they haven't chosen private practice. These perceptions have to be dealt with by making sure the In-House Corporate Counsel is an integral, essential and driving participant in the mediation. Refer to the party as "your client" so the In-House Corporate Counsel knows you acknowledge her role as an attorney, not a mere corporate representative. Invite the In-House Corporate Counsel to privately discuss mediation strategy by asking "would you like to discuss where we go next with your client, without me, for a few minutes?" Also, be sensitive to the reality that In-House Corporate Counsel function in the world of corporate politics and may be unwilling to take a position that could be politically unpopular or could be viewed as challenging corporate authority. In such instances, don't be afraid to sidebar with In-House Corporate Counsel and offer, as mediator, to advance the politically unpopular position to take the pressure off In-House Corporate Counsel. A dose of "good cop, bad cop" can go a long way with In-House Corporate Counsel as long as the mediator is the bad cop!

- **The Middle Child.** You know the middle child syndrome, right? "I am not important or heard and have inferior standing in the family structure." I used to think the middle child syndrome was fiction. I don't anymore. For whatever reason, middle children do feel left out and that can result in elevated expectations to make up for perceived inequalities of the past. Realize it and manage it. Make sure The Middle Child knows you are listening and The Middle Child is heard.

- **Feudal First Born Male Syndrome.** For some reason, many first born male children think they should receive more, particularly in estate, trust, farm and closely held business disputes. First, tactfully explain to them they aren't entitled

to anything. Second, make them feel like they are the new patriarch or matriarch. Third, tell them we don't have serfs and knaves anymore.

- **The Mr. Rogers Generation.** "You are great." "Good job." "Be what you want to be." "You deserve it." "Don't let anyone hold you back from your dreams." While all of these exhortations may be valuable contributors to self image, The Mr. Rogers Generation tends to show up at mediation with a sense of entitlement. Our job is to help The Mr. Rogers Generation feel validated based on fair and equitable proposals. Also let The Mr. Rogers Generation know that a mediation is not the place to live out their dreams and be everything they can be.

- **The Smartest Person In the Room.** In life and in mediation we have met many people who have to be the smartest person in the room. The difference is in life outside mediation, we don't have to let the purported smartest person in the room get away with it, but in mediation we do. There is no upside to challenging The Smartest Person In the Room in mediation. Let them be The Smartest Person In the Room. More accurately, let them **think** they are the Smartest Person In the Room. Go to them for guidance. Ask them their opinion in a way that solicits their superior wisdom, instead of being more directive. Imply the answer by your phrasing of the question, such as "I am struggling with where to go next. Do you think it would be a good idea to (fill in what you, as mediator, want to do here)?"

- **The Timid/The Pleaser.** The Timid participant lacks self-esteem. The Timid typically wants to please everyone, dispute no one and is conflict adverse. In extreme circumstances, The Timid may be virtually incapable of making a decision because The Timid would rather make no decision than make a poor decision. Extra care must be taken to coach and inform The Timid. Use whiteboard illustrations to track offers and pros and cons of offers. Encourage The Timid not to regress to prior mediation offers and, instead, to keep moving forward. Use encouraging, supportive language such as, "you are doing fine," "we are on track and just need to keep moving forward," and "hang in there, we can get this done."

- **The Athlete.** The Athlete always has to win. It doesn't matter what the contest is, The Athlete has to win. More accurately, The Athlete has to be able to say The Athlete won. Often, The Athlete was a less than star quality athlete in high school. Rarely, was The Athlete a truly accomplished athlete. The Athlete has never gotten over the fact they weren't recognized as the athlete they are. The simple solution to working with The Athlete, is to let them win. The challenge is defining what a win is. Find creative ways to describe why a particular settlement would be "a win" for The Athlete. Use phrases such as, "I know this isn't just about winning for you, but for what it's worth, the offer I just brought in here feels like a win for you to me; it was painful for your opponent and if we settle this, I can assure you she won't feel like she got the best of you." Also be prepared to warn that winning in Court is not like winning on a basketball court. A basketball game (or any other sporting contest) can be won by the slimmest of margins. In Court, a party usually has to win big or win it all to have a meaningful victory.

10. **DRAFT IT LIKE YOU WANT IT.**

If you want to lay the foundation for the written terms of a settlement document, draft it before the mediation and circulate it to opposing counsel and the mediator. You wouldn't negotiate a complicated business contract and prepare it in a hurry at the end of a twelve hour day. Why would you treat a mediation settlement agreement differently? Most mediators are willing to word process the settlement agreement (usually with limited administrative skill and efficiency), but the mediator is not the drafter. It is not his contract; it is the parties' contract. Thus, counsel for the parties should anticipate the necessary language for an acceptable settlement agreement and have it ready before the mediation.

PART II: COMPLEX BUSINESS LITIGATION

Complex business mediation is driven by the nature of the transaction, complex financial and accounting information and voluminous records and documents. Certainly, the participants' personalities play an important role in complex business mediation, but if the attorneys and the mediator do not have a firm understanding of the transaction and financial information underlying the disputes, the chance to mediate a resolution drops precipitously.

Here is my top list of key mediator considerations to promote a mediated settlement of complex business litigation.

- **Rule Number One.** I have a rule in my law practice I try to always remember and try to impress on my colleagues. I call it "Rule Number One". Rule Number One is read the documents. In complex mediation that means, as mediator, you need to acquire and read the governing documents. Complex business litigation usually involves the application and/or breach of entity documents and contracts, including exhibits to complicated contracts. Be sure the attorneys provide you with these documents. Read and understand them, focusing on the key disputed provisions.
- **Pregame.** I strongly recommend the mediator and attorneys meet before any complex business mediation. Why is this meeting important? It is important for two reasons. First, such a meeting gives the mediator an opportunity to determine if the attorneys are prepared. If they aren't prepared, you won't be prepared. Have the attorneys compiled the key documents? Have they compiled key financial information? Are asset appraisals and business valuations needed and have they been prepared? Second, a pre mediation meeting provides an opportunity to identify which financial information and documents the parties agree on and which they dispute. Sorting those issues out before the day of mediation can save a half day of haggling when it is time to mediate. If you conduct a pre-mediation attorney mediator meeting, take care to document that the meeting is part of the mediation process and, therefore, governed by the Indiana Rules for Dispute Resolution.

- **Seek Consensus on Scope.** Parties to complex business litigation often have multiple relationships. Not all of those relationships may be part of the litigation. It is very difficult to achieve resolution when the parties are mediating different things. Encourage counsel to agree on a written list of items that are being mediated. By flushing this list out in advance, you will also learn how each party prioritizes the issues. Without such a list plan on burning several hours just trying to get the parties to agree on the scope of the mediation.
- **Has Necessary Discovery Been Completed?** Some mediated disputes can be successful without completing any significant discovery. Saving discovery costs can promote early resolution of some disputes. Complex business mediations do NOT fall within this category. Key discovery must be completed to equip the parties with the document and financial discovery they need to make informed decisions. In my experience when that discovery does not precede the mediation, the mediation either fails because the parties don't have the information they need to make them comfortable or the mediation is continued and rescheduled so necessary discovery can be completed.
- **How Many Sessions are Enough?** It is often not feasible to wade through complex business litigation issues in one day. At the "pregame" meeting or otherwise, communicate with counsel to determine whether more than one day is needed to maximize settlement potential. Multiple day mediations are tricky. On one hand, it helps to have one day to lay groundwork on the first day that can lead to settlement on the second day. On the other hand, it is a challenge for the mediator to make sure the parties accomplish something on the first day, when parties know there are more mediation days to follow. It is also a challenge to preserve momentum in multiple day mediations.
- **How Many Mediators are Enough?** Sometimes there are so many parties to a complex business mediation that one mediator cannot efficiently conduct the mediation. If you know that going in, suggest two mediators. It is not easy to mediate the same case the same day with another mediator. It takes a plan. Don't expect to show up and meet in the hall occasionally to figure out where things stand. Try to divide the mediation between the mediators by issue or groups of parties. If some parties are involved in less than all the issues, use one mediator to work with those parties and carve them out.

- **Structure First, then Terms.** When mediating complex business litigation it is absolutely critical to work with the parties to identify an agreed structure before attempting to achieve consensus on dollar amounts or specific settlement terms. If you don't work on transactional structure first, the parties usually get bogged down in minutia. As you prepare to mediate complex business litigation think about what kinds of structure might promote settlement. Should one party buy out another? Should an entity or its assets be sold, in whole or in part? What collateralization issues might arise in a buy out or sale? How will you handle the situation if both parties want to be a buyer or a seller? I often challenge the parties and their counsel to "get on the same interstate first, then try to agree on the same exit" when suggesting they agree on structure first.
- **The Dreaded Buy/Sell Agreement:** Many complex business mediations involve buy sell concepts and documents. There are a couple of challenges presented by Buy Sell documents. They often are poorly drafted or outdated. Many buy sell arrangements require the parties to update valuations and the parties often don't. For whatever reason, one party wants to ignore a buy sell arrangement when it comes time to apply it. Read the Buy Sell arrangement before the mediation. Is it mandatory or optional? If it is optional, the party holding the option will try to leverage that option. Determine who is bound by the Buy Sell arrangement. Make sure all parties who are bound are at the mediation to promote a global settlement. Nobody likes settling less than all the issues. Be prepared to politic your way through Buy/Sell agreement drafting issues if the scrivener is sitting in your conference room.
- **The Dreaded Covenant Not to Compete.** If you are mediating a covenant not to compete, be prepared to manage some seriously angry people. Also be prepared for attorneys who won't agree on whether the scope of the covenant is enforceable. These cases are hard to settle. The bottom line is the accused violator better plan on writing a check if he wants to compete and the protector of the covenant better be prepared to go to trial or allow some form of competition for a price. Be prepared to tell the accused violator "Can you risk an injunction that shuts you down? Do the math and make a business decision and write a check to buy yourself out of the covenant." Determine whether there is a prevailing party attorney fee clause in the covenant agreement. While

attorney fees often aren't much of a bargaining chip in business mediation, the risk of paying the opponent's fees after your business is shut down can be an attention grabber.

- **Timing is Important.** High dollar business mediations usually involve seasoned business men or women with in house and outside counsel. The participants are used to high pressure negotiation; it's what they do. They are typically also used to litigation and thus are not intimidated by it. These business veterans usually arrive with plenty of ego. Consider scheduling high dollar business mediations just a few days before trial because high net worth parties usually don't get motivated to settle until trial is imminent.
- **Second Bite at the Apple.** If your initial mediation session is unsuccessful, don't give up. It is often possible to settle the case through email and phone calls just prior to a trial, when cagy business tycoons have played the bluff as long as they can and are finally ready to settle to avoid trial risk.
- **Attorney Fee Risk May Not Help.** Highly successful business men and women don't like to pay attorney fees any more than most people, but they are used to it and can afford it. Don't plan on the threat of ongoing attorney fees being much of a motivator. In fact, using attorney fees as a threat can come off as amateurish in complex business mediation.
- **Use the Threat of Bad Press and Social Media.** Don't underestimate the impact of bad press in business mediation. No matter how big the business is, it is the baby or brain child of the key decision maker. That person does not want his baby smeared by bad press and he certainly doesn't want the value of the business impacted by the press. Ask the decision maker "how much would you have to lose in sales because of the press following this case for a week or a month to make it wise to settle this case?"
- **Big Ego, Big Picture.** Highly successful business men and women often have big egos and focus on the big picture. They pay others to focus on details. They don't have time or inclination to focus on every detail. If you try to get them to focus on every detail you will lose them. Figure out what their big picture is and focus on that.
    - **Documenting the Complex Business Mediation:** We all mediate settlements that can be quickly documented with a standard mediated settlement agreement. That is not the case for complex business mediations. We all prefer that a mediated settlement be reduced to a signed and binding settlement contract AT

the mediation. It is not appropriate or prudent to expect a mediator to prepare a complex business settlement agreement at the end of a lengthy mediation. Ask the attorneys to prepare and exchange proposed settlement agreements before the mediation that leave blanks for key settlement terms, such as dollar amounts. Even then it may not be possible to complete and execute a complex business settlement agreement at the mediation, but at least some of the critical terms might be worked out in advance.

PART III: HOW TO CLOSE A DEAL TO YOUR ADVANTAGE IN MEDIATION

- **Don't Negotiate in 5's or 10's:**

  When you negotiate in 5's and 10's (such as in $5,000 or $10,000 increments) you will often give up ground by the end of a negotiation. Negotiate in 2's or 3's or 7's and 8's and you can grab two or three thousand dollars on each volley, especially on the last two or three volleys before a settlement.

- **"Invoke the Timeout":**

  After the mediation has gone on for a while it is sometimes helpful to slow it down. If the other side is getting overly aggressive put them in "time out"; take a break, let them sit for a while. This can indirectly communicate you are there for the long haul or give them time to cool off if negotiations have become heated. You don't have to announce you are invoking a timeout; just take one. This can also give your client a chance to collect his or her thoughts and take a deep breath.

- **Is this a Feud or a Crusade?:**

  Virtually every mediation involves either a nasty feud between long warring parties or a crusade on the part of one party. Determine which it is. If the dispute is a feud, both parties have an ax to grind and an agenda that may cloud their vision and, in fact, lead to poor decision making. If your client or your opponent's client is simply on a crusade, you won't change that thinking during the course of the day. Try to structure conversations and proposals that have the appearance of fulfilling whatever mandate that crusader seeks to accomplish. A crusader needs a sense of fulfillment. Find a way to provide it.

- **Russian Roulette:**

  Particularly when asset values are disputed, turn the tables on an offer. If, for example, your opponent offers you a piece of real estate or closely held interest as a part of an offer at a certain high value, flip the offer and offer it to them at the

same value. This will quickly recalibrate the discussions so a reasonable value can be assigned to assets, the division of which is being negotiated.

- **Demands are Not Offers**:

  Sometimes offers have been made before a mediation and sometimes they have not. At a minimum, each party should communicate their best case to the other parties before the mediation. Remember, however, a best case proposal is a demand, not an offer. It is not productive to begin a mediation that merely restates your best case or demand. That is not a negotiation and sets a horrible tone for compromise. If you want the other party to show some movement, show some movement yourself.

- **Beware the Condition Precedent or Subsequent:**

  Many final mediation agreements include either a condition precedent or subsequent. If you need to include such a provision, make sure of two things. First, make sure that condition is a hill your client is willing to die on, because once it is made a part of the contract, a condition can be used either as a weapon or a shield. Second, make sure the condition precedent or subsequent is carefully drafted into the settlement agreement. Unfortunately, I have seen several mediated settlement agreements fall apart later because of an unfulfilled condition or a poorly drafted one. Consider a penalty provision that increases the cost of settlement in lieu of a condition precedent or subsequent.

PART IV: TOP 10 THINGS THAT DRIVE MEDIATORS CRAZY

I. INTRODUCTION:

A. I was going to title this presentation “It’s All About Me”.

B. We have been actively mediating cases for 30 years.

1. Unprepared attorneys.
- Two kinds of submissions that aren’t helpful.

2. Unprepared clients.
- Has mediation been explained?
- Do the clients understand mediator is a neutral?
- Have clients agreed to a first offer?

3. Entourages.
4. Enabling attorneys.
5. Conflicted attorneys.
    - The quick list
        - Do you represent a PR or Trustee and an individual beneficiary?
        - Do you represent an estate and an entity it owns and beneficiaries and shareholders differ?
        - Do you represent several beneficiaries who disagree?
        - Do you represent entities’ owners of which are now parties?
        - Did you draft documents that are flawed?
6. Unsupported valuations.
    - Objective valuations and appraisals are very helpful.

- Baseless valuations are not.

7. Surprise add-ons to offers.
   - Get it all out there in first two moves.
8. Tangible personal property disputes.
   - Must, must, must prepare the client:
     - Have a list.
     - Explain family auction alternative.
   - Don’t let the tail wag the dog – too much leverage against your client.
9. Surprise quitting times. As you know, non-insurance driven mediations are rarely quick.
   - Parties have to first tell their story.
   - Then they have to agree on the pot.
   - Then have to roll up your sleeves and get to work.

Part V: Lessons I Have Learned

Give Credit When Credit is Due. Nuance When It is Not.

It is easy for a mediator to get hyper-focused on settlement and to push the process as quickly as possible, simply because we want the case to settle. Remember to slow down and acknowledge the productive effort of parties who are genuinely engaged in the process. Thank them for their efforts. Thank them along the way for specific considerations, concessions and well-reasoned proposals.

On the other hand, when parties are not being helpful, take the time to nuance your comments with those parties. Try to win them over with nuance instead of hitting them on the head with a sledgehammer.

The Settlement is the Parties' Settlement, not the Mediator's. The Parties Have to Take Ownership of the Settlement.

If we are mediating with the passion we should be, it is easy to become discouraged when we feel a mediation slipping away. It is even easier to feel responsible for the failure of the parties to reach an accord. Remember, our job is to do our best, not give up, and provide measured, well-reasoned input. If we have done that and dispute resolution does not occur, don't be too hard on yourself. Sometimes the parties need reminded this is their settlement and they have to take ownership of it.

Charities Can Be Less Than Charitable

With all due respect to the many charities and not-for-profits that do wonderful things, I have had the opportunity to work with charities in many business, will and trust mediations. Almost without exception, the representatives of the charities, be they board members assigned to a settlement committee, or in-house counsel for large national charities, are particularly difficult and inflexible.

Charities tend to be driven by two misimpressions. First, they confuse legality with morality. Because their missions tend to be driven by a socially accepted form of morality, they believe that being named as a party to a suit is immoral as well as illegal. Of course, neither is true. Morality lies in the eyes of the beholder. Different "ethically moral" positions can be taken, but be adverse. As we know, parties often conflate morality, ethics and legality. Morality rarely overlaps with legality. Charities need reminded of this early and often.

Second, charities believe their reputation will be harmed and their donor base will be compromised if they settle a dispute. Their justification for this position is that if donors become aware their gifts may not be fully realized because a charity buckles in the face of litigation, it could dampen donor trust. What charities don't realize is the vast majority of their donors are unaware of a single piece of litigation involving a charitable gift. They give too much credit to donors and whether they would even know the litigation exists.

Third, charities need to be asked how donors would feel if they don't compromise and engage in litigation and lose an entire gift. At the end of the day, while many charities do good work, they can only do that work if they make prudent business decisions. The representatives of the charity need to be reminded they ultimately have to make a sound business decision in order to maximize the net benefit of a litigated gift.

Know Your Audience and Work the Crowd

- I have spoken often about specific personality traits that drive behavior in mediation. I would be happy to provide that paper to anyone. Feel free to email me.
- In short, you need to engage what I call a personality driven approach ("PDA") to mediation. Identify key personality characteristics that drive behavior in mediation, understand the audience, take them as they are, and use their central personality traits to motivate productive behavior. It may seem disingenuous for us to be different people to different parties. There is nothing disingenuous about changing how you interact with parties to make them feel more comfortable. The more comfortable they feel, the less threatened they will feel by the process, and by you, and the more able they will be to participate productively and objectively.
- The four steps to PDA to mediation are:
  - Step One: Spend the first session or two identifying the specific personality trait of every participant (stay tuned);
  - Step Two: Build rapport by tailoring your interaction with each participant to a specific personality trait. This rapport building is personality trait specific;
  - Step Three: Identify what that participant needs, psychologically, not financially. The personality trait drives the dollar amount a participant will settle for, not the other way around;
  - Step Four: Acquire an offer that gives each participant what he or she needs, psychologically.

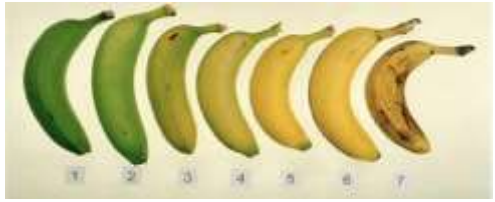
A Little Drama Can Go a Long Way

- The Time Out:
  - Sometimes despite our best efforts and exercise of herculean effort, a party just won't listen, will continue to interrupt, and refuses to participate in any helpful way. If all less drastic approaches have failed, sometimes a party has to be put in "time out" to get their attention. That requires the mediator to be firm and to ask a party and their counsel to take a break to discuss whether they have a goal to settle and to invite the mediator back into the process when they have evaluated and revised their approach to the process. In a similar vane, some parties tend to make repeated ridiculous and inflammatory offers. We all know that ridiculous offers open almost every mediation. Despite the fact we would all like to avoid that, it is part of the process. However, when some progress has been made and a party wants to go significantly backwards or make an absurd offer late in the day, don't be afraid to say "I am not going to take that offer in there, because if I do we are going to lose all the momentum we have and I don't want to do that to you". Sometimes this comment needs to be made to counsel who may be driving the party to make unreasonable offers.

Push Pause for Success

- Let's face it, we have mediated a lot of cases and those cases tend to fall into patterns, as do the participants. It is easy for us to identify a game plan and know what has to be done to settle a case. Sometimes, however, we, as mediators, need to push pause for success. We need to step out of the caucus rooms, take five or 10 minutes, review where the case has come and where it is going and consider different approaches. Don't get locked into your own game plan.

If the Case Doesn't Seem Ripe for Mediation, it isn't Ripe for Mediation



As neutrals, we want parties to take advantage of mediations and resolve disputes as soon and as inexpensively as possible. There's nothing wrong with that goal. Some cases that have few facts and little history can be mediated very early, with little to no discovery. Most cases, however, need some discovery and exchange of evidence so the parties feel educated enough to make meaningful concessions. Without a sufficient amount of education, the parties simply won't feel compelled to make concessions.

If you have a feeling a pre-suit or early-suit mediation is premature, schedule a conference call with counsel to discuss what information should be exchanged before a pre-suit or early litigation mediation. If early into mediation you realize the parties simply don't have a sufficient amount of information and are attempting to conduct discovery at an early mediation, discovery they will then have to review, suggest the mediation be continued and agree on a schedule for the exchange of discovery.

Phrases to Live (and act) by:

- **"I like to give a little as I take a little".** When a party is struggling to make another offer and has run out of energy, they may be experiencing analysis paralysis. They may also get fussy and claim they have given up far more than their opponent. Such parties are usually overcomplicating the process. Telling them "Don't think about what your opponent is getting, think about what you're keeping. Right now, you're simply making an offer to get an offer and every time you get another offer, you get closer to settlement."
- **"Work on structure first".** Every settlement requires two things. First, the parties have to agree on the structure of the settlement. What are the components, the building blocks, that are essential to settlement? Many mediations offer different options for settlement. This is particularly true in large dollar mediations that involved structured settlements, complicated business mediations, complicated tax mediations and will and trust mediations that involve numerous parties and various forms of assets. It is critical to discuss and agree on the structure of settlement first. Don't focus on the dollar values or asset values until you can agree on a structure. If you try to focus on dollars and assets first, you will end up wasting half the day and, ultimately, end up working on the structure before any meaningful progress will be made.
- **I explain it like this: Get on the same interstate; then get off at the same exit.** Until we agree on a structure for the settlement (the building blocks that are necessary to settle), you will be speaking Italian and they will be speaking French. We first have to start talking the same language and then we can roll up our sleeves and really get to work. Another way to put this phrase is that "until we agree on the same structure, the same building blocks for settlement, we are on parallel interstates that will never intercept". We first have to be driving on the same interstate in the same direction; that is the structure. We then need to get off at the same exit; that is the settlement.

When Do I Use my Negotiating Capital?

- Every party has a limited amount of negotiating capital to spend. Parties and, with shocking frequency, their counsel, don't understand the pace at which negotiating capital should be spent. That capital is finite. In more mediations than not, I find that neither a party, nor her counsel, have an effective appreciation for when to push the accelerator and when to hit the brake. Parties and counsel often spend negotiating capital too fast or too slow. They also suffer from the misbelief that that capital should be spent at a level pace over the course of a mediation period. I am convinced, and I am sure you are too from raw experience, that making larger moves can result in a better result several moves later if the timing of a larger move is carefully considered. A good mediator will take that move and make the most of it in the opposing caucus room. By the same token, there are times when a "get their attention" small move is appropriate. That timing should also be carefully considered.

Believe it or not, some Parties Lie – What do I do?

- One thing we have become very good at as mediators is judging character. It doesn't take us long to know when a party is lying to us. There is no profit in calling a party out when you know they are lying. Obviously, to do so would destroy your credibility. That does not mean, however, that lies should be ignored. In many cases, there are documents that prove whether a statement is true. When you hear something you believe to be a lie, don't state it as such in any room. Simply share the comment with opposing parties and ask them if they have any documents to respond to that comment. If they have documents proving the lie, innocently return to the declarant's caucus room and simply inform them the opposing party has asked you to share that document with them. I have found an exposed lie often redirects the dialogue between a party and the mediator. If you simply let the lie stand, there will be more to follow and the parties will think they have beaten the mediator at his own game. That is not helpful.

Be Smart, Be Patient When It Matters Most; Boil the Frog Slowly

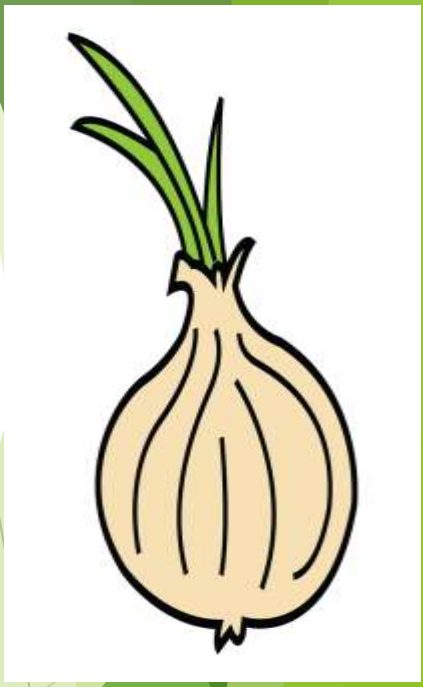
- If you are like me, you are more patient in your capacity as mediator than you are in most other things you do. That said, no mediator has an endless amount of patience. When you feel yourself becoming frustrated, take a minute by yourself, think about something else for 5 minutes or so, get a beverage (unfortunately, I don't mean an adult beverage), and realize your patience at that moment is critical. If a party detects your impatience, their impatience will grow exponentially. Tell them the mediation process is like boiling a frog. If you throw a frog into hot water, the frog will jump out. If you throw the frog into cold water and slowly increase the heat, it will be too late before the frog realizes its dilemma. That boiled frog is settlement.

Trust Me, Adding Significant Legal Provisions to the Settlement List Late in a Mediation is a Bad Idea.

- I can't tell you how many times I think I have mediated a settlement and I do a final laundry list of items that have been discussed for hours only to hear from counsel, "Oh, by the way, we need to include . . . ". That is when the additional and significant provisions that somebody wants to include in a settlement start to be expressed, for the first time. It is a horrible idea. It can derail a settlement or, at a minimum, delay it by several hours. The other room feels betrayed because items are being inserted at the last minute. It makes the mediator look bad because a party might assume the mediator forgot to mention these items. The solution is to try and anticipate items that might come up at the last minute. Ask the parties about them and tell them they need to be included early in the dialogue when the structure of the mediation is being discussed. Examples of such last minute catastrophes include indemnifications, releasing non-parties, releasing attorneys from potential malpractice claims that are separate from the mediation, mortgages and other security interests, and lists of tangible personal property that have disappeared or need to change hands.

Don’t Fixate on Arguing Over Who is in Charge. Fixate on Why it Matters.

- In various kinds of mediations, we will often encounter arguments over who has authority to do what and who is to have such authority going forward. Arguments over trustees, powers of attorney, officers and directors of entities, and guardians abound. It is easy to get into a tug of war over polarized candidates for positions of authority. Sometimes, if you peel back a couple more layers of the onion, the issue isn’t so much who is in charge, it is what they are in charge of. For example, I recently spent two days arguing about who an individual trustee had to be to serve with a corporate trustee on which the parties had agreed. We appeared to be at a dead end and then I asked what I should have asked on day one, “Why does it matter who the individual trustee is?” It turned out that it mattered because one side of the family wanted to make sure the individual trustee would not sell certain parcels of real estate that had sentimental and recreational significance to some of the family members. When I discussed that issue with all the parties, everyone agreed those parcels would not be sold and the need to have an individual trustee disappeared altogether.



Don’t Fixate on Where We Were or Where We Are, Fixate on Where We Are Going.

- Particularly after several hours of mediation, parties often get stuck. They can’t seem to find their way forward. They get stuck as they are fixated on prior offers and paralyzed in making additional offers. Every offer should have a purpose and every offer should be part of a plan. Getting parties to focus on the purpose and the plan equips them to look ahead and not dwell on the past.

Sometimes When You Ask Which Side Someone is on, it Depends on Which Day (or hour) it is.

- In multi-room mediations, parties often will align. Don't let those initial alignments fool you. Sometimes those allies are short-lived. Look for opportunities to leverage different groups of people against other groups of people in order to break log jams and make progress. Sometimes when somebody realizes the weakness of a perceived ally, it will motivate them to make more concessions in order to reinforce an alliance.

Use Math, Not Argument, Whenever Possible

- Whenever you can explain a suggested strategy or proposal through simple mathematics, the need to engage in needless debate decreases dramatically. Math is more objective. Be aware, however, that parties and their counsel often make mathematical mistakes. Mediators argue about whether it is the mediator's job to correct math errors. Sometimes, merely saying "Are you sure about that math?" "Do you want to check those numbers again just to be sure?" avoids a party making an offer and later figuring out the offer was based on false math. That scenario usually sets the dialogue back.

You are Wasting Your Time and Money if You Don't Come to Mediation with Appraisals and Valuations.

- So many business and family disputes are based on valuation disagreements. Parties come up with outlandish positions about what assets are worth and then insist on negotiating on the basis of those outlandish positions. When the facts suggest that objective valuation and appraisal information is critical, urge the parties to come equipped with professional valuations and appraisals or, at a minimum, some third party resource to support their valuation positions. I consult with a trusted CPA valuation expert who also holds investment advisor credentials as a sounding board during mediations to challenge the validity of valuation and appraisal positions. Being able to refer to a third party resource whose only purpose is to provide input to the mediator can only lend credibility to the dialogue.

DON'T THINK ABOUT GIVING IN; THINK ABOUT GETTING OUT!

There is no better goal than getting out of the mess! Can the finality and separation and its impact on health and well-being really be valued?

Section Ten

Trial Advocacy

Hon. Robert R. Altice, Jr.
Indiana Court of Appeals
Indianapolis, Indiana

Hon. Melissa S. May
Indiana Court of Appeals
Indianapolis, Indiana

Section Ten

Trial Advocacy…… Hon. Robert R. Altice, Jr.
Hon. Melissa S. May

Trial Advocacy Skills College

Jury Selection
&
Voir Dire

THEMEVISION INC

Can't you just tell me who I want on my jury?

Demographics

versus

Case-Relevant Experiences and Attitudes

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1

Preparation Is Key

Preparation for the Process

Learn all you can about the details of how your judge will handle *voir dire* in your particular case.

The Court has broad discretion. Trial Rule 47(D).

Just ask.

2

Preparation for the Process

Examples:

Will the Court do any questioning?

How far in advance can you get access to juror information forms?

Will there be time limits on your questioning?

How will your judge seat the venire in the courtroom and advance potential jurors into the jury box?

Preparation for the Questioning

Outline your questions, but be flexible. *Voir dire* should be a conversation that unfolds naturally.

Prepare a short-form (10 minute) voir dire in case your time is unexpectedly limited.

Identify your case strengths. But, also ask questions that go to potential jurors' beliefs about your case weaknesses.

Voir dire is NOT the time to try your case.

Practical Reason:

The primary goal of *voir dire* should be to eliminate biased jurors.

The secondary goal of *voir dire* should be to build rapport and begin introducing your themes.

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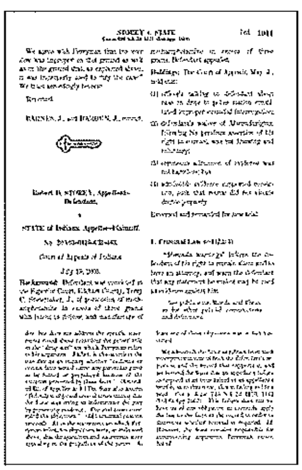
Voir dire is NOT the time to try your case.



Legal Reason:

It is improper to attempt to use *voir dire* to "try the case."

Perryman v. State, 830 N.E.2d 1005, 1011 (Ind. Ct. App. 2005)

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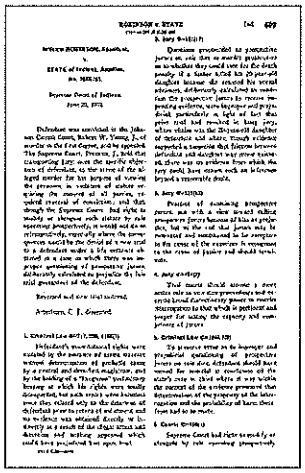
Voir dire is NOT the time to try your case.



"We think this practice is repugnant to the cause of justice and should terminate."

Robinson v. State, 260 Ind. 517, 520-521 (Ind. 1973)

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The *Voir Dire* Process

Keep your eye on the ball – identifying and eliminating bad jurors

Seek information and *truly listen* to the jurors

Make it comfortable for jurors to disagree with you

Never argue with a prospective juror

Encourage jurors to interrupt you during *voir dire*

Call on jurors and ask their opinion even if they don't raise their hand

Make sure you hear something from every potential juror who has a reasonable probability of ending up on the jury

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5

The *Voir Dire* Process

Keep your eye on the ball – identifying and eliminating bad jurors

Be conversational – don't talk more than the jurors talk

Voir dire is conversation, not a cross examination

A metric for gauging the success of your *voir dire* should be the amount of minutes more that the jurors were talking than that you were talking

Be willing to disclose things about yourself, but be genuine

Give jurors your full attention and do not interrupt

The *Voir Dire* Process

Keep your eye on the ball – identifying and eliminating bad jurors

Nonverbally indicate your interest in what each juror is saying

Keep your questions short, simple, and open-ended

Ask questions that could elicit a broad range of answers

Don't ask questions that are not really questions

Keeping Jurors Talking

The Right Introduction Helps

Some of you may not be the right match for this case. There is nothing wrong with that. You might be a better match for some other case. But the only way we can determine that is to hear from you. So, that's why it is so important for you to share some information about yourselves here in the courtroom.

*Jury selection is not the time for a lawyer to try to argue his case. All the attorneys will have plenty of time to talk later in the trial. Right now, this is **your** opportunity to talk. So, I'm looking forward to hearing from each of you.*

When I ask questions, please understand that there are no right or wrong answers. We are just looking for your truthful opinions.

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Keeping Jurors Talking

Things you can say to keep them talking.

You make a good point.

That makes sense.

That's helpful. I wonder if you can tell me more about that.

Sounds like you have thought about this before.

Thanks for speaking up about that, that is really helpful to know.

I appreciate you being open and upfront about that.

I saw you nodding. What are you thinking?

It looks like you have really been thinking about what some of these other folks have said. What are your thoughts?

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7

Ask open-ended questions that elicit a variety of responses:

Don't ask: Mr. Smith, I see here on your questionnaire that you previously served as a juror in a civil case in Superior Court. Now, is there anything about your prior jury duty that might cause you to hold some bias in this case?

Ask instead: Mr. Smith, I see here on your questionnaire that you previously served as a juror in a civil case in Superior Court. Can you tell me a little more about that experience?

Ok. And, how did serving as a juror in that case affect your opinions about our court system?

Ask open-ended questions that elicit a variety of responses:

Note:

Ask: And, **how did serving** as a juror in that case affect your opinions about our court system?

Don't ask: And, **did serving** as a juror in that case affect your opinions about our court system?

8

Use questions to the group to zero-in on potential jurors who require follow-up questioning.

Example: "Please raise your hand if you or someone close to you has ever been seriously injured in an automobile accident. Ok, please keep your hands raised for a minute so that I can be sure to see all of you."

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Challenges for Cause

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9

JURY RULE 17 CHALLENGE FOR CAUSE

(a) In both civil and criminal cases . . . . The court *shall* sustain a challenge for cause if the prospective juror:

.....

(4) has formed or expressed an opinion about the outcome of the case, and is unable to set that opinion aside and render an impartial verdict based upon the law and the evidence;

.....

(8) is biased or prejudiced for or against a party to the case; or

What *voir dire* is about

A time for you to listen to the jurors.

The time to reduce the risk of seating jurors who will not listen to you.

A great *voir dire* will not win your case, but it can get you started off on the right foot.

A lousy *voir dire* can lose your case.

10

Win Your Case In the First Thirty Minutes

How to Prepare and Deliver a Persuasive Opening Statement

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About the Author

Tony Paganelli practices law in Indianapolis, Indiana. He divides his practice into three areas: litigation, with an emphasis on business disputes; corporate and business law; and civil mediation. Tony's clients range from individuals to Fortune 500 companies, and he has represented them as lead trial counsel in state and federal lawsuits, in arbitration proceedings, and in criminal and regulatory investigations, in 21 different states and the District of Columbia.

Tony is a 1992 graduate of the University of Notre Dame and a 1995 graduate of the Indiana University Maurer School of Law—Bloomington, where he was a Managing Editor of the Indiana Law Journal.

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It's Not a Roadmap. It's Not an Outline.

The old cliché is that an opening statement is a "roadmap," or an "outline" of what will ensue over the following hours, days, or weeks. The lawyer who says this to a jury or judge then outlines what the evidence will look like and explains what will come next, and then what will follow that, and so on. In so doing, the lawyer summarizes what is to come and accomplishes. . . almost nothing, except, perhaps, to bore the jury.

Nobody gets excited reading a map. Or an outline. Don't waste this precious opportunity before the jury to tell them how a trial works and that opening statement is followed by direct examination, which is followed by cross examination, and that sometimes lawyers object to evidence, and so on. They've watched movies. They own a television. They know how trials work.

The opening statement is the trial lawyer's opportunity to get the jurors on the edges of their seats. Give them enough information about what is to come to take advantage of their curiosity and encourage them to pay attention. Tell them enough about your case to make them understand the basic message—the theme—that will be the touchstone of your entire case.

A persuasive opening statement is like a movie trailer. A trailer is not a summary or a roadmap of the movie. It is a two-minute preview of a two-hour movie, consisting of well-edited snippets of key segments of film designed to evoke a desired emotional response. A $200 million movie may rise or fall based on audience response to a trailer. If the trailer is well produced, a substantial number of people will be willing to see the movie—even if the underlying story is not especially good. The goal of the trailer is to give you the broad strokes of why the movie is appealing—stars, director, type of movie, etc. It creates impressions on the

audience. If it is a scary movie, the trailer will try to scare the audience a little bit. If it's a war movie, expect images of battle in the trailer. If it's a love story, expect scenes with the romantic leads doing romantic things. A sports movie will try to capture the excitement of the game played out in the movie. The narrator often says very little. The images and sounds of the movie itself do the talking. They start the process of telling the story. A good trailer, like a good opening statement, leaves the audience hungry to learn the rest of the story.

Present Your Theme

Like a movie trailer, the first mission of an opening statement is to implant your theme in the mind of your audience, whether it is a jury or a judge. A theme is a concept that helps a fact-finder understand your story. It is the organizing principle, or the touchstone, of your story. *It is what the case is all about.*

A theme is simple and short—one sentence should be enough. It is the lens through which you want the jury or judge to view your narrative.

A theme:

- is simple;
- has broad appeal to a very wide audience;
- is familiar;
- evokes an emotional response; and
- ties together your evidence and argument.

Some examples:

"*An Injustice Has Occurred, and Only This Jury Can Correct It.*"

"*A Deal is a Deal.*"

"Big Companies Shouldn't Be Allowed to Pick on Small Businesses."

"People Should Accept Responsibility for Their Actions."

How do you communicate your theme? Early and often. It should be communicated in your very first sentence: *"Ladies and Gentlemen, this case is about unfair competition."* Don't waste the precious moments when the jury is hanging on your every word by boring them to death with introductions or with platitudes about what a wonderful community service they are doing by serving on a jury or, worst of all, by telling them what an opening statement is supposed to be. If you do a good job, they'll get it.

You Never Get a Second Chance to Make a First Impression

Like the movie trailer, your opening statement is your job interview and first date rolled into one. In fact, some writers believe that opening statements are more important than closing argument. Studies show that up to 80% of juries have made at least a preliminary determination of how they will vote in the jury room by the end of opening statements. This is human nature. It has been said that people are not impartial about anything for any longer than they have to be. Any time people hear or read something, they instinctively agree or disagree with it. People naturally want to root for or against something—or someone. A local Texas politician once famously said, "there's nothing in the middle of the road except yellow lines and dead armadillos."

Furthermore, once people make up their minds, they do everything they can to avoid having to change them. Why? Because nobody wants to admit, even to themselves, that they made a mistake. And the longer people hold an opinion, the less willing they are to change it. This is why rationalization is such a powerful force in human psychology.

In other words, you don't have any time to waste. In the first minute of your opening statement, you have to capture the jury's attention and establish a rapport with the jurors. How? Get the jury involved in the case. Once you tell them the theme of the case, remind them of their role in the process and of the power each juror wields over your client's well-being. Once you tell them what the case is about, tell them what you want them to do about it. "*Ladies and Gentlemen, an injustice has occurred and only this jury can correct it. Courts and lawsuits are about righting wrongs and making sure that people are treated fairly under the law. Your job in this trial is to make sure that that the legal system works for everyone, and to hold people accountable for their actions.*"

Edward Bennett Williams, regarded by many as the finest trial lawyer of all time, said this about opening statements:

> I think the first impression you make on the jury is crucial—you start with voir dire, if you have it. Then you make an opening statement. I don't remember ever passing up that opportunity. And whatever you say in your opening statement, you had better be prepared to prove. Make sure you are absolutely right on the law and the facts. . . . Your aim is to present the best first impression of your case and your client as possible.

It goes without saying that you should never waive or defer your opening statement. This is especially true if you are a defendant and the first several witnesses that the court will hear are the plaintiff's witnesses.

Once Upon a Time . . .

The effective trial lawyer is a storyteller. Every aspect of your courtroom advocacy is part of the storytelling process. You tell your story through argument, evidence, and witness testimony, much like a film director tells a story through dialog, cinematography, sound and

visual effects, and music. Once you have captured the jury's attention, tell your story. But don't tell your whole story. Remember the movie trailer. Deal in broad themes and key points in opening statement. Leave your audience wanting more.

Once you have communicated your theme and involved the jury in your case, the rest of your opening statement is a preview (but *not* a summary) of what the trial will look like. The best way to start this preview is with a single sentence that summarizes your case. This sentence is the bridge between your theme (an abstract concept) and your evidence. Your summary sentence answers the unspoken question, *why are we here?* For example: "*Ladies and Gentlemen, we are here today because Giganticorp breached its contract with Mom & Pop, Inc. and forced them out of business.*" Like your theme, this sentence should be plain and simple. It should encapsulate what you want to prove to the jury.

Using this summary sentence as a leaping-off point, tell your story. As you do so, focus on the narrative and try not to present a witness-by-witness catalog of testimony and evidence. Let the characters develop the plot of your story. Just like every author tells a story differently, every trial lawyer will tell a story differently. The key is to engage the listeners in your story and make them care about how it ends.

When you tell your story, do so boldly and vividly. Paint a picture and immerse the jury in each scene that you are describing. How?

- Set the scene and introduce the characters. Explain how they connect to the story.
- Use clear, vivid speech and avoid jargon or legalese.

  Say: "*It happened in the blink of an eye,*" rather than "*It happened instaneously.*"

  Or: "*The car was mangled beyond recognition,*" rather than "*The car was seriously damaged.*"

• Be bold. Use the active voice. "*We will prove to you that Mrs. Smith lied.*"

Steal Their Thunder

Every lawyer has to deal with bad facts at trial. If all of your facts were good, the case would have settled beforehand. The jury or judge *will* learn about them before the case is over. The key for a trial lawyer is to control *how* the jury learns about your bad facts. The best answers are: (a) as soon as possible, and (b) from you—not your adversary. Your theme should accept and account for bad facts. If you are telling a sincere story and advocating a powerful theme, it should not be weaker for the presence of some bad facts. The theme should account for *all* of the facts, both good and bad. Bad facts are part of your story, and if you don't include them when you are telling your story, you will lose credibility and your entire trial presentation will suffer, just as the overall credibility of the witness who is largely truthful suffers when he is impeached for dishonesty on a small issue. Conversely, don't dwell on bad facts either. Remember—your role is to persuade. An acknowledgement of bad facts and a brief explanation of how they fit into your theme is sufficient.

The Zen of the Opening Statement: Argue Without Arguing

The key rule governing opening statements is that they cannot contain "argument." But what is argument and what is persuasive storytelling? One rule of thumb is that "[a]s long as opening remarks will assist the jury in understanding the evidence, they are permissible. However, when they turn distinctly partisan—asking the jury to resolve disputes, make inferences, or interpret facts favorably to the speaker—the remarks are argumentative." Tanford, "The Trial Process: Law, Tactics and Ethics" at 153-54. This rule is helpful, but a more concise

guide comes from Professor Mauet: "[O]pening statements state facts. Closing arguments, in addition to stating evidence, also can argue conclusions, inferences, credibility of witnesses, common sense, and other matters beyond the evidence itself." Still, the distinction is blurry. Where do you draw the line between persuasive recitation of the facts and argument? I submit that the reason it is so difficult to separate between "statement" and "argument" is that the distinction is artificial and almost meaningless. Persuasive storytelling is virtually indistinguishable from "argument."

Still, there are tools that allow the trial lawyer to avoid objections and warnings about being argumentative in opening statement. Chief among these are the magic words: "I will prove to you that . . . ." As a rhetorical tool, this phrase unlocks doors for a lawyer on opening statement. By telling the jury what you are going to prove to them, you facilitate discussion on opening statement that would almost certainly draw objections (which might just be sustained) if you don't qualify them in some way. Other magic words include "the evidence will show" and "a witness will tell you." These are less effective than "I will prove to you that . . ." but will also give a lawyer greater latitude to tell his or her story persuasively.

The Gee-Whiz Factor: How O.J. and CSI Ruined It for the Rest of Us

Audiences want to be entertained and impressed. Juries have been spoiled by courtroom graphics in televised trials and television shows. Other public speakers who address these jurors at work or school use charts and PowerPoint presentations. They expect you to have *something* to show them. The use of charts, diagrams, or PowerPoint presentations can give a lawyer access to presentation tools that allow for a multimedia presentation of non-verbal information, making a lawyer's presentation much more persuasive. This trend is only accelerating. But

visual aids in the courtroom are a double-edged sword. Presentation materials can be a crutch and a lawyer who relies too heavily on them, either by reading from PowerPoint slides verbatim or using them as a substitute for a powerful oral presentation, has done himself or herself no favors. They are no substitute for a compelling story told by a totally prepared advocate.

Furthermore, visuals can be distracting if they are overdone. They should complement, not replace, your storytelling. As with most things, less is more. Keep them simple and don't overdo it. Don't overwhelm the jury or judge with bullet points or show every exhibit that will be introduced at trial. And a chart or a presentation slide containing tiny text that can't be read by a jury is worse than no slide at all.

As with all things in the courtroom, the key to the effective use of visual aids is *preparation*. Plan in advance how your visual aids will present information to the jury. Work out beforehand the question of whether you can show actual exhibits to the jury in your opening statement (Have you stipulated to their admissibility? Has the judge given you permission?) Will they be pictures? Bullet points? Deposition excerpts? Blown-up documents? Think about how they will help you persuade the jury. If you're planning on using a computer-based presentation, call the court and ask for time in the courtroom a few days before the trial to figure out where electrical outlets are located and where screens can be set up. (Will you need an extension cord? You want to know this beforehand.) By getting the lay of the land in advance, you may find that the courtroom layout simply is not conducive to a big presentation. The time to make this discovery is *not* the morning of trial.

Finally, have a backup plan. Projector bulbs burn out. Computers crash. If you absolutely must use your PowerPoint presentation, bring an extra laptop and projector. See if

you can deliver your charts to the courtroom the night before. Do whatever you can to minimize the risks of technology failures hurting your opening statement.

Ask for the Sale

The happy ending in your story is a verdict or ruling in your favor. You have to end your opening statement somehow, so end it by asking for the relief you want for your client—after restating your theme and reminding the jury of their role in the process: "*Ladies and Gentlemen of the jury, at the end of this trial you will be asked to render a verdict. We are confident that, by that time, we will have proven to you that a great injustice was done here. We are equally confident that you will remedy that injustice by entering a verdict in favor of Mom & Pop, Inc. Thank you.*"

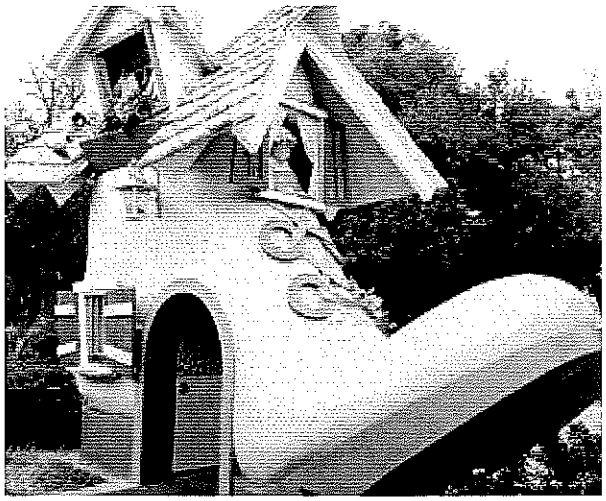
By using these techniques, you will be able to create and convey powerful opening statements that set the tone for your entire trial presentation and engage the fact-finder from the opening seconds of your trial. Good luck!

Persuasive Litigator

February 21, 2013

When You Think "Story" Think "Structure"

By Dr. Ken Broda-Bahm:



I have a five-year-old daughter (stay with me, it's relevant), and every night, just as she is going to bed, I tell her a story, creating each tale in impromptu fashion. I've been doing this for as long as she's been able to understand what I'm saying (and probably a little longer). We do this after the books are done, so I can't just rely on published help, and I can't just tell her any old Grimm or Mother Goose tale either. It has to be original and created just for that night -- no repeats. She gives me a character and a setting (e.g., a bear who wants to be president), and I have to just go with it. If that sounds like an exercise from a storytelling workshop, that is pretty much what it is. What enables me to do this night after night is not a wild imagination, nor is it just the inspiration provided by my (extraordinarily cute and creative) kid. What gets me through is a reliance on a bit of knowledge about narrative structure. That is, I draw from a well-established yet simple series of steps that a story needs to go through in order to be understood and appreciated as a story.

First, I need to set a scene and flesh out some characters (so, we meet the bear who aspires to the oval office, and I resist the urge to name him "Romney the Bear"). Then, I need to introduce a conflict or a problem (Let's say the bear has great ideas for the country, but keeps scaring off the moderator and audience when he shows up for the candidate's debate). Then, I need the final step to send the child off to dreamland: a crisis and resolution that brings the story to a close (Hmm, the debate is invaded by a swarm of angry bees, and bear saves the day by scaring them away -- everyone takes a fresh look at what the bear can offer). Okay, so I won't be winning a Newberry medal for children's literature, but it does work, and works for a reason that should matter to litigators. Keeping an an eye toward the basic structural elements of a narrative is critical to telling the kind of stories jurors will want to hear and retain. Most litigators understand that they need to tell a story, but for too many, the knowledge stops there. They'll arrange the events in a sequence, but omit some of the parts (chapters; beginning, middle, and end; conflict and resolution) that help us see it as a story. This post takes a look at the ways a little knowledge about narrative structure can help attorneys tell better and more involving stories.

The Scene: A Need to Both *Involve* and *Influence* in Court

> While the rational legal model would say that jurors and other fact finders don't need a story about the facts, they just need the facts. The problem with that is the facts don't motivate and engage, the facts don't create a framework of their own, and the facts don't organize themselves in a memorable or influential fashion. In

short, as Eric Oliver (2006) has noted, the facts *can't* speak for themselves. An adversary system expects that the advocates on both sides won't just present, they'll persuade. And a first step to persuasion is getting an audience to *follow* your view of what happened and what should happen. Even mathematics is more understandable as "story problems" framed in the narrative mode that tracks with our most basic way of understanding the world. Thanks to some research (e.g., Spiecker & Worthington, 2003) and a lot of CLE's, most lawyers now understand that they need to tell a story, and I'd wager the vast majority of trial lawyers believe that they *are* telling a story in opening and through testimony. But there's often a problem with that.

The Obstacle: A *Nominal* Allegiance to Narrative

Lawyers get it, but not always in a deep way. That is, once immersed in the facts and the super-structure of claims and defenses, the litigator may fail to appreciate that a story is more than just sequence. It is possible to present one's case by taking the facts and arranging them chronologically, walking through the timeline, sharing a series of events with "and then" inserted in between. That can convey the feeling of moving forward through time in a story-like manner, but without the recognizable signposts of a narrative, it really isn't a story and doesn't function as one. Think about simply narrating your most recent trip to the grocery story (you parked, got a cart, got tomatoes, then bread, then coffee...then paid and left). Yes, it is a chronology, but there is no situation, no conflict, no resolution. Just sequence without story. The same can occur in trial, particularly in complex or commercial litigation where we don't have the clear story elements that stand out in a personal injury case, for example. The result that we see is that, in many cases, lawyers believe they're telling stories, but jurors aren't hearing them as such. In mock trials, for example, the jurors we watch in deliberations are often creating the stories on their own instead of reacting to those presented by attorneys. But that isn't inevitable. There is a way for attorneys to exercise greater control over the stories jurors end up with.

The Triumph: A *Deeper* Appreciation of Narrative Structure

If you can't identify discrete chapters, then you probably aren't telling a story. At the simplest level, a story is as Aristotle said, "a whole" that "has a beginning and middle and end" (*Poetics*). Aristotle called these the *protasis* (the introduction or first act that sets the scene), the *epitasis* (the main action building to a climax), and *catastrophe* (the final resolution, where everything is unraveled or put back together again - depending on whether it's a comedy or a tragedy). You'll recognize this as the structure of my headings above. While it is the simplest way to tell a recognizable story (and it works great for five-year-olds), it isn't the only way.

There are about as many models for narrative structure as there are literary theorists, which is to say, a lot. Even sticking with the ancients, we could add a section called the *chorus* to each of those three steps. The Greeks used that to provide the voice of a third party onlooker to describe the proper response to these events, whether to be happy or sad for example. It is easy to see a role for that in the trial story, as an expert witness or those who work or live with a plaintiff provide that third party reaction. This chorus role reminds us that what makes a story is not just what happened, but how we should feel about what happened. For those who want to go further, there is also the notion of the *dénouement*, coming at the end or just after the climax, providing a return to normalcy or, appropriate to the legal setting, a righting of the scales of justice. If the central events leading to the lawsuit provide the story's climax, then perhaps the verdict is the *dénouement*. This also provides the central insight that jurors should have a positive role in the story: They aren't just onlookers, they're there to create justice or prevent its miscarriage, whether for plaintiffs or defendants.

Of course, that just scratches the surface of the need for narrative structure. I've also written that structure can be nonlinear -- you can begin at the end of the story, or at some other key point. Perspective, or the question of who is telling the story, also matters and you can overlap multiple stories as a guard against hindsight, for example.

But beyond all of these strategic considerations, the heart of the advice is this: Make sure your sequence is recognizable as a story, because those story elements provide touchstones that anyone can recognize, even my five-year-old daughter. If I just relied on a description of the bear, or if I just narrated a normal day in the woods, or if I just shared reason upon reason why this bear should be president --- in short, if I just conveyed information without a clear beginning, middle, and end -- the reaction would be predictable: "Daddy, that isn't a story."

Other Posts on Legal Storytelling:

- Your Opening: Tell It Like a Story, but Tailor It Like a Strategy
- Find the "Universal Morality" in Your Case Story
- Don't Put "Story" on Too High a Pedestal
- Talk to the Eyes: If It Can't Be Visualized, It's Not a Story

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Posted at 10:07 AM in Dr. Ken Broda-Bahm, Narrative | Permalink
Technorati Tags: jury, Litigation, narrative, persuasion, storytelling, trial consultant

DIRECT EXAMINATION, CROSS EXAMINATION, AND IMPEACHMENT

Prepared for Trial Advocacy Skills College
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I. BASIC QUESTIONING TECHNIQUES

A. Direct Examination

1. Open ended questions only - questions that begin with Who, What, When, Where, How, Why, Describe, Explain, Tell Us.

2. Examples of non-leading questions:
   a. Describe your sports coat?
   b. What is it made of?
   c. Where did you get it?
   d. How long have you had it?
   e. Why did you buy it?
   f. How much did you pay for it?

3. No leading questions on direct, except
   a. Preliminary matters
   b. Foundations
   c. Issues not in controversy (undisputed or inconsequential facts)
   d. Witness very old, young, or slow
   e. Witness is hostile or adverse - T.R. 43(B)
   f. No harm to opponent

4. When is a question leading?
   a. Generally, when the question contains or suggests the answer.
   b. Open-ended questions are almost always non-leading because they can not be answered "yes" or "no."
   c. Questions that can be answered "yes" or "no," may or may not be leading.
   d. In this class, if the question can be answered yes or no, it will be considered leading.

B. Cross Examination

1. Closed ended questions only - leading only.

2. Make statements - don't ask questions.

3. Short, specific statement of fact that must be confirmed or denied by witness.

4. One fact per question.

5. Examples:
   a. You are wearing a coat.

b. The coat is made of wool.
c. It has buttons.
d. The coat is black.
e. You bought it at Macy's.

6. Do not:
   a. Ask open-ended questions, i.e., questions that begin with Who, What, When, Where, How, Why, Describe, Explain, Tell Us.
   b. Ask a question to which you do not know the answer.
   c. Ask a question that contains an inference or conclusion. (Save them for final argument.)
   d. Use precedents at the beginning of the statement - e.g., you would agree that, is it true that, isn't it a fact that.
   e. Use tag lines at the end of the statement, e.g., isn't it true, isn't it correct, wouldn't you agree.

II. DIRECT EXAMINATION

A. THREE STEP APPROACH

1. Accredit the witness
2. Set the scene
3. Tell the story

A. ORGANIZATION

1. Associational - stories within stories
2. Chronological
3. Logical
4. Combination

B. PREPARING YOURSELF

1. Must have total trial plan - more than just theory of case
2. Trial Notebook
3. Preparing yourself psychologically and emotionally

a. How do you feel about case, witnesses, jury, judge, opposing counsel?
b. What do you want jury to feel?
c. What do you want witness to feel and communicate to juror?
d. How do you want to feel when you are asking questions?

C. PREPARING WITNESS

1. Tell witness what case is about and how he/she fits in.

2. Let them see courtroom - explain where they will sit, where the court reporter will be, the bailiff, judge, etc.

3. Prepare witness for objections.

4. Prepare witness for cross examination.

   a. Let them know other witnesses will say different things.
   b. Make sure they know about prior inconsistent statements.

5. Let them know it's okay to say "I don't know."

6. Let them know it's okay to say "I don't understand the question."

D. GENERAL RULES

1. Strike tone.

2. Principles of primacy and recency - order questions accordingly.

3. Select questions to fit the witness.

4. Remember purpose - to persuade jury that your case is right and just.

5. Method - you are the artist, witness is the brush, jury is the canvas.

6. Create exhibits/visual aids.

7. Use stretch out technique for effect.

8. Take care of future (especially in criminal cases) - let jury know defendant will not be a threat to victim or public in future.

9. End on a high point.

F. ANTICIPATE AND BE PREPARED FOR

1. Forgetful witness - know difference between rules and methods for refreshing memory and admitting documentary evidence as past recollection recorded.

2. All possible evidentiary foundations - be ready to establish alternative foundations for admissibility.

3. Rehabilitation - see Nine Ways to Impeach.

III. CROSS-EXAMINATION

A. Four Reasons for Cross Examination

1. Clarify direct examination.

2. Bring out favorable evidence.

3. Show why witness could not be correct.

4. Show why witness should not be believed.

B. What if you Don't Have a Reason to Cross

1. Don't cross - sometimes the best cross is no cross.

C. Control Techniques That Work

1. Proper questioning technique.
   a. Leading questions only.
   b. Make statement; don't ask real questions.
   c. Short - no more than five words.
   d. Specific - no more than one new fact per question.
   e. Examples:

WRONG:
How do you feel about drinking? (not leading)
Do you like to drink? (2 facts and is a question rather than statement)

RIGHT:
You drink.

You like it.

2. Physical control
   a. maintain eye contact
   b. no body movement

3. Physical interruption.
   a. Excuse me.
   b. Verbal command "Stop."
   c. Hand gesture "Stop" (arm extended with palm toward witness).
   d. Shake finger and say "that didn't answer my question did it."

4. Non-responsive or runaway witness.
   a. Repeat exact same question verbatim 3 times.
   b. Reversal - e.g., "so your answer is yes"

D. Control Techniques That Don't Work

1. Asking the judge for help.
2. Responding to witness, "Just answer Yes or No."

E. Irving Younger's Ten Commandments

1. Be brief.
2. Use short questions in plain words.
3. Never ask anything but leading questions.
4. Ask only questions to which you know the answers.
5. Listen to the answers.
6. Don't quarrel with the witness.
7. Never let the witness repeat what was said on direct.
8. Don't let the witness explain anything.
9. Avoid one question too many.
10. Save the point for summation.

III. IMPEACHMENT

A. Should impeachment be attempted?

1. Has witness said anything favorable?
2. Does the witness have anything favorable you can elicit on cross-examination?
3. Has the witness damaged your theory of the case? (Damage assessment)
4. Can I impeach on major areas?
5. Will it be successful?

B. Two Reasons to Impeach

1. Show jurors reasons why witness could not be correct (accuracy).
2. Show jurors why witness should not be believed (honesty/truthfulness).

C. Can you impeach your own witness?

1. Federal Court - YES (FRE 607).
2. Indiana - YES (IRE 607).

D. Nine Ways to Impeach

1. Oath [IRE 603].
2. Ability to perceive (first hand knowledge) [IRE 602].
3. Ability to remember or recollect (line-up, hypnosis).
4. Ability to communicate.
5. Bias, prejudice, interest or motive [IRE 616].
6. Prior convictions [IRE 609] - Ashton v. Anderson
7. Prior bad acts (character witnesses only) [IRE 608(b)].

8. Prior inconsistent statements [IRE 613 (impeachment) and 801(d)(1)(A) (substantive evidence)].

9. Reputation for lack of truthfulness [IRE 608(a)].

E. Technique for Impeachment with Prior Inconsistent Statement

1. Commit to present

2. Validate prior (accredit / credit)

3. Confront with prior

4. Prove-up prior

F. Other Types of Impeachment

1. Impeachment by omission.

2. Impeachment by things not done.

3. Impeachment by contradiction with other witnesses or physical evidence.

Steps for Impeaching and Refreshing Recollection

To impeach:

- Confirm
- Clue
- Credit
- Confront

Example:

- Confirm: "You testified here today that you did not see Mr. Smith get into the car?"
- Clue: Let the witness know you are going to be talking about their prior deposition: "This isn't the first time we've spoken about this, is it?" or "That isn't what you said in your deposition, is it?"
- Credit: "Do you remember when I took your deposition in my office on January 3rd, 21012?" "You were under oath and swore to tell the truth?" The same oath you took here today? You had an opportunity to read the transcript of your deposition and make changes?" "You knew it was important to tell the truth?" "You signed the deposition transcript?" etc.
- Confront: "I would like to hand you your deposition. Please look at my question to you and your answer on page 27 of the transcript, line 4-5 and read it to yourself. You said 'I saw Mr. Smith get into the car.' Did I read that correctly?"

To refresh recollection:

- Confirm
- Clue
- Ask witness to look at document
- Ask whether recollection refreshed
- Take document away
- Re-ask question

Example:

- Confirm they have no recollection: You don't remember whether you went straight to the hospital after the accident?"
- Clue: "You also testified about this when your deposition was taken?"

- As witness to look at document: "Please look at page 85 of your deposition, which I am now handing to you, and tell me when you have finished reading it."
- Ask whether recollection refreshed: "Does that refresh your recollection as to whether you did anything before going to the hospital?"
- Take document away.
- Re-ask question: "In fact, you stopped and picked up your sister first, didn't you?"

For past recollection recorded you will need to mark the document as an exhibit.

12 STEP PROGRAM FOR ADMISSION OF EXHIBITS

by
Larry A. Landis

1. Call sponsoring witness.
2. Elicit testimony to lay relevancy & factual foundation.
3. Ask court reporter to mark exhibit (if not premarked).
4. Offer exhibit to opposing counsel for inspection.
5. Ask permission to approach witness.
6. Hand exhibit to witness and identify by Exhibit No. ___.
7. Lay foundation for admissibility.
8. Offer into evidence.
9. Pass/display/publish to the jury.
10. Retrieve exhibit from jury.
11. Give exhibit to court reporter.
12. Return to starting position.

Trial Skills

Exhibits – Rutherford's Simple Notes On Getting Information Into Evidence

With Additions by Judge Melissa S. May

I. Exhibits Generally

1. Mark Exhibit
2. Show Exhibit to Opposing Counsel
3. Approach Witness (Does Court Require Permission to Approach?)
4. Show Exhibit to Witness
5. Lay the foundation

   Tangible Documents

   a) Relevant

   b) Identification-Visual or through other means

   c) Witness recognizes

   d) What it looked like on date in question

   e) Same or substantially same condition

   f) Chain of Custody

      i. Who has it, has it been continuous, exclusive and secure, or;

      ii. Kept in a uniquely marked or sealed or tamper proof container

6. Move to Admit
7. Publish

II. Foundation for Pictures/Photographs

1. Relevance (Rule 401-Relevance)
2. Witness familiar with scene
3. Fairly and accurately shows scene/true and accurate representation

III. Foundation for Diagrams and Models

1. Relevance
2. Familiar scene represented by diagram or model
3. Familiar with relevant date in question?
4. Useful to help witness explain events?
5. Reasonably accurate or up to scale
6. Drawings are the same except #5 drawing is accurate and not misleading

IV. Business Records

1. Relevance
2. Memo, reports, data compilation
3. Witness custodian
4. Record made by person with knowledge of facts or made from information transmitted by a person with knowledge of the facts
5. Made at or near time of event
6. Made in the regular practice of business activity
7. Under a business duty to make such record

V. Public/Certified Records

1. Is it certified?
2. Relevant on its face or in context of trial/hearing?
3. Move to admit and publish
4. (If not certified, use essentially same foundation as Business Records)

VI. – Social Media Posts

1. You can get social media posts through the creator of the page

a. Do you have a Facebook page?

b. Is it currently active?

c. Who has access to this page?

d. Does anyone have authorization to update or edit this page other than you?

e. How do you have this page protected?

f. (Hand copy of social media page to witness) Do you recognize what I just handed you?

g. What is is?

h. Does it appear to be a fair and accurate representation of your page (on X subject or X date?)

i. Does it appear to be altered in any manner?

j. Your Honor at this time I'd like to enter this ito evidence as Exhibit __.

2. How to get social media page through a friend of the page's creator

a. If obtained through a third party, put them on the stand and have them ID the page/post/picture.

b. Are you familiar with (defendant/opposing party/person whose page it is)

c. How do you know them?

d. Are you friends with them on any social media networks? Which ones?

e. Are you familiar with his/her Facebook page?

f. Is it currently active?

g. Would you recognize if it were presented to you today in court?

h. (Hand copy of social media page to witness) Do you recognize what I just handed you?

i. What is it?

j. Does it appear to be a fair and accurate representation of (person)'s page (about X or on X date)?

k. Does it appear to be altered in any manner?

l. Your Honor, at this time I would like to enter this exhibit into evidence as Exhibit ___.

VII. Text Messages

1. Are you familiar with the defendant/opposing party?

2. Do you communicate with them on a regular basis?

3. In what ways do you communicate with them?

4. Did you receive a text message from (person) recently/on ____date?

5. (Hand picture of text message, or group of text messages) – Do you recognize what I just handed you?

6. What is it?

7. How do you know that this is a message from the (person/Defendant/opposing party)?

    a. Name, number, nickname

8. Does it appear to be a fair and accurate representation of the text message you received on (specific date)?

9. Does it appear to have been altered in any way?

10. Your Honor, at this time I would like to enter this document into evidence as Exhibit ___.

Some tips re: social media posts & text messages

How to overcome objections to these:

1. Authentication Rule 901

    a. Rule 901 Requirement of authentication or identification.

        1. Way to Authenticate a Document

            a. Testimony of Witness with Knowledge - Testimony that a matter is what it is claimed to be.

            b. Distinctive Characteristics and the Like – Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

2. Relevancy – Rule 401 and 402

    a. Rule 401. Definition of "relevant evidence." "relevant evidence".

    b. Rule 402 – Relevant evidence generally admissible irrelevant evidence inadmissible.

c. Watch out for Rule 403 – Exclusion of Relevant evidence on Grounds of prejudice, confusion, or waste of time.

3. Hearsay Exceptions – Rule 804 – Admission by Party Opponent, excited utterance, then existing mental, emotional or physical condition, recorded recollection, reputation concerning personal or family history, or reputation as to character.

VIII Past Recollection Recorded

1. Relevance
2. Witness has no full or accurate present recollection
3. Witness once had first hand knowledge
4. Witness made record at or near time
5. Record is accurate and complete
6. Record in same condition

Credit is due to Thomas A. Mauet, Fundamental of Trial Techniques, Little Brown & Company.

EVIDENTIARY FOUNDATIONS

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TABLE OF CONTENTS

I. TWO TYPES OF EVIDENCE

A. TESTIMONIAL

B. TANGIBLE

1. Real

2. Documentary

3. Demonstrative

4. Illustrative

II. REAL (A thing involved in incident or transaction in the case).

A. RELEVANCY

1. Probative and material

2. Not misleading, prejudicial, or confusing

B. AUTHENTICATION / IDENTIFICATION

1. Key issue is whether it is the thing it is purported to be.

2. Two primary methods of authenticating real evidence:

a. Readily identifiable

(1) exhibit has unique characteristics
(2) witness observed unique characteristics
(3) witness can identify object due to unique characteristics
(4) exhibit is in same or similar condition as when originally observed

b. Chain of custody

(1) If exhibit is not readily identifiable or is fungible, there must be evidence of a chain of custody to alleviate concern about tampering or mistake.
(2) Example: Ed Hard's .22 handgun: If initialed by Det. Tharp, it would be "readily identifiable." If not initialed or nothing unique about gun, a chain of custody foundation would be required to show it was the gun used by Hard.

III. DOCUMENTARY

A. AUTHENTICATION

1. Self-authentication (IRE 902)

2. Sponsoring witness (IRE 901)

B. BEST EVIDENCE RULE (IRE 1001-1004)

C. HEARSAY (IRE 801-805)

1. Refreshing Recollection Distinguished (IRE 612)

   a. Not admitted into evidence, unless by adverse party.

   b. If while testifying, a witness uses a writing or object to refresh memory, adverse party is entitled to have writing or object produced at trial, hearing, or deposition in which witness is testifying.

   c. If used to refresh prior to testimony, discretionary.

2. Past-Recollection Recorded Exception (IRE 803(5))

   a. Witness once had first-hand knowledge.

   b. Now, insufficient recollection to enable witness to testify fully and accurately.

   c. Writing made by or adopted by witness.

   d. When matter was fresh in witness's memory.

   e. Writing accurately states information (witness can vouch for accuracy).

   f. Admission into evidence - If admitted, document should be read into evidence and not be admitted as an exhibit unless offered by opponent.

3. Business Record Exception (IRE 803(6))

   a. Original entry by person with business relationship with company or organization

   b. Kept in regular course of business

c. Because of a business duty

d. Recording facts (opinions) by someone with first-hand knowledge

e. Entry made at or near time of event

4. Public Records Exception (IRE 803(8))

a. records, reports, statements, or data compilations in any form,
   (1) of a public office or agency,
   (2) setting forth its regularly conducted and
   (3) regularly recorded activities, or matters observed
   (4) pursuant to duty imposed by law and
   (5) as to which there was a duty to report,

b. factual findings resulting from an investigation made pursuant to authority granted by law.
   (1) Not within this exception:
      (a) investigative reports by police and other law enforcement personnel, except when offered by an accused in a criminal case;
      (b) investigative reports prepared by or for a government, a public office, or an agency when offered by it in a case in which it is a party;
      (c) factual findings offered by the government in criminal cases; and
      (d) factual findings resulting from special investigation of a particular complaint, case, or incident, except when offered by an accused in a criminal case.

IV. DEMONSTRATIVE

A. RELEVANCY FOUNDATION

1. Witness is familiar with what is depicted in exhibit.
2. What is depicted is something that witness can testify to.
3. It is relevant to issue(s) in case.

B. AUTHENTICATION

1. Exhibit is in fair, accurate, true, or good depiction or representation of what it depicts at the relevant time.

C. TEST FOR ADMISSIBILITY

1. Will it help jury understand testimony of witness?

2. Is it prejudicial, confusing, or a waste of time? (FRE 403, IRE 403)

3. Even if prejudicial impact outweighs probative value, exhibit may still be admissible for a limited purpose.
Example: A photograph of a bloody knife at murder scene that was moved before photograph may be offered for limited purpose of showing blood pattern on knife.

V. ILLUSTRATIVE

A. RELEVANCY FOUNDATION

1. The extent of the foundation for the admission into evidence of models, charts and diagrams depends on the function they are being offered to serve, i.e., assist the witness in giving testimony.

2. Some courts take a relaxed approach to visual or illustrative aid exhibits and require no foundation to be laid to permit their use in helping the witness testify. Other courts may, however, insist on a testimonial foundation and formal introduction of the exhibit into evidence

B. TEST FOR ADMISSIBILITY

1. Will it help the witness in giving testimony?

C. PRACTICE TIPS

1. Offering the exhibit into evidence is recommended to have a complete record and it is necessary to allow the exhibit to be taken into the jury room.

VI. MISCELLANEOUS

A. Establish relevancy by having witness describe object, scene, etc., before exhibit is produced. Extract narrative first.

B. Don't let exhibit get in the way of having the witness tell the story.

C. Ask judge to give limiting instruction where appropriate. (FRE 105, IRE 105)

D. Choose sponsoring witness for impact and persuasiveness.

E. Leading questions may be used for laying foundations.

F. Use exhibits in opening statement

1. Get agreement/stipulation from opposing counsel.

2. Get permission from judge to use as visual aid only.

3. Offer to lay foundation pretrial by calling sponsoring witness.

G. Challenging foundation

1. Ask witness questions in CX style (i.e., leading) to lay a foundation for an objection.
"Your Honor, may I ask the witness a few preliminary questions to a lay foundation for an objection?"

CLOSING ARGUMENT

Hon. Melissa S. May
Adjunct Professor
Trial Practice
Indiana University School of Law – Indianapolis

I. Preparing for closing argument

A. Questions to ask yourself before closing

1. What is a win in this case?
2. What must the jury believe for me to win?
3. Why should they believe that?
4. Is what I am asking the jury to do fair and just?
5. If they vote for my client, will they be able to go home and tell their family, friends, co-workers, neighbors, etc., what they did and feel good about it?

B. What is the purpose/objective of closing argument?

1. To give the jury reasons why they should vote for your client.

C. What is the jury's job and what do they need to know about it?

1. Does the jury understand their primary job responsibility?
   a. This is an adversarial or accusatorial process, not an inquisitorial process.
   b. The jury should not go off on a treasure hunt searching for some truth.
   c. Their job is to decide whether the party with the burden of proof has met their burden. And, if it is a civil case with an issue of damages, to award damages, if any.

2. Do you want or need to give them a decision-making process for doing their job?
   a. Determine facts from evidence presented?
   b. Determine inferences to be drawn from facts.
   c. Apply facts and inferences to law as given by the judge.

3. Do you want to give them suggestions for how to make a group decision?
   a. How should they select a foreperson?
   b. What is the job of a foreperson?
   c. Should they take a straw vote before they start discussing the issues?
   d. How do you resolve the conflict or tension between the duty to listen to others and the duty to make an independent decision?
   e. What happens if you can't reach a unanimous verdict?
   f. Make sure you have the judge's permission before discussing any of the above.

D. How will the jury make a decision?

1. A group decision is different than individual decisions by a group.
   a. No immediate vote.
   b. No secret ballot.
   c. No majority win rule.
   d. Must be unanimous in criminal cases

E. Assume there are 3 groups of jurors by the close of the evidence.

1. Those who are with you
   a. Give them reasons to think and feel comfortable with their decision.
   b. Arm them with arguments to make your case in the jury room.
2. Undecided
   a. Identify the single most compelling reason that you should win.
   b. Then, the next 2 best reasons. You never know which issue might bring a juror over to your side.
3. Those who are against you
   a. What would convince them to think or feel they might be wrong?
   b. If you can't bring them over to your side, try to weaken their belief in the rightness of their beliefs so that those jurors who are with you can convince them to come over to their side.

II. How to Organize Closing Argument

A. Organize Facts into Chapters

1. List all facts that support your verdict
2. Group together
3. Give each block a working title or chapter
4. 3-7 chapters
5. One page for each

B. Expand Facts Under Each Chapter

1. Scour record
2. Discovery
3. Deposition
4. Physical evidence

C. Develop complete argument for each chapter

1. Each chapter must have beginning, middle, and end
2. Talk first, then write
3. Use talking points or bullet points
4. Aim for each of three groups of jurors
   a. In your favor - ammunition to make your case for you
   b. Undecided
   c. Against you - a way to save face and change mind

D. Order Chapters

1. Strongest last

2. Next strongest first
3. Throw away arguments that are weak

E. Chapter Headings and Transitions

1. Think headlines
2. Think connections and linkage for transitions

F. Delivery

1. Practice opening grabber, including getting up and walking to the jury
2. Practice closing paragraph, including walking back to chair and setting down
3. Practice delivery, but don't memorize or you will loose spontaneity
4. Always tell the jury what you want them to do – return a verdict of guilty or not guilty (never innocent)

G. Reduce to Outline

1. One page
2. Chapter headings
3. 1-2 words for each fact or piece of evidence

III. Persuasion

A. When does it begin?

1. Persuasion begins when you come within sight or sound of the audience
2. Every moment that you are within sight or sound of the trier-of-fact is an opportunity to be persuasive.
3. You are always communicating, either verbally or nonverbally.
4. There is no such thing as not communicating, you must be aware always of the messages that you are sending.

B. Three attributes of a Persuasive Person

1. Likeable: pleasant, courteous, respectful, humble, humorous.
2. Trustworthy: sincere, honest, forthright, consistent.
3. Perceived as competent: prepared, knowledgeable, professional, skilled, effective, articulate, coherent, succinct.

C. Use Persuasive Techniques

1. Trilogies – three facts, themes, etc. closely related in sequence
2. Metaphors
3. Alliteration (e.g., the moment was fast, furious, and frantic)
4. Quotations

5. Analogies
6. Silence

Final Arguments

DO

- MAKE EYE CONTACT – don't talk above them or below them rather to them.
- TONE - Have a conversational tone, they are easier and more interesting to listen to.
- MOVEMENT -Consider movement to emphasize a point to make transitions from chapter to chapter.
- DELIVERY – your presentation on a topic should match what you are saying. Voice tones and volume can emphasize and/or change the demeanor of the presentation.
- ACCURACY – make sure what you recite as evidence in the case is accurate. Misstating the evidence opens the door for opposing counsel to interrupt and shift the focus away from your closing remarks.
- PHYSICAL EVIDENCE – us demonstrative exhibits and other exhibits that have been admitted to illustrate points being made.
- COURT INSTRUCTIONS – court instructions carry weight with a jury. Use them to bolster certain points you are making.
- ASK FOR WHAT YOU WANT – Do not forget to be sure the jury knows what you want from them. Prosecutor wants a conviction and the defense wants an acquittal. Ask for it!

DON'T

- ATTACK OPPOSING COUNSEL – make substantive arguments for your case and/or against your opponent's case.
- OBJECTIONS – frivolous objections designed to interrupt opposing counsel's flow of argument can be transparent and not well received. Objections at this stage need to be substantive and for good cause not just to disrupt opposing counsel.
- INVADE JURIES SPACE – be sensitive to what and how you are saying as it relates to jury comfort. Loud and angry presentations are better received further away from the jury compared to soft, low comments about sensitive or emotional testimony.
- SLOBBERING, GUSHY THANKY YOUS – going on and on about how wonderful the jurors are is disingenuous and a waste of time. If you must, a brief thanks and recognition of their time commitment is sufficient.
- MISSTATE EVIDENCE – the evidence is what it is. You are free, at this point, to argue reasonable inferences from the evidence. Just don't try to make the evidence something that it is not.
- DON'T IGNORE THE OBVIOUS – if you have a weak point or opposing counsel has made a strong point, you must embrace the bad fact and explain to the jury how those things can be true and you still win. If you don't supply the answers the jury likely will and you may not like the answer.
- MALIGN OR BELITTLE WITNESSES - unless called for.

Section Eleven

COVID-19 & Real Estate

Michael (Mike) R. Limrick
Hoover Hull Turner LLP
Indianapolis, Indiana

Section Eleven

COVID-19 & Real Estate…….. Michael (Mike) R. Limrick

PowerPoint Presentation

COVID-19 & Real Estate

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Part 1: Know Your Contract

It may have anticipated COVID-19

Force Majeure Clauses

Defining "force majeure"

"Historically, the theory of force majeure embodied the concept that parties could be relieved of performance of their contractual obligations when the performance was prevented by causes beyond their control, such as an act of God."

Specialty Foods of Ind., Inc. v. City of South Bend, 997 N.E.2d 23, 27 (Ind. Ct. App. 2013)

Force Majeure Clauses

The theory's definition is irrelevant

"However, much of the theory's 'historic underpinnings have fallen by the wayside' with the result that force majeure is now 'little more than a descriptive phrase without much inherent substance.'"

Specialty Foods of Ind., Inc. v. City of South Bend, 997 N.E.2d 23, 27 (Ind. Ct. App. 2013)

Force Majeure Clauses

What matters is what the contract says

"Indeed, the scope and effect of a force majeure clause depends on ***the specific contract language,*** and not on any traditional definition of the term."

Specialty Foods of Ind., Inc. v. City of South Bend, 997 N.E.2d 23, 27 (Ind. Ct. App. 2013)

Force Majeure Clauses

Former College Football Hall of Fame – South Bend

By Derek Jensen
CC BY 2.5,
https://commons.wikimedia.org/w/index.php?curid=298760

Force Majeure Clauses

FM Clause in N.Y. case cited by Specialty Foods

If either party to this Lease shall be delayed or prevented from the performance of any obligation through no fault of their own by reason of labor disputes, inability to procure materials, failure of utility service, restrictive governmental laws or regulations, riots, insurrection, war, adverse weather, Acts of God, **or other similar causes beyond the control of such party**, the performance of such obligation shall be excused for the period of the delay.

Kel Kim Corp. v. Central Markets, Inc.,
70 N.Y.2d 900 (1987)

Force Majeure Clauses

FM Clause in *Specialty Foods*

In the event Century Center or [Specialty Foods] shall be delayed or hindered or prevented from the performance of any obligation required under this Agreement by reason of strikes[,] lockouts, inability to procure labor or materials, failure of power, fire or other casualty, acts of God, restrictive governmental laws or regulations, riots, insurrection, war **or any other reason not within the reasonable control of Century Center or [Specialty Foods]**, as the case may be, then the performance of such obligation shall be excused for the period of such delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

Force Majeure Clauses

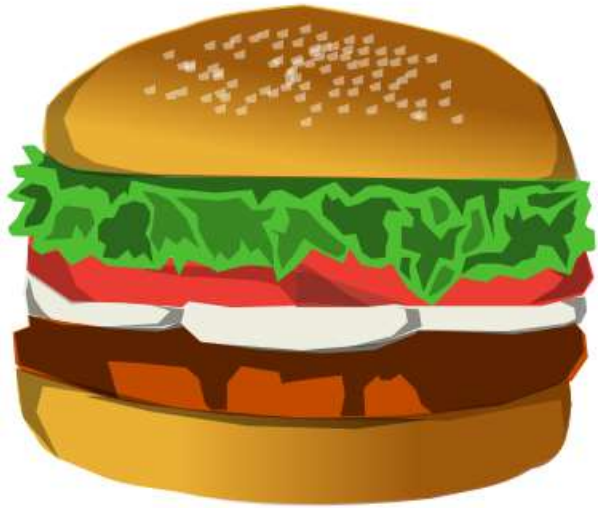
Ejusdem generis ("of the same kind")

"The canon applies only when a list of **more than one item** within an enumeration is followed by a catch-all phrase at the end. The meaning of the catch-all phrase turns on the nature of the items within the enumerated list. Scalia and Garner explain the canon this way: 'Where general words follow an enumeration of two or more things, they apply only to persons or things of the same general kind or class specifically mentioned[.]'"

O'Bryant v. Adams,
123 N.E.3d 689, 693 (Ind. 2019)

Force Majeure Clauses

Ejusdem generis ("of the same kind")



O'Bryant v. Adams,
123 N.E.3d 689, 693 (Ind. 2019)

Force Majeure Clauses

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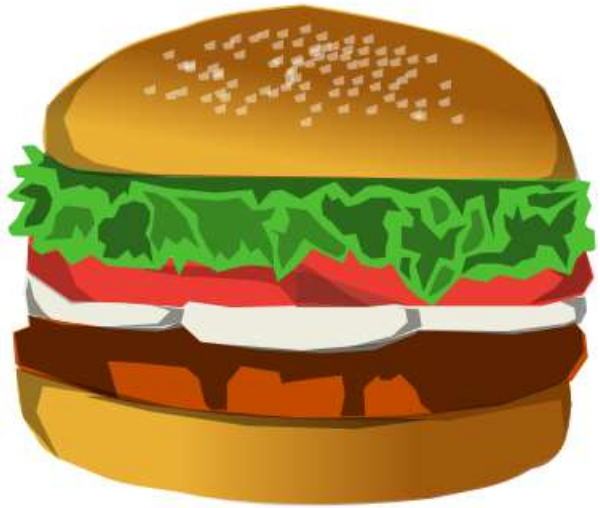

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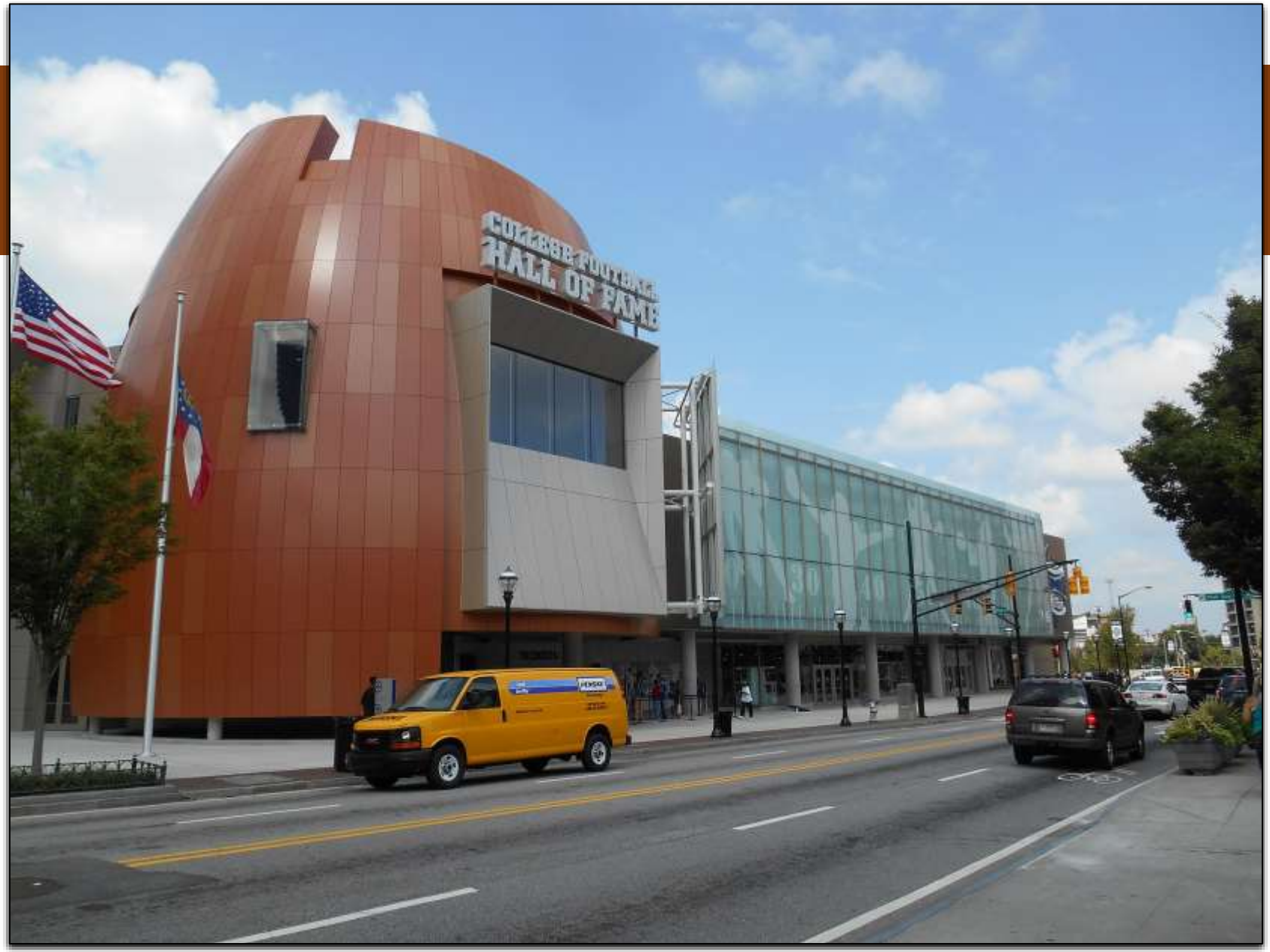
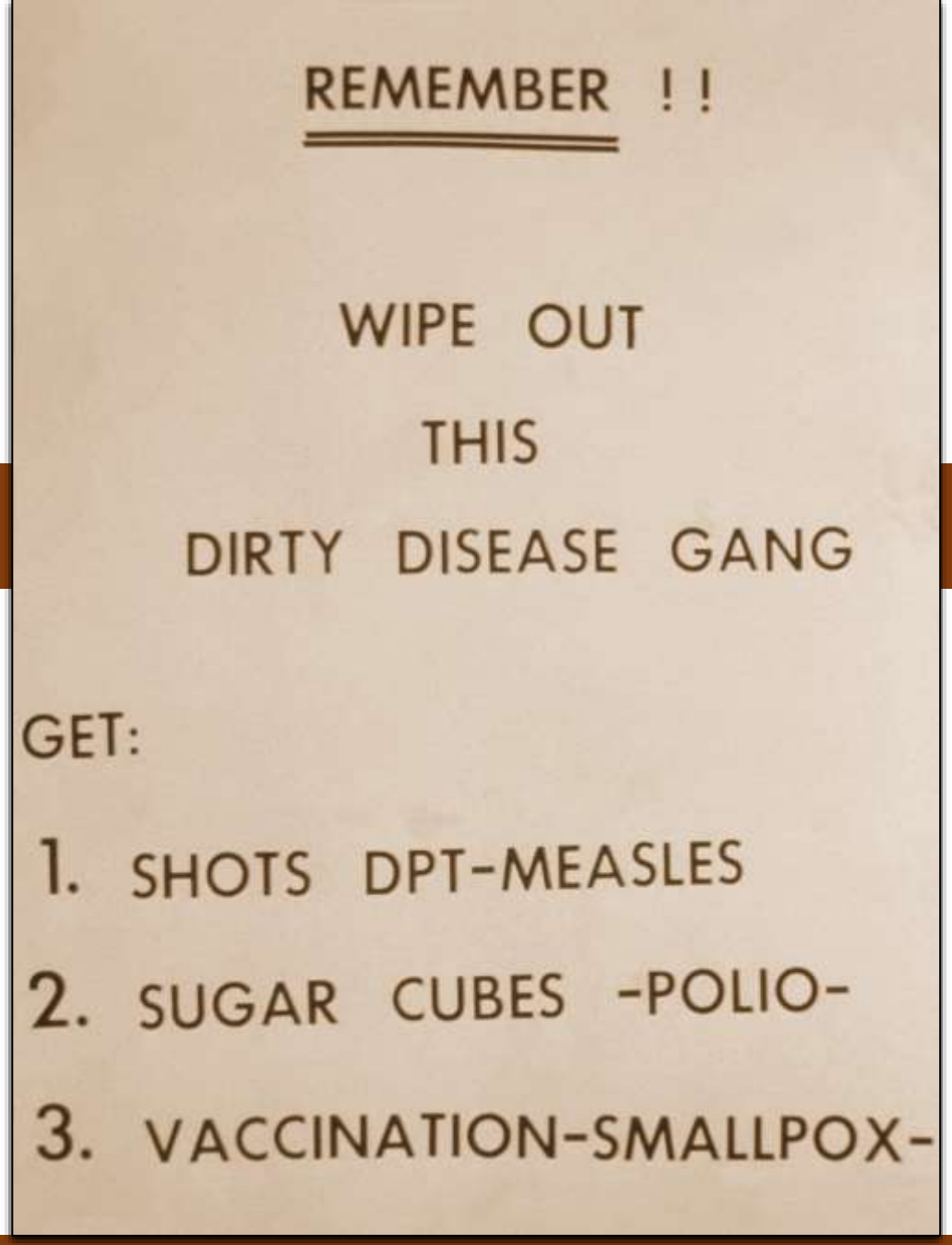


Current College Football Hall of Fame – Atlanta

By Bani - https://www.flickr.com/photos/bani/15292706222, CC BY 2.0, https://commons.wikimedia.org/w/index.php?curid=60813481



Force Majeure Clauses

Act of God
vs. Act of Government

1969 U.S. Government poster reminding parents to have children vaccinated.
https://phil.cdc.gov/Details.aspx?pid=17505

Force Majeure Clauses

Act of God vs. Act of Government

> "[T]he closing of a school by the order of a school board or a board of health is not the act of God, however prudent and necessary it may have been to make such order. It was one of the contingencies which might have been provided against by the contract, but was not."

Gear v. Gray,
37 N.E. 1059, 1061 (Ind. Ct. App. 1894)

Part 2: Availability of Other Defenses

Failure of Consideration

A "misnomer" of a defense

"As commentators have noted, the phrase 'failure of consideration' is a misnomer. … A party asserting the defense of failure of consideration is not really arguing that the contract lacks the necessary bargained for exchange. Rather, the party contends that his adversary has failed to perform her obligation under the contract. If the breach or failure to perform goes to the essence of the agreement, the adversary cannot sue to enforce the contract."

Zemco Mfg., Inc. v. Navistar Int'l Transp. Co.,
270 F.3d 1117, 1121 n.3 (7th Cir. 2001)

Impossibility

Impossibility is a high bar

> "To invoke impossibility, one must demonstrate that performance is not merely difficult or relatively impossible, but absolutely impossible, owing to the act of God, the act of law, or the loss or destruction of the subject-matter of the contract."

Wagler v. W. Boggs Sewer Dist., Inc.,
980 N.E.2d 363, 378 (Ind. Ct. App. 2012)

Impossibility

Impossibility caused by government action

"After the contract was entered into, and when the exigency arose, the health board, in the exercise of the police power delegated to it, closed the school, and the contract for the time that the order was in force was impossible of performance, and hence unenforceable, and there could be no recovery for such time."

Gregg Sch. Twp., Morgan Cty. v. Hinshaw,
132 N.E. 586, 587 (Ind. Ct. App. 1921)

Impossibility

"Impractical" isn't the same as "impossible"

> "Under that doctrine [of impracticability], a party is excused from performing when, in pertinent part, an unexpected event has rendered the party's performance commercially impracticable. Indiana has never recognized that doctrine, and instead insists that a party's performance become impossible before excusing it."

Lutheran Homes, Inc. v. Lock Realty Corp. IX, 2015 WL 880644, at *6 (N.D. Ind. Mar. 2, 2015)

Frustration of Purpose

Scope of the doctrine

"Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary."

Restatement (Second) of Contracts § 265 (1981)

Frustration of Purpose

Problem

"Indiana does not recognize the doctrine of frustration of purpose."

Justus v. Justus,
581 N.E.2d 1265, 1275 (Ind. Ct. App. 1991)

Mutual Mistake

Scope of the doctrine

"The doctrine of mutual mistake provides that where both parties share a common assumption about a vital fact upon which they based their bargain, and that assumption is false, the transaction may be avoided if because of the mistake a quite different exchange of values occurs from the exchange or values contemplated by the parties."

Breeden Revocable Tr. v. Hoffmeister-Repp,
941 N.E.2d 1045, 1054 (Ind. Ct. App. 2010)

Mutual Mistake

A failure to predict is not a mistake

> "A party's prediction or judgment as to events to occur in the future, even if erroneous, is not a 'mistake' as that word is defined here."

Restatement (Second) of Contracts § 151 cmt. a (1981)

See also Jay Cty. Rural Elec. Membership Corp. v. Wabash Valley Power Ass'n, Inc., 692 N.E.2d 905, 912 (Ind. Ct. App. 1998) (citing same principle)

Defenses Limited by Contract

Resort to common law only if contract is silent

"Indiana courts zealously defend the freedom to contract."

State v. Int'l Bus. Machines Corp.,
51 N.E.3d 150, 160 (Ind. 2016)

Defenses Limited by Contract

Resort to common law only if contract is silent

"[T]he default common law Restatement factors do not apply in this case because the plain language of the MSA provides for evaluating the materiality of a breach by considering the breach or a series of breaches in light of the MSA 'as a whole.' Applying the specific terms agreed to by the parties rather than the common law default rule is consistent with Indiana contract law principles."

State v. Int'l Bus. Machines Corp.,
51 N.E.3d 150, 160 (Ind. 2016)

Defenses Limited by Contract

Seventh Circuit: contract defeats common law

"[S]ince impossibility and related doctrines are devices for shifting risk in accordance with the parties' presumed intentions, which are to minimize the costs of contract performance, one of which is the disutility created by risk, they have no place when the contract explicitly assigns a particular risk to one party or the other."

NIPSCO v. Carbon Cty. Coal Co.,
799 F.2d 265, 277 (7th Cir. 1986)

Defenses Limited by Contract

Does the FMC excuse, or require, performance?

Section 24.5. Force Majeure.

If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, environmental remediation work whether ordered by any governmental body or voluntarily initiated or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under this Lease, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, the provisions of this Section 24.5 shall at no time operate to excuse Tenant from ~~the obligation to open for business on the Commencement Date, except in the event of an industry wide strike, nor~~ any obligations for payment of Minimum Annual Rent, Percentage Rent, additional rent or any other payments required by the terms of this Lease when the same are due, and all such amounts shall be paid when due.

COVID Cases Around the Country

New York: reduced revenue isn't a defense

"[D]efendants acknowledge that they eventually reopened for curbside service and that they were able to gain access to the premises during the period of nonpayment. Thus, although the pandemic has been disruptive for many businesses, the purpose of the lease in this case was not frustrated, and defendants' performance was not rendered impossible, by its reduced revenues."

558 Seventh Ave. Corp. v. Times Square Photo Inc.,
194 A.D.3d 561 (N.Y. App. Div. 2021)

COVID Cases Around the Country

New York: no failure of consideration where premises were still available for use

"Gap's failure of consideration defense is unavailing because Gap has continued to receive the consideration promised under the Lease—retail premises for its operations—from the defendant landlord during the course of the COVID-19 pandemic."

Gap Inc. v. Ponte Gadea N.Y. LLC,
2021 WL 861121, at *10 (S.D.N.Y. Mar. 8, 2021)

COVID Cases Around the Country

Pennsylvania: FM clause defeats common law

"Restrictive laws or regulations, such as the Governor's orders, however, clearly are within the meaning of the force majeure clause and cannot excuse Cole Haan's contractual obligations. … [T]he common law doctrines of frustration of purpose, impossibility/impracticability of performance, and failure of consideration are inapplicable here."

1600 Walnut Corp. v. Cole Haan Co. Store,
2021 WL 1193100, at *3 (E.D. Pa. Mar. 30, 2021)

COVID Cases Around the Country

Connecticut: COVID-19 is not like Prohibition

"The defendants liken the impossibility here to cases involving the National Prohibition Act from 1919 which made it illegal to operate an establishment that sold alcoholic beverages …. Governor Lamont, however, did not make the operation of a restaurant … illegal or impossible."

AGW Sono Partners, LLC v. Downtown Soho, LLC,
2021 WL 2775075, at *5 (Conn. Super. Ct. Mar. 8, 2021)

COVID Cases Around the Country

Massachusetts: lease language as a defense

"The Lease provides that Caffé Nero could use the leased premises only to operate a café with a sit-down restaurant menu '***and for no other purpose***.' …. If UMNV had allowed Caffé Nero to use the leased premises for other purposes not barred by government order, then the fact that Caffé Nero's intended use was frustrated might not have discharged its obligation to pay rent."

UMNV 205-207 Newbury, LLC v. Caffé Nero Americas Inc.,
2021 WL 956069, at *5 (Mass. Super. Feb. 8, 2021)

COVID Cases Around the Country

Louisiana: quick cure prevented eviction

"Even assuming arguendo (as the district court did) that BB & B did in fact default on the lease, BB & B made a 'good faith error' in believing that it had not actually defaulted and then 'acted reasonably to correct it' by promptly tendering payment after it actually received the notice of default."

Applying "Judicial Control Doctrine"

Richards Clearview, L.L.C. v. Bed Bath & Beyond, Inc.,
849 Fed. Appx. 456, 459 (5th Cir. Mar. 8, 2021)

Part 3: Residential Issues

Federal Eviction Moratoriums

Congress's limited, temporary moratorium

March 2020: Coronavirus Aid, Relief, and Economic Security Act imposed 120-day moratorium for properties participating in federal assistance programs or subject to federally backed loans.

Not renewed.

Federal Eviction Moratoriums

CDC's broader nationwide moratorium

Sept. 2020: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 (Sept. 4, 2020 – Dec. 31, 2020)

Covered all residential properties nationwide and imposed criminal penalties on violators.

Federal Eviction Moratoriums

CDC moratorium extended by Congress

Dec. 2020: Consolidated Appropriations Act, 2021

Extended CDC moratorium for one month.

Federal Eviction Moratoriums

CDC extends its moratorium through July 31, 2021

CDC relies on its authority to prevent the introduction, transmission or spread of communicable diseases by "provid[ing] for inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures …."

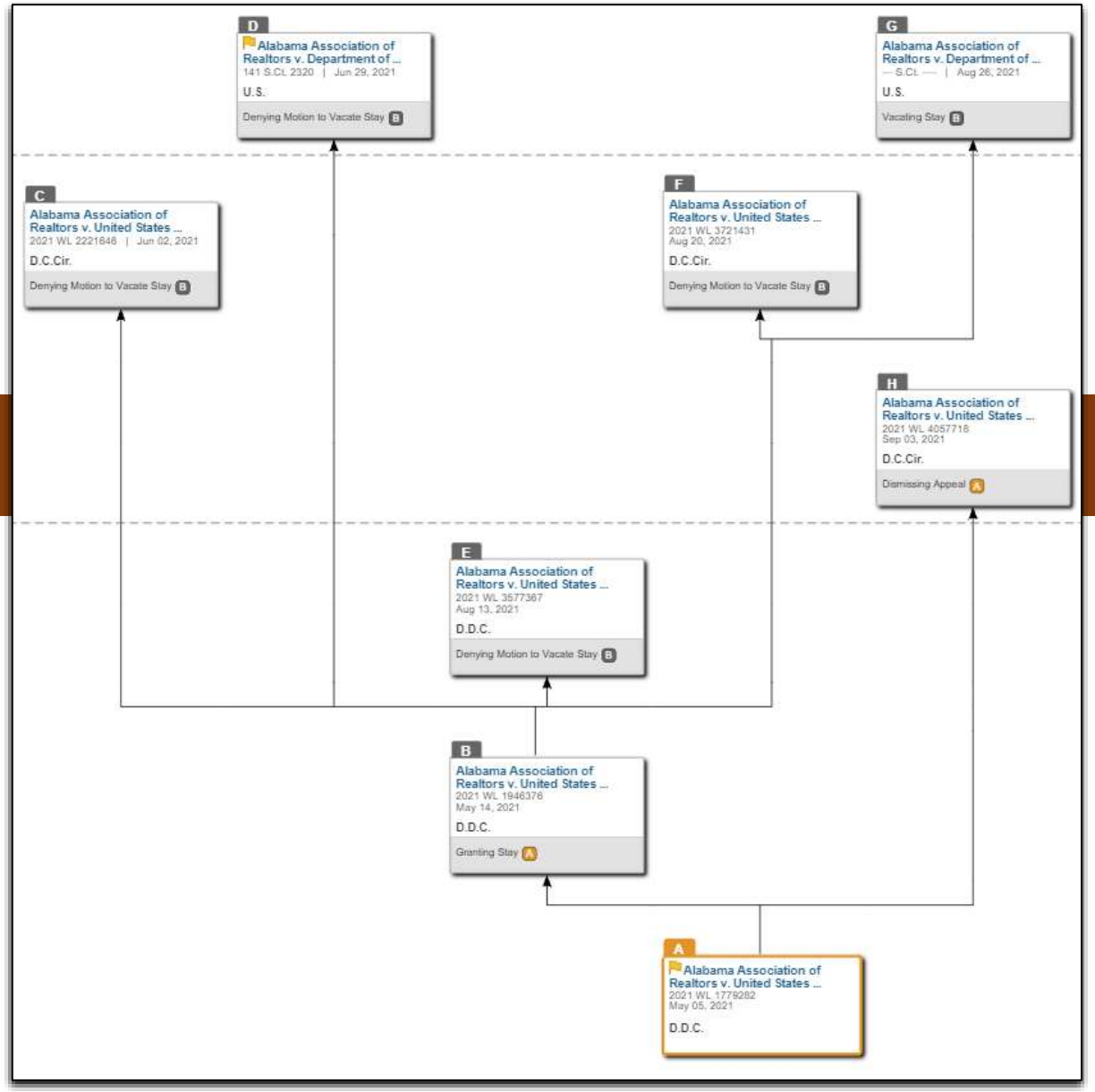
Federal Eviction Moratoriums

Challenge to the CDC's moratorium

"Realtor associations and rental property managers in Alabama and Georgia sued to enjoin the CDC's moratorium. The U.S. District Court for the District of Columbia granted the plaintiffs summary judgment, holding that the CDC lacked statutory authority to impose the moratorium."

Judgment stayed pending appeal.

Ala. Ass'n of Realtors v. Dep't of Health & Human Servs., 2021 WL 3783142, at *2 (U.S. Aug. 26, 2021) (per curiam)



Federal Eviction Moratoriums

Federal Eviction Moratoriums

CDC tries to extend despite shaky ground

June 29, 2021	Supreme Court declines to vacate stay. Justice Kavanaugh notes that "the CDC plans to end the moratorium in only a few weeks."
August 3, 2021	CDC reimposes the moratorium

Federal Eviction Moratoriums

District Court would vacate stay, but couldn't

> "[T]he court concluded that its hands were tied by the law of the case, in light of the D.C. Circuit's earlier decision not to vacate the stay. That denial was followed by one more stop at the D.C. Circuit, where that court again declined to lift the stay."

Ala. Ass'n of Realtors v. Dep't of Health & Human Servs., 2021 WL 3783142, at *2 (U.S. Aug. 26, 2021) (per curiam)

Federal Eviction Moratoriums

Supreme Court vacates stay and ends moratorium

> "It would be one thing if Congress had specifically authorized the action that the CDC has taken. But that has not happened. Instead, the CDC has imposed a nationwide moratorium on evidence in reliance on a decades-old statute that authorizes it to implement measures like fumigation and pest extermination."

Ala. Ass'n of Realtors v. Dep't of Health & Human Servs., 2021 WL 3783142, at *1 (U.S. Aug. 26, 2021) (per curiam)

Indiana Rental Assistance

Available resources

Statewide:
https://www.in.gov/ihcda/homeowners-and-renters/rental-assistance/

Indianapolis: https://indyrent.org/

Section Twelve

Bankruptcy

Mark S. Zuckerberg
Bankruptcy Law Office of Mark S. Zuckerberg, P.C.
Indianapolis, Indiana

Section Twelve

Bankruptcy…… Mark S. Zuckerberg

Jurisdiction & Where to File

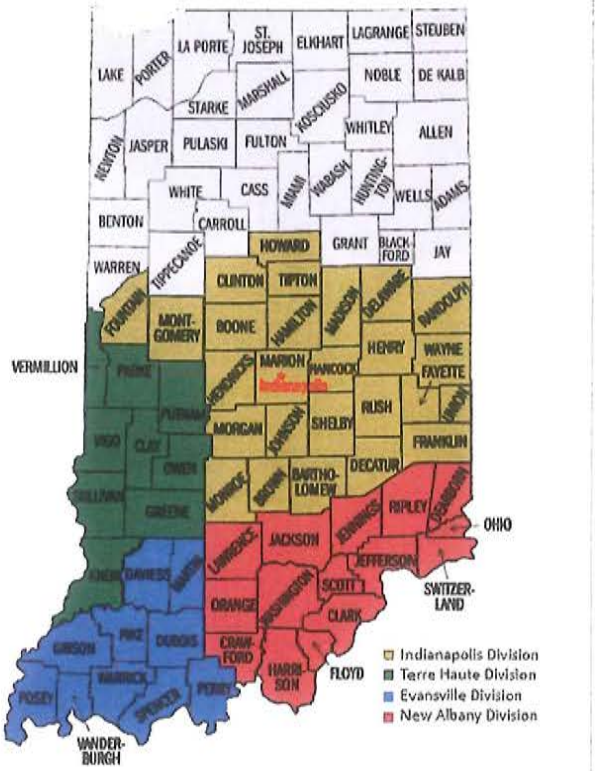
All petitions, lists, schedules, statements and other documents required by the Bankruptcy Court to commence a case shall be filed with the Clerk's Office in the division where the principal place of business, domicile, residence, or principal assets of the debtor have been located for such period of time as required by 28 U.S.C. §1408. If the Court determines that a case has been filed in the incorrect division, the Court may transfer the case to the correct division without notice. All papers tendered for filing after the commencement of a case shall be filed with the Clerk's Office in the division where the case is pending.

Note: cases from counties assigned to the Terre Haute Division that are not filed electronically must be filed in the Evansville Division.

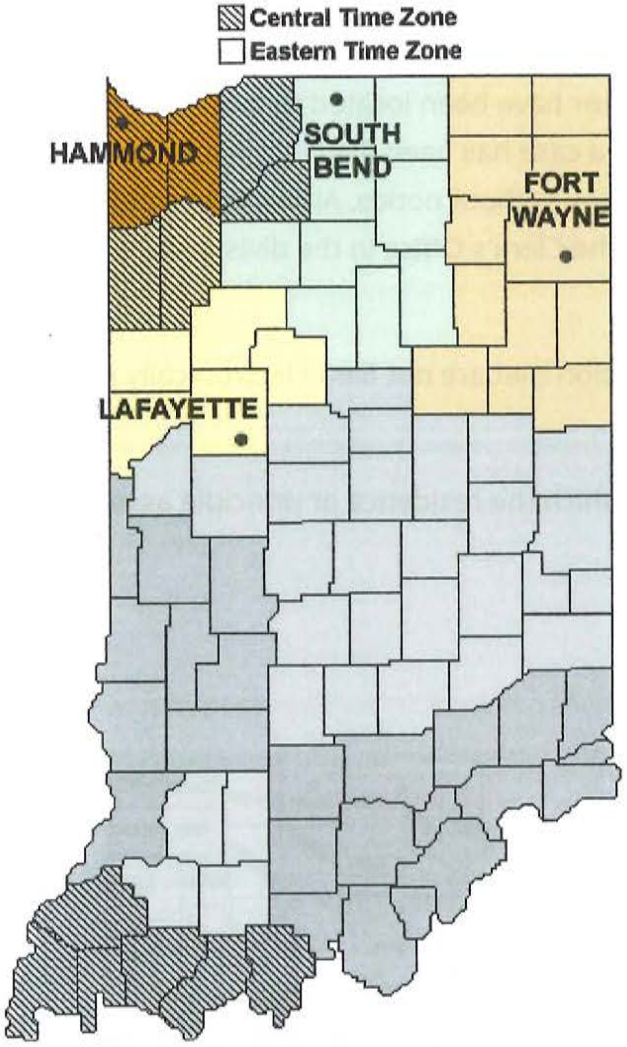
To locate the proper division for filing, select the county in which the residence or principle assets are located.

Counties:

Bartholomew	Franklin	Madison	Ripley
Boone	Gibson	Marion	Rush
Brown	Greene	Martin	Scott
Clark	Hamilton	Monroe	Shelby
Clay	Hancock	Montgomery	Spencer
Clinton	Harrison	Morgan	Sullivan
Crawford	Hendricks	Ohio	Switzerland
Daviess	Henry	Orange	Tipton
Dearborn	Howard	Owen	Union
Decatur	Jackson	Parke	Vanderburgh
Delaware	Jefferson	Perry	Vermillion
Dubois	Jennings	Pike	Vigo
Fayette	Johnson	Posey	Warrick
Floyd	Knox	Putnam	Washington
Fountain	Lawrence	Randolph	Wayne



District Composition



Fort Wayne: Comprised of the counties of Adams, Allen, Blackford, DeKalb, Grant, Huntington, Jay, LaGrange, Noble, Steuben, Wells, and Whitley.

South Bend: Comprised of the counties of Cass, Elkhart, Fulton, Kosciusko, LaPorte, Marshall, Miami, Pulaski, St. Joseph, Starke, and Wabash.

Hammond at Lafayette: Comprised of the counties of Benton, Carroll, Jasper, Newton, Tippecanoe, Warren, and White.

Hammond: Comprised of the counties of Lake and Porter.

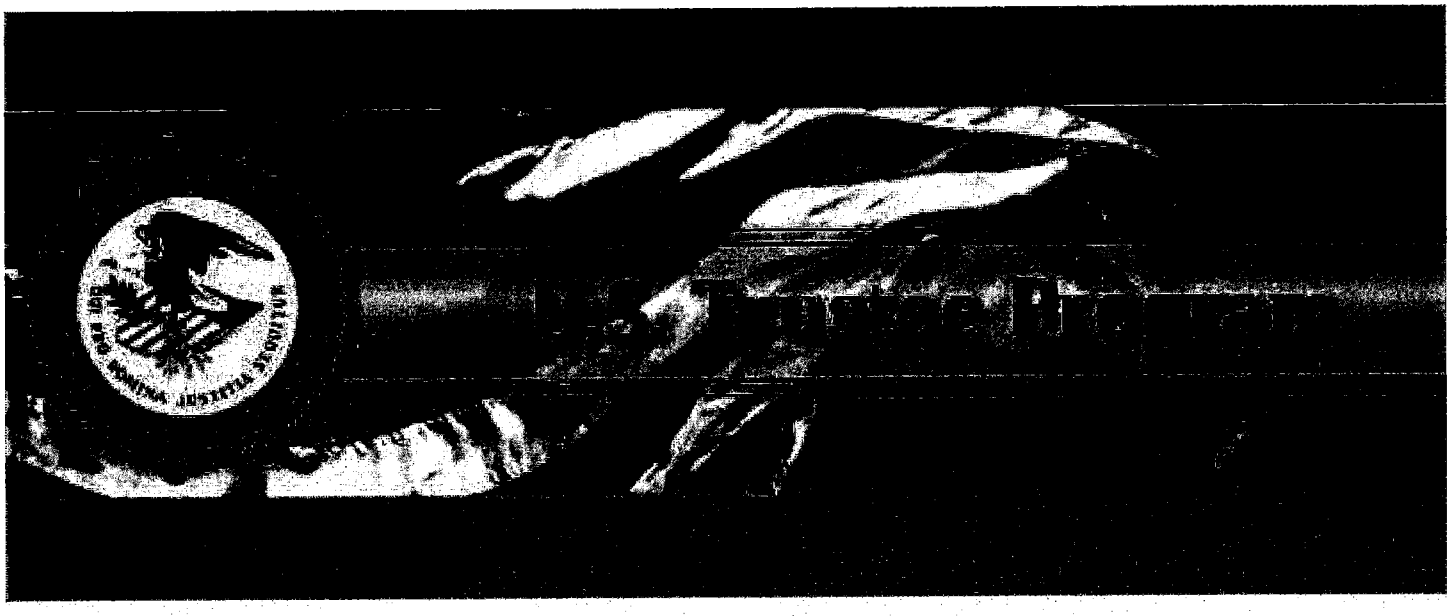
2. BANKRUPTCY COURT SOUTHERN DISTRICT - OF INDIANA WEBSITE INFORMATION

NOTICES:

Clerk of Court Career Opportunity. Deadline to apply is August 31, 2021. Click here for more information.

Effective August 3, 2021, everyone must wear a face covering which completely covers the wearer's nose and mouth and practice social distancing throughout the courthouses. More information regarding courthouse access and face covering requirements can be found in the District Court's General Order 2021-21 and the Bankruptcy Court's Frequently Asked Questions – COVID-19.

Customers are encouraged to review the pandemic-related changes to Court operations found within the Court's Response to Coronavirus Disease (COVID-19) website section. In particular, individuals should review the Filing Procedures for Parties Not Represented by an Attorney.



Office of the US Trustee

Approved Credit Counseling & Debtor Education provider and Means Testing Information can be found here.

Click to access

1 2 3 4 5 6

Case Administrator Search

Enter the last two digits of the case number (Case Digits) below to contact a case administrator

Search

Click on Search to see results

News & Announcements

Return of Face Coverings Requirement, Resumption of In-Person Hearings and Other Changes

Effective August 3rd, the courthouses in the Southern District of Indiana will be returning to the requirement of we coverings and of social distancing, regardless of vaccination status. For more details, click here.

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Update on Notices of Electronic Filing

The problem of missing text in Notices of Electronic Filing has been fixed. For more, read here

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New Electronic Devices Security Policy at Courthouses

Visitors to Courthouses in the Southern District of Indiana are subject to a new security policy, effective August 2nd, that particularly impacts electronic devices. For more information click here

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- Procedures Manual
- Court Calendar & 341 Meeting of Creditors
- Local Rules
- Forms
- CM/ECF Registration & Training
- Zoom Video Hearing Guide for Participants
- How to get Case Information
- ECF Administrative Policies & Procedures
- Unclaimed Funds

Quick Links

Electronic Payment Guide
Fees, Unclaimed Funds & Post Judgment Interest Rates
Frequently Asked Questions
Mediator Panel
Opinions
Publication & Resources
Transcripts
U.S. Trustee Program
Your Employee Rights and How to Report Wrongful Conduct

Request a Copy of a Discharge

- Free - Receive a PDF of the discharge by e-mail
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Megacases & Claims Agent Links

USA Gymnastics
Scotty's Holdings, LLC, et al
Fayette Memorial Hospital Assoc., Inc.
hhgregg, Inc.
ITT Educational Services, Inc.
ESI Service Corp.
Daniel Webster College, Inc.

Court Locations

Evansville

352 Federal Building
101 Northwest Martin L. King Boulevard
Evansville, IN 47708
(812) 434-6470 (map)

Indianapolis

116 U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204
(317) 229-3800 (map)

New Albany

110 U.S. Courthouse
121 West Spring Street
New Albany, IN 47150
(812) 542-4540 (map)

Terre Haute

921 Ohio Street
Terre Haute, IN 47807
(812) 231-1850 (map)
*** Not Staffed ***

Live Support

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Forms
- Local Forms
- National Forms
- Unclaimed Funds Forms
- General Orders
- Order Guidelines for the Bar
- Pro Hac Vice
- Local Rules

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Local Forms

Initial Case Documents and Captions

Motions and Related Notices/Certificates of Service/Orders

Creditors, Claims, and Unclaimed Funds

Hearings: Notices

Chapter 7

Chapter 11

Chapter 13

Adversary Proceedings

Trustee Forms

Miscellaneous

The PACER Case Locator (PCL) is a national index for district, bankruptcy, and appellate courts. The PCL serves as a search tool for PACER. You may conduct nationwide searches to determine whether or not a party is involved in federal litigation. Each night, subsets of data are collected from the courts and transferred to the PCL.

The PACER Case Locator (PCL) is a national index for district, bankruptcy, and appellate courts.

The PCL serves as a search tool for PACER. You may conduct nationwide searches to determine whether or not a party is involved in federal litigation.

PACER Case Locator Features

- Use as a one-stop location to search all courts (appellate, bankruptcy, district) for cases.
- Save links to your preferred cases using the Saved Cases feature.
- Save your frequent searches using the Saved Searches feature.
- Customize a simple search to include advanced search features such as region and date range.
- Set your preferred landing page to customize your experience.

PACER Fees and Case Currency

Access to case information costs $0.10 per page. The cost to access a single document is capped at $3.00, the equivalent of 30 pages. The cap does not apply to name searches, reports that are not case-specific, or transcripts of federal court proceedings.

By Judicial Conference policy, fees are waived when usage is $30 or less for the quarter.

Newly filed cases will typically appear on this system within 24 hours. Check the Court Information page for data that is currently available on the PCL. The most recent data is available directly from the court.

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* Required Information

Username *

Password *

Client Code

Login Clear

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Quick Links

PACER U.S. Courts Court Links

PCL Help PACER FAQ Statistics

This site is maintained by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary.

PACER Service Center
(800) 676-6856
pacer@psc.uscourts.gov

3. BANKRUPTCY COURT - REQUIRED CHECKLIST FOR BANKRUPTCY FILING

UNITED STATES BANKRUPTCY COURT
REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES
Voluntary Chapter 7 Case

☐ **Filing Fee of $245.** If the fee is to be paid in installments or the debtor requests a waiver of the fee, the debtor must be an individual and must file a signed application for court approval. Official Form 103A or 103B and Fed.R.Bankr.P. 1006(b), (c).

☐ **Administrative fee of $78 and trustee surcharge of $15.** If the debtor is an individual and the court grants the debtor's request, these fees are payable in installments or may be waived.

☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101) or **Voluntary Petition for Non-Individuals Filing for Bankruptcy** (Official Form 201); **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 707(a)(3). Official Form 101 contains spaces for the certification.

☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement About Your Social Security Numbers** (Official Form 121). Required if the debtor is an individual. Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).

☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan,** if applicable; **Section 109(h)(3) certification or § 109(h)(4) request,** if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Statement of Your Current Monthly Income** (Official Form 122A). Required if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of assets and liabilities** (Official Forms 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b),(c).

☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Your Income and Your Expenses** (Schedules I and J of Official Form 106). If the debtor is an individual, Schedules I and J of Official Form 106 must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of financial affairs** (Official Form 107 or 207). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices or other evidence of payment** received by the debtor from any employer within 60 days before the filing of the petition. Required if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Intention for Individuals Filing Under Chapter 7** (Official Form 108). Required ONLY if the debtor is an individual and the schedules of assets and liabilities contain debts secured by property of the estate or personal property subject to an unexpired lease. Must be filed within 30 days or by the date set for the Section 341 meeting of creditors, whichever is earlier. 11 U.S.C. §§ 362(h) and 521(a)(2).

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030). Required if the debtor is represented by an attorney. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Certification About a Financial Management Course** (Official Form 423), if applicable. Required if the debtor is an individual, unless the course provider has notified the court that the debtor has completed the course. Must be filed within 60 days of the first date set for the meeting of creditors. 11 U.S.C. § 727(a)(11) and Fed.R.Bankr.P. 1007(b)(7), (c).

REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES
Voluntary Chapter 11 Case

☐ **Filing fee of $1,167.** If the fee is to be paid in installments, the debtor must be an individual and must file a signed application for court approval. Official Form 103A and Fed.R.Bankr.P. 1006(b).

☐ **Administrative fee of $571.** If the debtor is an individual and the court grants the debtor's request, this fee is payable in installments.

☐ **United States Trustee quarterly fee.** The debtor, or trustee if one is appointed, is required also to pay a fee to the United States trustee at the conclusion of each calendar quarter until the case is dismissed or converted to another chapter. The calculation of the amount to be paid is set out in 28 U.S.C. § 1930(a)(6). As authorized by 28 U.S.C. § 1930(a)(7), the quarterly fee is paid to the clerk of court in chapter 11 cases in Alabama and North Carolina.

☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101) or **Voluntary Petition for Non-Individuals Filing for Bankruptcy** (Official Form 201); **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 1112(e). Official Form 101 contains spaces for the certification.

☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement About Your Social Security Numbers** (Official Form 121). Required if the debtor is an individual. Must be submitted **WITH** the petition. Fed.R.Bankr.P. 1007(f).

☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan,** if applicable; **Section 109(h)(3) certification or § 109(h)(4) request,** if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Statement of Your Current Monthly Income** (Official Form 122B). Required if the debtor is an individual unless the case is filed under subchapter V. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **For Individual Chapter 11 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders** (Official Form 104) or **Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders** (Official Form 204). Must be filed WITH the petition. Fed.R.Bankr.P. 1007(d).

☐ **Names and addresses of equity security holders of the debtor.** Must be filed with the petition or within 14 days, unless the court orders otherwise. Fed.R.Bankr.P. 1007(a)(3).

☐ **Schedules of Assets and Liabilities** (Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Current Income and Expenditures.** If the debtor is an individual, Schedules I and J of Official Form 106 must be used for this purpose. Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Financial Affairs** (Official Form 107 or 207). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices or other evidence of payment** received by debtor from any employer within 60 days before the filing of the petition. Required if the debtor is an individual. Must be filed WITH the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030), if applicable. Required if the debtor is represented by an attorney. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Certification About a Financial Management Course** (Official Form 423), if applicable. Required if the debtor is an individual and § 1141(d)(3) applies, unless the course provider has notified the court that the debtor has completed the course. Must be filed no later than the date of the last payment under the plan or the filing of a motion for a discharge under § 1141(d)(5)(B). 11 U.S.C. § 1141(d)(3) and Fed.R.Bankr.P. 1007(b)(7), (c).

☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1),** if applicable. Required if the debtor is an individual and has claimed exemptions under state or local law as described in § 522(b)(3) in excess of $170,350*. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1141(d)(5)(B). 11 U.S.C. § 1141(d)(5)(C) and Fed.R.Bankr.P. 1007(b)(8), (c).

* Amount subject to adjustment on 4/01/22, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES
Chapter 12 Case

☐ **Filing Fee of $200.** If the fee is to be paid in installments, the debtor must be an individual and must file a signed application for court approval. Official Form 103A and Fed.R.Bankr.P. 1006(b).

☐ **Administrative fee of $78.** If the debtor is an individual and the court grants the debtor's request, this fee is payable in installments.

☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101) or **Voluntary Petition for Non-Individuals Filing for Bankruptcy** (Official Form 201). **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the court in a timely manner. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii). Official Form 101 contains spaces for the certification.

☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement of Your Social Security Numbers** (Official Form 121). Required if the debtor is an individual. Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).

☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan,** if applicable; **Section 109(h)(3) certification or § 109(h)(4) request,** if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Schedules of Assets and Liabilities** (Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Current Income and Expenditures.** If the debtor is an individual, Schedule I and J of Official Form 106 must be used for this purpose. Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Financial Affairs** (Official Form 107 or 207). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices** or other evidence of payment received by the debtor from any employer within 60 days before the filing of the petition if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030), if applicable. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Chapter 12 Plan.** Must be filed within 90 days. 11 U.S.C. § 1221.

☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1),** if applicable. Required if the debtor is an individual and has claimed exemptions under state or local law as described in §522(b)(3) in excess of $170,350*. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1228(b). 11 U.S.C. § 1228(f) and Fed.R.Bankr.P. 1007(b)(8), (c).

* Amount subject to adjustment on 4/01/22, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES
Chapter 13 Case

☐ **Filing fee of $235.** If the fee is to be paid in installments, the debtor must file a signed application for court approval. Official Form 103A and Fed.R.Bankr.P. 1006(b).

☐ **Administrative fee of $78.** If the court grants the debtor's request, this fee is payable in installments.

☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101). **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 1307(c)(9). Official Form 101 contains spaces for the certification.

☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement of Social Security Number** (Official Form 121). Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).

☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan,** if applicable; **Section 109(h)(3) certification or § 109(h)(4) request,** if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Statement of Your Current Monthly Income** (Official Form 122C). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007.

☐ **Schedules of Assets and Liabilities** (Official Form 106). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Current Income and Expenditures** (Schedules I and J of Official Form 106). Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Financial Affairs** (Official Form 107). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices or other evidence of payment** received by the debtor from any employer within 60 days before the filing of the petition. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Chapter 13 Plan.** (Official Form 113), or local form plan (check with your local court for required plan version). Fed.R.Bankr.P 3015.1. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 3015.

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030), if applicable. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Certification About a Financial Management Course** (Official Form 423), if applicable. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1328(b), unless the course provider has notified the court that the debtor has completed the course. 11 U.S.C. § 1328(g)(1) and Fed.R.Bankr.P. 1007(b)(7), (c).

☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1),** if applicable. Required if the debtor has claimed exemptions under state or local law as described in §522(b)(3) in excess of $170,350*. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1328(b). 11 U.S.C. § 1328(h) and Fed.R.Bankr.P. 1007(b)(8), (c).

* Amount subject to adjustment on 4/01/22, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

4. BANKRUPTCY COURT - FEE SCHEDULES

EFFECTIVE December 1, 2020

*Indicates additions/changes

SCHEDULE OF BANKRUPTCY FEES

All checks, money orders and certified funds must be made payable to "Clerk, U.S. Bankruptcy Court".

Ref: 28 U.S.C. Sec. 1930 - Bankruptcy Court Miscellaneous Fee Schedule

NOTE: The Clerk's Office will not accept checks or credit cards from debtors.

*Chapter 7: Total Cost		$ 338.00
BREAKDOWN OF FEES:	Filing Fee	$ 245.00
	*Administrative Fee	$ 78.00
	Trustee Surcharge Fee	$ 15.00
*Chapter 9: Total Cost		$ 1738.00
BREAKDOWN OF FEES:	Filing Fee	$ 1167.00
	*Administrative Fee	$ 571.00
*Chapter 11: Total Cost		$ 1738.00
BREAKDOWN OF FEES:	Filing Fee	$ 1167.00
	*Administrative Fee	$ 571.00
*Chapter 12: Total Cost		$ 278.00
BREAKDOWN OF FEES:	Filing Fee	$ 200.00
	*Administrative Fee	$ 78.00
*Chapter 13: Total Cost		$ 313.00
BREAKDOWN OF FEES:	Filing Fee	$ 235.00
	*Administrative Fee	$ 78.00
*Chapter 15: Total Cost		$ 1738.00
BREAKDOWN OF FEES:	Filing Fee	$ 1167.00
	*Administrative Fee	$ 571.00

*Abandonment	$ 188.00
*Adequate Protection	$ 188.00
Adversary Filing	$ 350.00
*Amendment to Schedules D or E/F or list of creditors	$ 32.00
Appeal/Cross Appeal, Filing and Docketing of	$ 298.00
Authorized Direct Appeal	$ 207.00
Certifying a document or paper	$ 11.00
Conversion: Chapter 7 to Chapter 11 filed by debtor	$ 922.00
Chapter 7 to Chapter 13	$ no fee
Chapter 11 to Chapter 7	$ 15.00
Chapter 12 to Chapter 7	$ 60.00
Chapter 12 to Chapter 11	$ no fee
Chapter 12 to Chapter 13	$ no fee
Chapter 13 to Chapter 7	$ 25.00
Chapter 13 to Chapter 11 filed by debtor	$ 932.00
Copy cost (per page)	$ .50
*Copy of electronic record outside CM/ECF	$ 32.00
*Exemplification of a document or paper	$ 23.00
*Filing any document not in a case	$ 49.00
Payment returned for insufficient funds	$ 53.00
Pro Hac Vice, Motion to Appear	$ 100.00
*Redaction of Personal Identifiers	$ 26.00
*Relief from Stay, if not agreed to by all parties	$ 188.00
Reopening: Chapter 7	$ 260.00
Chapter 9	$ 1167.00
Chapter 11	$ 1167.00
Chapter 12	$ 200.00
Chapter 13	$ 235.00
Chapter 15	$ 1167.00
*Reproduction of recordings of proceedings (includes cost of materials)	$ 32.00
Retrieval of a record from the Federal Record Center	$ 64.00
Retrieval of a second box of a record from the Federal Record Center	$ 39.00
Retrieval of electronic records from the Federal Record Center	$ 19.90
Retrieval of electronic records from the Federal Record Center copy costs (per page)	$ .65
*Search of records of the court	$ 32.00
*Sell Pursuant to 11 U.S.C. Sec. 363(f), Motion to	$ 188.00
*Termination of joint administration or consolidation	
*Chapter 7	$ 338.00
*Chapter 11	$ 1738.00
*Chapter 12	$ 278.00
*Chapter 13	$ 313.00
*Transfer of Claim	$ 26.00
*Withdrawal of Reference (to U.S. District Court)	$ 188.00

5. BANKRUPTCY COURT – LOCAL RULES INDEX

LOCAL RULES

of the

UNITED STATES BANKRUPTCY COURT

for the

NORTHERN DISTRICT OF INDIANA

June 14, 2021

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Publication Page

Originally Adopted: January 1, 1994

Date of Amendment	*Title of Document*	*Amended Rule Numbers*
February 2, 2001	General Order 2001-01	B-3007-1
February 23, 2001	Amended General Order 99-1	Becomes Rule B-2002-2
April 30, 2001	Order Amending Local Rules	B-1007-5; B-5005-1; B-7007-1; B-7026-1; B-7026-2; B-7037-1; B-9010-1; B-9013-1; B-9014-2
December 7, 2001	Order Amending Local Rules	B-6006-1; B-9013-1
August 27, 2002	General Order 2002-01	B-5005-1; B-5005-2
September 24, 2002	Second Order Amending Local Bankruptcy Rule B-5005-1	B-5005-1
April 28, 2003	General Order 2003-01	B-1007-2; B-2002-2; B-2015-2; B-5005-2
April 28, 2003	General Order 2003-02	B-5005-2
October 28, 2003	Order Amending Local Bankruptcy Rules	B-5005-1; B-5005-2; B-9011-1; B-9013-4
January 15, 2004	Order Amending Local Bankruptcy Rules	B-5005-1; B-5005-2; B-5005-3
June 23, 2004	Order Amending Local Bankruptcy Rules	B-2002-1; B-3006-1; B-9014-2
February 15, 2005	Order Amending Local Bankruptcy Rules	B-2002-2; B-2014-2; B-4004-1; B-9019-1
April 28, 2005	General Order 2005-01	B-2002-2(a); B-5005-1; B-9014-2
September 22, 2005	General Order 2005-02	B-1009-1(a) & (c)
October 14, 2005	Order Adopting Interim Bankruptcy Rules and Amending Local Bankruptcy Rules	B-1002-1(a)(2); B-2002-2(a)(15) and (a)(16); B-4008-1
July 21, 2006	Order Amending Local Bankruptcy Rules	B-9006-1(a); B-9014-2
December 22, 2006	Order Amending Local Bankruptcy Rules	B-5005-2; B-9070-1
March 1, 2007	Order Amending Local Bankruptcy Rules	B-9010-2(a)

August 31, 2007	Order Amending Local Bankruptcy Rules	B-2002-2(b)(1)(B) B-3017.1-1
November 30, 2007	Order Amending Local Bankruptcy Rules	B-1002-1
November 30, 2007	Order Amending Local Bankruptcy Rules	B-3007-1(a) B-9013-1(a)
November 30, 2007	Order Amending Local Bankruptcy Rules	B-5005-3(b)
April 25, 2008	Order Amending Local Bankruptcy Rules	B-4004-2
July 23, 2008	Order Amending Local Bankruptcy Rules	B-4004-2
August 29, 2008	Order Amending Local Bankruptcy Rules	B-2002-3
August 29, 2008	Order Amending Local Bankruptcy Rules	B-9010-1
May 11, 2009	Order Amending Local Bankruptcy Rules	B-2002-2(a)(19)
May 11, 2009	Order Amending Local Bankruptcy Rules	B-4001-1
May 11, 2009	Order Amending Local Bankruptcy Rules	B-4004-3 and B-2002-2(a)(25)
September 11, 2009	Order Amending Local Bankruptcy Rules	B-4003-1; B-6007-1; B-7037-1
November 18, 2009	Order Amending Local Bankruptcy Rules	B-1007-3(a); B-1007-3(c); B-1007-4(b); B-2002-2(b)(1); B-2002-2(b)(2); B-2002-2(d); B-2014-2(b)(2); B-2015-1(a); B-3006-1(a); B-3018-1(b); B-3020-1(a); B-3020-1(b); B-4001-1(b)(3); B-4004-3(c); B-5071-1(b); B-7007-1(a); B-7016-1(d); B-9010-2(e)(2); B-9010-2(e)(3); B-9013-4(d); B-9014-1(b)
December 1, 2009	Order Amending Local Bankruptcy Rules	B-4004-2
December 16, 2009	Order Amending Local Bankruptcy Rules	B-1017-1; B-2015-1; B-4001-1(c); B-4002-1; B-4002-2
June 18, 2010	Order Amending Local Bankruptcy Rules	B-5071-1(b)
October 29, 2010	Order Amending Local Bankruptcy Rules	B-9010-2
May 5, 2011	Order Amending Local Bankruptcy Rules	B-3002-1; B-3007-1; B-5005-2; B-5005-3; B-7024-1
August 3, 2011	Order Amending Local Bankruptcy Rules	B-2014-1, B-9010-1(i)

October 31, 2011	Order Amending Local Bankruptcy Rules	B-1009-1
May 21, 2012	Order Amending Local Bankruptcy Rules	B-1001; B-5072-1; B-7069-1; B-9010-1
May 21, 2012	Order Amending Local Bankruptcy Rules	B-9013-1
August 31, 2012	Order Amending Local Bankruptcy Rules	B-2002-2; B-6004-1
December 18, 2012	Order Amending Local Bankruptcy Rules	B-7056-1
August 20, 2013	Order Amending Local Bankruptcy Rule	B-5005-1
August 20, 2013	Order Amending Local Bankruptcy Rule	B-9018-1
October 7, 2014	Order Amending Local Bankruptcy Rule	B-2002-2
November 6, 2014	Technical revision to update page numbering	
December 11, 2014	Technical revision to formatting	
July 7, 2015	Order Amending Local Bankruptcy Rules	B-7056-1; B-9013-4
July 7, 2015	Order Making Technical Amendments to Local Bankruptcy Rules	B-1002-1; B-2002-2; B-2002-3; B-3007-1; B-5005-1
July 13, 2015	Technical revision to update table of contents	
October 5, 2015	Order Amending Local Bankruptcy Rules	B-2002-2
December 1, 2015	Order Making Technical Amendments to Local Bankruptcy Rules	B-1002-1; B-1009-1: B-3002-1
November 7, 2016	Order Amending Local Bankruptcy Rules	B-4003-1; B-4008-3; B-9010-2
August 17, 2017	Technical revision to include pre-1994 commentary	
December 8, 2017	Order Amending Local Bankruptcy Rules	B-7016-1; B-7054-1
March 23, 2018	Order Amending Local Bankruptcy Rules	B-2002-2
December 1, 2018	Order Amending Local Bankruptcy Rules	B-5005-1
February 28, 2018	Order Amending Local Bankruptcy Rules	B-4004-2
March 15, 2019	Order Making Technical Amendments to Local Bankruptcy Rules	B-9029-2
September 25, 2019	Technical revision to Local Bankruptcy Forms 3a and 3b	B-2002-2 (LBF 3a and 3b)

February 19, 2020	Order Adopting Interim Bankruptcy Rules, Revisions to Local Rules to implement changes mandated by the Small Business Reorganization Act of 2019 (SBRA)	B-3017.1-1; B-3018-1; B-3020-1; B-3022-1; B-4004-3
March 3, 2020	Order Amending Local Bankruptcy Rules	B-7015-1; B-9013-4
January 21, 2021	Order Amending Local Bankruptcy Rules	B-3002-1.1; LBF 3002-1.1
June 11, 2021	Order Amending Local Bankruptcy Rule and Local Bankruptcy Form	B-3011-1; LBF 3011-1

Contents (References are to page numbers)

B-1001-1
Title and Scope of Rules

(a) These rules shall be known as the Local Rules of the United States Bankruptcy Court for the Northern District of Indiana. They may be cited as "N.D. Ind. L.B.R. B- ."

(b) These rules become effective on January 1, 1994.

(c) These rules shall govern all cases and proceedings referred to bankruptcy judges pursuant to N.D. Ind. L.R. 200-1.

(d) These rules supersede all previous rules and general orders governing practice or procedure promulgated by this court. They shall apply to all proceedings initiated in this court after they take effect and to all cases and proceedings pending at the time they take effect.

(e) In a case, the court, upon its own motion or upon the motion of any party in interest, may suspend or modify any of these rules if the interests of justice so require.

HISTORICAL AND REGULATORY NOTES

This rule was amended for technical numbering revisions pursuant to Order Amending Local Bankruptcy Rules dated May 21, 2012.

B-1002-1
Minimum Filing Requirements to Commence a Case

(a) The minimum filing requirements necessary to initiate a voluntary case under title 11 of the United States Code are set forth in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Official Forms. At the time of the adoption of these rules they require:

(1) The petition and, if the debtor has issued publicly-traded securities and is filing for relief under Chapter 11, Official Form 201A to the voluntary petition (11 U.S.C. § 301, Fed. R. Bankr. P. 1002 and Official Form 101/201);

(2) The appropriate filing fee, or, in an individual case, an application to either pay the filing fee in installments or, if the case is filed under Chapter 7, to waive that fee. (Fed. R. Bankr. P. 1006);

(3) Any miscellaneous fee applicable to the case (28 U.S.C. § 1930(b) and Bankruptcy Court Fee Schedule);

(4) A list of all creditors or a schedule of liabilities or a motion, together with a notice of the motion, directed to the United States trustee, for an extension of time to file the required list (Fed. R. Bankr. P. 1007(a)); and

(5) In cases under Chapter 9 and Chapter 11 a list of the creditors holding the twenty largest unsecured claims (Fed. R. Bankr. P. 1007(d)).

(b) The clerk may refuse to accept any case for filing which does not comply with the minimum filing requirements established by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Official Forms in effect at the time the case is presented for filing. If such a case is accepted for filing, it may be stricken by the court, *sua sponte*, without notice.

(c) A case that has been terminated pursuant to the provisions of this rule shall not constitute a case for the purpose of determining the creation, existence, or duration of the automatic stay as a result of any future petition that might be filed concerning the debtor, including § 362(c)(3), (c)(4), and (n).

Commentary (1994)

This rule is based upon the general orders the court has issued concerning the consequences of an insufficient filing, in order to make those consequences publicly known.

HISTORICAL AND REGULATORY NOTES

By Order Making Technical Amendments to Local Bankruptcy Rules dated November 25, 2015, this rule was amended to change the reference to "exhibit 'A'" to "Official Form 201A"; and to change the reference from "Official Form 1" to "Official Form 101/201."

By Order Making Technical Amendments to Local Bankruptcy Rules dated July 7, 2015, this rule was amended to delete the reference to Interim Bankruptcy Rule 1006(c).

Pursuant to Order Amending Local Bankruptcy Rules dated November 30, 2007, paragraph (c) was added to this rule.

Pursuant to Order Adopting Interim Bankruptcy Rules and Amending Local Bankruptcy Rules dated October 14, 2005, this rule was revised to better implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

B-1007-1
Matrix of Creditors

(a) The schedules and any list of creditors required by Rule 1007 of the Federal Rules of Bankruptcy Procedure shall be supplemented by a matrix of creditors and parties in interest, which shall be filed at the same time as the list required by Fed. R. Bankr. P. 1007(a).

(b) The matrix shall be prepared in such a form and manner as may, from time to time, be prescribed by the clerk and shall be verified by the debtor as to its correctness.

(c) It shall be the responsibility of the debtor to ensure that the matrix is complete and accurate. The clerk shall not be required to compare the names and addresses shown on the matrix with those shown on the schedules or other lists.

(d) In the event a petition is filed without a schedule of liabilities, a matrix prepared in accordance with this rule will serve as the list required by Fed. R. Bankr. P. 1007(a).

HISTORICAL AND REGULATORY NOTES

This rule is derived from Rule B-203(b) as amended on February 1, 1991.

B-1007-2
Statement Concerning Status of Filing of Tax Returns and Tax Review Proceedings

HISTORICAL AND REGULATORY NOTES

Abrogated April 28, 2003, by General Order 2003-01.

B-1007-3
Statement of Insider Compensation

(a) In any case under Chapter 11 or 12 in which the debtor is not a natural person, within fourteen (14) days after the order for relief the debtor shall file a "Statement of Insider Compensation." This statement shall be verified and shall disclose:

(1) the identity and duties of any insider who received compensation from the debtor or an affiliate of the debtor during the year prior to the order for relief and the amount, terms, and conditions of such compensation;

(2) whether the amount, terms, or conditions of any insider's compensation have been altered or changed, in any way, during the year prior to the case and, if so, the date and the precise nature of any such alteration or change; and

(3) the identity of any insider who will be compensated during the case, the duties such insider is expected to be performing and the amount, terms, and conditions of any compensation.

(b) The debtor shall serve a copy of the "Statement of Insider Compensation" upon the United States trustee, any trustee, any committee and/or the entities included on any list required by Fed. R. Bankr. P. 1007(d) and shall file proof thereof.

(c) As to any insider hired or employed by the debtor after the date of the petition, the debtor shall file and serve, in accordance with paragraph (b), a supplemental statement, disclosing the information required by paragraph (a)(3), within fourteen (14) days after such employment.

(d) The debtor shall not compensate any insider until the statements required by this rule have been filed.

(e) The court may, upon its own initiative or the motion of any party in interest, review the reasonableness of the amount, terms, and conditions of any compensation received by any insider during the administration of the estate, following notice and hearing.

(f) As used in this rule, the term "insider" is as defined in § 101 of title 11 of the United States Code.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

B-1007-4
Schedule of Income and Expenditures for Corporations and Partnerships

(a) A corporation or a partnership will not be required to file a schedule of income and expenditures unless ordered to do so.

(b) Upon the request of a trustee or the United States trustee and without notice or hearing, a corporation or a partnership will be ordered to file a schedule of income and expenditures within fourteen (14) days.

Commentary (1994)

Although both §521(a) and Bankruptcy Rule 1007(b)(1) require all debtors to file a schedule of income and expenses, there is no official form for this information unless the debtor is an individual. Bankruptcy Rule 1007(b)(1) authorizes the court to excuse the filing of certain schedules and statements. Paragraph (a) of the proposed rule is based upon this authority. More often than not, a Chapter 7 corporation or partnership is already out of business and would have no income or expenses to disclose. For cases under Chapter 11 and 12, much the same type of information will be available through the debtor's operating reports. Should it seem to be necessary or appropriate for the administration of the estate, paragraph (b) provides an expeditious process by which either a Trustee or the United States Trustee can request the information. The fifteen day time frame for filing the schedules is taken from Bankruptcy Rule 1007(c).

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

B-1007-5
Scheduling Federal and State Governmental Units

(a) If any federal or state governmental unit, department, agency or instrumentality is a creditor of the debtor or otherwise a party in interest, the schedules, statements, matrix/lists of creditors, or other document required to be filed with the court in which such indebtedness or interest is required to be disclosed shall identify the department, agency or instrumentality of the federal or state governmental unit through which the debtor became indebted, or which otherwise has an interest in the case.

(b) The address of any federal or state governmental unit, department, agency or instrumentality required to be stated in any schedule, statement of affairs, matrix/list of creditors or other document required to be filed with the court shall be the address for that governmental unit, department, agency or instrumentality as designated in the list maintained pursuant to Rule 5003(e) of the Federal Rules of Bankruptcy Procedure.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Rules dated April 30, 2001, this rule was revised effective June 4, 2001, to apply to both Federal and State agencies.

B-1009-1
Amendments

(a) (1) An amendment to a voluntary petition, list, schedule or statement shall be made in accordance with Fed. R. Bankr. P. 1009 and shall be accompanied by a separate notice of amendment which shall identify the document amended, the general purpose of the amendment, and state the information added, deleted or changed by the amendment. Each amendment shall be verified and signed as in the original document. No amendments by interlineation shall be permitted. Except by leave of court, the entire document which the amendments affect shall be reproduced. In order to accommodate the possibility of multiple amendments, each amendment shall be numerically identified.

(2) To correct the address of a scheduled creditor, the BNC Bypass Notice may be used. The BNC Bypass Notice may not be used to add a previously unscheduled creditor.

(b) If a schedule of creditors (Schedule D or E/F) is amended to add previously unscheduled creditors, the amendment shall also be accompanied by a supplement to the matrix of creditors. This supplement shall contain the name and address of the added creditor(s).

(c) Debtor shall serve a copy of the notice of amendment upon the United States trustee, any trustee, any committee and/or the entities included on any list required by Fed. R. Bankr. P. 1007(d), and all entities affected thereby, including any added creditors, and file proof thereof along with the amendment.

HISTORICAL AND REGULATORY NOTES

By Order Making Technical Amendments to Local Bankruptcy Rules dated November 25, 2015, this rule was amended to change the phrase "Schedule D, E, or F" to "Schedule D or E/F."

By Order Amending Local Bankruptcy Rules dated October 31, 2011, this rule was amended to allow the use of the BNC Bypass Notice to correct the address of a previously scheduled creditor.

By General Order2005-02 dated September 22, 2005, this rule was revised to change the way in which changed or added information is indicated when a document is amended.

B-1017-1
Dismissals for Failure to File Required Documents

(a) If an individual debtor in a voluntary case under Chapter 7 or Chapter 13 fails to file documents containing the information required by 11 U.S.C. § 521(a)(1)(A) and (B)(i-iii, v, vi) within 45 days following the date of the petition, unless that deadline has been extended or the trustee files an appropriate motion, the court will issue a notice reflecting the dismissal of the case pursuant to § 521(i)(1) on the 46th day after the date of the petition or as soon thereafter as may be practicable. A debtor or other party in interest who contends such a notice was issued in error may seek relief under Rule 9024(a) of the Federal Rules of Bankruptcy Procedure. In addition to the requirements of Local Bankruptcy Rule B-9023-1, any such motion shall:

(1) Specifically indicate where in the record documents containing the required information may be found;

(2) Describe how those documents provide all the information required; and

(3) State the date upon which they were filed.

(b) The absence of a notice reflecting dismissal of the case pursuant to § 521(i)(1) indicates that the court believes the debtor has filed the required information, and constitutes a presumption that such a dismissal has not occurred and that the case may continue to proceed. Notwithstanding the absence of such a notice, a party in interest that contends § 521(i)(1) requires dismissal of the case may file a motion for an order dismissing the case pursuant to § 521(i)(2). Such a motion must:

(1) Be filed electronically;

(2) Refer to § 521(i)(2) in both the title and the docket text entered by the movant; and

(3) Be accompanied by an affidavit from movant's counsel.

A motion which fails to so refer to § 521(i)(2) will be deemed to be a motion to dismiss for some other cause, a waiver of the court's need to act within seven days, and will be set for a hearing on notice to all creditors and parties in interest.

(c) The affidavit accompanying the motion for an order dismissing the case pursuant to § 521 (i)(2) must:

(1) Indicate that counsel has personally reviewed the docket and every page of every document filed in the case;

(2) Specifically identify what information required by § 521(a)(1)(A) and (B)(i-iii, v, vi) the debtor has failed to file;

(3) Specifically describe how the information that has been filed by the debtor does not provide what is required; and

(4) State whether the debtor has sought an extension of time to file the required documents and whether the trustee has filed a motion asking the court to decline to dismiss the case.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated December 16, 2009, this new rule was adopted effective January 1, 2010. General Order 2006-01 is vacated effective with the adoption of this new rule.

B-1073-1
Assignment of Cases

(a) The administrative orders of the court may provide for the assignment of cases and proceedings to the various divisions within this district.

(b) Judges may be assigned to a division of this court, permanently and for trial sessions, as the court may from time to time order.

(c) The judge to whom a case has been assigned has the primary responsibility with respect to all proceedings in this district arising in, under, or related to that case.

(d) All judges have concurrent jurisdiction and may act in any matter in the absence of, or with the consent of, the judge to whom the case or proceeding is assigned.

B-2002-1
Treatment of Returned Notices

(a) Envelopes containing notices of the § 341 meeting will bear the return address of debtor's counsel or the debtor if *pro se*. Debtor or debtor's counsel shall retain all such notices returned by the postal service for no less than one hundred eighty (180) days after the case is closed or dismissed.

(b) As to any notice which is not served by the clerk, the party responsible for serving the notice shall retain all notices returned by the postal service for no less than one hundred eighty (180) days after the date the case is closed or dismissed.

HISTORICAL AND REGULATORY NOTES

Pursuant to Order Amending Local Bankruptcy Rules dated June 23, 2004, paragraph (c) of Rule 2002-1 was deleted.

B-2002-2
Notice of Opportunity to Object to Motions

(a) Except as otherwise ordered, the court will consider the following matters without holding a hearing, unless a party in interest files a timely objection to the relief requested:

(1) Motions to approve agreements relating to relief from the automatic stay; providing adequate protection; or prohibiting or conditioning the use, sale or lease of property.

(2) Motions to approve agreements relating to the use of cash collateral.

(3) Motions for authority to obtain credit.

(4) In cases pending under Chapter 7, motions for relief from the automatic stay.

(5) Motions to avoid liens on exempt property.

(6) Motions to redeem personal property from liens.

(7) Applications for administrative expenses, including compensation for services rendered and reimbursement of expenses.

(8) Motions to extend the time for filing claims.

(9) Motions to extend the exclusivity periods for filing a Chapter 11 plan.

(10) Motions to extend the time to assume or reject executory contracts and unexpired leases.

(11) Motions filed by a trustee or debtor-in-possession to assume or reject executory contracts and unexpired leases.

(12) Motions to approve a modification to a confirmed Chapter 11, Chapter 12 or Chapter 13 plan.

(13) Motions to approve a compromise or settlement.

(14) Motions to transfer a case to another district or to another division in this district.

(15) Motions to approve transactions outside the ordinary course of business, except motions for the sale or lease of personally identifiable information.

(16) Motions to sell property free and clear of liens and/or to distribute the proceeds of sale, except motions to sell or lease personally identifiable information.

(17) Motions to abandon property of the estate.

(18) Motions for relief from the co-debtor stay of 11 U.S.C. § 1201 or § 1301.

(19) Motions for the joint administration or substantive consolidation of cases.

(20) Motions to compel the debtor to turnover or deliver property to a trustee.

(21) In cases under Chapter 12 and 13, motions for a discharge prior to the completion of payments under a confirmed plan (motions for hardship discharge).

(22) Motion of a party in interest to enter a final decree in a case under Chapter 11.

(23) Trustees' Applications to Employ Professionals after Notice to Creditors filed pursuant to N.D. Ind. L.B.R. B-2014-2(b).

(24) Applications to employ professionals retroactively.

(25) Motions for discharge in individual Chapter 11 cases.

(26) Motions to determine final cure pursuant to FRBP Rule 3002.1(h).

(27) Motions for order declaring lien satisfied pursuant to FRBP Rule 5009(d).

(b) Except as otherwise ordered by the court:

(1) no less than fourteen (14) days notice shall be given of the opportunity to file objections to:

(A) motions to approve agreements relating to relief from the automatic stay, providing adequate protection, prohibiting or conditioning the use, sale or lease of property;

(B)) motions to approve agreements relating to the use of cash collateral;

(C) motions for authority to obtain credit;

(D) motions for relief from the automatic stay in cases pending under Chapter 7; and

(E) motions relating to abandonment of property from the estate.

(2) no less than twenty-one (21) days notice shall be given of the opportunity to file objections to the other motions subject to this rule.

In all cases, the time within which objections may be filed shall be measured from the date notice of the opportunity to object is served.

(c) Local Bankruptcy Form 3a (LBF-3a), Local Bankruptcy Form 3b (LBF-3b) or another form of notice substantially similar thereto shall be used to give creditors and parties in interest notice of the motion and the opportunity to object thereto. This notice **must** (1) identify the party seeking relief, (2) state the name of the motion and the date upon which it was filed, (3) briefly and specifically state what you are asking the court to do, (4) contain a brief summary of the ground for the motion or have a copy of the motion attached to it, (5) state the date by which objections to the motion are to be filed, where objections should be filed and upon whom copies should be served, (6) contain a statement to the effect that if no objections are filed by the date due the court may grant the relief requested without holding a hearing, (7) be dated as of the date it is served, and (8) be signed by counsel for the movant or the movant, if *pro se*, and contain the name, address and telephone number of the individual signing the notice.

(d) The moving party shall be responsible for properly completing the appropriate version of LBF-3 so that it contains the required information, serving it upon the entities required by the United States Bankruptcy Code, the applicable rules of bankruptcy procedure, the local rules of this court,[1] and/or any order of the court, and making due proof thereof. The failure to

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[1]Pursuant to Rule 5003(e) of the Federal Rules of Bankruptcy Procedure, the clerk maintains a list containing the addresses of various state and federal governmental units. The list is available at the clerk's office and on the court's web site.

do so within seven (7) days of the date the motion was filed will be deemed to be a waiver of any time limits associated with ruling on the motion, including the time limits set forth in 11 U.S.C. § 362(e).

(e) The appropriate version of LBF-3 may also be adapted for use in those instances, not specifically covered by this rule, where the court directs that particular relief may be granted without a hearing following the expiration of notice to creditors. In those situations, in addition to complying with the other requirements of this rule, the notice shall be accompanied by a copy of the court's order authorizing notice to creditors and establishing the deadline for filing objections.

Commentary

Certain motions and applications can be granted after notice and the opportunity for a hearing. This Rule standardizes the practice and procedure for dealing with these motions. Paragraph (a) identifies the applications and motions to which this Rule applies. Paragraph (b) identifies the minimum amount of time between the date of service of the notice and the last day for objecting to the relief requested. Paragraph (c) governs the form of notice. Compliance with this paragraph is mandatory. Because the party filing a motion is responsible for preparing and serving the notice to creditors, the failure to use a complete and proper form of notice may result in the court's refusal to rule on the motion until proper notice has been sent.

Paragraph (a)(24) has been amended to clarify its scope, by changing the phrase "nunc pro tunc" to the word "retroactively." The term "nunc pro tunc" has a precise meaning (*See In re IFC Credit Corporation*, 663 F.3d 315, 317-18 (7th Cir. 2011)), which relates to correcting a record to properly document an actual previous event, rather than to relate something back when the event did not previously occur. The notice requirement refers to a circumstance in which a professional has in fact rendered services or established a professional relationship prior to being approved as a professional by the court - the professional now seeks to authorize employment retroactively to the date upon which services were first performed or the professional relationship arose.

Paragraph (b) does not specify which creditors and parties in interest are entitled to receive notice. Not all types of relief require notice to all creditors. You should consult the Code, the Bankruptcy Rules, and the Local Rules and General Orders to determine which creditors and parties in interest are entitled to receive notice of a particular type of motion.

Local Forms LBF-3a and LBF-3b may be used to comply with paragraph (c) of the Rule. Form 3a is used if you intend to summarize the grounds for the motion; Form 3b is used if a copy of the motion or application is attached to the notice. In briefly stating the specific remedy or relief you want the court to grant, it is important to be both brief and specific. A Motion for Abandonment, for example, would be the name of the motion; the relief requested by the movant, briefly summarized, would be to abandon from the bankruptcy estate the debtor's 1995 F o r d Tempo automobile. Or, for example, if the motion is to modify a confirmed Chapter 13 Plan, the relief requested might be to extend the plan payments from 36 months to 60 months. The requested relief should be stated with sufficient particularity in the notice that the reader can determine, from this statement alone, what it is that the movant is asking the court to do. Would your client be satisfied if the court granted the relief you request in this part of the notice, as worded? If the relief you mention is generic or ambiguous, an order granting that relief in those terms might be ineffectual. Specificity is needed, but brevity is also required. The statement of relief sought should be concise, clear, and informative.

If you will not be attaching the actual motion to the notice, then Form 3a should be used. In addition to the brief, particular statement of the relief you are asking the court to grant, you should provide a summary of the grounds for the motion. Here you should state, in summary form, the factual basis for seeking the relief. The statement of the grounds of the motion should not be argumentative; nor should it be generic. The purpose is to inform the creditor body of the essential facts supporting your motion or application.

Paragraph (d) of the Rule is a reminder that the moving party is responsible for preparing the notice to creditors, making certain it is in proper form, and serving the notice on the proper parties. In certain cases, parties who must receive the notice include all creditors and parties in interest; in other circumstances, only particular creditors or parties are required to be served with the notice. The identity of the entities required to be served is beyond the scope of this Rule; the identity of parties required to be served is determined by the provisions of the Bankruptcy Code itself, applicable rules of bankruptcy procedure, the local rules of this court, or by any order of this court.

Paragraph (e) of the Rule provides for certain adaptations of the forms, in the event of circumstances not anticipated by the Rule for example, where the court independently orders notice to creditors with respect to motions, applications or relief, not specifically mentioned in paragraph (a) of the Rule.

HISTORICAL AND REGULATORY NOTES

Technical revision to Local Bankruptcy Forms 3a and 3b by Order dated September 25, 2019.

By Order Amending Local Bankruptcy Rules dated March 23, 2018, paragraph (a)(27) was added to include motions for order declaring lien satisfied pursuant to FRBP Rule 5009(d).

By Order Amending Local Bankruptcy Rules dated October 5, 2015, paragraph (a)(26) was added to include motions to determine final cure pursuant to FRBP Rule 3002.1(h).

By Order Making Technical Amendments to Local Bankruptcy Rules dated July 7, 2015, this rule was amended to change the word "mailed" to "served" in paragraph (a) and in the commentary.

By Order Making Technical Amendments to Local Bankruptcy Rules dated July 7, 2015, LBF-3a and 3b were amended to change the phrase "mail a copy of your objection to" to "serve a copy of your objection upon" and the word "mailed" to "served."

Pursuant to Order Amending Local Bankruptcy Rules dated October 9, 2014, paragraph (a)(24) was amended by changing the phrase "nunc pro tunc" to the word "retroactively" for clarification and adding additional explanatory commentary.

By Order Amending Local Bankruptcy Rules dated August 31, 2012, this rule was amended to include motions to disburse sales proceeds.

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

Pursuant to Order Amending Local Bankruptcy Rules dated May 11, 2009, paragraph (a)(25) was added to include motions for discharge in individual Chapter 11 cases.

Pursuant to Order Amending Local Bankruptcy Rules dated May 11, 2009, paragraph (a)(19) was amended to make a technical change to clarify the rule.

Pursuant to Order Amending Local Bankruptcy Rules dated August 31, 2007, paragraph (b)(1)(B) was amended to make a technical change to clarify the rule.

Pursuant to Order Adopting Interim Bankruptcy Rules and Amending Local Bankruptcy Rules dated October 14,

2005, this rule was revised to better implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Pursuant to General Order 2005-01 dated April 28, 2005, paragraph (a)(24) was added to include applications to employ professionals nunc pro tunc.

Pursuant to Order Amending Local Bankruptcy Rules dated February 15, 2005, paragraph (a)(23) was added to include motions filed pursuant to new Rule 2014-2.

Pursuant to General Order 2003-01 dated April 28, 2003, new Rule 2002-2 became effective immediately.

LBF-3a (07/2015)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
[*division*]

IN THE MATTER OF:

[*name of debtor*]	)	CASE NO. [*case number*]
	)	CHAPTER [*chapter number*]
DEBTOR(S)	)	

NOTICE OF MOTION AND OPPORTUNITY TO OBJECT

On [*date*], [*name of moving party*], filed [*name of motion*], asking the court to [*briefly and specifically state what you are asking the court to do*]. In support of the relief requested, the motion states [*briefly summarize the motion*]. If you have not received a copy of the motion, you may get one by contacting the person who signed this notice or at the clerk's office.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the motion, then **on or before [*date*]** you or your attorney must:

1. File a written objection to the motion, which should explain the reasons why you object, with the Clerk of the United States Bankruptcy Court at:

[*address of the clerk's office for the division where the case is pending*]

If you mail your objection, you must mail it early enough so that it will be **received** by the date it is due.

2. You must also serve a copy of your objection upon:

[*name and address of the movant, if pro se*]

[*in cases under Chapter 11, 12, or 13, name and address of the debtor, if pro se*] [*names and addresses of any others to be served*]

If you do not file an objection by the date it is due, the court may grant the relief requested without holding a hearing. If you do file an objection, the court will set the motion for hearing, which you or your attorney will be expected to attend.

Date: [*date notice is served*]

_____ [*signed*] _____
Name:
Title:
Address:
Telephone:

LBF-3b (07/2015)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
[*division*]

IN THE MATTER OF:

[*name of debtor*]	)	CASE NO. [*case number*]
	)	CHAPTER [*chapter number*]
DEBTOR(S)	)	

NOTICE OF MOTION AND OPPORTUNITY TO OBJECT

On [*date*], [*name of moving party*], filed [*name of motion*], asking the court to [*briefly and specifically state what you are asking the court to do*]. A copy of the motion is attached to this notice.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the motion, then **on or before [*date*]** you or your attorney must:

1. File a written objection to the motion, which should explain the reasons why you object, with the Clerk of the United States Bankruptcy Court at:

[*address of the clerk's office for the division where the case is pending*]

If you mail your objection, you must mail it early enough so that it will be **received** by the date it is due.

2. You must also serve a copy of your objection upon:

[*name and address of the movant, if pro se*]

[*in cases under Chapter 11, 12, or 13, name and address of the debtor, if pro se*]

[*names and addresses of any others to be served*]

If you do not file an objection by the date it is due, the court may grant the relief requested without holding a hearing. If you do file an objection, the court will set the motion for hearing, which you or your attorney will be expected to attend.

Date: [*date notice is served*]

[*signed*]
Name:
Title:
Address:
Telephone:

B-2002-3
Limited Notice in Chapter 7 Cases

In Chapter 7 cases, after all time periods for filing proofs of claim have expired, all notices required by Fed. R. Bankr. P. 2002(a), except for the notice of dismissal or denial of discharge, shall be served only upon the debtor, the attorney for debtor, the case trustee, the United States trustee, creditors who have filed claims, and creditors, if any, who are still permitted to file claims by reason of an extension granted under Fed. R. Bankr. P. 3002(c)(1) or (c)(2).

HISTORICAL AND REGULATORY NOTES

By Order Making Technical Amendments to Local Bankruptcy Rules dated July 7, 2015, this rule was amended to change the phrase "mailed only to" to "served only upon."

This new rule was adopted by Order Amending Local Bankruptcy Rules dated August 29, 2008.

B-2014-1
Employment of Professionals by Debtor-in-Possession

(a)(1) Except when employed for a special purpose under 11 U.S.C. § 327(e), to be eligible to be employed as counsel for the debtor-in-possession, an attorney must be a registered ECF user and shall make all filings in the case, including the application to employ, electronically.

(a)(2) All applications for employment of professionals by a debtor-in-possession, together with the accompanying affidavits and disclosures, including the disclosure of compensation required by Fed. R. Bankr. P. 2016, shall be served upon the United States trustee, any committee and/or the entities included on any list required by Fed. R. Bankr. P. 1007(d), and all secured creditors.

(b) In addition to the other disclosures and affidavits required by the Bankruptcy Code and applicable Federal Rules of Bankruptcy Procedure, where the debtor-in-possession is not a natural person, the affidavit of the proposed professional shall specifically state:

(1) whether or not the debtor has any affiliates, as defined by 11 U.S.C. § 101(2), and, if so, (a) whether the professional or a member of the professional's firm or business represented or was employed by any such affiliate during the twelve months prior to the petition, and (b) any position, other than legal counsel, the professional or a member of the professional's firm or business holds or held in any such affiliate during the two years prior to the petition;

(2) if the professional or a member of the professional's firm or business has represented or been employed by any affiliate of the debtor during the twelve months prior to the petition, the circumstances of such representation or employment, all payments received on account of such representation or employment during the twelve months prior to the petition, and any amount owed on account of such representation or employment on the date of the petition;

(3) whether or not the professional or a member of the professional's firm or business represented or was employed by the debtor during the twelve months prior to the petition and, if so, the circumstances of such representation or employment, all payments received on account of such representation or employment during the twelve months prior to the petition, and any amount owed on account of such representation or employment on the date of the petition;

(4) any position, other than legal counsel, the professional or a member of the professional's firm or business holds or held in the debtor during the two years prior to the petition;

(5) whether or not the professional or a member of the professional's firm or business represented or was employed by an officer, director, shareholder, partner or limited partner of the debtor, or any entity that has guaranteed an obligation of the

debtor or is liable on any obligation of the debtor or pledged property to secure an obligation of the debtor and, if so, the circumstances of such representation or employment; and

(6) whether or not the professional or a member of the professional's firm or business has represented any scheduled creditor within the year prior to the date of the petition and, if so, the circumstances of such representation or employment.

(c) Unless objections to the application are filed seven (7) days prior to the date first set for the § 341 meeting or within twenty-one (21) days following service of the application, whichever is later, the court may approve the application without further notice or hearing. Unless the court orders otherwise for good cause shown, the failure to file an objection to the application within the time required will be deemed a waiver of any objection to the professional's employment by the debtor-in-possession and to the allowance or payment of fees on account of such employment based upon the disclosures made pursuant to paragraph (b).

(d) In the event the court approves the application, unless otherwise requested following notice to all creditors, the approval will relate back to the date the application was filed.

Commentary (1994)

This rule is designed to avoid after the fact realization that counsel for a debtor-in-possession may have a conflict of interest which would preclude it from representing a debtor-in-possession, by requiring counsel to pause and consider the unique potential for conflicts that the representation of a corporate debtor-in-possession may present. These disclosures will help to bring any such potential conflicts out into the open at the beginning of the case, when counsel first seeks authorization of its employment, rather than months or years later in the context of an objection to fees or a motion to disgorge fees previously paid.

Although some might find the proposed disclosures more burdensome than the standard "affidavit of disinterestedness" now used, their benefit comes from paragraph (c) providing for the waiver of any objection to the representation or payment of fees based upon the disclosures made in the affidavit.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated August 3, 2011, this rule was amended effective immediately, to add a requirement that counsel for the debtor-in-possession be a registered ECF user and make all filings electronically.

B-2014-2
Employment of Professionals by Trustees

(a) Except as otherwise requested, the court will consider and rule upon a bankruptcy trustee's application to employ a professional without notice or hearing.

(b)(1) If the trustee would like the court to defer ruling on an application to employ a professional until creditors have been given the opportunity to object to the application, the trustee shall file an "Application to Employ (Identify type of professional – attorney, accountant, etc.) After Notice to Creditors." In addition to the other disclosures and affidavits required by the Bankruptcy Code and the applicable Rules of Bankruptcy Procedure, the verified statement of the proposed professional shall also set forth the connections with any affiliates and/or insiders of the debtor and shall specifically state:

(A)(i) whether the professional or a member of the professional's firm or business represented or was employed by any affiliate or insider of the debtor during the twelve months prior to the petition, and (ii) any position the professional or a member of the professional's firm or business holds or held in any affiliate or insider of the debtor during the two years prior to the petition;

(B) if the professional or a member of the professional's firm or business has represented or been employed by any affiliate or insider of the debtor during the twelve months prior to the petition, the circumstances of such representation or employment, all payments received on account of such representation or employment, and any amount owed on account of such representation or employment on the date of the petition;

(C) whether or not the professional or a member of the professional's firm or business represented or was employed by the debtor during the twelve months prior to the petition and, if so, the circumstances of such representation or employment, all payments received on account of such representation or employment, and any amount owed on account of such representation or employment on the date of the petition;

(D) any position the professional or a member of the professional's firm or business holds or held in the debtor during the two years prior to the petition;

(E) whether or not the professional or a member of the professional's firm or business represented or was employed by an officer, director,

shareholder, partner or limited partner of the debtor, or any entity that has guaranteed an obligation of the debtor or is liable on any obligation of the debtor or pledged property to secure an obligation of the debtor and, if so, the circumstances of such representation or employment; and

(F) whether or not the professional or a member of the professional's firm or business has represented any scheduled creditor within the year prior to the date of the petition and, if so, the circumstances of such representation or employment.

(2) The application, together with the accompanying affidavits and disclosures, shall be served upon the United States trustee and all creditors and parties in interest, along with a notice of the application and the opportunity to object thereto prepared in accordance with local bankruptcy rule B-2002-2(c). Unless objections to the application are filed within twenty-one (21) days following service of the application and the notice of the opportunity to object thereto, the court may grant the application and approve the employment without further notice or hearing. Unless the court orders otherwise for good cause shown, the failure of any party served with notice of the opportunity to object to the application to file an objection within the time required will be deemed a waiver of any objection to the professional's employment by the trustee and to the allowance or payment of fees on account of such employment based upon the disclosures made in the application and the accompanying affidavits.

(c) Unless otherwise requested following notice to all creditors, the approval of a professional's employment will relate back to the date the application was filed.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

This new rule was adopted by Order Amending Local Bankruptcy Rules dated February 15, 2005.

B-2015-1
Report of Operations

(a) Every trustee, Chapter 11 debtor in possession, or other debtor who operates a business under any chapter of the Bankruptcy Code shall file a *monthly* statement of the cash receipts and disbursements no later than twenty-one (21) days after the end of the calendar month. This report shall include:

(1) A summary of all income and expenses for the reporting period;

(2) A statement of the use of, reductions and additions to raw materials and inventory, crops, livestock or other items held or produced for sale;

(3) A statement of the collection of and addition to accounts receivable;

(4) A reconciliation of all income and expenses while operating under Title 11;

(5) An itemized statement of all unpaid post-petition obligations;

(6) A statement of insurance coverage;

(7) Proof or certification of payment of all post-petition taxes due, including taxes withheld or collected from others; and

(8) A statement identifying any federal or state tax returns filed during the reporting period, including verification of tax deposits.

The report may be in any appropriate form or format containing the minimum information required.

(b) In addition to the electronic service automatically effected by the court's ECF System, the report shall be served upon the chair of any committee.

(c) The failure to comply with the reporting requirements of paragraph (a) may constitute cause for conversion, dismissal, or the appointment (or removal) of a trustee pursuant to 11 U.S.C. § 1112.

Commentary (1994)

A rule concerning monthly operating reports is necessary notwithstanding the requirements of the United States Trustee's office, as the revision to the national rules (2015(a)(5)) seems to indicate that reporting requirements will be on a quarterly basis and tied to the timing of the fees due the United States Trustee.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated December 16, 2009, this rule was amended effective January 1, 2010, to provide for substantive changes and delete paragraph (d).

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

B-2015-2
Post-Petition Taxes and Tax Returns

Every trustee or debtor who operates a business under any chapter of the United States Code shall:

(1) file all federal, state and local tax returns and shall pay all federal, state and local taxes on account of the operations of the estate as and when due; and

(2) segregate and pay as and when due any and all taxes withheld from employees or collected from others under any federal, state or local law.

HISTORICAL AND REGULATORY NOTES

Pursuant to General Order 2003-01 dated April 28, 2003, paragraph (b) of this rule was abrogated.

B-2090-1
Student Practice Rule

(a) **Purpose**. Effective legal service for each person in the Northern District of Indiana, regardless of that person's ability to pay, is important to the directly affected person, to our court system, and to our whole citizenry. Law students, under supervision by a member of the bar of the District Court for the Northern District of Indiana, may staff legal aid clinics organized under city or county bar associations or accredited law schools, or which are funded pursuant to the Legal Service Corporation Act. Law students and graduates may participate in legal training programs organized in the offices of United States Attorneys.

(b) **Procedure**. A member of the legal aid clinic, in representation of clients of such clinic, shall be authorized to advise such persons and to negotiate and appear on their behalf. These activities shall be conducted under the supervision of a member of the bar of the District Court for the Northern District of Indiana. Supervision by a member of this bar shall include the duty to examine and sign all pleadings filed on behalf of a client. Supervision shall not require that any such member of the bar be present in the room while a student or law graduate is advising a client or negotiating on his or her behalf nor that the supervisor be present in the courtroom during a student's or graduate's appearance. In no case shall any such student or graduate appear without first having received the approval of the judge of that court for the student's appearance. Where such permission has been granted, the judge of any court may suspend the trial proceedings at any stage where the judge in his or her sole discretion determines that such student's or graduate's representation is professionally inadequate and substantial justice so requires. Law students or graduates serving in a United States Attorney's program may be authorized to perform comparable functions and duties as assigned by the United States Attorney subject to all the conditions and restrictions in this rule and the further restriction that they may not be appointed as Assistant United States Attorneys.

(c) **Eligible Students**. Any student in an accredited law school who has received a passing grade in law school courses and has completed the freshman year shall be eligible to participate in a legal aid clinic if (1) the student meets the academic and moral standards established by the dean of that school, and (2) the school certifies to the court that the student has met the eligibility requirements of this rule.

B-3002-1
Filing and Allowance of § 503(b)(9) Administrative Claims

(a) A creditor whose claim may include amounts entitled to priority under 11 U.S.C. § 503(b)(9) (value of goods delivered during the 20 days prior to the commencement of the case) may file a proof of claim within the claims deadline established by the court. The amount of the claim entitled to priority, and the basis for the claimed priority, shall be stated on the proof of claim.

(b) Unless the court orders otherwise, a motion for the allowance of a § 503(b)(9) administrative expense must be filed no later than the expiration of the claims deadline. This motion shall state, with particularity, the goods delivered to the debtor during the 20 days prior to the petition, the date or dates of delivery, and their value. Movant shall be responsible for serving all creditors and parties in interest with notice of the motion, in accordance with Local Bankruptcy Rule B-2002-2(a)(7), and making due proof thereof. Absent objection within the time required by that rule, *see*, N.D. Ind. L.B.R. B-2002-2(b), the court will consider the motion without a hearing.

Commentary

Section 503(b)(9) administrative claims are something of a chimera. They have all the attributes of a prepetition claim, *see, e.g.*, 11 U.S.C. §§ 101(5), 501, and as such are subject to the requirements for those claims. *See, e.g.*, 11 U.S.C. § 502(a), (b). Yet, having been given administrative, not just priority, status, *compare* 11 U.S.C. § 507(a) with 11 U.S.C. § 503(b), they are also subject to the requirements of administrative claims, including allowing them "[a]fter notice and a hearing." The proposed rule tries to recognize both aspects of these claims and by doing so preserve the creditor's rights.

As a right to payment arising before the date of the petition, the Proof of Claim form (Official Form 410) may be used to assert a claim which might be entitled to administrative status under 11 U.S.C. § 503(b)(9). In doing so, the creditor should, in section 5 of that form regarding priority status, mark the box labeled "Other" and specify that the claim is filed pursuant to 11 U.S.C. § 507(a)(3) and § 503(b)(9), and then state the amount so claimed in the blanks provided. Among other things, using the claim form and following the usual claims process will preserve the creditor's rights to a general unsecured claim in the event any issue of administrative status would be resolved against it. To receive administrative status, the claimant must also satisfy the procedural requirements of 11 U.S.C. § 503(b) which require "notice and a hearing" before administrative claims – including § 503(b)(9) claims – can be allowed. This does not require an actual hearing, only the opportunity for one, 11 U.S.C. § 102(1), but it does require something more than whatever "notice" might come from simply filing something on the docket. The language of § 102(1)(B)(i) that no hearing is required if "a hearing is not timely requested" suggests that some type of formal notice of the deadline for requesting a hearing needs to be given.

This Rule also establishes a deadline for requesting the allowance of § 503(b)(9) administrative claims. *See*, 11 U.S.C. § 503(a). Unlike other administrative claims, which do not exist as of the date of the petition, a § 503(b)(9) claimant can determine the amount of its administrative claim early in the case, and so the rule establishes a deadline for it to do so and to file the required motion. Absent a timely motion for allowance, the claim may still be allowed as a general unsecured claim under 11 U.S.C. § 502(a).

HISTORICAL AND REGULATORY NOTES

By Order Making Technical Amendments to Local Bankruptcy Rules dated November 25, 2015, the commentary was amended to change the phrase "Official Form 10" to "Official Form 410."

By Order Amending Local Bankruptcy Rules dated May 5, 2011, this new rule was adopted effective immediately.

B-3002.1-1
Response to Notice of Final Cure

(a) A Response to a Notice of Final Cure shall be filed on Local Form 3002.1-1 and include a copy of the payoff statement as defined by 12 C.F.R. §1026.36(c)(3) (Eff. 1/10/14). If the Response is not on the proper form or accompanied by the payoff statement, the Response shall be amended within 14 days of notice by the Trustee of the deficiency.

(b) Trustee shall serve a blank copy of local form 3002.1-1 required by this rule along with the Notice of Final Cure.

Fill in this information to identify the case:	
	(post publication draft)
Debtor 1	
Debtor 2 (Spouse, if filing)	
United States Bankruptcy Court for the:	District of (State)
Case number	

Local Bankruptcy Form 3002.1-1

Response to Notice of Final Cure Payment 10/19

According to Bankruptcy Rule 3002.1(g), the creditor responds to the trustee's notice of final cure payment.

Part 1: Mortgage Information

Name of creditor: _____ **Court claim no.** (if known): _____

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Property address:

_____
Number Street

_____

_____
City State ZIP Code

Part 2: Prepetition Default Payments

Check one:

☐ Creditor **agrees** that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim.

☐ Creditor **disagrees** that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim. Creditor asserts that the total prepetition amount remaining unpaid as of the date of this response is: $ _____

Part 3: Postpetition Mortgage Payment

Check one:

☐ Creditor states that the debtor(s) **are current** with all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs. Creditor provides the following information as required pursuant to NDIN L.R. 3002.1 as of the date of this Response:

Date last payment was received on the mortgage: $_____

Date next post-petition payment from the debtor(s) is due: $_____

Amount of the next post petition payment due: $_____

Unpaid principal balance of the loan: $_____

Additional amounts due for any deferred or accrued interest: $_____

Balance of the escrow account: $_____

Balance of unapplied funds or funds held in a suspense account: $_____

☐ Creditor states that the debtor(s) **are not current** on all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.

Creditor asserts that the total amount remaining unpaid as of the date of this response is:

a. Total post-petition ongoing payments due: $_____

b. Total fees, charges, expenses and costs outstanding: $_____

c. Total negative escrow amount: $_____

d. **Total.** Add lines a , b and c. $_____

Creditor asserts that the debtor(s) are contractually due for the monthly payment that first became due on: ____/____/_____
MM DD YYYY

Part 4: Itemized Payment History

If the creditor disagrees in Part 2 that the prepetition arrearage has been paid in full or states in Part 3 that the debtor(s) are not current with all postpetition payments, including all fees, charges, expenses, escrow, and costs, the creditor must attach an itemized payment history disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all payments received;
- all fees, costs, escrow, and expenses assessed to the mortgage; and
- all amounts the creditor contends remain unpaid.

Part 5: Sign Here

The person completing this response must sign it. The response must be filed as a supplement to the creditor's proof of claim.

Check the appropriate box::

☐ I am the creditor.

☐ I am the creditor's authorized agent.

I declare under penalty of perjury that the information provided in this response is true and correct to the best of my knowledge, information, and reasonable belief.

Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this response applies.

✘ _____ Date ____/____/_____
Signature

Print _____ Title _____
First Name Middle Name Last Name

Company _____

If different from the notice address listed on the proof of claim to which this response applies:

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____–_____ Email _____

B-3006-1
Withdrawal of Claim

(a) A request to withdraw a claim after it has been objected to, after the creditor has been named as a defendant in an adversary proceeding, or after the creditor has participated significantly in the case, shall be served upon the trustee or debtor-in-possession, any committee, all parties who objected to the claim, and the United States trustee. In the absence of an objection or other response within twenty-one (21) days after the date the request to withdraw is filed with the court, the court may allow the claim to be withdrawn without further notice or hearing.

(b) A request to withdraw a claim does not extend or defer the deadline for filing a response to a claim objection and will not delay any proceeding concerning the claim or the court's ruling thereon.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

This new rule was adopted pursuant to Order Amending Local Bankruptcy Rules dated June 23, 2004.

B-3007-1
Objections to Claims; Default

(a) Except as otherwise authorized by Rule 3007 of the Federal Rules of Bankruptcy Procedure regarding omnibus claim objections, an objection to a proof of claim shall be limited to the claim or claims filed by a single creditor, unless the objection is directed to a claim which has been filed jointly by more than one creditor.

(b) An objection to a proof of claim shall identify the creditor by name and the claim number as assigned by the court, and shall state with specificity the basis for disallowance or allowance in an amount or with a priority other than that claimed.

(c) Local Bankruptcy Form 2 (LBF-2) shall be used to give the claimant notice of the claim objection and the opportunity to respond thereto, instead of Official Bankruptcy Form 20(B).

(d) The objector shall be responsible for completing LBF-2 and serving it, along with the claim objection, and making due proof thereof, in accordance with Rule 7004 of the Federal Rules of Bankruptcy Procedure upon:

(1) the claimant, and claimant's attorney if an appearance has been filed;

(2) any trustee; and

(3) the debtor and debtor's counsel.

(e) Unless a response to the objection is filed within thirty (30) days following service of the notice of objection, the court may disallow or modify the claim in accordance with the objection, without further hearing.

Commentary (1994)

This rule is new. Paragraph (b), [now paragraph (e)], is derived from Southern District of Indiana L.B.R. B-3007. It provides a mechanism to deal with claim objections without a hearing where the claimant fails "to respond as directed in an order...."

Paragraph (a), [now paragraph (b)], does little more than state what one would expect an objection to contain – the reason for the objection – and the common sense requirement that it should be served upon the claimant as well as the other parties that are most likely to be interested in establishing the correct amount due.

HISTORICAL AND REGULATORY NOTES

By Order Making Technical Amendments to Local Bankruptcy Rules dated July 7, 2015, LBF-2 was amended to change the phrase "mail a copy of your response to" to "serve a copy of your response upon" and the word "mailed" to "served."

By Order Amending Local Bankruptcy Rules dated May 5, 2011, this rule was amended to make technical corrections to clarify the rule.

Pursuant to Order Amending Local Bankruptcy Rules dated November 30, 2007, paragraph (a) of this rule was amended to conform to the provisions of the amended national rules.

Pursuant to General Order 2001-01 dated February 2, 2001, this rule was adopted along with LBF-2; General Order 98-1 was vacated.

LBF-2 [07/2015]

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
_____DIVISION

IN THE MATTER OF:	)	
	)	
[*name of Debtor*]	)	CASE NO. [*case #*]
	)	
DEBTOR(S)	)	

NOTICE OF OBJECTION TO CLAIM

To: [*name of creditor*]

[*Name of party objecting to claim*] has filed an objection to your claim in this bankruptcy case. A copy of the objection accompanies this notice.

As a result of the objection, *your claim may be reduced, modified or eliminated.* You should read these papers carefully and discuss them with your attorney.

If you do not want the court to eliminate or change your claim, then **within thirty days (30)** of the date of this notice you or your attorney must:

1. File with the court a written response to the objection, explaining your position, at:

[*address of clerk's office for the division in which the case is pending*]

If you mail your response to the court, you must mail it early enough so that it will be **received** within the time required.

2. You must also serve a copy of your response upon:

[*name and address of objector's attorney or the objector, if pro se*]

[*name and address of the case trustee and the trustee's attorney, if any*]

[*in cases under Chapter 11, 12, or 13, name and address of debtor's attorney or the debtor, if pro se*]

If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to your claim.

Date: [*date notice is served*]

[*signature*] _____
Name:
Address:
Telephone:

B-3011-1
Payment of Unclaimed Funds

(a) A request for the payment of unclaimed funds, which have been deposited with the court pursuant to 11 U.S.C. § 347(a), Fed. R. Bankr. P. 3010 or Fed. R. Bankr. P. 3011, must be made through an attorney who is a member of the bar of this court, unless the entity entitled to receive payment is a natural person making the request on its own behalf and not as an agent or other representative of the claimant. This request shall be made using the court's local form: LBF 3011-1, Application for Payment of Unclaimed Funds.

(b) The application shall be accompanied by an affidavit, together with any appropriate supporting documentation, executed by the claimant demonstrating the claimant's present entitlement to the funds. If the claimant is the entity for whose benefit the funds were originally deposited, the affidavit shall contain a statement to the effect that the right to payment has not, in any way, been transferred or assigned to any other entity.

(c) If the claimant is not a natural person, the affidavit required by paragraph (b) shall be executed by an officer, director, general partner, or other individual authorized to do so and shall be accompanied by proof that the individual executing the affidavit has been authorized to do so on behalf of the claimant and of the capacity in which the individual acts.

(d) The clerk shall serve notice of the upon the United States Attorney. If the claimant is not the entity for whose benefit the funds were originally deposited (Owner of Record), the clerk shall also serve notice of the application upon that entity.

(e) In the absence of an objection or other response from the United States Attorney, or Owner of Record, if applicable, within thirty (30) days of the date the motion is filed, the court may determine the motion, without further notice or hearing.

(f) The failure to comply with the requirements of this rule may result in the motion being denied.

Commentary (1994)

This rule is designed to implement 28 U.S.C. §2042, concerning the manner in which money deposited with the court is retrieved. Beyond requiring notice to the U.S. Attorney and proof of entitlement, the statute is silent as to how this is to be done. The Bankruptcy Code and Rules deal only with depositing the money with the court and do not speak to getting it out. The rule is largely prompted by the problems the court has recently encountered in this area due to "unclaimed funds locators."

Paragraph (a) does nothing more than reiterate the court's general rule requiring entities other than natural persons to appear through counsel. This seems to be appropriate since the motion asks for a court order, based upon a judicial determination that the movant has proven its entitlement to funds in possession of the clerk. Although such a restatement of the general rule is arguably unnecessary, it has been reiterated for ease of reference and for the sake of clarity. It is also legitimately applied to the scenario presented by fund locators. These individuals often are not attorneys and base their right to proceed upon a power of attorney authorizing them to collect the funds on the claimant's behalf. Existing

law in Indiana indicates that this is improper. *See* Simmons v. Carter, 576 N.E. 2d 1278 (Ind. App. 1991)(judgment rendered in an action initiated on behalf of a plaintiff by a non-lawyer, acting pursuant to a power of attorney, was void).

Paragraphs (b) & (c) are designed to ensure that the motion makes a proper showing (ie. presents a prima facie case) concerning the claimant's right to distribution of the funds at the time the motion is made and that, in the case of a claimant other than a natural person, there is some type of verification that the individual executing the affidavit is what he purports to be - in other words, proof that the "president" of the corporation is really the president.

Paragraph (d) is nothing more than a restatement of the requirements of a proper proof of service.

Paragraph (e) is designed to implement the statutory requirement of notice to the U.S. Attorney, by ensuring that it as an appropriate opportunity to file any response.

Paragraph (f) serves only to provide public notice of the consequences of a failure to comply with the requirements of the rule.

Fill in this Information to identify the case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the Northern District of Indiana

Case number: _____

APPLICATION FOR PAYMENT OF UNCLAIMED FUNDS (11/20)

1. Claim Information

For the benefit of the Claimant(s)[1] named below, application is made for the payment of unclaimed funds on deposit with the court. I have no knowledge that any other party may be entitled to these funds, and I am not aware of any dispute regarding these funds.

Note: If there are joint Claimants, complete the fields below for both Claimants.

Amount:	
Claimant's Name:	
Claimant's Current Mailing Address, Telephone Number, and Email Address:	

2. Applicant Information

Applicant[2] represents that Claimant is entitled to receive the unclaimed funds because (*check the statements that apply*):

☐ Applicant is the Claimant and is the Owner of Record[3] entitled to the unclaimed funds appearing on the records of the court.

☐ Applicant is the Claimant and is entitled to the unclaimed funds by assignment, purchase, merger, acquisition, succession or by other means.

- ☐ The Owner of Record is: _____.

☐ Applicant is Claimant's representative (*e.g.,* attorney or unclaimed funds locator).

- ☐ The Owner of Record is: _____.

☐ Applicant is a representative of the deceased Claimant's estate.

- ☐ The Owner of Record is: _____.

[1] The Claimant is the party entitled to the unclaimed funds.
[2] The Applicant is the party filing the application. The Applicant and Claimant may be the same.
[3] The Owner of Record is the entity for whose benefit the funds were originally deposited.

3. Supporting Documentation

☐ Applicant has read the court's instructions for filing an Application for Unclaimed Funds and is providing the required supporting documentation with this application. Prior to filing this application, applicant and/or claimant(s) must read Northern District of Indiana Local Bankruptcy Rule B-3011-1, Payment of Unclaimed Funds, setting out the requirements for requesting payment of unclaimed funds.

4. Applicant Declaration

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

_____

Signature of Applicant

_____

Printed Name of Applicant

Address:

Telephone: _____

Email: _____

4. Co-Applicant Declaration (if applicable)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: _____

_____

Signature of Co-Applicant (if applicable)

_____

Printed Name of Co-Applicant (if applicable)

Address:

Telephone: _____

Email: _____

B-3017.1-1
Consideration of Disclosure Statements in Small Business Cases and Confirmation Deadlines

(a) Except in cases under subchapter V of Chapter 11, if the proponent of a plan in a small business case would like the court to:

(1) determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

(2) approve a disclosure statement submitted on an approved official form,

(3) conditionally approve a disclosure statement subject to final approval at hearing where the court will also consider confirmation of a proposed plan, or

(4) allow the proponent to defer filing of a proposed plan until after a disclosure statement has been approved,

it shall file an appropriate motion at the same time as the proposed plan or the proposed disclosure statement is filed. Such a motion shall state, with particularity, why a separate disclosure statement may be dispensed with, why a separate hearing to consider the adequacy of a disclosure statement is not necessary, or why the filing of a plan should be deferred.

(b) Absent an order granting a motion submitted in accordance with paragraph (a), the court will schedule the matter for such proceedings as it deems appropriate.

(c) At any hearing where the court is to consider the adequacy of a proposed disclosure statement, the court may also, either on its own initiative or at the request of any party in interest, consider whether any applicable deadlines for confirming a proposed plan should be extended.

HISTORICAL AND REGULATORY NOTES

This rule was amended pursuant to Order Adopting Interim Bankruptcy Rules and Amending Local Bankruptcy Rules to implement changes mandated by the Small Business Reorganization Act of 2019 (SBRA) dated February 14, 2020.

This new rule was adopted pursuant to Order Amending Local Bankruptcy Rules dated August 31, 2007.

B-3018-1
Chapter 11 Confirmation: Balloting

(a) Any entity entitled to accept or reject a proposed plan may do so by delivering an appropriate ballot to the proponent or other individual identified by the court on or before the date set by the court. Each ballot shall clearly indicate, either by designation or description, the class in which the entity is voting to accept or reject. An entity entitled to cast a ballot in more than one class shall submit a separate ballot for each class in which it desires to vote to accept or reject a proposed plan.

(b) Unless the court orders otherwise, the proponent of the plan shall prepare, file, and serve a verified report of the results of the balloting no later than fourteen (14) days before the date set for the hearing on confirmation. The report shall include the designation and description of each class provided for by the plan and whether or not any such class is impaired, the total number and amount of claims voting in each class and the number and amount of claims voting to accept and to reject the plan. The report shall also identify any material change from the disclosure statement or, in the case under subchapter V, the plan's representations concerning the requirements for confirmation established by 11 U.S.C. § 1129(a) and shall indicate whether there are sufficient funds available with which to make the payments due upon the effective date of the plan. All ballots received shall be attached to the ballot report. A similar report on any ballots received after the last date fixed for delivering acceptances or rejections shall be made by the proponent of the plan at the hearing on confirmation and shall be accompanied by such ballots.

(c) The proponent shall serve copies of the first ballot report upon the United States trustee, any trustee, any committee and/or the entities included on any list required by Fed. R. Bankr. P. 1007(d). If the proponent is an entity other than the debtor, a copy shall also be served upon the debtor and debtor's counsel.

Commentary (1994)

Paragraph (a) is derived from Bankr. Rule 3018(d), its commentary and the committee note to official form 14 (ballot).

Paragraph (b) is derived from prior Rule B-223(e), although the required contents of a ballot report are identified with greater specificity. These requirements have been derived from a proposed local rule for the Northern District of Illinois.

HISTORICAL AND REGULATORY NOTES

This rule was amended pursuant to Order Adopting Interim Bankruptcy Rules and Amending Local Bankruptcy Rules to implement changes mandated by the Small Business Reorganization Act of 2019 (SBRA) dated February 14, 2020.

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

B-3020-1
Chapter 11 Confirmation: Hearing

(a) In a case under Chapter 11, other than a case under subchapter V, if all the requirements for confirmation of 11 U.S.C. § 1129(a) are met other than those contained in paragraph (8) (acceptance or deemed acceptance of the plan by all classes), should the proponent intend to seek confirmation over the rejection of any class pursuant to the requirements of 11 U.S.C. § 1129(b), the proponent shall file and serve a request to do so no later than fourteen (14) days before the date set for the confirmation hearing. The request shall identify the class or classes which have rejected the plan as to which the proponent contends the requirements of 11 U.S.C. § 1129(b) are fulfilled and shall state how those requirements have been fulfilled as to each such class, so that the plan may be confirmed notwithstanding the rejection of such class or classes. The request shall be served upon each entity which cast a ballot in any such rejecting class and upon the entities entitled to receive copies of the ballot report. At the initial confirmation hearing the court may determine that the proposed plan does not discriminate unfairly and is fair and equitable as to a rejecting class, based upon the information contained in the request, without further proof, unless at least one rejecting member of such class appears at the confirmation hearing.

(b) In a case under subchapter V of Chapter 11, if all classes do not vote to accept the proposed plan pursuant to 11 U.S.C. § 1191(b), the debtor intends to seek confirmation over the rejection of any class, debtor shall file and serve a motion to do so not later than fourteen (14) days before the date set for the confirmation hearing. The request shall identify the class or classes which have rejected the plan as to which the debtor contends the requirements of 11 U.S.C. § 1191 (b) are fulfilled and shall state how those requirements have been fulfilled as to each such class, so that the plan may be confirmed notwithstanding the rejection of such class or classes. The motion shall be served upon each entity which cast a ballot in any such rejecting class and upon the entities entitled to receive copies of the ballot report. At the initial confirmation hearing the court may determine that the proposed plan does not discriminate unfairly and is fair and equitable as to a rejecting class, based upon the information contained in the debtor's motion, without further proof, unless at least one rejecting member of such class appears at the confirmation hearing.

(c) The proponent of the plan may be required to file an application to fix the amount of any confirmation deposit, no less than fourteen (14) days before the date set for the hearing on confirmation, which shall include the computations which were used in arriving at the amount of any deposit.

Commentary (1994)

Paragraph (a) is based upon §1129(b) which specifically requires the proponent to request "cram down" of a plan. The formal request is rarely, if ever, made as to a class which has only voted to reject a plan and has not also filed a separate objection to the plan as well.

HISTORICAL AND REGULATORY NOTES

This rule was amended pursuant to Order Adopting Interim Bankruptcy Rules and Amending Local Bankruptcy Rules to implement changes mandated by the Small Business Reorganization Act of 2019 (SBRA) dated February 14, 2020.

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

B-3022-1
Final Decree in Chapter 11 Cases

(a) Except for a case pending under subchapter V of Chapter 11, unless the confirmed plan or the order of confirmation otherwise provides, an estate under Chapter 11 may be deemed to be fully administered when:

(1) at least one hundred eighty (180) days have passed after the date of the entry of the order of confirmation;

(2) all adversary proceedings, contested matters and other disputes, including appeals, have been resolved by a final, nonappealable order or dismissed; and

(3) no paper has been filed in the case for at least sixty (60) days.

(b) In a case pending under subchapter V of Chapter 11, the estate may be deemed to be fully administered when:

(1) the services of the trustee have terminated;

(2) all adversary proceedings, contested matters and other disputes, including appeals, have been resolved by a final, nonappealable order or dismissed; and

(3) no paper has been filed in the case for at least sixty (60) days.

(c) The court may, on its own motion and without notice or hearing, enter a final decree and close a case under Chapter 11 when the estate is deemed to be fully administered.

(d) Upon the motion of a party in interest, following notice to creditors, the court may enter a final decree and close a case under Chapter 11, without a hearing, in the absence of an objection thereto.

Commentary (1994)

Bankruptcy Rule 3022 authorizes the entry of a final decree closing a case under Chapter 11, on the court's own motion or the motion of a party in interest, when the estate has been "fully administered." This rule identifies the point in time when the court will act on its own initiative and establishes a notice and opportunity to object procedure when a party in interest seeks a final decree.

HISTORICAL AND REGULATORY NOTES

This rule was amended pursuant to Order Adopting Interim Bankruptcy Rules and Amending Local Bankruptcy Rules to implement changes mandated by the Small Business Reorganization Act of 2019 (SBRA) dated February 14, 2020.

B-4001-1
Relief from Stay in Chapter 13 Cases

(a) If a confirmed chapter 13 plan provides for the surrender of property in which a creditor has an interest, whether as a lienholder or as a lessor, the automatic stay is terminated upon confirmation, and without the need for a further order of the court, to allow the creditor to foreclose upon, repossess, or otherwise proceed *in rem* against that property. The surrendered property will, nonetheless, remain property of the estate until it has been disposed of pursuant to applicable non-bankruptcy law as a result of the creditor's proceedings unless the confirmed plan specifically provides for its abandonment or the court enters a separate order of abandonment, following an appropriate motion and notice to creditors.

(b) In a case under chapter 13, if the provisions of a plan provide for the surrender of property in which a creditor has an interest, the court will consider a motion for relief from stay and/or abandonment as to such property without holding a hearing, unless a party in interest files an objection to the relief requested, provided that:

(1) The motion is titled "Motion for Relief from Stay and/or Abandonment Because Plan Proposes to Surrender Property";

(2) Movant serves all creditors and parties in interest with a notice of the motion and the opportunity to object thereto, containing the information required by Local Bankruptcy Rule B-2002-2(c), and makes due proof thereof; and

(3) The deadline for filing objections to the motion is no less than fourteen (14) days after service of the notice and no sooner than seven (7) days after the first date set for the meeting of creditors held pursuant to section 341(a) of the United States Bankruptcy Code.

The failure to comply with the requirements of sub-paragraphs (b)(2) and (b)(3) will constitute a waiver of any time limits associated with ruling on the motion, including the time limits set forth in 11 U.S.C. § 362(e).

(c) In a case under Chapter 13, a motion for relief from stay and/or abandonment, other than a motion because a plan proposes to surrender property, will be set for such proceedings as the court deems appropriate, and must include the following information:

(1) Copies of documents upon which the claim is based, including loan documents and documents that evidence both the grant of the lien, security interest, mortgage or other encumbrance, and its proper perfection or proper recordation;

(2) The balance owing as of the date the petition is filed, and the date and amount of any payments received since the filing;

(3) The total arrearage as of the petition date, the number of pre-petition payments in arrears, and the amount of each such payment;

(4) The movant's best estimate of the value of the collateral and the basis for that value;

(5) The identity of any person or entity claiming an interest in the property that is the subject of the motion and of which movant is aware; and

(6) If the motion is based upon a post-petition payment default, the motion and/or exhibits thereto shall also contain the following:

(A) A legible post-petition payment history that sets forth the date each post-petition payment was received, the amount of each post-petition payment, and how each post-petition payment was applied;

(B) An itemization of any other expenses or fees that are due post-petition including attorney fees, filing fees, late payment fees, and escrow advance;

(C) The total dollar amount necessary to cure the post-petition debt as of a date certain; and

(D) The address where the current monthly payment is to be mailed if the mailing address is not listed in the movant's filed proof of claim or if the mailing address has changed.

The failure to provide the documentation and/or information required by this paragraph may result in the motion being stricken or denied.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated December 16, 2009, this rule was amended effective January 1, 2010, to provide for substantive changes in paragraph (c).

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

Pursuant to Order Amending Local Bankruptcy Rules dated May 11, 2009, this new rule became effective immediately.

B-4002-1
Debtor's Duties

(a) In addition to the other duties imposed upon a debtor by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, the debtor under any chapter shall:

(1) Cooperate with the United States trustee by furnishing such information as the United States trustee may reasonably require in supervising the administration of the estate; and

(2) Immediately upon the entry of an order for relief, give written notice of the bankruptcy to any court or other tribunal where an action or other proceeding is being maintained against the debtor, whether or not the matter has proceeded to final judgment, and to all the parties involved in any such action or proceeding.

(b) The payment advices or other evidence of payment referred to in 11 U.S.C. § 521(a)(1)(B)(iv) need not be filed with the court.

Commentary (1994)

Paragraph (a) is based upon former Bankruptcy Rule X-1007(b). Although the obligation to cooperate with the UST is certainly implicit, the current version of the Bankruptcy Rules has not continued the explicit commandment of former rule X-1007(b).

Paragraph (b) [now paragraph (a)(2)] is based upon S.D.Ind.L.B.R. 4002(a). It is designed to minimize or eliminate any problems that might arise due to a delay between the actual filing of a petition for relief (with the resulting creation of the automatic stay) and ultimate notice to creditors of it. Consequently, despite the filing of the petition, when no one is told about it, employers continue to observe garnishment orders and sheriffs continue to sell property upon foreclosure, as previously ordered by the state court. Such a situation accomplishes nothing beyond breeding unnecessary litigation to undo something that could have been so easily avoided. Furthermore, given the safe harbor of §549(c) it may not be possible to undo some of these otherwise improper transactions.

Although the rule does not and cannot change the scope or impact of the automatic stay, it places the burden of informing other courts of it upon the debtor, since it is the debtor (or debtor's counsel), who will first become aware of its creation and is also most vitally interested in taking advantage of its protection.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated December 16, 2009, this rule was amended effective January 1, 2010, to provide for substantive changes including renumbering of paragraphs and adding paragraph (b). General Order 2005-03 is vacated with the amendment of this rule.

B-4002-2
Payments by Debtors in Chapter 13 Cases

Notwithstanding the provisions of 11 U.S.C. § 1326(a)(1)(B) and 1326(a)(1)(c), the debtor shall not reduce the payments to the Chapter 13 trustee, and any payments required by these sections shall be paid by the trustee following proper notice and order of the court.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated December 16, 2009, this new rule was adopted effective January 1, 2010. General Order 2005-03 is vacated with the adoption of this new rule.

B-4003-1
Manner of Claiming Exemptions

(a) Any property claimed as exempt shall be adequately described and itemized on the schedules required by Fed. R. Bankr. P. 1007. General terms (*i.e.*, "automobile," "personal property," "common stock," etc.) are not sufficiently descriptive and shall render any such claim ineffective. The section number of the statute under which such exemption is claimed shall be shown.

(b) The amount of a claimed exemption shall be limited by the dollar "Value of Claimed Exemption" listed on Schedule C regardless of the value of the asset. A debtor intending to claim an exemption which is not limited by a dollar amount shall indicate on Schedule C that the "Value of Claimed Exemption" is "ALL" or 100% of fair market value (FMV).

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated November 7, 2016, paragraph (b) of this rule was amended to address the new schedule C that was adopted effective December 1, 2015.

Pursuant to Order Amending Local Bankruptcy Rules dated September 11, 2009, this rule was amended to add paragraph (b).

B-4004-1
Extensions of Time for Filing Discharge Objections and Dischargeability Complaints

(a) Motions for an extension of the time within which to file complaints objecting to a debtor's discharge, pursuant to 11 U.S.C. § 727, or to determine the dischargeability of debt, pursuant to 11 U.S.C. § 523, shall be combined with notice thereof, be filed prior to the expiration of the bar date to be extended and be served upon the United States trustee, any trustee, debtor and debtor's counsel, any committee and/or the entities included on any list required by Fed. R. Bankr. P. 1007(d).

(b) At a minimum, the motion shall state the cause for the requested extension, the date to which the time is to be extended, and contain a statement that any objections to the motion must be filed within fourteen (14) days of the date the motion was served.

(c) In the absence of an objection to the motion within fourteen (14) days after service the court may grant the motion without further notice or hearing.

Commentary (1994)

This rule is designed to expedite the process of ruling on motions for an extension of the §523 & §727 bar dates, by dispensing with the notice to creditors or the separate hearing. It also limits the number of entities who receive notice of the requested extension. This limitation should not seriously impact upon the rights of the parties, since it will almost always be the debtor who is most passionately interested in the expiration of these dates and, therefore, the party most likely to object.

HISTORICAL AND REGULATORY NOTES

Pursuant to Order Amending Local Bankruptcy Rules dated February 15, 2005, paragraph (d) of this rule was deleted.

B-4004-2
Discharge in Chapter 12 & 13 Cases

(a) In any case under Chapter 12 or 13, in order to receive a discharge after completing all the payments under a confirmed plan, the debtor shall file a Verified Motion for Entry of Discharge. In a joint case a separate motion shall be filed for each debtor

(b) (1) The Verified Motion for Entry of Discharge shall be filed on the corresponding local form – LBF-4004-2(a) (Chapter 13) or LBF-4004-2(b) (Chapter 12) – and separately affirm, under penalties of perjury, that the debtor has fulfilled each of the statutory requirements for a discharge. Those requirements are enumerated in the local form. A motion submitted in any other form may be denied without notice or hearing. If the debtor is represented by counsel, the motion shall also be signed by debtor's counsel.

(2) In the event the debtor is required to pay a domestic support obligation, the verified motion shall also contain the name and address of the entity to whom such payments are to be made and the name and address of the debtor's employer. (See, 11 U.S.C. §§ 1202(c)(1)(C), 1302(d)(1)(C)).

(c) The clerk will issue notice of a Motion for Entry of Discharge and give all creditors and parties in interest at least thirty (30) days notice of the opportunity to object thereto. Absent timely objection, the motion may be granted and a discharge issued, without a hearing.

(d) If a Verified Motion for Entry of Discharge is not filed within thirty (30) days after the filing of the trustee's final report, the court may close the case without issuing a discharge, but doing so shall not prejudice the debtor's right to file a motion to reopen under 11 U.S.C. § 350(b).

HISTORICAL AND REGULATORY NOTES

Pursuant to Order Amending Local Bankruptcy Rules dated February 28, 2019, this rule and associated local forms were amended to be applicable to both chapter 12 and 13 cases.

Pursuant to Order Amending Local Bankruptcy Rules dated December 1, 2009, this rule and associated local form were amended to conform to the statutory provisions of 11 U.S.C. § 1328.

Pursuant to Order Amending Local Bankruptcy Rules dated July 23, 2008, this rule was amended to add a sentence to the end of paragraph (a).

Pursuant to Order Amending Local Bankruptcy Rules dated April 25, 2008, this new rule became effective June 15, 2008, along with LBF-4004-2.

LBF-4004-2(a)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
DIVISION

IN THE MATTER OF:	)	
	)	
	)	CASE NO.
	)	
DEBTOR(S)	)	

VERIFIED MOTION FOR ENTRY OF CHAPTER 13 DISCHARGE

Comes now the debtor,_____, (hereinafter "Movant") and, pursuant to 11 U.S.C. § 1328(a), moves the court for the entry of a discharge in this Chapter 13 case. In support of this request, Movant states the following:

1. All of the payments required by the confirmed plan, whether made to the Chapter 13 trustee or made directly to creditors, have been completed.

2. *NOTE: Please select one of the following paragraphs and delete the other.*

[*Option 1*] Movant is required to pay a domestic support obligation, as defined by 11 U.S.C. § 101(14A), to:

name of entity to whom support is paid
mailing address

and all such amounts that are due on or before the date of this motion have been paid. The name and address of Movant's employer is:

employer's name
mailing address

OR

[*Option 2*] Movant is not required to pay a domestic support obligation, as defined by 11 U.S.C. § 101(14A).

3. Movant did not receive a discharge in a case filed under Chapter 7, 11, or 12 of the United States Bankruptcy Code during the four years prior to the date of the order for relief under Chapter 13 in this case.

4. Movant did not receive a discharge in a case filed under Chapter 13 of the United States Bankruptcy Code during the two years prior to the date of the order for relief under Chapter 13 in this case.

5. *NOTE: Please select one of the following paragraphs and delete the other.*

[*Option 1*] After filing the petition in this case, Movant completed a course concerning personal financial management, and a copy of the certificate of completion of that course has been filed with the court.

OR

[*Option 2*] The court has exempted Movant from completing a course concerning personal financial management.

6. There is no proceeding in which Movant has been or may be found guilty of a felony of the kind described in 11 U.S.C. § 522(q)(1)(A), or liable for a debt of the kind described in 11 U.S.C. § 522(q)(1)(B), and there is no reason to believe that 11 U.S.C. § 522(q)(1) might apply to me.

7. [*Available for additional explanation or information.*]

Wherefore, Movant respectfully requests that, following notice and the opportunity for a hearing, the court enter a discharge pursuant to 11 U.S.C. § 1328(a).

I certify under the penalty of perjury, that the foregoing statements are true and correct.

_____
Signature of Debtor

_____

Date: _____

Respectfully submitted,

_____
Attorney for Debtor

Address:

Telephone:
Email:

LBF-4004-2(b)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
DIVISION

IN THE MATTER OF:	)	
	)	
	)	CASE NO.
	)	
DEBTOR(S)	)	

VERIFIED MOTION FOR ENTRY OF CHAPTER 12 DISCHARGE

Comes now the debtor, _____, (hereinafter "Movant") and, pursuant to 11 U.S.C. § 1228(a), moves the court for the entry of a discharge in this Chapter 12 case. In support of this request, Movant states the following:

1. All of the payments required by the confirmed plan, whether made to the Chapter 12 trustee or made directly to creditors, have been completed.

2. *NOTE: Please select one of the following paragraphs and delete the other.*

[*Option 1*] Movant is required to pay a domestic support obligation, as defined by 11 U.S.C. § 101(14A), to:

name of entity to whom support is paid
mailing address

and all such amounts that are due on or before the date of this motion have been paid. The name and address of Movant's employer is:

employer's name
mailing address

OR

[*Option 2*] Movant is not required to pay a domestic support obligation, as defined by 11 U.S.C. § 101(14A).

3. There is no proceeding in which Movant has been or may be found guilty of a felony of the kind described in 11 U.S.C. § 522(q)(1)(A), or liable for a debt of the kind described in 11 U.S.C. § 522(q)(1)(B), and there is no reason to believe that 11 U.S.C. § 522(q)(1) might apply.

4. [*Available for additional explanation or information.*]

Wherefore, Movant respectfully requests that, following notice and the opportunity for a hearing, the court enter a discharge pursuant to 11 U.S.C. § 1228(a).

I certify, under the penalty of perjury, that the foregoing statements are true.

_____
Signature of Debtor (or Authorized Representative,
if the debtor is not an individual)

_____

Date: _____

Respectfully submitted,

_____
Attorney for Debtor

Address:

Telephone:
Email:

B-4004-3
Discharge in Chapter 11 Cases for Individual Debtors

(a) If the debtor is an individual, in order to receive a discharge in a case under Chapter 11 the debtor must file an appropriate motion. The motion may be filed either before or after confirmation of a plan in accordance with the provisions of this rule.

(b) Prior to confirmation, if the debtor would like the court to consider issuing a discharge upon confirmation of a proposed plan, it shall file a "Motion for Discharge Upon Confirmation." The motion shall state, with particularity, the reason or reasons for issuing a discharge before payments under the plan have been completed and shall be filed prior to the hearing to consider the adequacy of the disclosure statement or at the same time the debtor files a motion under local bankruptcy rule B-3017.1-1 to dispense with such a hearing. The court will hold a hearing on the debtor's motion for discharge, upon notice to all creditors and parties in interest, at the same time it considers confirmation of the proposed plan. Any objections to the motion must be filed within the time required by local bankruptcy rule B-9014-1(b) (no later than seven days prior to the hearing).

(c) After confirmation, when the debtor would like the court to consider issuing a discharge it shall file a "Motion for Discharge." The motion shall state how the debtor has satisfied the requirements for the entry of discharge, *see*, 11 U.S.C. § 1141(d)(5), if applicable, by alleging, with particularity:

(1) that all the payments required by the confirmed plan have been completed; or,

(2) if all the payments required by the confirmed plan have not been completed, which payments have yet to be made, and

(A) the reason or reasons for issuing a discharge before payments have been completed; or

(B) how the distribution actually made on account of each allowed unsecured claim has satisfied the best interest of creditors test and why modification of the plan is not practicable.

The debtor shall serve all creditors and parties in interest with notice of a motion for discharge, in accordance with local bankruptcy rule B-2002-2, giving at least twenty-one (21) days notice of the opportunity to object thereto. Unless a creditor or other party in interest files a timely objection, the court will consider the motion and may issue a discharge without holding a hearing.

(d) Except for cases under subchapter V of Chapter 11, in addition to satisfying the requirements of paragraph (b) or (c), any motion for discharge, whether filed before or after confirmation, must also state that there is no proceeding pending in which the debtor might be found guilty of a felony of the kind described in 11 U.S.C. § 522(q)(1)(A), or liable for a debt of the kind described in 11 U.S.C. § 522(q)(1)(B), and there is no reason to believe that 11 U.S.C. § 522(q)(1) might apply to the debtor (11 U.S.C. §1141(d)(5)(c)).

HISTORICAL AND REGULATORY NOTES

This rule was amended pursuant to Order Adopting Interim Bankruptcy Rules and Amending Local Bankruptcy Rules to implement changes mandated by the Small Business Reorganization Act of 2019 (SBRA) dated February 14, 2020.

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

Pursuant to Order Amending Local Bankruptcy Rules dated May 11, 2009, this new rule became effective immediately.

B-4008-1
Discharge and Reaffirmation Hearings

(a) The court will not hold hearings concerning any reaffirmation agreement unless a motion to do so, signed by the debtor and, if the debtor is represented by counsel, debtor's counsel, is filed with the court.

(b) A motion for a hearing concerning any reaffirmation agreement shall be filed as a separate document and not incorporated into any other filing.

Commentary (1994)

This rule is designed to eliminate the discharge/reaffirmation hearing unless the court is required to approve the agreement (pro se debtor) or a party to the agreement would like to have one held. This will allow the court, should it desire to do so, to avoid giving a speech, containing belated warnings to people who would rather not have to listen. Authority for making the hearing optional is found in Rule 4008 which provides that the court "may" hold the hearing. Furthermore, the Tenth Circuit has recently recognized that the debtor may waive the hearing, by failing to appear. In re Sweet, 954 F.2d 610 (10th Cir. 1992), aff'g 116 B.R. 283 (Bankr. N.D. Ok. 1990).

HISTORICAL AND REGULATORY NOTES

Pursuant to Order Adopting Interim Bankruptcy Rules and Amending Local Bankruptcy Rules dated October 14, 2005, this rule was revised to better implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

B-4008-2
Rescission of Reaffirmation Agreements

(a) Court approval of the rescission of a reaffirmation agreement is not required.

(b) Should a debtor choose to rescind a reaffirmation agreement with any creditor, notice of rescission shall be given to the creditor at the address set forth in the reaffirmation agreement and, if known, to creditor's counsel within the time required and a copy thereof filed with the court.

(c) The failure to comply with paragraph (b) will not affect the validity of a rescission which otherwise complies with 11 U.S.C. § 524(c)(4).

Commentary (1994)

This rule is designed to eliminate motions, timely or otherwise, for the rescission of reaffirmation agreements by restating what §524(c)(4) already says. Court approval of the rescission is not necessary. All that is needed is "notice of rescission to the holder" of the claim within the time required. 11 U.S.C. §524(c)(4). Thus, notice of the rescission is either good or not, depending upon when it is given, regardless of whether the bankruptcy court acts upon it. Arguably, the notice need not even be filed with the court, although doing so might help the parties independently establish when it was given, should there be a dispute concerning its timeliness.

The need to serve counsel and file with the court are, arguably, requirements beyond those specified in §524 (as is the stated address). Accordingly, paragraph (c) has been added to ensure that an otherwise proper rescission is not invalidated due to a failure to comply with the requirements of this rule.

B-4008-3
Extension of Deadline for Filing Reaffirmation Agreements

(a) An order deferring the entry of discharge or extending the deadline for filing complaints objecting to discharge shall also operate as a similar extension of the deadline for filing reaffirmation agreements.

(b) An order extending the deadline for filing reaffirmation agreements, if entered prior to discharge, shall also operate to defer the entry of discharge until the day after the extended deadline.

Commentary

The proposed rule addresses the problem caused by the fact that two different deadlines for reaffirmation agreements are found at two different places. Section 524(c)(1) requires the agreement to be "made before the granting of the discharge," while Bankruptcy Rule 4008(a) requires the agreement to "be filed no later than 60 days after the first date set for the meeting of creditors," which is usually the deadline for objecting to discharge. Both deadlines can be extended but unless they are kept together problems can arise. The entry of discharge is often deferred to facilitate negotiating reaffirmation agreements, but unless the deadline for filing such agreements is also extended they will be untimely under Rule 4008(a), creating uncertainties as to their validity. If the deadline for filing reaffirmation agreements is extended, without a similar extension or deferral of the discharge, the agreement may not be made prior to the granting of discharge, making it untimely and unenforceable under § 524(a)(1). Frequently motions to extend these deadlines will address only one of them – usually the entry of discharge – not both of them, leading to problems which may or may not be solvable. The proposed rule will prevent that from happening by keeping the deadline for entry of discharge and the deadline for filing reaffirmation agreements together, insofar as it is possible to do so.

HISTORICAL AND REGULATORY NOTES

This new rule was adopted pursuant to Order Amending Local Bankruptcy Rules dated November 7, 2016.

B-5004-1
Reassignment Upon Recusal

If for any reason it should become necessary for a judge to be disqualified or recused from a case, contested matter or adversary proceeding assigned to that judge, the case, contested matter or adversary proceeding shall be sent to the Chief Bankruptcy Judge of the district for reassignment to any other judge who is not also disqualified. If the Chief Bankruptcy Judge is disqualified or recused from either deciding or reassigning such a case, contested matter or adversary proceeding, the case, contested matter or adversary proceeding shall be sent to the judge who is next senior in service on the bench and who is not also disqualified or recused for reassignment.

B-5005-1
Mandatory Electronic Case Filing (ECF)

HISTORICAL AND REGULATORY NOTES

Pursuant to Order Amending Local Bankruptcy Rules dated December 1, 2018, this rule was abrogated.

By Order Making Technical Amendments to Local Bankruptcy Rules dated July 7, 2015, this rule was amended to the word "document" to "paper."

Pursuant to Order Amending Local Bankruptcy Rule dated August 20, 2013, this rule was amended to include the requirement that all ECF users shall maintain an active email address with the court.

Pursuant to General Order 2005-01 dated April 28, 2005, this rule was amended to reflect the change in the threshold number from twenty-five (25) to five (5).

Pursuant to Order Amending Local Bankruptcy Rules dated January 15, 2004, this new rule was adopted, which renumbered then existing Rule B-5005-1 as B-5005-2; and renumbered then existing Rule B-5005-2 as B-5005-3.

B-5005-2
Form and Style Requirements

(a) The following format requirements apply to all papers submitted for filing, whether in paper or electronic format:

(1) They shall be plainly typewritten or printed and double spaced, except for quoted material.

(2) The title must be set out on the first page.

(3) Each page shall be consecutively numbered.

(4) All papers must be clearly legible.

(b) For filings submitted in paper format:

(1) They shall be flat and unfolded.

(2) They shall be on white paper of good quality, 8½" x 11" in size, printed on one side of the paper only.

(3) They shall have no covers or backs and shall be fastened together at the top left corner and at no other place.

(4) If the filer wishes to receive a file-stamped copy of any paper document which is not presented for filing in person, they shall provide a self-addressed, stamped envelope of adequate size and postage.

(c) For filings submitted electronically:

(1) No paper submitted electronically may contain any watermarks, embedded links or hyperlinks relating to websites promoting commercial products except when relevant to the matter addressed in the filing. The failure to comply with this prohibition may result in the imposition of appropriate sanctions.

(2) All papers submitted electronically shall comply with the technical requirements of the courts' Electronic Case Filing system.

(d) The originally signed paper copy of all documents submitted under oath or penalties of perjury shall be retained by the filing attorney for a least three years following the closing of the case by the court. Examples of such documents include, but are not limited to, affidavits, bankruptcy petitions, lists, schedules, statements, and amendments thereto. Such originally signed documents shall be produced upon request. The failure to do so may result in the

imposition of sanctions, on the court's own initiative or upon the motion of the case trustee, United States trustee, United States Attorney, or other appropriate party.

(e) Fax and email filings are not permitted and will not be accepted. If such transmissions are received, they shall be of no effect and will be ignored.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated May 5, 2011, this rule was amended to reorganize the rule to specify requirements relating to paper and electronic filings and to incorporate parts of abrogated Rule 5005-3.

By Order Amending Local Bankruptcy Rules dated December 22, 2006, this rule was amended to delete paragraph (b) which pertained to computer generated versions of Official Forms and paragraph (c) which pertained to the number of paper copies presented for filing; and to redesignate the remaining paragraph (d) as paragraph (b).

This rule was previously numbered as Rule 5005-1 until January 15, 2004, when a new Rule 5005-1 became effective, renumbering this rule as Rule 5005-2.

By Order Amending Local Bankruptcy Rules dated October 28, 2003, paragraph (c)(2) of this rule (then Rule 5005-1) was deleted, and paragraph (c)(1) was re-designated as paragraph (c).

By Second Order Amending Local Bankruptcy Rule B-5005-1 dated September 24, 2002, paragraph (a) and paragraph (c)(2) of this rule (then Rule 5005-1) were amended to conform procedures to electronic case filing requirements.

Pursuant to General Order 2002-01 dated August 27, 2002, this rule (then Rule 5005-1) was amended to conform procedures to electronic case filing requirements.

By Order Amending Local Rules dated April 30, 2001, this rule (then Rule 5005-1) was revised effective June 4, 2001.

B-5005-3
Requirements and Place of Filing

HISTORICAL AND REGULATORY NOTES

Pursuant to Order Amending Local Bankruptcy Rules dated May 5, 2011, this rule was abrogated.

By Order Amending Local Bankruptcy Rules dated November 30, 2007, paragraph (b) of this rule was abrogated.

This rule was previously numbered as Rule 5005-2 until January 15, 2004, when a new Rule 5005-1 became effective, renumbering this rule as Rule 5005-3.

By Order Amending Local Bankruptcy Rules dated October 28, 2003, paragraph (d) of this rule (then Rule 5005-2) was amended in accordance with electronic filing and paragraph (e) was abrogated.

Pursuant to General Order 2003-02 dated April 28, 2003, paragraphs (a) and (b) of this rule (then Rule 5005-2) were amended to require filings in the proper division within the district.

Pursuant to General Order 2003-01 dated April 28, 2003, paragraph (f) of this rule (then Rule 5005-2) was amended to prohibit fax filings.

Pursuant to General Order 2002-01 dated August 27, 2002, this rule (then Rule 5005-2) was amended to conform procedures to electronic case filing requirements.

B-5071-1
Continuances

(a) A request to continue, reschedule, postpone or cancel any matter scheduled before the court shall be made by motion, demonstrating good cause, or by stipulation of all parties involved. Whether the request or stipulation is granted, and upon what terms and conditions, if any, is in the discretion of the court.

(b) A request to continue, reschedule, postpone or cancel based upon a prior conflict shall specifically describe the conflict and must be filed no later than ten (10) days after the issuance of the notice or order scheduling the matter sought to be continued.

(c) Requests to continue, reschedule, or relocate a § 341 meeting shall be directed to the United States trustee or, if a trustee has been designated, to the trustee. Whether the request is granted is in the discretion of the United States trustee or the trustee.

(d) A motion to postpone an evidentiary hearing on account of the absence of evidence shall be made only upon affidavit, showing the materiality of the evidence expected to be obtained; that due diligence has been used to obtain it; where the evidence may be. If the motion is for an absent witness, the affidavit must show the name and residence of the witness, if known; the probability of procuring the testimony within a reasonable time and that the absence has not been procured by the act or connivance of the party, or by others at the party's request, or with his or her knowledge or consent, the facts that the party believes to be true, and that the party is unable to prove such facts by any other witness whose testimony can be as readily procured. If the adverse party will stipulate to the content of the evidence that would have been elicited at trial from the absent document or witness, the trial shall not be postponed. In the event of such a stipulation, the parties shall have the right to contest the stipulated evidence to the same extent as if the absent document or witness were available at trial.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated June 18, 2010, this rule was amended to change the time computation in paragraph (b).

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

B-5072-1
Courtroom and Courthouse Decorum

HISTORICAL AND REGULATORY NOTES

Abrogated May 21, 2012, by Order Amending Local Bankruptcy Rules.

B-5081-1
Payment by Check, Credit Card and Returned Checks

(a) No personal or business checks or credit cards will be accepted from debtors while the case is pending.

(b) In the event that any check or draft received by the clerk is returned for any reason, including but not limited to insufficient funds, closed account, etc., no further checks or drafts will be accepted from the maker unless the clerk is directed by the judge, after written application of the maker, to do so.

(c) Whenever a check or draft is returned for any reason, the returned check fee specified by the Judicial Conference shall be paid in full, in collected funds, in addition to the amount specified on the returned instrument, before the maker may apply for an order directing the clerk to accept checks or drafts.

B-6004-1
Sales Outside the Ordinary Course of Business

(a) A motion to sell property of the bankruptcy estate outside the ordinary course of business shall be served upon the United States trustee, any committee and/or the entities included on any list required by Fed. R. Bankr. P. 1007(d), and all entities that can be discovered through a reasonably diligent inquiry holding liens upon or having interests in the property to be sold.

(b) Notice of the motion must be given to all creditors and parties in interest, unless the court orders otherwise, in addition to service of the motion itself as required by paragraph (a).

(c) In the event the motion is granted, within seven (7) days following the sale the trustee or debtor-in-possession shall file or cause to be filed the report of sale required by Fed. R. Bankr. P. 6004(f)(1). The report of sale shall be served upon the parties identified in paragraph (a) and any objectors.

(d) The proceeds of the sale shall not be disbursed, except pursuant to court order following an appropriate motion upon notice to all creditors and parties in interest, in accordance with Local Bankruptcy Rule B-2002-2.

Commentary (1994)

This rule attempts to clarify who should receive a copy of any motion for sale outside the ordinary course of business, particularly for a sale free and clear of liens. It is designed to ensure that certain parties, those most likely to be interested it was going on, not only receive notice of the motion but the motion as well.

Paragraph (c) is designated to clarify the report of sale and establishes a time limit for it to be filed - although the seven (7) days allotted may be more liberal than the "on completion of a sale" stated in Rule 6004(f)(1). It also provides for the dissemination of this report to those most likely to be interested in the outcome of the sale.

Paragraph (d) in conjunction with paragraph (c) is designed to separate the somewhat ministerial function of reporting upon a sale from the most significant distribution of the sale proceeds. The court is not required to approve the resulting sale - what happens to the sale proceeds, however is another matter.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated August 31, 2012, this rule was amended to clarify that motions to disburse sale proceeds are subject to Local Bankruptcy Rule B-2002-2.

B-6006-1
Extensions of Time to Assume or Reject Executory Contracts

(a) Motions for an extension of the time within which to assume or reject an executory contract shall be filed prior to the expiration of the date to be extended and served upon all parties to the contract, the United States trustee, any trustee, the debtor and debtor's counsel, any committee and/or the entities included on any list required by Fed. R. Bankr. P. 1007(d).

(b) At a minimum, the motion shall identify the contract for which an extension is being requested and the identity of all parties thereto and shall also state the cause for the requested extension, and the date to which the time is to be extended.

HISTORICAL AND REGULATORY NOTES

This rule was amended to conform with current practices pursuant to Order Amending Local Rules dated December 7, 2001, with an effective date of January 1, 2002.

B-6007-1
Trustee's Notice of Abandonment

(a) A trustee's or debtor-in-possession's notice of abandonment, served pursuant to 11 U.S.C. § 554(a) and Rule 6007(a), (not a motion to abandon filed by a party in interest pursuant to 11 U.S.C. § 554(b) and Rule 6007(b)) shall:

(1) identify the property to be abandoned;

(2) state the reason for the proposed abandonment; and

(3) state the date by which objections are to be filed, which shall be no less than 14 days from the date the notice is served, and where objections should be filed.

Except as authorized by local bankruptcy rule B-2002-3 or an order of the court, the notice shall be served upon all creditors and parties in interest and due proof thereof filed with the court.

(b) A no asset report is not a notice of abandonment.

HISTORICAL AND REGULATORY NOTES

Pursuant to Order Amending Local Bankruptcy Rules dated September 11, 2009, this new rule became effective immediately.

B-7007-1
Motion Practice; Length and Form of Briefs

(a) Any motion filed within a contested matter or an adversary proceeding (*e.g.*, motions filed pursuant to Fed. R. Bankr. P. 5011(b), 7012, 7037, and 7056) shall be accompanied by a separate supporting brief. Unless the court orders otherwise, the opposing party shall have thirty (30) days after service of the motion and initial brief within which to serve and file a response. The moving party shall have fourteen (14) days after service of any response within which to serve and file a reply. Time shall be computed as provided in Fed. R. Bankr. P. 9006. Extensions of time shall only be upon order of the court, for good cause shown. The failure to respond or reply within the time required will be deemed a waiver of the opportunity to do so and may subject the motion to a ruling without further submissions.

(b) Except by permission of the court, no brief shall exceed twenty-five (25) pages in length (exclusive of any pages containing a table of contents, table of authorities, and appendices), and no reply brief shall exceed fifteen (15) pages. Permission to file briefs in excess of these page limitations will be granted only upon motion supported by extraordinary and compelling reasons.

Briefs exceeding twenty-five (25) pages in length (exclusive of any pages containing the table of contents, table of authorities, and appendices) shall contain (a) a table of contents with page references; (b) a statement of issues; and (c) a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.

(c) A party citing a decision, statute, or regulation that is not available on Westlaw or Lexis/Nexis shall furnish a copy to the court and other parties.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

By Order Amending Local Rules dated April 30, 2001, this rule was revised to conform with current practices, effective June 4, 2001.

B-7007-2
Oral Argument on Motions

(a) Any motion filed within an adversary proceeding or a contested matter may be determined by the court without argument or hearing, following the expiration of the time for any response or reply provided for by these rules.

(b) A request for oral argument shall be filed separately and served along with any brief, response, or reply. The request shall specifically identify the purpose of the request and estimate the time reasonably required for any argument. The granting of any request for oral argument shall be discretionary with the court.

(c) The court may, on its own initiative, schedule any motion for oral argument or a hearing.

B-7015-1
Amended Pleadings

(a) Except by leave of court, any amendment to a pleading in an adversary proceeding, whether submitted as a matter of course or in connection with a motion to amend, must reproduce the entire pleading and may not incorporate any prior pleading by reference or interlineation.

(b) A motion to amend any pleading filed in an adversary proceeding shall attach a copy of the proposed amended pleading as an exhibit to the motion.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated March 3, 2020, this rule was amended to change paragraph (b) to clarify filing requirements.

B-7016-1
Pre-Trial Procedure

(a) The court, upon its own initiative or upon the request of a party in interest, may schedule any adversary proceeding, contested matter or other dispute for a pre-trial conference.

(b) The requirements of Fed. R. Bankr. P. 7016 shall apply to all adversary proceedings, contested matters and other disputes scheduled for a pre-trial conference.

(c) As a result of the pre-trial conference, the court may direct the parties to file a joint proposed pre-trial order, which, unless notified to the contrary, shall identify or contain:

(1) a statement concerning the court's subject matter jurisdiction which shall also state whether or not the parties consent to the bankruptcy judge hearing and determining the matter and entering any final judgment or orders therein;

(2) a statement identifying the pleadings, motions, objections or other requests upon which the matter is at issue;

(3) the status of any pending motion filed within the adversary proceeding, contested matter, or other dispute;

(4) a separate statement by each party specifically identifying the theory of each claim or defense and a summary of the facts which each party will endeavor to prove in support thereof;

(5) stipulations as to any and all relevant and undisputed facts;

(6) a statement identifying the contested facts, if any;

(7) a statement identifying the contested legal issues, if any;

(8) a list of the exhibits which each party will offer into evidence at trial, except those to be used solely for impeachment or rebuttal, together with a stipulation concerning which, if any, exhibits may be received into evidence without further proof;

(9) a list of the names of the witnesses each party anticipates calling at trial, except those to be called solely for impeachment or rebuttal. The witness list shall specify the general qualifications of any witness who is to be called as an expert; and

(10) the estimated amount of time required for trial.

(d) The parties shall exchange copies of any exhibits listed in the pre-trial order on or before the date the pre-trial order is filed with the court. If no pre-trial order is required, exhibits shall be exchanged no later than fourteen (14) days prior to trial.

(e) In any non-core matter in which all parties have not consented to the bankruptcy judge hearing and determining the issue and entering any final judgment or orders thereon, each party shall file along with any joint proposed pre-trial order proposed findings of fact and conclusions of law, including citations for each conclusion of law, if available.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated December 8, 2017, this rule was amended to delete the reference to core or non-core in paragraph (c)(1).

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

B-7023-1
Designation of "Class Action" in Caption

(a) In any case sought to be maintained as a class action, the complaint shall bear next to its caption the legend "Complaint -- Class Action." The complaint shall also contain a reference to the portion or portions of Rule 23, Federal Rules of Civil Procedure, under which it is claimed that the suit is properly maintained as a class action.

(b) Unless it is not practicable within the meaning of Rule 23(c)(1) of the Federal Rules of Civil Procedure to do so, a person seeking certification of a class action shall file a motion seeking class certification within ninety (90) days of the filing of a complaint brought as a class action. In ruling upon such a motion, the court may allow the action to be maintained as a class action, may disallow the action to be so maintained, or may order postponement of the determination pending discovery or other such preliminary procedures as appear to be appropriate and necessary in the circumstances. Whenever possible, where it is held that the determination should be postponed, a date will be fixed by the court for renewal of the motion.

(c) The provisions of this Rule shall apply, with appropriate adaptations, to any counterclaim or crossclaim alleged to be brought for or against a class.

B-7024-1
Procedure for Notification of Any Claim of Unconstitutionality

HISTORICAL AND REGULATORY NOTES

Pursuant to Order Amending Local Bankruptcy Rules dated May 5, 2011, this rule was abrogated to conform the local bankruptcy rules to revisions in Federal Rule of Civil Procedure 5.1 and Local Rule 5.1.1 of the United States District Court for the Northern District of Indiana.

B-7026-1
Form of Interrogatories, Requests for Production and Requests for Admission

(a) The party propounding written interrogatories, requests for production of documents or things, or requests for admission, shall number each such interrogatory or request sequentially. The party answering, responding or objecting to such interrogatories or requests shall quote each such interrogatory or request in full immediately preceding the statement of any answer, response or objection thereto, and shall number each such response to correspond with the number assigned to the request.

(b) No party shall serve on any other party more than thirty (30) requests for admission without leave of court. Requests relating to the authenticity or genuineness of documents are not subject to this limitation. Any party desiring to serve additional requests for admission shall file a written motion setting forth the proposed additional requests for admission and the reason(s) for their use.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Rules dated April 30, 2001, this rule was revised to conform with current practices, effective June 4, 2001.

B-7026-2
Requests for Filing of Discovery Materials

On its own motion or upon the request of a party in interest and for cause shown, the court may order that discovery materials in any adversary proceeding or contested matter which would not otherwise be filed, be filed, distributed or otherwise made available to parties in interest.

Commentary (1994)

This rule provides a mechanism by which discovery materials not filed with the court may be made available to the parties who may also have an interest in reviewing the information.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Rules dated April 30, 2001, then existing Rule 7026-2 was abrogated and Rule 7026-3 was renumbered as Rule 7026-2.

B-7037-1
Informal Conference to Settle Discovery Disputes

The court may deny any discovery motion (except those involving *pro se* litigants) unless the motion is accompanied by the certification required to be made under Rules 26(c)(1), 37(a)(1), and 37(d)(1)(B) of the Federal Rules of Civil Procedure. The certification shall be filed as a separate document and shall, in addition to the information required under the appropriate Federal Rule, also recite the date, time, and place of the conference or attempted conference and the names of all persons participating therein. If counsel for any party advises the court in writing that opposing counsel has refused or delayed meeting and discussing the problems covered in this Rule, the court may take such action as is appropriate to avoid unreasonable delay.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated September 11, 2009, this rule was amended to reflect updated Federal Rules of Civil Procedure.

By Order Amending Local Rules dated April 30, 2001, this rule was revised to conform with current practices, effective June 4, 2001.

B-7038-1
Jury Trial of Right

The provisions of Rule 38(b), (c), and (d) of the Federal Rules of Civil Procedure apply to adversary proceedings.

B-7041-1
Failure to Prosecute

Any contested matter or adversary proceeding in which no action has been taken for a period of sixty (60) days may be dismissed due to the lack of prosecution, with judgment for costs, if any, following twenty-one (21) days notice given by the court to counsel of record or, in the case of a *pro se* party, to the party unless, for good cause shown, the court orders otherwise.

B-7041-2
Dismissal of Objections to Discharge

(a) A motion for the voluntary dismissal of a complaint containing an objection to a debtor's discharge, pursuant to 11 U.S.C. § 727, or a stipulation between the parties for the dismissal of such a complaint shall be served upon the United States trustee and any trustee.

(b) The motion or stipulation shall contain a recital concerning the consideration, if any, for the dismissal or the terms and conditions of any agreement concerning the dismissal.

(c) Unless the United States trustee, the trustee or another entity seeks to intervene or to be substituted for the plaintiff in the proceeding or objects to the dismissal within twenty-one (21) days following service of the motion, the court may grant the motion, upon such terms and conditions as it deems proper, without further notice or hearing.

Commentary (1994)

This rule is designed to implement the restrictions of Rule 7041 concerning the voluntary dismissal of §727 complaints and provide for notice of the motion to the United States Trustee, any trustee and other parties, as well as establishing a time within which they should react if they believe dismissal is, for any reason, improper.

Paragraph (b) is designed to ensure that there is full disclosure of any agreement or understanding between the parties in return for the dismissal and, thus, alert the court to any improper and, arguably, illegal bargain. *See* 18 U.S.C. §152.

The language of paragraph (c), allowing dismissal upon such terms as the court deems proper, is taken directly from Rule 7041 and will allow the court to excise or void any improper agreement for dismissal.

B-7054-1
Costs

HISTORICAL AND REGULATORY NOTES

Abrogated December 8, 2017, by Order Amending Local Bankruptcy Rules.

B-7056-1
Motions for Summary Judgment

(a) In addition to complying with the requirements of N.D. Ind. L.B.R. B-7007-1, all motions for summary judgment shall be accompanied by a "Statement of Material Facts" which shall either be filed separately or as part of the movant's initial brief. The "Statement of Material Facts" shall identify those facts as to which the moving party contends there is no genuine issue and shall be supported by appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence. Any party opposing the motion shall, within thirty (30) days of the date the motion is served upon it, serve and file a "Statement of Genuine Issues" setting forth all material facts as to which it is contended there exists a genuine issue, supported with appropriate citations to discovery responses, affidavits, depositions or other admissible evidence, together with any affidavits or other documentary material controverting the movant's position. The "Statement of Genuine Issues" may either be filed separately or as part of the responsive brief. In determining the motion for summary judgment, the court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are controverted in the "Statement of Genuine Issues" filed in opposition to the motion, as supported by the depositions, discovery responses, affidavits and other admissible evidence on file.

(b) A party opposing a summary judgment motion may file a reply brief only if the movant cites new evidence in the reply or objects to the admissibility of the evidence cited in the non-movant's response to the motion. The reply must be filed within 7 days after the movant serves the reply and must be limited to the new evidence and objections.

(c) If a party is proceeding pro se and an opposing party files a motion for summary judgment, counsel for the moving party shall also simultaneously serve all unrepresented parties using Local Bankruptcy Form (LBF) B-7056-1. The failure to do so may result in denial of the motion for summary judgment, without prejudice to resubmission.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated July 7, 2015, this rule was amended to add a new paragraph requiring the moving party to serve unrepresented parties and establishing a new form LBF B-7056-1.

By Order Amending Local Bankruptcy Rules dated December 18, 2012, this rule was amended to redesignate a paragraph and to add a new paragraph concerning reply briefs.

LBF B-7056-1 (07/2015)

[INSERT APPROPRIATE CASE OR ADVERSARY PROCEEDING CAPTION]
NOTICE OF MOTION FOR SUMMARY JUDGMENT

A motion for summary judgment has been filed asking to have this matter decided against you, in whole or in part, without a trial. The motion claims there are no genuine issues of material fact and is based on the evidence presented in the affidavits and/or documents referenced in the motion or the argument that you are not able to offer admissible evidence in support of your position. The material facts set forth in the motion and accompanying affidavits/documents may be accepted as true unless you submit affidavits and/or other documentary evidence contradicting those assertions, along with a "statement of genuine issues" identifying the facts you dispute and any brief arguing your position.

Your response to the motion must be filed within thirty days from the date the motion was served[1] and comply with Rule 56 of the Federal Rules of Civil Procedure and local bankruptcy rule B-7056-1. Your response must include a "statement of genuine issues" identifying the facts you dispute and be accompanied by affidavits or other admissible evidence supporting your factual assertions. If you do not respond within the time required the court may rule against you. If you need more time to respond, you must file a motion asking the court for an extension of the deadline before it expires. The court may – but is not required to – give you more time.

Copies of Rule 56 of the Federal Rules of Civil Procedure and local bankruptcy rule B-7056-1 (N.D. Ind. L.B.R. B-7056-1) accompany this notice.

Date: _____

Signed: _____
name:
address:
telephone:

[1] The date of service can be determined from the certificate of service accompanying the motion or by reviewing the docket at the clerk's office.

B-7065-1
Motions for Preliminary Injunctions and Temporary Restraining Orders

The court will consider a request for a preliminary injunction or a temporary restraining order only when:

(1) the party seeking the relief files a separate verified motion for such relief;

(2) the verified motion establishes the willingness of the moving party to provide security as the court might deem proper;

(3) the moving party files an accompanying brief in support of the requested relief; and

(4) in the case of a temporary restraining order, the further requirements of Federal Rule of Civil Procedure 65(b) are fully complied with.

B-7067-1
Deposits

(a) **Deposit into Registry Account and Other Interest-Bearing Accounts.** All funds deposited into the court pursuant to Rule 67 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2041 shall be deposited into an interest-bearing Registry Account maintained by the clerk. The Order of Deposit should direct the clerk, without further order of the court, to deduct from the income earned on the investment a fee not exceeding the fee authorized from time to time by the Judicial Conference of the United States, as soon as such fee becomes available for deduction from the investment income.

(b) **Orders Directing Investments of Funds by Clerk of Court.** A party may petition the court for an Order of Investment which directs the clerk to hold the funds in a form of interest-bearing account other than the Registry Account. Whenever a party seeks a court order for money to be invested by the clerk into an interest-bearing account, the party shall personally deliver a proposed order to the clerk, who will inspect the order for proper form, content, and compliance with this rule. The clerk shall immediately forward the proposed order to the judge for whom the order was prepared.

Any order which, pursuant to 28 U.S.C. § 2041, directs the clerk to invest funds in an interest-bearing account or instrument shall include the following:

(1) The amount to be invested;

(2) The name of the financial institution in which the money will be invested;

(3) The type of instrument or account;

(4) The term of the investment; and

(5) If the deposit and/or interest received during the time of investment will exceed the FDIC Insurance amount, then the petitioning party shall obtain a collateral pledge by the financial institution for the remainder of the investment. The collateral pledge shall be approved by the judge.

B-7069-1
Enforcement of Judgments

HISTORICAL AND REGULATORY NOTES

Abrogated May 21, 2012, by Order Amending Local Bankruptcy Rules.

B-9002-1
Meaning of Words in Local Rules

In construing any local rules of the district court made applicable to proceedings before the bankruptcy court, all references to the court shall be deemed to be a reference to the bankruptcy court, all references to the district judge or magistrate judge shall be deemed to be a reference to the bankruptcy judge, all references to the clerk shall be deemed to be a reference to the clerk of the bankruptcy court, and all references to the Federal Rules of Civil Procedure shall be deemed to be a reference to the corresponding Federal Rules of Bankruptcy Procedure.

B-9006-1
Initial Enlargement of Time

(a) In any adversary proceeding in which a party wishes to obtain an initial enlargement of time, not exceeding thirty (30) days, within which to file a responsive pleading and in any adversary proceeding or contested matter in which a party wishes to obtain an initial enlargement of time, not exceeding thirty (30) days, within which to file a response to a written request for discovery or request for admission, the party shall contact counsel for the opposing party and solicit opposing counsel's agreement to the extension. In the event opposing counsel does not object to the extension, the party requesting the extension shall document the lack of objection and file notice of the extension. No further filings or action by the court shall be required for the extension.

(b) In the event the opposing party is not represented by counsel or opposing counsel objects to the request for extension, the party seeking the extension shall file a formal request for extension and, unless the opposing party is *pro se*, shall recite in the request the unsuccessful effort to obtain agreement.

(c) Any motion or notice filed pursuant to this rule shall state the date such response is due and the date to which time is to be enlarged.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated July 21, 2006, this rule was amended to delete the requirement to document the lack of objection by letter to opposing counsel.

B-9010-1
Attorneys

(a) The bar of this court shall consist of those persons admitted to practice by the District Court for the Northern District of Indiana.

(b) The chair of any committee established pursuant to 11 U.S.C. § 705 or § 1102 may appear and speak for the committee at any non-evidentiary hearing in a contested matter. Such a committee must be represented by an attorney at any evidentiary hearing and in all adversary proceedings.

(c) A person not a member of the bar of this court shall not be permitted to practice in this court or before any officer thereof as an attorney, unless (1) such person appears on his or her own behalf as a party, or (2) such person is admitted to practice in any other United States Court or the highest court of any state and is, on application to this court, granted leave to appear in a specific action *pro hac vice* and tenders the required fee (which is one-half of the fee required for admission to the bar of the United States District Court for the Northern District of Indiana) by a check payable to the "Clerk, United States District Court" or (3) such person appears as attorney for the United States.

(d) The provisions of N.D. Ind. L.R. 83-5(a)(3), (d), and (e) are applicable to all matters pending in the bankruptcy court.

(e) In all matters and proceedings before this court, only natural persons may appear and represent themselves. All other entities shall be represented by an attorney. For the purposes of filing a proof of claim, participating in a meeting conducted pursuant to 11 U.S.C. § 341 or a reaffirmation agreement, a creditor need not be represented by or appear through an attorney.

(f) Paraprofessionals may not appear at a § 341 meeting on behalf of a debtor but may appear and question a debtor on behalf of a creditor.

(g) Persons appearing *pro hac vice* pursuant to subsection (c) of this rule shall certify that they have read the Standards for Professional Conduct within the Seventh Federal Judicial Circuit and the local rules of this court and shall abide by them in all cases in this court. This certification shall accompany the motion to appear *pro hac vice* on the form available from the clerk of court. The failure to make the required certification may result in the motion being denied.

Commentary (1994)

This rule is primarily derived from L.D.R. 83.5 and is based upon the recognition that, by statute, the bankruptcy court is "a unit of the district court" not an entirely separate court.

Paragraph (b) is based upon current Rule B-101(h) and is intended to more clearly express the intent of that rule.

Paragraph (h), [now paragraph (f)], is derived from current Local Rule B-101(g), but adds reaffirmation agreements to the exception for the necessity of counsel.

Paragraph (i), [now deleted], was added at the request of the bar in order to clarify the role of paralegals.

HISTORICAL AND REGULATORY NOTES

This rule was amended for technical numbering revisions pursuant to Order Amending Local Bankruptcy Rules dated May 21, 2012.

By Order Amending Local Bankruptcy Rules dated August 3, 2011, this rule was amended, effective immediately, to make a technical correction to the rule.

By Order Amending Local Bankruptcy Rules dated August 29, 2008, this rule was revised to add a provision relating to the procedure for obtaining pro hac vice admission to practice.

By Order Amending Local Rules dated April 30, 2001, this rule was revised to add language concerning the required fee to district court, effective June 4, 2001.

B-9010-2
Appearance and Withdrawal

(a) (1) Each attorney representing a party in interest, except an attorney signing a voluntary petition for relief or a complaint in an adversary proceeding, shall first file a separate formal written appearance clearly identifying the party or parties such attorney is representing, and the name, mailing address, telephone number, and e-mail address of the attorney filing it.

(2) A single appearance submitted on behalf of multiple attorneys is not permitted. Each attorney must file his or her own appearance separately. General appearances by a law firm are not permitted.

(3) An appearance must be filed as a separate document and may not be incorporated into any other pleading, motion, or request. See Local Bankruptcy Rule B-9013-1. An appearance incorporating a request for some type of relief or other action, e.g., an appearance and a request for notice, will be treated only as an appearance. Any other request joined with an appearance may be ignored by all parties.

(b) An appearance shall remain effective until withdrawn by order of the court.

(c) Separate appearances must be filed by each attorney in the main case and in any adversary proceeding in which that attorney is participating.

(d) For purposes of this rule, the granting of a motion for admission pro hac vice constitutes a written appearance in the case or proceeding in which the motion is filed.

(e) Upon filing an appearance in the main case, the attorney will be added to the matrix of creditors and will be entitled to be served with the notices, orders, motions, and other papers that are to be served upon all creditors and parties in interest.

(f) Any attorney desiring to withdraw an appearance shall file a verified application and notice requesting leave to do so. The application and notice shall be served upon the client and, if filed in the main case, the United States trustee, any trustee, any committee and/or the entities included on any list required by Fed. R. Bankr. P. 1007(d), or, if filed in an adversary proceeding, all parties that have appeared in the matter. Unless accompanied or preceded by an appearance of other counsel, the application shall:

(1) specifically state the grounds or cause for withdrawal;

(2) be accompanied by satisfactory evidence that counsel has advised the client, in writing, of the reasons for and the intention to seek permission to withdraw at least seven (7) days prior to its filing; and

(3) unless the client has terminated counsel's services, contain a statement that any response, objection, or comments to the application should be filed within fourteen (14) days.

Unless requested or ordered by the court, the court may rule upon the application without a hearing upon the expiration of the time for any response.

(g) Separate applications to withdraw must be filed for the main case and each adversary proceeding in which the attorney has appeared. The withdrawal of an appearance in the main case will not constitute an order withdrawing an appearance in any pending adversary proceeding and an order withdrawing an appearance in any adversary proceeding will not constitute an order withdrawing an appearance in the main case or any other pending adversary proceeding.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated November 7, 2016, paragraph (f)(2) of this rule was amended to shorten the time period from 14 to 7 days.

By Order Amending Local Bankruptcy Rules dated October 29, 2010, this rule was amended effective immediately to require that each attorney file a separate individual appearance; to prohibit general appearances by a law firm; to clarify that any appearance incorporating any other request will be treated only as an appearance; and to clarify that the granting of a motion for admission pro hac vice satisfies the written appearance requirement.

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

By Order Amending Local Rules dated March 1, 2007, paragraph (a) of this rule was revised to delete the requirement that the appearance list the attorney's bar identification number and to add a requirement to list the attorney's e-mail address.

B-9011-1
Signing of Papers

HISTORICAL AND REGULATORY NOTES

Pursuant to Order Amending Local Bankruptcy Rules dated October 28, 2003, this rule was abrogated.

B-9013-1
Motions Initiating Contested Matters and Other Requests for Relief

(a) Except as otherwise authorized by Federal Rule of Bankruptcy Procedure 6006, every application, motion, or other request for an order from the court, including motions initiating contested matters, shall be filed separately from any other request, except that requests for alternative relief may be filed together. All such requests shall be named in the caption, shall state with particularity the order or relief sought and the grounds for the motion.

(b) Motions seeking relief from the automatic stay or adequate protection may not be joined with any other request or objection except abandonment.

(c) The application, motion, or other request should be accompanied by a proposed form of order.

Commentary

Different types of relief can be subject to very different procedural requirements. Some must be set for hearing on notice to all creditors, others receive a hearing only if an objection is filed, and different deadlines apply to different requests. This rule avoids the confusion that will result if multiple requests for relief are combined in a single motion. It requires each request for relief to be filed separately from any other, unless alternative relief is sought.

In everyday life, choosing between alternatives often involves a choice between mutually exclusive options; you can go one way or the other, but not both. It is much the same with alternative relief. The court is asked to choose between available remedies; it may do one thing or the other, but not both. If both options could be selected, or if the court is asked to do more than one thing in a given situation, the relief sought is not alternative.

Requests for alternative relief will generally use the conjunction "or" in the motion's title or prayer, rather than the word "and," *i.e.*, "motion to convert or dismiss," not "motion to dismiss and objection to confirmation." In the event a movant is not certain whether alternative relief is being sought, separate motions should be filed. There is no penalty for filing separately.

Pursuant to Rule 9014(c), certain provisions applicable to adversary proceedings are incorporated into contested matters. Absent from provisions incorporated by Rule 9014(c) are Fed. R. Bankr. P. 7018, 7019, and 7020, which respectively reference Fed. R. Civ. P. 18, 19, and 20. It is clear from this omission that joinder of claims, and joinder of parties, are not contemplated in a contested matter. A contested matter is essentially a discrete action seeking one form of relief as to a single party.

HISTORICAL AND REGULATORY NOTES

Pursuant to Order Amending Local Bankruptcy Rules dated May 21, 2012, this rule was amended for clarification and to add a commentary.

Pursuant to Order Amending Local Bankruptcy Rules dated November 30, 2007, paragraph (a) of this rule was amended to conform to the provisions of the amended national rules.

This rule was amended to conform with current practices pursuant to Order Amending Local Rules dated December 7, 2001, with an effective date of January 1, 2002.

By Order Amending Local Rules dated April 30, 2001, this rule was revised effective June 4, 2001.

B-9013-2
Service of Motions and Objections

(a) The party filing a motion, application or an objection is responsible for serving the motion, application or objection upon all entities entitled to receive it.

(b) Service of a motion or application upon the entities entitled to receive it is required in addition to service of any notice concerning the motion or application upon such entities.

(c) Except as provided in these rules or otherwise ordered by the court, all motions, applications, objections and other requests for relief shall be served upon the United States trustee, any trustee and counsel for the trustee, debtor and debtor's counsel, any committee and/or the entities included on any list required by Fed. R. Bankr. P. 1007(d), in addition to any other entity and its counsel upon whom the motion is required to be served by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

(d) With respect to service pursuant to Fed. R. Bankr. P. 7004(b)(4) and (5) -- either in an adversary proceeding under Fed. R. Bankr. P. 7001 or a contested matter under Fed. R. Bankr. P. 9014 -- the addresses of the departments, agencies and instrumentalities of the United States of America shall be designated as those stated in the list filed by the Office of the United States Attorney pursuant to N.D. Ind. L.B.R. B-1007-5(b).

Commentary (1994)

Paragraphs (a) and (b) are designed to eliminate the apparently increasingly prevalent and questionable practice of failing to serve certain motions upon the parties entitled to receive them and, instead, relying upon the subsequent "notice" to suffice. The Bankruptcy Rules are clear that certain entities are entitled to receive both the notice issued as a result of the motion and the underlying motion as well. The most logical entity upon whom the burden of serving the motion should be placed is the party seeking the relief. (Service of notice of the motion will be done either by the clerk or the moving party and this responsibility can be allocated by a separate order.)

The purpose of paragraph (c) is to try and identify a single place the various entities that are to be served. This listing is basically a summation of the Bankruptcy Rules' requirements for service.

B-9013-3
Service Upon Committees

(a) Where the court has authorized a committee which has been elected or appointed to employ counsel, service upon the committee shall be made by serving counsel and, if known, the chair of the committee.

(b) Where the court has not authorized a committee which has been elected or appointed to employ counsel, service upon the committee shall be made by serving each member thereof and, if such a committee is a committee of unsecured creditors, service shall also be made upon the entities included on any list required by Fed. R. Bankr. P. 1007(d).

Commentary (1994)

Many Bankruptcy Rules (and the proposed local rules) require motions and notices to be served upon court authorized committees. How this is accomplished (i.e. service upon every member, the committee chair, and/or counsel) is not specified in any detail and even Bankruptcy Rule 7004(b)(3) (service upon unincorporated associations) is somewhat lacking. Paragraphs (a) and (b) attempt to fill this gap by identifying how service is made depending upon whether or not the committee has been authorized to retain counsel.

One of the consequences of the recent revision of the Bankruptcy Rules is an increased importance given to the creditors included on the Rule 1007(d) list (20 largest unsecured creditors), in terms of the various papers that are to be served upon them. Service upon the 20 largest is not, however, necessary when an unsecured creditors committee has been authorized. In this instance, service upon the committee replaces service upon the 20 largest. In the Northern District of Indiana, committees, of any kind, are rare and active committees, even more so. When a committee of unsecured creditors does not actively participate in the proceeding, it is just as good as no committee whatsoever. Therefore, the rationale which justifies service upon an unsecured creditors committee fails. The last portion of paragraph (b) is based upon this reality. When a committee does not retain counsel, experience has shown that it generally will not actively participate in the bankruptcy. In this instance, the spirit of the Bankruptcy Rules is better served by requiring service upon the 20 largest unsecured creditors as well as upon the individual committee members. Since the committee is usually drawn from among the 20 largest, compliance with the rule will be no more burdensome than if a committee had never been appointed.

B-9013-4
Proof of Service

(a) No certificate of service is required when a paper is served by filing it with the court's electronic filing system. For service other than through the court's electronic filing system, in addition to identifying the pleading, motion or other paper served and showing the date upon which service was made, every proof of service or certificate of service shall state the name of every entity served and the address to which service was directed, together with the manner in which service was made.

(b)(1) Proof of service by facsimile machine may be made by the person causing the paper to be transmitted. Such proof of service shall indicate the telephone number to which the paper was transmitted and the method of confirmation that the transmission was received.

(2) Proof of service by email may be made by the person causing the paper to be transmitted. Such proof of service shall indicate the email address to which the paper was transmitted and the method of confirmation that the transmission was received.

(c) Proof of service of all papers required or permitted to be served may be made by certificate of the person serving the same or by written acknowledgment of service, unless some other method of proof is expressly required by these rules or by the Federal Rules of Bankruptcy Procedure.

(d) The court may take no action with regard to any pleading, objection, motion or other paper required to be served upon any other party, including motions initiating contested matters, unless accompanied by a proper proof or certificate of service. Any such pleading, objection, motion or paper may be stricken, *sua sponte*, following seven (7) days notice.

Commentary

This rule does not authorize service by any particular manner. That is done by other rules and orders of the court. The rule merely specifies how proof of that service is to be made. Paragraph (b)(2) is new and specifies how proof of service by email is to be made. It is modeled on the original paragraph (b) which did the same thing for fax service. That paragraph has been re-designated (b)(1) to accommodate the new provision.

Commentary (1994)

Paragraph (a) merely states what is the proper practice given the diversity and variability of the entities the rules require to be served with various motions, notices, and other papers. It attempts to explicitly recognize that the "state certificate of service" so often encountered is neither suitable to nor proper for bankruptcy proceedings.

Paragraph (b) is based upon C.D.Cal.L.B.R. 10(3)(a).

Paragraph (c) is based upon proposed N.D.Ind.L.R. 5.1(e).

Paragraph (d) implements the requirements of paragraph (a) by publicly stating the consequences of an inadequate or absent proof of service.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated March 3, 2020, this rule was amended to address proof of service when a paper is served by filing electronically.

By Order Amending Local Bankruptcy Rules dated July 7, 2015, this rule was amended to add a new paragraph (b)(2) describing proof of service when service is made by email, re-designate the existing paragraph (b) as (b)(1), and add a commentary.

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

Pursuant to Order Amending Local Bankruptcy Rules dated October 28, 2003, paragraph (a) of this rule was amended to conform with electronic case filing requirements.

B-9014-1
Objections and Responses to Motions Initiating Contested Matters

(a) As to any matter in which the court may grant relief without a hearing in the absence of a timely objection, objections to the motion, application, or request shall contain a short, plain statement concerning the factual or legal basis for the objection. The failure to state a sufficient factual or legal basis for the objection may result in the objection being overruled without a hearing.

(b) Except as otherwise ordered by the court, as to any matter in which the court may grant relief only after a hearing, a party desiring to oppose the motion, application, or request shall, except for good cause shown, file and serve any objection no later than seven (7) days prior to the hearing. If such a hearing is scheduled upon less than fourteen (14) days notice, the objection or response shall be filed and served any time prior to or at the hearing. The objection or response shall be concise and direct, stating in short and plain terms the factual or legal basis for the objection and shall fairly meet the substance of the allegations contained in the motion, application, or request.

(c) The objections or responses required by paragraphs (a) and (b) above shall also be served upon the moving party or parties and the entities specified in N.D. Ind. L.B.R. B-9013-2(c).

Commentary (1994)

Paragraph (a) is designed to require any party objecting to a request for relief not only to object but also to explain why. This will allow the court, if it should choose to do so, to dispense with hearings on obviously insufficient objections. More often than not, these objections are filed by pro se parties. Often the "objection" is nothing more than a handwritten note on the clerk's notice stating, "I object." When these "objections" ultimately come before the court for a hearing, the objector generally fails to appear. The only result of the process is to delay proceedings, increase the congestion on the court's calendar and increase the costs of the proceeding, through the additional attorney fees incurred through attending a useless hearing. Since the rule uses the term "may" in connection with overruling an insufficient objection, the court retains the discretion to schedule the matter for a hearing, should that be its preference.

Paragraph (b) is designed to promote both judicial and fiscal economy. It is based upon Rule 9014 which authorizes the court to require an answer to a motion. Doing so will, hopefully expedite proceedings on the motion, by requiring the parties to make their respective positions known before the hearing takes place. The early availability of this information should result in a more focused argument and, if the matter requires further proceedings, may permit the court to dispense with the usual pre-trial conference, thereby accelerating the decisional process, reducing both calendar congestion and the parties' attorney fees.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure.

B-9014-2
Applicability of Certain Rules of the Federal Rules of Civil Procedure to Contested Matters

(a) The provisions of Rule 5(d) of the Federal Rules of Civil Procedure concerning the filing of discovery matters shall apply to contested matters.

(b) The provisions of Rule 16(f) of the Federal Rules of Civil Procedure shall apply to all contested matters.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Rules dated July 21, 2006, this rule was amended to make Rule 16(f) of the Federal Rules of Civil Procedure applicable to contested matters.

Pursuant to General Order 2005-01 dated April 28, 2005, paragraph (a) of this rule was deleted. The designation of the remaining paragraph as paragraph (b) was deleted.

This rule was amended pursuant to Order Amending Local Bankruptcy Rules dated June 23, 2004, which renamed the rule and added new paragraph (b).

This rule was amended pursuant to Order Amending Local Rules dated April 30, 2001, which renumbered then rule B-7026-4 to Rule B-9014-2 which opts out of disclosure requirements under FRCP 26.

B-9018-1
Filing Under Seal

(a) A motion to file papers under seal shall be accompanied by a brief in support thereof. ECF Users shall file this motion electronically.

(b) If the motion is granted, the papers ordered to be placed under seal shall be filed on paper with the clerk, and not electronically, along with a paper copy of the order granting the motion. The papers to be sealed shall be placed in a sealed envelope with a prominently marked cover sheet containing the case or proceeding caption, title of the paper, and the legend "Filed Under Seal."

(c) The clerk will maintain sealed papers in accordance with the court's internal procedures.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Rule dated August 20, 2013, this new rule was adopted to provide more specific procedural instruction.

B-9019-1
Stipulations and Settlements

When a case, adversary proceeding, contested matter, dispute, claim or controversy is settled, the parties shall promptly notify the court of the settlement or stipulation and, within the time required by the court, file an agreed judgment or order and, where appropriate, a motion to compromise which will be considered following notice to creditors in accordance with N.D. Ind. L.B.R. B-2002-2. The court may extend this time upon a showing of good cause. Failure to file the required judgment or stipulation may result in the dismissal of the pleading, motion, objection, or application upon which the matter was at issue.

HISTORICAL AND REGULATORY NOTES

Pursuant to Order Amending Local Bankruptcy Rules dated February 15, 2005, this rule was amended in accordance with Rule B-2002-2.

B-9019-2
Arbitration/Alternative Dispute Resolution

The court may, upon its own initiative, or upon the motion of a party, set any appropriate adversary proceeding or contested matter for a non-binding method of alternative dispute resolution. The parties may, however, agree to be bound by the results of any such alternative method of dispute resolution.

B-9023-1
Post Judgment Motions

(a) Any motion filed after the entry of a final judgment or order, whether filed pursuant to Fed. R. Bankr. P. 9023 or Fed. R. Bankr. P. 9024, shall be accompanied by a separate supporting brief and any appropriate affidavits or other materials in support thereof. The failure to submit a supporting brief will be deemed a waiver of the opportunity to do so.

(b) Unless otherwise ordered by the court, no response to the motion is required.

(c) The provisions of N.D. Ind. L.B.R. B-7007-2 (oral argument on motions) apply to post judgment motions.

Commentary (1994)

This rule will allow the court to tailor its response, and the need for an opposing party to respond, to post judgment motions based on the apparent significance of the motion itself. Motions which are clearly unwarranted, such as a 9023 motion which merely seeks to reargue a legal issue the court has already confronted and disposed of, can be dispensed without the need for a response or a hearing. If, however, the motion appears to have a degree of significance, the court will have the ability to require a response and, if appropriate, schedule a hearing.

B-9027-1
Remand of Removed Actions

(a) A motion to remand a claim or cause of action removed to the bankruptcy court, other than one based upon the lack of subject matter jurisdiction, shall be filed within the same time as a motion to remand actions which have been removed to the district court (*see e.g.* 28 U.S.C. § 1447(c)) and shall be served upon all other parties to the removed action.

(b) The provisions of N.D. Ind. L.B.R. B-7007-1(motion practice) and N.D. Ind. L.B.R. B-7007-2 (oral argument on motions) shall apply to motions to remand removed actions.

Commentary (1994)

This rule established a procedure for the timing and handling of motions seeking to remand removed actions. Unlike removal to the district court, neither the statutes nor the rules of procedure specifically establish a time limit within which motions to remand actions removed to the bankruptcy court must be filed. The Seventh Circuit has indicated, however, that §1447(c) applies. *See* Hernandez v. Bredegate, 943 F.2d 1223 (7th Cir. 1991).

Paragraph (b) merely incorporates the general local rules concerning briefs, response times, and hearing requests and makes them applicable to motions to remand.

B-9029-2
Limitation on Sanctions for Error as to Form

The court may sanction any attorney or person appearing *pro se* for violation of any local rule governing the form of pleadings and other papers filed with the court by the imposition of a fine not to exceed $1,000.00, or by ordering stricken, after notice and opportunity to be heard or to cure the defect, a paper which does not comply with these Rules. Local rules governing the form of pleadings and other papers filed with the court include, but are not limited to, those local rules regulating the paper size, and the requirement of a special designation in the caption.

HISTORICAL AND REGULATORY NOTES

This rule was amended for technical revisions pursuant to Order Making Technical Amendment Local Bankruptcy Rules dated March 15, 2019.

B-9070-1
Custody of Files and Exhibits

(a) **Custody During Pendency of Action**. After being marked for identification, models, diagrams, exhibits and material offered or admitted in evidence in any cause pending or tried in this court shall be placed in the custody of the clerk, unless otherwise ordered by the court, and shall not be withdrawn until after the time for appeal has run or the case is disposed of otherwise. Such items shall not be withdrawn until the final mandate of the reviewing court is filed in the office of the clerk and until the case is disposed of as to all issues, unless otherwise ordered.

(b) **Removal After Disposition of Action**. Subject to the provisions of subsections (a) and (d) hereof, unless otherwise ordered, all models, diagrams, exhibits or material placed in the custody of the clerk shall be removed from the clerk's office by the party offering them in evidence within ninety (90) days after the case is decided. In all cases in which an appeal is taken these items shall be removed within thirty (30) days after the mandate of the reviewing court is filed in the clerk's office and the case is disposed of as to all issues, unless otherwise ordered. At the time of removal a detailed receipt shall be given to the clerk and filed in the cause. No motion or order is required as a prerequisite to the removal of an exhibit pursuant to this rule.

(c) **Neglect to Remove**. Unless otherwise ordered by the court, if the parties or their attorneys shall neglect to remove models, diagrams, exhibits or material within thirty (30) days after notice from the clerk, the same shall be sold by the United States Marshal at public or private sale or otherwise disposed of as the court may direct. If sold, the proceeds, less the expense of sale, shall be paid into the registry of the court.

(d) **Withdrawal of Original Records and Papers**. Except as provided above with respect to the disposition of models and exhibits, no person shall withdraw any original pleading, paper, record, model or exhibit from the custody of the clerk or other officer of the court having custody thereof except upon order of a judge of this court.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated December 22, 2006, this rule was amended to delete paragraph (d) concerning custody of contraband exhibits; and to redesignate paragraph (e) as paragraph (d).

6. UNITED STATES TRUSTEE PROGRAM – REGION 10 WEBSITE INFORMATION

Federal Judicial Districts Established for Indiana and Illinois

The United States Trustee Program is the component of the U.S. Department of Justice that supervises the administration of bankruptcy cases. The United States Trustee for Region 10 serves the federal judicial districts established for Indiana and the Central and Southern Districts of Illinois. The regional office is located in Indianapolis, IN. The links on this site contain information about the regional office of the United States Trustee and the field offices within Region 10.

IMPORTANT NOTICES

USTP FORMS FOR THE FILING OF PERIODIC OPERATING REPORTS IN NON-SMALL BUSINESS CHAPTER 11 CASES NOW EFFECTIVE

Wednesday, July 21, 2021

On June 21, 2021, the United States Trustee Program's rule titled Procedures for Completing Uniform Periodic Reports in Non-Small Business Cases Filed Under Chapter 11 of Title 11, (28 C.F.R. § 58.8) became effective. The Final Rule governs the filing of pre-confirmation monthly operating reports (MORs) and quarterly post-confirmation reports (PCRs) by all debtors except those who are small business debtors or who, in accordance with the CARES Act, elect relief under subchapter V of chapter 11. To obtain the required MOR and PCR forms, instructions for completing and filing MOR and PCR forms, and other important information, please visit the United States Trustee Program's Chapter 11 Operating Reports resource page at www.justice.gov/ust/chapter-11-operating-reports.

U.S. TRUSTEE PROGRAM EXTENDS TELEPHONIC OR VIDEO SECTION 341 MEETING

Friday, August 28, 2020

The U.S. Trustee Program has extended the requirement that section 341 meetings be conducted by telephone or video appearance to all cases filed during the period of the President's "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak" issued March 13, 2020, and ending on the date that is 60 days after such declaration terminates. However, the U.S. Trustee may approve a request by a trustee in a particular case to continue the section 341 meeting to an in-person meeting in a manner that complies with local public health guidance, if the U.S. Trustee determines that an in-person examination of the debtor is required to ensure the completeness of the meeting or the protection of estate property. This policy may be revised at the discretion of the Director of the United States Trustee Program.

USTP ISSUES NOTICE TO CHAPTER 7 AND 13 TRUSTEES REGARDING RECOVERY REBATES UNDER THE CARES ACT OF 2020

Tuesday, April 7, 2020

Read More

U.S. Trustee Program

About Bankruptcy & the United States Trustee Program
Nationwide Office Locator
USTP Regions
Press & Public Affairs
Private Trustee Listings & Library
Approved Credit Counseling Agencies
Approved Debtor Education Providers

Bankruptcy Information Sheet

The bankruptcy information sheet provides some general information about what happens in a bankruptcy case, and it is available in a number of languages on the following page: Information for Individuals with Limited English Proficiency.

Questions?

Please email questions concerning this Web site to: USTP.Region10@usdoj.gov

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Quick Links

- What's New
- Employment Opportunities

U.S. Bankruptcy Courts

Southern District of Indiana
Northern District of Indiana
Central District of Illinois
Southern District of Illinois

Web Site Comments?

The U.S. Trustee Program recently redesigned this Web site. If you are having trouble locating information or have comments on the redesigned site, please email us at USTWeb.

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7. TRUSTEE(S) COVERING THE SOUTHERN DISTRICT OF INDIANA – CHAPTER 7

TRUSTEE(S) COVERING THE SOUTHERN DISTRICT OF INDIANA

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8. TRUSTEE(S) COVERING THE SOUTHERN DISTRICT OF INDIANA - CHAPTER 13

TRUSTEE(S) COVERING THE SOUTHERN DISTRICT OF INDIANA

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Back to State Locator

INDIANA

Note: The individuals listed are private parties, not government employees.

TRUSTEE(S) COVERING THE NORTHERN DISTRICT OF INDIANA

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9. BANKRUPTCY RESOURCES

Publications & Resources

This section of the website provides publications and resources that may be useful during the course of a bankruptcy filing. Some of the links may assist you in staying current regarding the law, procedures, and services available.

Note: Many of these resources are external websites. These links are provided for the user's convenience, therefore, the court does not control or guarantee the accuracy, relevance, timeliness, or completeness. The inclusion of these links is not intended to reflect their importance or endorsement of the resource nor any sponsorship.

Addresses of Governmental Units	Library of Congress
American Bar Association	Free or Low Cost Legal Help
Court Employee Links	National Archives
Credit Report Information & Disputes	Seventh Circuit Court of Appeals
Federal Bar Association	U.S. Bankruptcy Court - Northern District of Indiana
Federal Rules of Bankruptcy Procedure	U.S. Code - Title 11 (Bankruptcy Code)
Federal Rules of Civil Procedure	U.S. Code - Title 28
Federal Rules of Evidence	U. S. Courts
Legal Services	U. S. District Court - Southern District of Indiana

10. ARTICLE: EVERYTHING YOU NEED TO KNOW TO START AND BUILD A LAW PRACTICE

"Everything You Need to Know To Start and Build a Law Practice"

Written by
Paul A. Kraft and Mark S. Zuckerberg

Checklist ✓

I. Type of Practice

- A. General
- B. Specialize

II. Choice of Entity

- A. Sole Proprietorship
- B. Partnership
  - 1. Partnership Agreement
- C. Professional Corporation
  - 1. Stock Ownership
  - 2. Compensation Arrangement

III. Office Space

- A. Location, Location, Location
- B. Client Parking
- C. Lease-Term, Rent, C.A.M., Building Purchase
- D. Signage
- E. Layout
  - 1. Attorney Offices
  - 2. Secretarial Areas
  - 3. File Room
  - 4. Library

8. Hands Free

E. Answering Services/Machine/Voice Mail

F. Cost Recovery Systems

G. Copier

H. Fax Machine

I. Scanner, 3 in 1

J. Postage Meter

K. Dictaphone

L. Surge Protectors

M. Computer

1. Back up System
2. Software
3. Tech Support
4. Anti-Virus

N. Filing System – Open/Closed

O. Conflict of Interest Procedure

P. Court Hearing Calendar Procedure

Q. Miscellaneous Office Supplies

R. Phone Numbers

V. Financing

A. Outright Purchase

B. Lease

C. Office Sharing Arrangement

VI. Insurance

A. Professional Liability Insurance

B. Health Insurance

1. Group Policy

VIII. Directories

A. Martindale-Hubbell Directory – October

B. Indiana Legal Directory – March

C. White Pages - June

D. Yellow Pages – June

E. Indianapolis Bar Association Directory – June

IX. Personnel

A. Advertisements

B. Hiring Policy

C. Employee Handbook

D. Salaries

E. Fringe Benefits – Pension Plan

F. Labor Laws

G. Vacation Time

H. Sick Time, etc.

X. Advertising/Marketing

A. Target Market

B. Yellow Pages – June

C. Firm Brochure

D. Newsletter

E. Indianapolis Bar Referral Program/Legal Aid Referral Program

F. Direct Solicitation

G. Seminars

H. Church Groups, etc.

I. Other Referral Sources

J. Web

XIII. Website

A. Creating Web Site

B. Optimizations

C. Advertising

D. Instructional/Forms

XIV. Disaster Recovery

A. List of all phone numbers

B. Back Up

1. Off site
2. Tape
3. remote server

C. Phone System

D. Filing Process

E. Calendar

F. Passwords

G. Terminated Employees

H. Theft

I. Fire/Storms

11. INITIAL CONSULTATION AGREEMENT AND STATUTORY DISCLOSURE FORM

INITIAL CONSULTATION AGREEMENT

Thank you for coming to the law firm of_____. This letter is our initial consultation agreement.

I understand that I have come to Thav, Gross, Steinway & Bennett, P.C. to discuss a legal situation.

I understand that by signing this initial consultation agreement, I am not retaining any of the attorneys at this office, nor am I entitled to have any work done by the law firm until a retainer agreement is executed by all necessary parties.

I understand that there will be no charge for this initial consultation which shall be a maximum of____ hrs. After _____ hrs, the attorney that I am meeting with, may, at his or her discretion, extend the length of the free consultation or may advise me that any further discussions will be billed at his / her then applicable hourly rate after I sign a separate written engagement/retainer agreement.

For an initial free bankruptcy consultation, the attorney you meet with shall provide the following services:

A. To the extent possible, based on the information provided by you, advise you of the available options as to bankruptcy.

B. If you have not provided the attorney with sufficient information which is needed to advise you as to your options, then the attorney shall inform you what information you need to provide to enable the attorney to provide such advice and information.

C. Advise you of the requirements placed upon the Client to file a Chapter 7 or 13 Bankruptcy.

D. To the extent possible, quote you an estimated fee for the Attorney's services to provide bankruptcy assistance or other legal services (if applicable) to you.

I further acknowledge that the first date upon which Thav, Gross, Steinway & Bennett, P.C. has first offered to provide me with bankruptcy assistance is this date and that the attorney has provided me with the following:

1) Notice Mandated By Section 527(a)(2) Of The Bankruptcy Code

2) Notice Mandated By Section 527(b) Of The Bankruptcy Code

LAW FIRM

By:_____

Acknowledged:

X_____ Date

Name:_____

Address:_____

_____

X_____ Date

Spouse's Name:_____

Home Phone:_____

Work Phone:_____

12. CLIENT DOCUMENTS CHECKLIST FOR BANKRUPTCY

Mark S. Zuckerberg
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*United States Bankruptcy Court
Southern District, Indiana

BANKRUPTCY
LAW OFFICE
OF
MARK S. ZUCKERBERG, P.C.
ATTORNEY AT LAW

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(812) 372-8888

113A East 9th Street
Anderson, Indiana 46013
(765) 649-7777

511 Woodscrest Drive
Bloomington, Indiana 47401
(812) 330-9999

REQUIRED DOCUMENT CHECKLIST

Please only provide COPIES of the items that apply with your completed homework packet.
WE DO NOT WANT/ACCEPT ORIGINALS (Documents will be shredded)

- ☐ Retainer Fee (minimum $250) or Balance of Fees
- ☐ **COPIES ONLY** of your past 2 years tax returns (Federal & State) with W-2's
- ☐ Copies of your 3 most recent bank statements for ALL active bank accounts & pre-paid cards
- ☐ Proof of all income for last 6 months including paystubs, food stamps, unemployment, child support, Social Security (may be found on https://www.ssa.gov/myaccount/, retirement income, pension, etc. For both spouses even if only 1 spouse is filing.
- ☐ A copy of your valid picture ID (Indiana driver's license, military ID, IN ID card or passport)
- ☐ A copy of your social security card - https://www.ssa.gov/myaccount/replacement-card.html
- ☐ Copies of all lawsuits (any suits where someone is suing your or you are suing someone else) -you may be able to find lawsuits against you on mycase.in.gov
- ☐ If you are currently paying child support, or have a child support order which you are SUPPOSED to be paying, provide the names and addresses or the person who receives child support where the child support payments are sent and a copy of the child support order
- ☐ A Copy of your most recent property tax statement or appraisal or market analysis
- ☐ A Copy of your mortgage and deed – may be found at your county recorder or on www.doxpop.com
- ☐ If you have been divorced in the last 4 years, provide a copy of your divorce decree and property settlement documents
- ☐ Proof of private school tuition/education/expenses (just bring a copy of the monthly bill for us to verify)
- ☐ Proof of full coverage automobile insurance
- ☐ Retirement account statements
- ☐ Life Insurance policies
- ☐ Credit counseling certificate - **Once you provide payment and all documents, our office will provide you with the information to complete your credit counseling course.**
- ☐ Proof of value of your:

NOTE: If you would like to purchase a tri-merge credit report for $28 [per person], please call the office to request one.

13. MODEL CHAPTER 13 PLAN

UNITED STATES BANKRUPTCY COURT

Southern District of Indiana

In re: _____ Debtor(s)	)	Case No. _____ (xx-xxxxx)

CHAPTER 13 PLAN

☐ Original

Amended Plan # _____ (e.g. 1st, 2nd)

*** MUST BE DESIGNATED ***

1. NOTICE TO INTERESTED PARTIES:

The Debtor must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not Include", if neither box is checked, or if both boxes are checked, the provision will be ineffective if set out later in the plan.

1.1 A limit on the amount of a secured claim, pursuant to paragraph 8.(b), which may result in a partial payment or no payment at all to the secured creditor.	☐ Included	☐ Not Included
1.2 Avoidance of a judicial lien or nonpossessory, non-purchase money security interest. Any lien avoidance shall occur by separate motion or proceeding, pursuant to paragraph 12.	☐ Included	☐ Not Included
1.3 Nonstandard provisions, set out in paragraph 15.	☐ Included	☐ Not Included

2. GENERAL PROVISIONS:

(a) YOUR RIGHTS MAY BE AFFECTED. Read these papers carefully and discuss them with your attorney. If you oppose any provision of this plan, you must file a timely written objection. This plan may be confirmed without further notice or hearing unless a written objection is filed before the deadline stated on the separate Notice you received from the Court.

(b) PROOFS OF CLAIM: You must file a proof of claim to receive distributions under the plan. Absent a Court order determining the amount of the secured claim, the filed proof of claim shall control as to the determination of pre-petition arrearages; secured and priority tax liabilities; other priority claims; and the amount required to satisfy an offer of payment in full. All claims that are secured by a security interest in real estate shall comply with the requirements of Federal Rule of Bankruptcy Procedure ("FRBP") 3001(c)(2)(C).

(c) NOTICES RELATING TO MORTGAGES: As required by Local Rule B-3002.1-1, all creditors with claims secured by a security interest in real estate shall comply with the requirements of FRBP 3002.1 (b) and (c) without regard to whether the real estate is the Debtor's principal residence. If there is a change in the mortgage servicer while the bankruptcy is pending, the mortgage holder shall file with the Court and serve upon the Debtor, Debtor's counsel and the Chapter 13 Trustee ("Trustee") a Notice setting forth the change and providing the name of the new servicer, the payment address, a contact phone number and a contact e-mail address.

(d) NOTICES (OTHER THAN THOSE RELATING TO MORTGAGES): Non-mortgage creditors in Section 8(c) (whose rights are not being modified) or in Section 11 (whose executory contracts/unexpired leases are being assumed) may continue to mail customary notices or coupons to the Debtor or the Trustee notwithstanding the automatic stay.

(e) EQUAL MONTHLY PAYMENTS: As to payments required by paragraphs 7 and 8, the Trustee may increase the amount of any "Equal Monthly Amount" offered to appropriately amortize the claim. The Trustee shall be permitted to accelerate payments to any class of creditor for efficient administration of the case.

(f) PAYMENTS FOLLOWING ENTRY OF ORDERS LIFTING STAY: Upon entry of an order lifting the stay, no distributions shall be made on any secured claim relating to the subject collateral until such time as a timely amended deficiency claim is filed by such creditor and deemed allowed, or the automatic stay is re-imposed by further order of the Court.

3. **SUBMISSION OF INCOME:** Debtor submits to the supervision and control of the Trustee all or such portion of future earnings or other future income or specified property of the Debtor as is necessary for the execution of this plan.

4. **PLAN TERMS:**

(a) PAYMENT AND LENGTH OF PLAN: Debtor shall pay $_____ _____ to the Trustee, starting not later than 30 days after the order for relief, for _____ months, for a total amount of $_____ .

Additional payments to Trustee and/or future changes to the periodic amount proposed are:

(b) INCREASED FUNDING: If additional property comes into the estate pursuant to 11 U.S.C. §1306(a)(1) or if the Trustee discovers undisclosed property of the estate, then the Trustee may obtain such property or its proceeds to increase the total amount to be paid under the plan. However, if the Trustee elects to take less than 100% of the property to which the estate may be entitled OR less than the amount necessary to pay all allowed claims in full, then a motion will be filed, and appropriate notice given.

(c) CURING DEFAULTS: If Debtor falls behind on plan payments or if changes to the payments owed to secured lenders require additional funds from the Debtor's income, the Debtor and the Trustee may agree that the Debtor(s) will increase the periodic payment amount or that the time period for making payments will be extended, not to exceed 60 months. Creditors will not receive notice of any such agreement unless the total amount that the Debtor(s) will pay to the Trustee decreases. Any party may request in writing, addressed to the Trustee at the address shown on the notice of the meeting of creditors, that the Trustee give that party notice of any such agreement. Agreements under this section cannot extend the term of the plan more than 6 additional months.

(d) OTHER PLAN CHANGES: Any other modification of the plan shall be proposed by motion pursuant to 11 U.S.C. §1329. Service of any motion to modify this plan shall be made by the moving party as required by FRBP 2002(a)(5) and 3015(h), unless otherwise ordered by the Court.

5. **PAYMENT OF ADMINISTRATIVE CLAIMS (INCLUSIVE OF DEBTOR'S ATTORNEY FEES):**

☐ NONE

All allowed administrative claims will be paid in full by the Trustee unless the creditor agrees otherwise.

Creditor	Type of Claim	Scheduled Amount

6. **PAYMENT OF DOMESTIC SUPPORT OBLIGATIONS:**

(a) Ongoing Domestic Support Obligations:

☐ NONE

Debtor shall make any Domestic Support Obligation payments that are due after the filing of the case under a Domestic Support Order directly to the following payee:

Creditor	Type of Claim	Payment Amount

(b) Domestic Support Obligation Arrears:

☐ NONE

The following arrearages on Domestic Support Obligations will be paid in the manner specified.

Creditor	Type of Claim	Estimated Arrears	Treatment

7. **PAYMENT OF SECURED CLAIMS RELATING SOLELY TO THE DEBTOR'S PRINCIPAL RESIDENCE:**

☐ NONE

As required by Local Rule B-3015-1(d), if there is a pre-petition arrearage claim on a mortgage secured by the Debtor's principal residence, then both the pre-petition arrearage and the post-petition mortgage installments shall be made through the Trustee. Initial post-petition payment arrears shall be paid with secured creditors. If there are no arrears, the Debtor may pay the secured creditor directly. Before confirmation, the payment to the mortgage lender shall be the regular monthly mortgage payment unless otherwise ordered by the Court or modified pursuant to an agreement with the mortgage lender. After confirmation, payment shall be as set forth below. Equal Monthly Amount and Estimated Arrears listed below shall be adjusted based on the filed claim and/or notice. Delinquent real estate taxes and homeowners' association or similar dues should be treated under this paragraph.

Creditor	Residential Address	Estimated Arrears	Equal Monthly Amount	Mortgage Treatment
				○ Trustee pay ○ Direct pay

No late charges, fees or other monetary amounts shall be assessed based on the timing of any payments made by the Trustee under the provisions of the Plan, unless allowed by Order of the Court.

8. PAYMENT OF SECURED CLAIMS OTHER THAN CLAIMS TREATED UNDER PARAGRAPH 7:

(a) Secured Claims as to Which 11 U.S.C. § 506 Valuation Is Not Applicable:

☐ NONE

Pursuant to Local Rule B-3015-1(c), and unless otherwise ordered by the Court, prior to plan confirmation, as to secured claims not treated under paragraph 7 and as to which valuation under 11 U.S.C. § 506 is not applicable, the Trustee shall pay monthly adequate protection payments equal to 1% of a filed secured claim. The Trustee shall disburse such adequate protection payments to the secured creditor as soon as practicable after receiving plan payments from the Debtor, and the secured claim will be reduced accordingly. After confirmation of the plan, unless otherwise provided in paragraph 15, the Trustee will pay to the holder of each allowed secured claim the filed claim amount with interest at the rate stated below.

Creditor	Collateral	Purchase Date	Estimated Claims Amount	Interest Rate	Equal Monthly Amount

(b) Secured Claims as to Which 11 U.S.C. § 506 Valuation Is Applicable:

☐ NONE

Pursuant to Local Rule B-3015-1(c), and unless otherwise ordered by the Court, prior to plan confirmation as to secured claims not treated under paragraph 7 but as to which § 506 valuation is applicable, the Trustee shall pay monthly adequate protection payments equal to 1% of the value of the collateral stated below. The Trustee shall disburse such adequate protection payments to the secured creditor as soon as practicable after receiving plan payments from the Debtor, and the secured claim will be reduced accordingly. After confirmation of the plan, unless otherwise provided in paragraph 15, the Trustee will pay to the holder of each allowed secured claim in the manner set forth below.

Creditor	Collateral	Purchase Date	Scheduled Debt	Value	Interest Rate	Equal Monthly Amount

(c) Curing Defaults and/or Maintaining Payments:

☐ NONE

Trustee shall pay the allowed claim for the arrearage, and Debtor shall pay regular post-petition contract payments directly to the creditor:

Creditor	Collateral/Type of Debt	Estimated Arrears	Interest Rate

(d) Surrendered/Abandoned Collateral:

☐ NONE

The Debtor intends to surrender the following collateral. Upon confirmation, the Chapter 13 estate abandons any interest in, and the automatic stay pursuant to 11 U.S.C. § 362 is terminated as to, the listed collateral and the automatic stay pursuant to 11 U.S.C. §1301 is terminated in all respects. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in paragraph 10.(b) below. Upon confirmation, the secured creditor is free to pursue its *in rem* rights.

Creditor	Collateral	Surrendered/Abandoned	Scheduled Value
		○ Abandoned ○ Surrendered	

9. SECURED TAX CLAIMS AND 11 U.S.C. § 507 PRIORITY CLAIMS:

☐ NONE

All allowed secured tax obligations shall be paid in full by the Trustee, inclusive of statutory interest thereon (whether or not an interest factor is expressly offered by plan terms). All allowed priority claims shall be paid in full by the Trustee, exclusive of interest, unless the creditor agrees otherwise.

Creditor	Type of Priority or Secured Claim	Scheduled Debt	Treatment

10. NON-PRIORITY UNSECURED CLAIMS:

(a) Separately Classified or Long-term Debts:

☐ NONE

Creditor	Basis for Classification	Treatment	Amount	Interest

(b) General Unsecured Claims:

○ **Pro rata distribution from any remaining funds; or**

○ **Other:** _____

11. EXECUTORY CONTRACTS AND UNEXPIRED LEASES:

All executory contracts and unexpired leases are REJECTED, except the following, which are assumed. Click *here* to list assumed leases.

12. AVOIDANCE OF LIENS:

☐ NONE

Debtor will file a separate motion or adversary proceeding to avoid the following non-purchase money security interests, judicial liens, wholly unsecured mortgages or other liens that impair exemptions:

Creditor	Collateral/Property Description	Amount to be Avoided

13. **LIEN RETENTION:** With respect to each allowed secured claim provided for by the plan, the holder of such claim shall retain its lien securing such claim until the earlier of a) the payment of the underlying debt determined under non-bankruptcy law or b) entry of a discharge order under 11 U.S.C. §1328.

14. **VESTING OF PROPERTY OF THE ESTATE:** Except as necessary to fund the plan or as expressly retained by the plan or confirmation order, the property of the estate shall revest in the Debtor upon confirmation of the Debtor's plan, subject to the rights of the Trustee, if any, to assert claim to any additional property of the estate acquired by the Debtor post-petition pursuant to operation of 11 U.S.C. §1306.

15. **NONSTANDARD PROVISIONS:**

☐ NONE

Under FRBP 3015(c), nonstandard provisions are required to be set forth below. Any nonstandard provision placed elsewhere in the plan is void. These plan provisions will be effective only if the included box in Paragraph 1.3 of this plan is checked.

Date: 8/31/2021

Signature of Debtor

Printed Name of Debtor

Signature of Joint Debtor

Printed Name of Joint Debtor

Signature of Attorney for Debtor(s)

Address:

City, State, ZIP code:

Area code and phone:

Area code and fax:

E-mail address:

By filing this document, the Debtor(s), if not represented by an attorney, or the Attorney for the Debtor(s) certify(ies) that the wording and order of the provisions in this Chapter 13 plan are identical to those contained in the form plan adopted by this Court, other than any nonstandard provisions included in paragraph 15.

14. BEWARE OF BANKRUPTCY PITFALLS

BEWARE OF BANKRUPTCY PITFALLS

A. Prior cases
B. Fraudulent Acts, Conveyances, and Preferences
C. Homestead Issues
D. Possibility of Inheritance during case or within 180 days of filing petition
E. Further Debt Anticipated
F. Delay Filing When Sheriff Sale Imminent (Retain/Surrender House Options)
G. Tax Refunds
H. Tax Matters
I. Timing Petition to Avoid 707(b)(2) action or to Lower Disposable Income in 13
J. Timing Petition to Avoid Automatic Stay Limitations
K. Rising Home Prices
L. Education Savings Accounts
M. Large Bonus or Commissions in Near Future
N. Credit Card Charges
O. Repayment of Family Members
P. Liquidation of Retirement Account
Q. Equity Loan Pre-Bankruptcy
R. Failure to Appear State Court Proceedings
S. Failure to Disclose All Information to Attorney

15. MOST COMMONLY ASKED BANKRUPTCY QUESTIONS

MOST OFTEN ASKED QUESTIONS

1. When will phone calls stop
2. How should I value my possession
3. What if I don't want to list certain creditors
4. Recent usage of credit
5. Tax refunds
6. Bank accounts
7. Commissions/inheritance/bonus check
8. Unknown debts
9. What if I owe my bank
10. Re-establish credit

16.CHAPTER 7 UNIFORM DOCUMENT PRODUCTION LIST

NOTICE TO DEBTORS AND PRACTITIONERS

CHAPTER 7 UNIFORM DOCUMENT PRODUCTION LIST

After extensive discussion and negotiation with representatives of the consumer debtors' bar, the Chapter 7 trustees serving in the Southern District of Indiana have agreed on a uniform list of documents to be provided by each Chapter 7 debtor. These documents must be delivered to the case trustee before the meeting of creditors.

Most of these documents are required by the Bankruptcy Code and Rules. Local Rule B-4002-1 provides additional authority for these document requests.

These are the documents which the trustees believe they need to fulfill their statutory obligations. Meetings of creditors will proceed more smoothly if the documents are submitted in advance. The trustees have also agreed to receive the documents electronically.

The trustees will be expecting these documents in every Chapter 7 case. For cases filed after October 1, 2006, the trustees may elect not to conduct the meeting of creditors on the original date set if the documents listed have not been provided as required.

The trustees will not be distributing this list to you separately. However, the trustees may request specific documents not included in this standard list, if they so desire based on the facts of your case.

Your cooperation with this document request is appreciated, and will help meetings run more quickly and smoothly.

(Note: Always bring your Petition, Schedules with Declaration, and Statement of Financal Affairs with *original* signatures to your meeting of creditors.

DOCUMENT PRODUCTION FORM

DEBTOR NAME: _____

JOINT DEBTOR NAME: _____

BANKRUPTCY NO: _____

DATE: _____

Please send the following items and this completed and signed form electronically in PDF format **seven days before** the first meeting of creditors to the trustee assigned to your case, to avoid having your meeting continued. **[Do not send this form or the requested documents to the U.S. Trustee.]**

1) Your most recent tax returns filed, including W-2's. **(DO NOT CASH ANY TAX REFUNDS UNTIL AUTHORIZED BY THE TRUSTEE.)**
Not provided because _____
Attached

2) If you are married and filing individually, copies of documentation used to complete the spouse's portion of Schedule I. **Bring to the meeting of creditors your most recent pay stubs.**
Not provided because _____
Attached

3) The last three monthly statements from prior to the date of filing for each of your depository and investment accounts, including checking, savings and money market
accounts, mutual funds and brokerage accounts; and the most recent statement received
for any retirement account. **Bring to the meeting of creditors the statement for each such account (other than any retirement account) that includes the date the bankruptcy was filed.**
Not provided because _____
Attached

4) If you claim expenses for private school tuition/education/extra home heating expenses for you or your dependents (Form B122), any supporting documents/receipts not previously provided to the U.S. Trustee.
Not provided because _____
Attached

5) If you have any judgments in your favor, or are in the midst of legal proceedings seeking damages for yourself, copies of any complaint or judgment. Please provide the name, address, and telephone number for the attorney handling the case. If you have been involved in a dissolution of marriage proceeding in the last three years, please provide a copy of the divorce decree and any property settlement agreement.
Not provided because _____
Attached

6) A copy of any divorce decree and any property settlement agreement if you were
divorced within the past three years.
Not provided because_____
Attached

7) A copy of the front page, the page containing the legal description, and the signature page of any real estate mortgage on your real estate, and a copy of the deed to any real estate in which you have an interest.
Not provided because _____
Attached

8) For any real estate in which you have an interest and which you are not surrendering, objective evidence of value, including any appraisal obtained within the past three years, recent market analysis, or the latest tax statement showing assessed value.
Not provided because _____
Attached

9) If you have a domestic support obligation ("DSO") and this information is available, the name, address and telephone number of the DSO claim holder.
Not provided because _____
Attached

I affirm under the penalties for perjury that the attached are true and accurate copies of the original requested documents and that the statements contained herein are true.

_____
DEBTOR

_____
JOINT DEBTOR

17. SAMPLE PETITION, SCHEDULES AND STATEMENT OF AFFAIRS

United States Bankruptcy Court
Southern District of Indiana

In re **John Doe Debtor**
Jane Ann Debtor
Debtor(s)

Case No. _____
Chapter **13**

CHAPTER 13 PLAN

■ Original
Amended Plan #__ (e.g. 1st, 2nd)
MUST BE DESIGNATED*

1. NOTICE TO INTERESTED PARTIES:

The Debtor must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not Include", if neither box is checked, or if both boxes are checked, the provision will be ineffective if set out later in the plan.

1.1 A limit on the amount of a secured claim, pursuant to paragraph 8.(b), which may result in a partial payment or no payment at all to the secured creditor.	☐ Included	■ Not Included
1.2 Avoidance of a judicial lien or nonpossessory, non-purchase money security interest. Any lien avoidance shall occur by separate motion or proceeding, pursuant to paragraph 12.	☐ Included	■ Not Included
1.3 Nonstandard provisions, set out in paragraph 15.	☐ Included	■ Not Included

2. GENERAL PROVISIONS:

(a) YOUR RIGHTS MAY BE AFFECTED. Read these papers carefully and discuss them with your attorney. If you oppose any provision of this plan, you must file a timely written objection. This plan may be confirmed without further notice or hearing unless a written objection is filed before the deadline stated on the separate Notice you received from the Court.

(b) PROOFS OF CLAIM: You must file a proof of claim to receive distributions under the plan. Absent a Court order determining the amount of the secured claim, the filed proof of claim shall control as to the determination of pre-petition arrearages; secured and priority tax liabilities; other priority claims; and the amount required to satisfy an offer of payment in full. All claims that are secured by a security interest in real estate shall comply with the requirements of Federal Rule of Bankruptcy Procedure ("FRBP") 3001(c)(2)(C).

(c) NOTICES RELATING TO MORTGAGES: As required by Local Rule B-3002.1-1, all creditors with claims secured by a security interest in real estate shall comply with the requirements of FRBP 3002.1(b) and (c) without regard to whether the real estate is the Debtor's principal residence. If there is a change in the mortgage servicer while the bankruptcy is pending, the mortgage holder shall file with the Court and serve upon the Debtor, Debtor's counsel and the Chapter 13 Trustee ("Trustee") a Notice setting forth the change and providing the name of the new servicer, the payment address, a contact phone number and a contact e-mail address.

(d) NOTICES (OTHER THAN THOSE RELATING TO MORTGAGES): Non-mortgage creditors in Section 8(c) (whose rights are not being modified) or in Section 11 (whose executory contracts/unexpired leases are being assumed) may continue to mail customary notices or coupons to the Debtor or the Trustee notwithstanding the automatic stay.

(e) EQUAL MONTHLY PAYMENTS: As to payments required by paragraphs 7 and 8, the Trustee may increase the amount of any "Equal Monthly Amount" offered to appropriately amortize the claim. The Trustee shall be permitted to accelerate payments to any class of creditor for efficient administration of the case.

(f) PAYMENTS FOLLOWING ENTRY OF ORDERS LIFTING STAY: Upon entry of an order lifting the stay, no distributions shall be made on any secured claim relating to the subject collateral until such time as a timely amended deficiency claim is filed by such creditor and deemed allowed, or the automatic stay is re-imposed by further order of the Court.

3. SUBMISSION OF INCOME: Debtor submits to the supervision and control of the Trustee all or such portion of future earnings or other future income or specified property of the Debtor as is necessary for the execution of this plan.

4. PLAN TERMS:

(a) **PAYMENT AND LENGTH OF PLAN:** Debtor shall pay $ **$2,265.00 per month for 60 months** to the Trustee, starting not later than 30 days after the order for relief, for **60** months, for a total amount of $ **135,900.00** .
Additional payments to the Trustee and/or future changes to the periodic amount proposed are:

None.

(b) **INCREASED FUNDING:** If additional property comes into the estate pursuant to 11 U.S.C. §1306(a)(1) or if the Trustee discovers undisclosed property of the estate, then the Trustee may obtain such property or its proceeds to increase the total amount to be paid under the plan. However, if the Trustee elects to take less than 100% of the property to which the estate may be entitled OR less than the amount necessary to pay all allowed claims in full, then a motion will be filed, and appropriate notice given.

(c) **CURING DEFAULTS:** If Debtor falls behind on plan payments or if changes to the payments owed to secured lenders require additional funds from the Debtor's income, the Debtor and the Trustee may agree that the Debtor(s) will increase the periodic payment amount or that the time period for making payments will be extended, not to exceed 60 months. Creditors will not receive notice of any such agreement unless the total amount that the Debtor(s) will pay to the Trustee decreases. Any party may request in writing, addressed to the Trustee at the address shown on the notice of the meeting of creditors, that the Trustee give that party notice of any such agreement. Agreements under this section cannot extend the term of the plan more than 6 additional months.

(d) **OTHER PLAN CHANGES:** Any other modification of the plan shall be proposed by motion pursuant to 11 U.S.C. §1329. Service of any motion to modify this plan shall be made by the moving party as required by FRBP 2002(a)(5) and 3015(h), unless otherwise ordered by the Court.

5. PAYMENT OF ADMINISTRATIVE CLAIMS (INCLUSIVE OF DEBTOR'S ATTORNEY FEES):

☐ NONE

All allowed administrative claims will be paid in full by the Trustee unless the creditor agrees otherwise:

Creditor	Type of Claim	Scheduled Amount
Mark S. Zuckerberg 13815-49	**Attorney Fees**	**$2,830.00**

6. PAYMENT OF DOMESTIC SUPPORT OBLIGATIONS:

(a) Ongoing Domestic Support Obligations:

■ NONE

Debtor shall make any Domestic Support Obligation payments that are due after the filing of the case under a Domestic Support Order directly to the following payee:

Creditor	Type of Claim	Payment Amount

(b) Domestic Support Obligation Arrears.

■ NONE

The following arrearages on Domestic Support Obligations will be paid in the manner specified:

Creditor	Type of Claim	Estimated Arrears	Treatment

7. PAYMENT OF SECURED CLAIMS RELATING SOLELY TO THE DEBTOR'S PRINCIPAL RESIDENCE:

☐ NONE

As required by Local Rule B-3015-1(d), if there is a pre-petition arrearage claim on a mortgage secured by the Debtor's principal residence, then both the pre-petition arrearage and the post-petition mortgage installments shall be made through the Trustee. Initial post-petition payment arrears shall be paid with secured creditors. If there are no arrears, the Debtor may pay the secured creditor directly. Before confirmation, the payment to the mortgage lender shall be the regular monthly mortgage payment unless otherwise ordered by the Court or modified pursuant to an agreement with the mortgage lender. After confirmation, payment shall be as set forth below. Equal Monthly Amount and Estimated Arrears listed below shall be adjusted based on the filed claim and/or notice. Delinquent real estate taxes and homeowners' association or similar dues should be treated under this paragraph.

Creditor	Residential Address	Estimated Arrears	Equal Monthly Amount	Mortgage Treatment:
Freedom Mortgage	**123 UnEasy Street Carmel, IN 46032 Hamilton County**	**$8,000.00**	**$1,500.00**	**X** Trustee Pay Direct Pay

No late charges, fees or other monetary amounts shall be assessed based on the timing of any payments made by the Trustee under the provisions of the Plan, unless allowed by Order of the Court.

8. PAYMENT OF SECURED CLAIMS OTHER THAN CLAIMS TREATED UNDER PARAGRAPH 7:

(a) Secured Claims as to Which 11 U.S.C. § 506 Valuation Is Not Applicable:

☐ NONE

Pursuant to Local Rule B-3015-1(c), and unless otherwise ordered by the Court, prior to plan confirmation, as to secured claims not treated under paragraph 7 and as to which valuation under 11 U.S.C. § 506 is not applicable, the Trustee shall pay monthly adequate protection payments equal to 1% of a filed secured claim. The Trustee shall disburse such adequate protection payments to the secured creditor as soon as practicable after receiving plan payments from the Debtor, and the secured claim will be reduced accordingly. After confirmation of the plan, unless otherwise provided in paragraph 15, the Trustee will pay to the holder of each allowed secured claim the filed claim amount with interest at the rate stated below.

Creditor	Collateral	Purchase Date	Estimated Claims Amount	Interest Rate	Equal Monthly Amount
PNC Bank	**2016 Jeep Cherokee**	**9/2019**	**$16,500.00**	**5.00%**	**$374.48**

(b) Secured Claims as to Which 11 U.S.C. § 506 Valuation Is Applicable:

■ NONE

Pursuant to Local Rule B-3015-1(c), and unless otherwise ordered by the Court, prior to plan confirmation as to secured claims not treated under paragraph 7 but as to which § 506 valuation is applicable, the Trustee shall pay monthly adequate protection payments equal to 1% of the value of the collateral stated below. The Trustee shall disburse such adequate protection payments to the secured creditor as soon as practicable after receiving plan payments from the Debtor, and the secured claim will be reduced accordingly. After confirmation of the plan, unless otherwise provided in paragraph 15, the Trustee will pay to the holder of each allowed secured claim in the manner set forth below.

(1) Creditor	(2) Collateral	(3) Purchase Date	(4) Scheduled Debt	(5) Value	(6) Interest Rate	(7) Equal Monthly Amount

(c) Curing Defaults and/or Maintaining Payments:

■ NONE

Trustee shall pay the allowed claim for the arrearage, and Debtor shall pay regular post-petition contract payments directly to the creditor:

Creditor	Collateral/Type of Debt	Estimated Arrears	Interest Rate

(d) Surrendered/Abandoned Collateral:

■ NONE

The Debtor intends to surrender the following collateral. Upon confirmation, the Chapter 13 estate abandons any interest in, and the automatic stay pursuant to 11 U.S.C. § 362 is terminated as to, the listed collateral and the automatic stay pursuant to 11 U.S.C. §1301 is terminated in all respects. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in paragraph 10.(b) below. Upon confirmation, the secured creditor is free to pursue its *in rem* rights.

Creditor	Collateral	Surrendered/Abandoned	Scheduled Value

9. SECURED TAX CLAIMS AND 11 U.S.C. § 507 PRIORITY CLAIMS:

☐ NONE

All allowed secured tax obligations shall be paid in full by the Trustee, inclusive of statutory interest thereon (whether or not an interest factor is expressly offered by plan terms). All allowed priority claims shall be paid in full by the Trustee, exclusive of interest, unless the creditor agrees otherwise:

Creditor	Type of Priority or Secured Claim	Scheduled Debt	Treatment
Indiana Department of Revenue	**11 U.S.C. 507(a)(8)**	**$0.00**	**Notice Only**
Internal Revenue Service	**11 U.S.C. 507(a)(8)**	**$6,000.00**	**Pay in full through plan**

10. NON-PRIORITY UNSECURED CLAIMS:

(a) Separately Classified or Long-term Debts:

■ NONE

Creditor	Basis for Classification	Treatment	Amount	Interest

(b) General Unsecured Claims:
_X_ Pro rata distribution from any remaining funds; or
__ Other: __

11. EXECUTORY CONTRACTS AND UNEXPIRED LEASES:

■ NONE

All executory contracts and unexpired leases are REJECTED, except the following, which are assumed:

Creditor	Property Description

12. AVOIDANCE OF LIENS:

■ NONE

Debtor will file a separate motion or adversary proceeding to avoid the following non-purchase money security interests, judicial liens, wholly unsecured mortgages or other liens that impair exemptions:

Creditor	Collateral/Property Description	Amount of Lien to be Avoided

13. LIEN RETENTION: With respect to each allowed secured claim provided for by the plan, the holder of such claim shall retain its lien securing such claim until the earlier of a) the payment of the underlying debt determined under non-bankruptcy law or b) entry of a discharge order under 11 U.S.C. § 1328.

14. VESTING OF PROPERTY OF THE ESTATE: Except as necessary to fund the plan or as expressly retained by the plan or confirmation order, the property of the estate shall revest in the Debtor upon confirmation of the Debtor's plan, subject to the rights of the Trustee, if any, to assert claim to any additional property of the estate acquired by the Debtor post-petition pursuant to operation of 11 U.S.C. § 1306.

15. NONSTANDARD PROVISIONS:

■ NONE

Under FRBP 3015(c), nonstandard provisions are required to be set forth below. Any nonstandard provision placed elsewhere in the plan is void. These plan provisions will be effective only if the included box in Paragraph 1.3 of this plan is checked.

Date: _____

_____
Signature of Debtor
John Doe Debtor
Printed Name of Debtor

_____
Signature of Joint Debtor
Jane Ann Debtor
Printed Name of Joint Debtor

_____
Mark S. Zuckerberg 13815-49
Signature of Attorney for Debtor(s)

Address:	**429 N. Pennsylvania Street - Suite 100**
City, State, ZIP code:	**Indianapolis, IN 46204**
Area code and phone:	**317-687-0000**
Area code and fax:	**317-687-5151**
E-mail address:	**filings@mszlaw.com**

By filing this document, the Debtor(s), if not represented by an attorney, or the Attorney for the Debtor(s) also certify(ies) that the wording and order of the provisions in this Chapter 13 plan are identical to those contained in the form plan adopted by this Court, other than any nonstandard provisions included in paragraph 15.

Fill in this information to identify your case:

United States Bankruptcy Court for the:

SOUTHERN DISTRICT OF INDIANA

Case number *(if known)*: _____

Official Form 121
Statement About Your Social Security Numbers

12/15

Use this form to tell the court about any Social Security or federal Individual Taxpayer Identification numbers you have used. Do not file this form as part of the public case file. This form must be submitted separately and must not be included in the court's public electronic records. Please consult local court procedures for submission requirements.

To protect your privacy, the court will not make this form available to the public. You should not include a full Social Security Number or Individual Taxpayer Number on any other document filed with the court. The court will make only the last four digits of your numbers known to the public. However, the full numbers will be available to your creditors, the U.S. Trustee or bankruptcy administrator, and the trustee assigned to your case.

Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Part 1: Tell the Court About Yourself and Your spouse if Your Spouse is Filing With You

	For Debtor 1:	For Debtor 2 (Only if Spouse is Filing:)
1. Your name	**John** First name **Doe** Middle name **Debtor** Last name	**Jane** First name **Ann** Middle name **Debtor** Last name

Part 2: Tell the Court About all of Your Social Security or Federal Individual Taxpayer Identification Numbers

2. All Social Security Numbers you have used	**000-00-0001**	**000-00-0002**
	☐ You do not have a Social Security Number	☐ You do not have a Social Security Number
3. All federal Individual Taxpayer Identification Numbers (ITIN) you have used		
	■ You do not have an ITIN.	■ You do not have an ITIN.

Part 3: Sign Below

Under penalty of perjury, I declare that the information I have provided in this form is true and correct.	Under penalty of perjury, I declare that the information I have provided in this form is true and correct.
X _____ **John Doe Debtor** Signature of Debtor 1	X _____ **Jane Ann Debtor** Signature of Debtor 2
Date _____	Date _____

Fill in this information to identify your case:

United States Bankruptcy Court for the:

SOUTHERN DISTRICT OF INDIANA

Case number *(if known)* _____

Chapter you are filing under:

- ☐ Chapter 7
- ☐ Chapter 11
- ☐ Chapter 12
- ■ Chapter 13

☐ Check if this is an amended filing

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy

04/20

The bankruptcy forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Identify Yourself

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
1. Your full name Write the name that is on your government-issued picture identification (for example, your driver's license or passport). Bring your picture identification to your meeting with the trustee.	**John** First name **Doe** Middle name **Debtor** Last name and Suffix (Sr., Jr., II, III)	**Jane** First name **Ann** Middle name **Debtor** Last name and Suffix (Sr., Jr., II, III)
2. All other names you have used in the last 8 years Include your married or maiden names.		
3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)	**xxx-xx-0001**	**xxx-xx-0002**

Debtor 1 **John Doe Debtor**
Debtor 2 **Jane Ann Debtor**

Case number *(if known)* _____

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
4. Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years Include trade names and *doing business as* names	■ I have not used any business name or EINs. Business name(s) EIN	☐ I have not used any business name or EINs. **DBA ABC Corporation** Business name(s) EIN
5. Where you live	**123 UnEasy Street** **Carmel, IN 46032** Number, Street, City, State & ZIP Code **Hamilton** County **If your mailing address is different from the one above, fill it in here.** Note that the court will send any notices to you at this mailing address. Number, P.O. Box, Street, City, State & ZIP Code	**If Debtor 2 lives at a different address:** Number, Street, City, State & ZIP Code County **If Debtor 2's mailing address is different from yours, fill it in here.** Note that the court will send any notices to this mailing address. Number, P.O. Box, Street, City, State & ZIP Code
6. Why you are choosing *this district* to file for bankruptcy	*Check one:* ■ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ☐ I have another reason. Explain. (See 28 U.S.C. § 1408.)	*Check one:* ■ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ☐ I have another reason. Explain. (See 28 U.S.C. § 1408.)

Part 2: Tell the Court About Your Bankruptcy Case

7. The chapter of the Bankruptcy Code you are choosing to file under

Check one. (For a brief description of each, see *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Form 2010)).* Also, go to the top of page 1 and check the appropriate box.

- ☐ Chapter 7
- ☐ Chapter 11
- ☐ Chapter 12
- ■ Chapter 13

8. How you will pay the fee

- ■ **I will pay the entire fee when I file my petition.** Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.
- ☐ **I need to pay the fee in installments.** If you choose this option, sign and attach the *Application for Individuals to Pay The Filing Fee in Installments* (Official Form 103A).
- ☐ **I request that my fee be waived** (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your petition.

9. Have you filed for bankruptcy within the last 8 years?

- ■ No.
- ☐ Yes.

District _____ When _____ Case number _____
District _____ When _____ Case number _____
District _____ When _____ Case number _____

10. Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, or by a business partner, or by an affiliate?

- ■ No
- ☐ Yes.

Debtor _____ Relationship to you _____
District _____ When _____ Case number, if known _____
Debtor _____ Relationship to you _____
District _____ When _____ Case number, if known _____

11. Do you rent your residence?

- ■ No. Go to line 12.
- ☐ Yes. Has your landlord obtained an eviction judgment against you?
  - ☐ No. Go to line 12.
  - ☐ Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it as part of this bankruptcy petition.

Part 3: Report About Any Businesses You Own as a Sole Proprietor

12. Are you a sole proprietor of any full- or part-time business?

A sole proprietorship is a business you operate as an individual, and is not a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this petition.

- ■ No. Go to Part 4.
- ☐ Yes. Name and location of business

Name of business, if any

Number, Street, City, State & ZIP Code

Check the appropriate box to describe your business:

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ☐ None of the above

13. Are you filing under Chapter 11 of the Bankruptcy Code, and are you a *small business debtor or a debtor as defined by 11 U.S.C. § 1182(1)?*

For a definition of *small business debtor*, see 11 U.S.C. § 101(51D).

If you are filing under Chapter 11, the court must know whether you are a small business debtor or a debtor choosing to proceed under Subchapter V so that it can set appropriate deadlines. If you indicate that you are a small business debtor or you are choosing to proceed under Subchapter V, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

- ■ No. I am not filing under Chapter 11.
- ☐ No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.
- ☐ Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I do not choose to proceed under Subchapter V of Chapter 11.
- ☐ Yes. I am filing under Chapter 11, I am a debtor according to the definition in § 1182(1) of the Bankruptcy Code, and I choose to proceed under Subchapter V of Chapter 11.

Part 4: Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention

14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?

For example, do you own perishable goods, or livestock that must be fed, or a building that needs urgent repairs?

- ■ No.
- ☐ Yes.

What is the hazard?

If immediate attention is needed, why is it needed?

Where is the property?

Number, Street, City, State & Zip Code

Part 5: Explain Your Efforts to Receive a Briefing About Credit Counseling

15. Tell the court whether you have received a briefing about credit counseling.

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

About Debtor 1:

You must check one:

■ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

☐ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

☐ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.
If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

☐ **I am not required to receive a briefing about credit counseling because of:**

- ☐ **Incapacity.**
  I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- ☐ **Disability.**
  My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
- ☐ **Active duty.**
  I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver credit counseling with the court.

About Debtor 2 (Spouse Only in a Joint Case):

You must check one:

■ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

☐ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

☐ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

☐ **I am not required to receive a briefing about credit counseling because of:**

- ☐ **Incapacity.**
  I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- ☐ **Disability.**
  My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
- ☐ **Active duty.**
  I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

Debtor 1 **John Doe Debtor**
Debtor 2 **Jane Ann Debtor**

Case number *(if known)* _____

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debts do you have?

16a. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

☐ No. Go to line 16b.

■ Yes. Go to line 17.

16b. **Are your debts primarily business debts?** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.

☐ No. Go to line 16c.

☐ Yes. Go to line 17.

16c. State the type of debts you owe that are not consumer debts or business debts

_____

17. Are you filing under Chapter 7?

■ No. I am not filing under Chapter 7. Go to line 18.

Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?

☐ Yes. I am filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?

☐ No

☐ Yes

18. How many Creditors do you estimate that you owe?

■ 1-49	☐ 1,000-5,000	☐ 25,001-50,000
☐ 50-99	☐ 5001-10,000	☐ 50,001-100,000
☐ 100-199	☐ 10,001-25,000	☐ More than100,000
☐ 200-999		

19. How much do you estimate your assets to be worth?

☐ $0 - $50,000	☐ $1,000,001 - $10 million	☐ $500,000,001 - $1 billion
☐ $50,001 - $100,000	☐ $10,000,001 - $50 million	☐ $1,000,000,001 - $10 billion
■ $100,001 - $500,000	☐ $50,000,001 - $100 million	☐ $10,000,000,001 - $50 billion
☐ $500,001 - $1 million	☐ $100,000,001 - $500 million	☐ More than $50 billion

20. How much do you estimate your liabilities to be?

☐ $0 - $50,000	☐ $1,000,001 - $10 million	☐ $500,000,001 - $1 billion
☐ $50,001 - $100,000	☐ $10,000,001 - $50 million	☐ $1,000,000,001 - $10 billion
■ $100,001 - $500,000	☐ $50,000,001 - $100 million	☐ $10,000,000,001 - $50 billion
☐ $500,001 - $1 million	☐ $100,000,001 - $500 million	☐ More than $50 billion

Part 7: Sign Below

For you

I have examined this petition, and I declare under penalty of perjury that the information provided is true and correct.

If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11,12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7.

If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

John Doe Debtor
Signature of Debtor 1

Executed on _____
MM / DD / YYYY

Jane Ann Debtor
Signature of Debtor 2

Executed on _____
MM / DD / YYYY

For your attorney, if you are represented by one

If you are not represented by an attorney, you do not need to file this page.

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

Signature of Attorney for Debtor

Date
MM / DD / YYYY

Mark S. Zuckerberg 13815-49
Printed name

Bankruptcy Law Office of Mark S. Zuckerberg
Firm name

429 N. Pennsylvania Street - Suite 100
Indianapolis, IN 46204
Number, Street, City, State & ZIP Code

Contact phone **317-687-0000**

Email address **filings@mszlaw.com**

13815-49 IN
Bar number & State

Fill in this information to identify your case:			
Debtor 1	**John Doe Debtor**		
	First Name	Middle Name	Last Name
Debtor 2 (Spouse if, filing)	**Jane Ann Debtor**		
	First Name	Middle Name	Last Name
United States Bankruptcy Court for the:	SOUTHERN DISTRICT OF INDIANA		
Case number (if known)			

☐ Check if this is an amended filing

Official Form 107
Statement of Financial Affairs for Individuals Filing for Bankruptcy

4/19

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Give Details About Your Marital Status and Where You Lived Before

1. What is your current marital status?

- ■ Married
- ☐ Not married

2. During the last 3 years, have you lived anywhere other than where you live now?

- ■ No
- ☐ Yes. List all of the places you lived in the last 3 years. Do not include where you live now.

Debtor 1 Prior Address:	Dates Debtor 1 lived there	Debtor 2 Prior Address:	Dates Debtor 2 lived there

3. Within the last 8 years, did you ever live with a spouse or legal equivalent in a community property state or territory? (*Community property states and territories* include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington and Wisconsin.)

- ■ No
- ☐ Yes. Make sure you fill out *Schedule H: Your Codebtors* (Official Form 106H).

Part 2 Explain the Sources of Your Income

4. Did you have any income from employment or from operating a business during this year or the two previous calendar years?
Fill in the total amount of income you received from all jobs and all businesses, including part-time activities.
If you are filing a joint case and you have income that you receive together, list it only once under Debtor 1.

- ☐ No
- ■ Yes. Fill in the details.

	Debtor 1		Debtor 2	
	Sources of income Check all that apply.	**Gross income** (before deductions and exclusions)	**Sources of income** Check all that apply.	**Gross income** (before deductions and exclusions)
For last calendar year: (January 1 to December 31, 2020)	■ Wages, commissions, bonuses, tips	**$30,000.00**	☐ Wages, commissions, bonuses, tips	**$15,000.00**
	☐ Operating a business		■ Operating a business	

Debtor 1 **John Doe Debtor**
Debtor 2 **Jane Ann Debtor**

Case number (*if known*) _____

	Debtor 1		Debtor 2	
	Sources of income Check all that apply.	**Gross income** (before deductions and exclusions)	**Sources of income** Check all that apply.	**Gross income** (before deductions and exclusions)
For the calendar year before that: (January 1 to December 31, 2019)	■ Wages, commissions, bonuses, tips ☐ Operating a business	**$45,000.00**	☐ Wages, commissions, bonuses, tips ■ Operating a business	**$26,000.00**
For the calendar year: (January 1 to December 31, 2018)	■ Wages, commissions, bonuses, tips ☐ Operating a business	**$43,000.00**	☐ Wages, commissions, bonuses, tips ■ Operating a business	**$24,000.00**

5. **Did you receive any other income during this year or the two previous calendar years?**
Include income regardless of whether that income is taxable. Examples of *other income* are alimony; child support; Social Security, unemployment, and other public benefit payments; pensions; rental income; interest; dividends; money collected from lawsuits; royalties; and gambling and lottery winnings. If you are filing a joint case and you have income that you received together, list it only once under Debtor 1.

List each source and the gross income from each source separately. Do not include income that you listed in line 4.

■ No
☐ Yes. Fill in the details.

Debtor 1		Debtor 2	
Sources of income Describe below.	**Gross income from each source** (before deductions and exclusions)	**Sources of income** Describe below.	**Gross income** (before deductions and exclusions)

Part 3: List Certain Payments You Made Before You Filed for Bankruptcy

6. **Are either Debtor 1's or Debtor 2's debts primarily consumer debts?**

☐ No. **Neither Debtor 1 nor Debtor 2 has primarily consumer debts.** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

During the 90 days before you filed for bankruptcy, did you pay any creditor a total of $6,825* or more?

☐ No. Go to line 7.
☐ Yes List below each creditor to whom you paid a total of $6,825* or more in one or more payments and the total amount you paid that creditor. Do not include payments for domestic support obligations, such as child support and alimony. Also, do not include payments to an attorney for this bankruptcy case.

* Subject to adjustment on 4/01/22 and every 3 years after that for cases filed on or after the date of adjustment.

■ Yes. **Debtor 1 or Debtor 2 or both have primarily consumer debts.**
During the 90 days before you filed for bankruptcy, did you pay any creditor a total of $600 or more?

☐ No. Go to line 7.
■ Yes List below each creditor to whom you paid a total of $600 or more and the total amount you paid that creditor. Do not include payments for domestic support obligations, such as child support and alimony. Also, do not include payments to an attorney for this bankruptcy case.

Creditor's Name and Address	**Dates of payment**	**Total amount paid**	**Amount you still owe**	**Was this payment for ...**
PNC Bank **2730 Liberty Avenue** **Pittsburgh, PA 15222**		**$9,000.00**	**$16,500.00**	☐ Mortgage ■ Car ☐ Credit Card ☐ Loan Repayment ☐ Suppliers or vendors ☐ Other__

7. **Within 1 year before you filed for bankruptcy, did you make a payment on a debt you owed anyone who was an insider?**
Insiders include your relatives; any general partners; relatives of any general partners; partnerships of which you are a general partner; corporations of which you are an officer, director, person in control, or owner of 20% or more of their voting securities; and any managing agent, including one for a business you operate as a sole proprietor. 11 U.S.C. § 101. Include payments for domestic support obligations, such as child support and alimony.

■ No
☐ Yes. List all payments to an insider.

Insider's Name and Address	Dates of payment	Total amount paid	Amount you still owe	Reason for this payment

8. **Within 1 year before you filed for bankruptcy, did you make any payments or transfer any property on account of a debt that benefited an insider?**
Include payments on debts guaranteed or cosigned by an insider.

■ No
☐ Yes. List all payments to an insider

Insider's Name and Address	Dates of payment	Total amount paid	Amount you still owe	Reason for this payment Include creditor's name

Part 4: Identify Legal Actions, Repossessions, and Foreclosures

9. **Within 1 year before you filed for bankruptcy, were you a party in any lawsuit, court action, or administrative proceeding?**
List all such matters, including personal injury cases, small claims actions, divorces, collection suits, paternity actions, support or custody modifications, and contract disputes.

☐ No
■ Yes. Fill in the details.

Case title Case number	Nature of the case	Court or agency	Status of the case
Freedom Mortgage **49D05-2008-MF-00001**	**Foreclosure**	**Hamilton County Superior Court** **1 Hamilton Sq** **Noblesville, IN 46060**	■ Pending ☐ On appeal ☐ Concluded

10. **Within 1 year before you filed for bankruptcy, was any of your property repossessed, foreclosed, garnished, attached, seized, or levied?**
Check all that apply and fill in the details below.

■ No. Go to line 11.
☐ Yes. Fill in the information below.

Creditor Name and Address	Describe the Property Explain what happened	Date	Value of the property

11. **Within 90 days before you filed for bankruptcy, did any creditor, including a bank or financial institution, set off any amounts from your accounts or refuse to make a payment because you owed a debt?**

■ No
☐ Yes. Fill in the details.

Creditor Name and Address	Describe the action the creditor took	Date action was taken	Amount

12. **Within 1 year before you filed for bankruptcy, was any of your property in the possession of an assignee for the benefit of creditors, a court-appointed receiver, a custodian, or another official?**

■ No
☐ Yes

Part 5: List Certain Gifts and Contributions

13. **Within 2 years before you filed for bankruptcy, did you give any gifts with a total value of more than $600 per person?**

■ No
☐ Yes. Fill in the details for each gift.

Gifts with a total value of more than $600 per person Person to Whom You Gave the Gift and Address:	Describe the gifts	Dates you gave the gifts	Value

14. **Within 2 years before you filed for bankruptcy, did you give any gifts or contributions with a total value of more than $600 to any charity?**

■ No
☐ Yes. Fill in the details for each gift or contribution.

Gifts or contributions to charities that total more than $600 Charity's Name Address (Number, Street, City, State and ZIP Code)	Describe what you contributed	Dates you contributed	Value

Part 6: List Certain Losses

15. **Within 1 year before you filed for bankruptcy or since you filed for bankruptcy, did you lose anything because of theft, fire, other disaster, or gambling?**

■ No
☐ Yes. Fill in the details.

Describe the property you lost and how the loss occurred	Describe any insurance coverage for the loss Include the amount that insurance has paid. List pending insurance claims on line 33 of *Schedule A/B: Property.*	Date of your loss	Value of property lost

Part 7: List Certain Payments or Transfers

16. **Within 1 year before you filed for bankruptcy, did you or anyone else acting on your behalf pay or transfer any property to anyone you consulted about seeking bankruptcy or preparing a bankruptcy petition?**
Include any attorneys, bankruptcy petition preparers, or credit counseling agencies for services required in your bankruptcy.

☐ No
■ Yes. Fill in the details.

Person Who Was Paid Address Email or website address Person Who Made the Payment, if Not You	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
Bankruptcy Law Office of Mark S. Zuckerb 429 N. Pennsylvania Street - Suite 100 Indianapolis, IN 46204 filings@mszlaw.com	Attorney Fees of $1170 paid prior to filing with $2830 to be paid through the chapter 13 plan. $310 filing fee. $20 credit counseling	8/2020	$1,170.00

17. **Within 1 year before you filed for bankruptcy, did you or anyone else acting on your behalf pay or transfer any property to anyone who promised to help you deal with your creditors or to make payments to your creditors?**
Do not include any payment or transfer that you listed on line 16.

■ No
☐ Yes. Fill in the details.

Person Who Was Paid Address	Description and value of any property transferred	Date payment or transfer was made	Amount of payment

18. **Within 2 years before you filed for bankruptcy, did you sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs?**
Include both outright transfers and transfers made as security (such as the granting of a security interest or mortgage on your property). Do not include gifts and transfers that you have already listed on this statement.

■ No
☐ Yes. Fill in the details.

Person Who Received Transfer Address Person's relationship to you	Description and value of property transferred	Describe any property or payments received or debts paid in exchange	Date transfer was made

19. **Within 10 years before you filed for bankruptcy, did you transfer any property to a self-settled trust or similar device of which you are a beneficiary?** (These are often called *asset-protection devices*.)

■ No
☐ Yes. Fill in the details.

Name of trust	Description and value of the property transferred	Date Transfer was made

Part 8: List of Certain Financial Accounts, Instruments, Safe Deposit Boxes, and Storage Units

20. **Within 1 year before you filed for bankruptcy, were any financial accounts or instruments held in your name, or for your benefit, closed, sold, moved, or transferred?**
Include checking, savings, money market, or other financial accounts; certificates of deposit; shares in banks, credit unions, brokerage houses, pension funds, cooperatives, associations, and other financial institutions.

☐ **No**
■ **Yes. Fill in the details.**

Name of Financial Institution and Address (Number, Street, City, State and ZIP Code)	Last 4 digits of account number	Type of account or instrument	Date account was closed, sold, moved, or transferred	Last balance before closing or transfer
Chase Bank	XXXX-	■ Checking ☐ Savings ☐ Money Market ☐ Brokerage ☐ Other__	**5/2020**	**$3.00**

21. **Do you now have, or did you have within 1 year before you filed for bankruptcy, any safe deposit box or other depository for securities, cash, or other valuables?**

■ **No**
☐ **Yes. Fill in the details.**

Name of Financial Institution Address (Number, Street, City, State and ZIP Code)	Who else had access to it? Address (Number, Street, City, State and ZIP Code)	Describe the contents	Do you still have it?

22. **Have you stored property in a storage unit or place other than your home within 1 year before you filed for bankruptcy?**

■ **No**
☐ **Yes. Fill in the details.**

Name of Storage Facility Address (Number, Street, City, State and ZIP Code)	Who else has or had access to it? Address (Number, Street, City, State and ZIP Code)	Describe the contents	Do you still have it?

Part 9: Identify Property You Hold or Control for Someone Else

23. Do you hold or control any property that someone else owns? Include any property you borrowed from, are storing for, or hold in trust for someone.

- ■ No
- ☐ Yes. Fill in the details.

Owner's Name Address (Number, Street, City, State and ZIP Code)	Where is the property? (Number, Street, City, State and ZIP Code)	Describe the property	Value

Part 10: Give Details About Environmental Information

For the purpose of Part 10, the following definitions apply:

- ■ *Environmental law* means any federal, state, or local statute or regulation concerning pollution, contamination, releases of hazardous or toxic substances, wastes, or material into the air, land, soil, surface water, groundwater, or other medium, including statutes or regulations controlling the cleanup of these substances, wastes, or material.
- ■ *Site* means any location, facility, or property as defined under any environmental law, whether you now own, operate, or utilize it or used to own, operate, or utilize it, including disposal sites.
- ■ *Hazardous material* means anything an environmental law defines as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, contaminant, or similar term.

Report all notices, releases, and proceedings that you know about, regardless of when they occurred.

24. Has any governmental unit notified you that you may be liable or potentially liable under or in violation of an environmental law?

- ■ No
- ☐ Yes. Fill in the details.

Name of site Address (Number, Street, City, State and ZIP Code)	Governmental unit Address (Number, Street, City, State and ZIP Code)	Environmental law, if you know it	Date of notice

25. Have you notified any governmental unit of any release of hazardous material?

- ■ No
- ☐ Yes. Fill in the details.

Name of site Address (Number, Street, City, State and ZIP Code)	Governmental unit Address (Number, Street, City, State and ZIP Code)	Environmental law, if you know it	Date of notice

26. Have you been a party in any judicial or administrative proceeding under any environmental law? Include settlements and orders.

- ■ No
- ☐ Yes. Fill in the details.

Case Title Case Number	Court or agency Name Address (Number, Street, City, State and ZIP Code)	Nature of the case	Status of the case

Part 11: Give Details About Your Business or Connections to Any Business

27. Within 4 years before you filed for bankruptcy, did you own a business or have any of the following connections to any business?

- ■ A sole proprietor or self-employed in a trade, profession, or other activity, either full-time or part-time
- ☐ A member of a limited liability company (LLC) or limited liability partnership (LLP)
- ☐ A partner in a partnership
- ☐ An officer, director, or managing executive of a corporation
- ☐ An owner of at least 5% of the voting or equity securities of a corporation

☐ No. None of the above applies. Go to Part 12.

■ Yes. Check all that apply above and fill in the details below for each business.

Business Name Address (Number, Street, City, State and ZIP Code)	Describe the nature of the business Name of accountant or bookkeeper	Employer Identification number Do not include Social Security number or ITIN. Dates business existed
ABC Corporation	Sales	EIN: 0002 From-To 2010 to Current

28. Within 2 years before you filed for bankruptcy, did you give a financial statement to anyone about your business? Include all financial institutions, creditors, or other parties.

■ No

☐ Yes. Fill in the details below.

Name Address (Number, Street, City, State and ZIP Code)	Date Issued

Part 12: Sign Below

I have read the answers on this *Statement of Financial Affairs* and any attachments, and I declare under penalty of perjury that the answers are true and correct. I understand that making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both.
18 U.S.C. §§ 152, 1341, 1519, and 3571.

John Doe Debtor
Signature of Debtor 1

Date _____

Jane Ann Debtor
Signature of Debtor 2

Date _____

Did you attach additional pages to *Your Statement of Financial Affairs for Individuals Filing for Bankruptcy* (Official Form 107)?

■ No
☐ Yes

Did you pay or agree to pay someone who is not an attorney to help you fill out bankruptcy forms?

■ No
☐ Yes. Name of Person _____. Attach the *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119).

Fill in this information to identify your case:			
Debtor 1	**John Doe Debtor**		
	First Name	Middle Name	Last Name
Debtor 2 (Spouse if, filing)	**Jane Ann Debtor**		
	First Name	Middle Name	Last Name
United States Bankruptcy Court for the:	SOUTHERN DISTRICT OF INDIANA		
Case number (if known)			

☐ Check if this is an amended filing

Official Form 106Sum

Summary of Your Assets and Liabilities and Certain Statistical Information 12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Fill out all of your schedules first; then complete the information on this form. If you are filing amended schedules after you file your original forms, you must fill out a new *Summary* and check the box at the top of this page.

Part 1: Summarize Your Assets

		Your assets Value of what you own
1.	**Schedule A/B: Property** (Official Form 106A/B)	
	1a. Copy line 55, Total real estate, from Schedule A/B	$ 250,000.00
	1b. Copy line 62, Total personal property, from Schedule A/B	$ 107,550.00
	1c. Copy line 63, Total of all property on Schedule A/B	$ 357,550.00

Part 2: Summarize Your Liabilities

		Your liabilities Amount you owe
2.	*Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D)	
	2a. Copy the total you listed in Column A, *Amount of claim,* at the bottom of the last page of Part 1 of *Schedule D*	$ 256,500.00
3.	*Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F)	
	3a. Copy the total claims from Part 1 (priority unsecured claims) from line 6e of *Schedule E/F*	$ 6,000.00
	3b. Copy the total claims from Part 2 (nonpriority unsecured claims) from line 6j of *Schedule E/F*	$ 16,000.00
	Your total liabilities	$ 278,500.00

Part 3: Summarize Your Income and Expenses

4.	*Schedule I: Your Income* (Official Form 106I) Copy your combined monthly income from line 12 of *Schedule I*	$ 4,879.16
5.	*Schedule J: Your Expenses* (Official Form 106J) Copy your monthly expenses from line 22c of *Schedule J*	$ 2,615.00

Part 4: Answer These Questions for Administrative and Statistical Records

6. **Are you filing for bankruptcy under Chapters 7, 11, or 13?**

☐ No. You have nothing to report on this part of the form. Check this box and submit this form to the court with your other schedules.

■ Yes

7. **What kind of debt do you have?**

■ **Your debts are primarily consumer debts.** *Consumer debts* are those "incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). Fill out lines 8-9g for statistical purposes. 28 U.S.C. § 159.

☐ **Your debts are not primarily consumer debts.** You have nothing to report on this part of the form. *Check this box* and submit this form to the court with your other schedules.

Debtor 1 **John Doe Debtor**
Debtor 2 **Jane Ann Debtor**

Case number *(if known)* _____

8. **From the *Statement of Your Current Monthly Income*:** Copy your total current monthly income from Official Form 122A-1 Line 11; **OR**, Form 122B Line 11; **OR**, Form 122C-1 Line 14. $ **0.00**

9. **Copy the following special categories of claims from Part 4, line 6 of *Schedule E/F*:**

	Total claim
From Part 4 on *Schedule E/F*, copy the following:	
9a. Domestic support obligations (Copy line 6a.)	$ **0.00**
9b. Taxes and certain other debts you owe the government. (Copy line 6b.)	$ **6,000.00**
9c. Claims for death or personal injury while you were intoxicated. (Copy line 6c.)	$ **0.00**
9d. Student loans. (Copy line 6f.)	$ **0.00**
9e. Obligations arising out of a separation agreement or divorce that you did not report as priority claims. (Copy line 6g.)	$ **0.00**
9f. Debts to pension or profit-sharing plans, and other similar debts. (Copy line 6h.)	+$ **0.00**
9g. **Total.** Add lines 9a through 9f.	$ **6,000.00**

Fill in this information to identify your case and this filing:			
Debtor 1	**John Doe Debtor**		
	First Name	Middle Name	Last Name
Debtor 2 (Spouse, if filing)	**Jane Ann Debtor**		
	First Name	Middle Name	Last Name
United States Bankruptcy Court for the:	SOUTHERN DISTRICT OF INDIANA		
Case number			

☐ Check if this is an amended filing

Official Form 106A/B
Schedule A/B: Property

12/15

In each category, separately list and describe items. List an asset only once. If an asset fits in more than one category, list the asset in the category where you think it fits best. Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest In

1. **Do you own or have any legal or equitable interest in any residence, building, land, or similar property?**

☐ No. Go to Part 2.

■ Yes. Where is the property?

1.1

123 UnEasy Street
Street address, if available, or other description

Carmel | **IN** | **46032-0000**
City | State | ZIP Code

Hamilton
County

What is the property? Check all that apply

- ■ Single-family home
- ☐ Duplex or multi-unit building
- ☐ Condominium or cooperative
- ☐ Manufactured or mobile home
- ☐ Land
- ☐ Investment property
- ☐ Timeshare
- ☐ Other

Who has an interest in the property? Check one

- ☐ Debtor 1 only
- ☐ Debtor 2 only
- ■ Debtor 1 and Debtor 2 only
- ☐ At least one of the debtors and another

Other information you wish to add about this item, such as local property identification number:

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property.*

Current value of the entire property?	**Current value of the portion you own?**
$250,000.00	**$250,000.00**

Describe the nature of your ownership interest (such as fee simple, tenancy by the entireties, or a life estate), if known.

Tenancy by the entirety

☐ **Check if this is community property** (see instructions)

2. **Add the dollar value of the portion you own for all of your entries from Part 1, including any entries for pages you have attached for Part 1. Write that number here.....=>** **$250,000.00**

Part 2: Describe Your Vehicles

Do you own, lease, or have legal or equitable interest in any vehicles, whether they are registered or not? Include any vehicles you own that someone else drives. If you lease a vehicle, also report it on *Schedule G: Executory Contracts and Unexpired Leases.*

3. **Cars, vans, trucks, tractors, sport utility vehicles, motorcycles**

☐ No
■ Yes

3.1 Make: Jeep
Model: Cherokee
Year: 2016
Approximate mileage: _____
Other information:

Who has an interest in the property? Check one
☐ Debtor 1 only
☐ Debtor 2 only
■ Debtor 1 and Debtor 2 only
☐ At least one of the debtors and another
☐ **Check if this is community property** (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property.*

Current value of the entire property?	**Current value of the portion you own?**
$15,000.00	**$15,000.00**

4. **Watercraft, aircraft, motor homes, ATVs and other recreational vehicles, other vehicles, and accessories**
Examples: Boats, trailers, motors, personal watercraft, fishing vessels, snowmobiles, motorcycle accessories

■ No
☐ Yes

5 **Add the dollar value of the portion you own for all of your entries from Part 2, including any entries for pages you have attached for Part 2. Write that number here.....=>** **$15,000.00**

Part 3: Describe Your Personal and Household Items

Do you own or have any legal or equitable interest in any of the following items?

Current value of the portion you own? Do not deduct secured claims or exemptions.

6. **Household goods and furnishings**
Examples: Major appliances, furniture, linens, china, kitchenware
☐ No
■ Yes. Describe.....

Household goods and furnishings — **$2,000.00**

7. **Electronics**
Examples: Televisions and radios; audio, video, stereo, and digital equipment; computers, printers, scanners; music collections; electronic devices including cell phones, cameras, media players, games
☐ No
■ Yes. Describe.....

Electronics — **$500.00**

8. **Collectibles of value**
Examples: Antiques and figurines; paintings, prints, or other artwork; books, pictures, or other art objects; stamp, coin, or baseball card collections; other collections, memorabilia, collectibles
☐ No
■ Yes. Describe.....

Elephant Figurines — **$200.00**

9. **Equipment for sports and hobbies**
Examples: Sports, photographic, exercise, and other hobby equipment; bicycles, pool tables, golf clubs, skis; canoes and kayaks; carpentry tools; musical instruments
☐ No
■ Yes. Describe.....

Golf Clubs	**$50.00**

10. **Firearms**
Examples: Pistols, rifles, shotguns, ammunition, and related equipment
☐ No
■ Yes. Describe.....

(2) Rifles	**$500.00**

11. **Clothes**
Examples: Everyday clothes, furs, leather coats, designer wear, shoes, accessories
☐ No
■ Yes. Describe.....

Clothing & Shoes	**$200.00**

12. **Jewelry**
Examples: Everyday jewelry, costume jewelry, engagement rings, wedding rings, heirloom jewelry, watches, gems, gold, silver
☐ No
■ Yes. Describe.....

Wedding Rings and Watch	**$1,000.00**

13. **Non-farm animals**
Examples: Dogs, cats, birds, horses
☐ No
■ Yes. Describe.....

(1) Dog	**$0.00**

14. **Any other personal and household items you did not already list, including any health aids you did not list**
☐ No
■ Yes. Give specific information.....

Tools and Lawnmower	**$1,000.00**

15. **Add the dollar value of all of your entries from Part 3, including any entries for pages you have attached for Part 3. Write that number here** **$5,450.00**

Part 4: Describe Your Financial Assets

Do you own or have any legal or equitable interest in any of the following?

Current value of the portion you own?
Do not deduct secured claims or exemptions.

16. **Cash**
Examples: Money you have in your wallet, in your home, in a safe deposit box, and on hand when you file your petition
■ No
☐ Yes.....

17. **Deposits of money**
Examples: Checking, savings, or other financial accounts; certificates of deposit; shares in credit unions, brokerage houses, and other similar institutions. If you have multiple accounts with the same institution, list each.
☐ No
■ Yes..... Institution name:

17.1.	**Checking & Savings**	**Huntington Bank**	**$300.00**

18. **Bonds, mutual funds, or publicly traded stocks**
Examples: Bond funds, investment accounts with brokerage firms, money market accounts

■ No
☐ Yes..... Institution or issuer name:

19. **Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture**

☐ No
■ Yes. Give specific information about them.....

Name of entity:	% of ownership:	
ABC Corpoartion. This is a sales based business. No accounts receivable. Inventory worth approximately $200. 1 bank account with Fifth Third Bank with $2 balance	**100** %	**$0.00**

20. **Government and corporate bonds and other negotiable and non-negotiable instruments**
Negotiable instruments include personal checks, cashiers' checks, promissory notes, and money orders.
Non-negotiable instruments are those you cannot transfer to someone by signing or delivering them.

■ No
☐ Yes. Give specific information about them
Issuer name:

21. **Retirement or pension accounts**
Examples: Interests in IRA, ERISA, Keogh, 401(k), 403(b), thrift savings accounts, or other pension or profit-sharing plans

☐ No
■ Yes. List each account separately.

Type of account:	Institution name:	
401(k)	**Fidelity**	**$72,000.00**
IRA	**Fifth Third Bank**	**$12,000.00**

22. **Security deposits and prepayments**
Your share of all unused deposits you have made so that you may continue service or use from a company
Examples: Agreements with landlords, prepaid rent, public utilities (electric, gas, water), telecommunications companies, or others

■ No
☐ Yes. ..... Institution name or individual:

23. **Annuities** (A contract for a periodic payment of money to you, either for life or for a number of years)

■ No
☐ Yes..... Issuer name and description.

24. **Interests in an education IRA, in an account in a qualified ABLE program, or under a qualified state tuition program.**
26 U.S.C. §§ 530(b)(1), 529A(b), and 529(b)(1).

■ No
☐ Yes..... Institution name and description. Separately file the records of any interests.11 U.S.C. § 521(c):

25. **Trusts, equitable or future interests in property (other than anything listed in line 1), and rights or powers exercisable for your benefit**

■ No
☐ Yes. Give specific information about them...

26. **Patents, copyrights, trademarks, trade secrets, and other intellectual property**
Examples: Internet domain names, websites, proceeds from royalties and licensing agreements

■ No
☐ Yes. Give specific information about them...

27. **Licenses, franchises, and other general intangibles**
Examples: Building permits, exclusive licenses, cooperative association holdings, liquor licenses, professional licenses

■ No
☐ Yes. Give specific information about them...

Money or property owed to you?	**Current value of the portion you own?** Do not deduct secured claims or exemptions.

28. **Tax refunds owed to you**

■ No
☐ Yes. Give specific information about them, including whether you already filed the returns and the tax years.....

29. **Family support**
Examples: Past due or lump sum alimony, spousal support, child support, maintenance, divorce settlement, property settlement

■ No
☐ Yes. Give specific information.....

30. **Other amounts someone owes you**
Examples: Unpaid wages, disability insurance payments, disability benefits, sick pay, vacation pay, workers' compensation, Social Security benefits; unpaid loans you made to someone else

■ No
☐ Yes. Give specific information..

31. **Interests in insurance policies**
Examples: Health, disability, or life insurance; health savings account (HSA); credit, homeowner's, or renter's insurance

☐ No
■ Yes. Name the insurance company of each policy and list its value.

Company name:	Beneficiary:	Surrender or refund value:
Whole life insurance policy through Gerber	**Spouse**	**$2,800.00**

32. **Any interest in property that is due you from someone who has died**
If you are the beneficiary of a living trust, expect proceeds from a life insurance policy, or are currently entitled to receive property because someone has died.

■ No
☐ Yes. Give specific information..

33. **Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment**
Examples: Accidents, employment disputes, insurance claims, or rights to sue

■ No
☐ Yes. Describe each claim.....

34. **Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims**

■ No
☐ Yes. Describe each claim.....

35. **Any financial assets you did not already list**

■ No
☐ Yes. Give specific information..

36. **Add the dollar value of all of your entries from Part 4, including any entries for pages you have attached for Part 4. Write that number here.....** **$87,100.00**

Part 5: Describe Any Business-Related Property You Own or Have an Interest In. List any real estate in Part 1.

37. **Do you own or have any legal or equitable interest in any business-related property?**

■ No. Go to Part 6.

☐ Yes. Go to line 38.

Part 6: Describe Any Farm- and Commercial Fishing-Related Property You Own or Have an Interest In.
If you own or have an interest in farmland, list it in Part 1.

46. **Do you own or have any legal or equitable interest in any farm- or commercial fishing-related property?**

■ No. Go to Part 7.

☐ Yes. Go to line 47.

Part 7: Describe All Property You Own or Have an Interest in That You Did Not List Above

53. **Do you have other property of any kind you did not already list?**
Examples: Season tickets, country club membership

■ No

☐ Yes. Give specific information.....

54. **Add the dollar value of all of your entries from Part 7. Write that number here** **$0.00**

Part 8: List the Totals of Each Part of this Form

55.	**Part 1: Total real estate, line 2**			**$250,000.00**
56.	**Part 2: Total vehicles, line 5**	**$15,000.00**		
57.	**Part 3: Total personal and household items, line 15**	**$5,450.00**		
58.	**Part 4: Total financial assets, line 36**	**$87,100.00**		
59.	**Part 5: Total business-related property, line 45**	**$0.00**		
60.	**Part 6: Total farm- and fishing-related property, line 52**	**$0.00**		
61.	**Part 7: Total other property not listed, line 54** +	**$0.00**		
62.	**Total personal property.** Add lines 56 through 61...	**$107,550.00**	Copy personal property total	**$107,550.00**
63.	**Total of all property on Schedule A/B.** Add line 55 + line 62			**$357,550.00**

Fill in this information to identify your case:			
Debtor 1	**John Doe Debtor**		
	First Name	Middle Name	Last Name
Debtor 2 (Spouse if, filing)	**Jane Ann Debtor**		
	First Name	Middle Name	Last Name
United States Bankruptcy Court for the:	SOUTHERN DISTRICT OF INDIANA		
Case number (if known)			

☐ Check if this is an amended filing

Official Form 106C

Schedule C: The Property You Claim as Exempt

4/19

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Using the property you listed on *Schedule A/B: Property* (Official Form 106A/B) as your source, list the property that you claim as exempt. If more space is needed, fill out and attach to this page as many copies of *Part 2: Additional Page* as necessary. On the top of any additional pages, write your name and case number (if known).

For each item of property you claim as exempt, you must specify the amount of the exemption you claim. One way of doing so is to state a specific dollar amount as exempt. Alternatively, you may claim the full fair market value of the property being exempted up to the amount of any applicable statutory limit. Some exemptions—such as those for health aids, rights to receive certain benefits, and tax-exempt retirement funds—may be unlimited in dollar amount. However, if you claim an exemption of 100% of fair market value under a law that limits the exemption to a particular dollar amount and the value of the property is determined to exceed that amount, your exemption would be limited to the applicable statutory amount.

Part 1: Identify the Property You Claim as Exempt

1. **Which set of exemptions are you claiming?** *Check one only, even if your spouse is filing with you.*

   ■ You are claiming state and federal nonbankruptcy exemptions. 11 U.S.C. § 522(b)(3)

   ☐ You are claiming federal exemptions. 11 U.S.C. § 522(b)(2)

2. **For any property you list on *Schedule A/B* that you claim as exempt, fill in the information below.**

Brief description of the property and line on *Schedule A/B* that lists this property	Current value of the portion you own Copy the value from *Schedule A/B*	Amount of the exemption you claim *Check only one box for each exemption.*	Specific laws that allow exemption
123 UnEasy Street Carmel, IN 46032 Hamilton County Line from *Schedule A/B*: **1.1**	**$250,000.00**	■ **$38,600.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(1)**
2016 Jeep Cherokee Line from *Schedule A/B*: **3.1**	**$15,000.00**	■ **$0.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(2)**
Household goods and furnishings Line from *Schedule A/B*: **6.1**	**$2,000.00**	■ **$2,000.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(2)**
Electronics Line from *Schedule A/B*: **7.1**	**$500.00**	■ **$500.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(2)**
Elephant Figurines Line from *Schedule A/B*: **8.1**	**$200.00**	■ **$200.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(2)**

Debtor 1 **John Doe Debtor**
Debtor 2 **Jane Ann Debtor**

Case number (if known) _____

Brief description of the property and line on *Schedule A/B* that lists this property	Current value of the portion you own Copy the value from *Schedule A/B*	Amount of the exemption you claim *Check only one box for each exemption.*	Specific laws that allow exemption
Golf Clubs Line from *Schedule A/B*: **9.1**	**$50.00**	■ **$50.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(2)**
(2) Rifles Line from *Schedule A/B*: **10.1**	**$500.00**	■ **$500.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(2)**
Clothing & Shoes Line from *Schedule A/B*: **11.1**	**$200.00**	■ **$200.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(2)**
Wedding Rings and Watch Line from *Schedule A/B*: **12.1**	**$1,000.00**	■ **$1,000.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(2)**
(1) Dog Line from *Schedule A/B*: **13.1**	**$0.00**	■ **$0.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(2)**
Tools and Lawnmower Line from *Schedule A/B*: **14.1**	**$1,000.00**	■ **$1,000.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(2)**
Checking & Savings: Huntington Bank Line from *Schedule A/B*: **17.1**	**$300.00**	■ **$300.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(3)**
ABC Corpoartion. This is a sales based business. No accounts receivable. Inventory worth approximately $200. 1 bank account with Fifth Third Bank with $2 balance 100 % ownership Line from *Schedule A/B*: **19.1**	**$0.00**	■ **$0.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(3)**
401(k): Fidelity Line from *Schedule A/B*: **21.1**	**$72,000.00**	■ **100%** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(6)**
IRA: Fifth Third Bank Line from *Schedule A/B*: **21.2**	**$12,000.00**	■ **$12,000.00** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code § 34-55-10-2(c)(6)**
Whole life insurance policy through Gerber **Beneficiary: Spouse** Line from *Schedule A/B*: **31.1**	**$2,800.00**	■ **100%** ☐ 100% of fair market value, up to any applicable statutory limit	**Ind. Code §§ 27-1-12-14, 27-2-5-1(c)**

3. **Are you claiming a homestead exemption of more than $170,350?**
(Subject to adjustment on 4/01/22 and every 3 years after that for cases filed on or after the date of adjustment.)

■ No

☐ Yes. Did you acquire the property covered by the exemption within 1,215 days before you filed this case?

☐ No

☐ Yes

Fill in this information to identify your case:

Debtor 1: **John Doe Debtor** (First Name / Middle Name / Last Name)

Debtor 2 (Spouse if, filing): **Jane Ann Debtor** (First Name / Middle Name / Last Name)

United States Bankruptcy Court for the: SOUTHERN DISTRICT OF INDIANA

Case number (if known): _____

☐ Check if this is an amended filing

Official Form 106D

Schedule D: Creditors Who Have Claims Secured by Property

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, copy the Additional Page, fill it out, number the entries, and attach it to this form. On the top of any additional pages, write your name and case number (if known).

1. Do any creditors have claims secured by your property?

☐ No. Check this box and submit this form to the court with your other schedules. You have nothing else to report on this form.

■ Yes. Fill in all of the information below.

Part 1: List All Secured Claims

2. List all secured claims. If a creditor has more than one secured claim, list the creditor separately for each claim. If more than one creditor has a particular claim, list the other creditors in Part 2. As much as possible, list the claims in alphabetical order according to the creditor's name.

	Column A	Column B	Column C
	Amount of claim Do not deduct the value of collateral.	**Value of collateral that supports this claim**	**Unsecured portion** If any
2.1 **Freedom Mortgage**	**$240,000.00**	**$250,000.00**	**$0.00**

Creditor's Name: **Freedom Mortgage**

Number, Street, City, State & Zip Code: **907 Pleasant Valley Ave, Ste 3, Mount Laurel, NJ 08054**

Describe the property that secures the claim: **123 UnEasy Street Carmel, IN 46032 Hamilton County**

As of the date you file, the claim is: Check all that apply.
- ☐ Contingent
- ☐ Unliquidated
- ☐ Disputed

Who owes the debt? Check one.
- ☐ Debtor 1 only
- ☐ Debtor 2 only
- ■ Debtor 1 and Debtor 2 only
- ☐ At least one of the debtors and another
- ☐ **Check if this claim relates to a community debt**

Nature of lien. Check all that apply.
- ■ An agreement you made (such as mortgage or secured car loan)
- ☐ Statutory lien (such as tax lien, mechanic's lien)
- ☐ Judgment lien from a lawsuit
- ■ Other (including a right to offset) **Principal Residence**

Date debt was incurred 2015 **Last 4 digits of account number** 0000

2.2 **PNC Bank**	**$16,500.00**	**$15,000.00**	**$1,500.00**

Creditor's Name: **PNC Bank**

Number, Street, City, State & Zip Code: **2730 Liberty Avenue, Pittsburgh, PA 15222**

Describe the property that secures the claim: **2016 Jeep Cherokee**

As of the date you file, the claim is: Check all that apply.
- ☐ Contingent
- ☐ Unliquidated
- ☐ Disputed

Who owes the debt? Check one.
- ☐ Debtor 1 only
- ☐ Debtor 2 only
- ■ Debtor 1 and Debtor 2 only
- ☐ At least one of the debtors and another
- ☐ **Check if this claim relates to a community debt**

Nature of lien. Check all that apply.
- ■ An agreement you made (such as mortgage or secured car loan)
- ☐ Statutory lien (such as tax lien, mechanic's lien)
- ☐ Judgment lien from a lawsuit
- ■ Other (including a right to offset) **Vehicle Loan**

Date debt was incurred 9/2019 **Last 4 digits of account number** _____

Debtor 1 **John Doe Debtor**
First Name Middle Name Last Name

Debtor 2 **Jane Ann Debtor**
First Name Middle Name Last Name

Case number (if known) _____

Add the dollar value of your entries in Column A on this page. Write that number here:	**$256,500.00**
If this is the last page of your form, add the dollar value totals from all pages. Write that number here:	**$256,500.00**

Part 2: List Others to Be Notified for a Debt That You Already Listed

Use this page only if you have others to be notified about your bankruptcy for a debt that you already listed in Part 1. For example, if a collection agency is trying to collect from you for a debt you owe to someone else, list the creditor in Part 1, and then list the collection agency here. Similarly, if you have more than one creditor for any of the debts that you listed in Part 1, list the additional creditors here. If you do not have additional persons to be notified for any debts in Part 1, do not fill out or submit this page.

[ ]

Name, Number, Street, City, State & Zip Code
Feiwell & Hannoy, P.C.
P.O. Box 44141
251 N. Illinois St., Ste. 1700
Indianapolis, IN 46204

On which line in Part 1 did you enter the creditor? **2.1**

Last 4 digits of account number ___

Fill in this information to identify your case:

Debtor 1: **John Doe Debtor** (First Name / Middle Name / Last Name)

Debtor 2 (Spouse if, filing): **Jane Ann Debtor** (First Name / Middle Name / Last Name)

United States Bankruptcy Court for the: SOUTHERN DISTRICT OF INDIANA

Case number (if known) _____

☐ Check if this is an amended filing

Official Form 106E/F
Schedule E/F: Creditors Who Have Unsecured Claims

12/15

Be as complete and accurate as possible. Use Part 1 for creditors with PRIORITY claims and Part 2 for creditors with NONPRIORITY claims. List the other party to any executory contracts or unexpired leases that could result in a claim. Also list executory contracts on Schedule A/B: Property (Official Form 106A/B) and on Schedule G: Executory Contracts and Unexpired Leases (Official Form 106G). Do not include any creditors with partially secured claims that are listed in Schedule D: Creditors Who Have Claims Secured by Property. If more space is needed, copy the Part you need, fill it out, number the entries in the boxes on the left. Attach the Continuation Page to this page. If you have no information to report in a Part, do not file that Part. On the top of any additional pages, write your name and case number (if known).

Part 1: List All of Your PRIORITY Unsecured Claims

1. **Do any creditors have priority unsecured claims against you?**

   ☐ No. Go to Part 2.

   ■ Yes.

2. **List all of your priority unsecured claims.** If a creditor has more than one priority unsecured claim, list the creditor separately for each claim. For each claim listed, identify what type of claim it is. If a claim has both priority and nonpriority amounts, list that claim here and show both priority and nonpriority amounts. As much as possible, list the claims in alphabetical order according to the creditor's name. If you have more than two priority unsecured claims, fill out the Continuation Page of Part 1. If more than one creditor holds a particular claim, list the other creditors in Part 3.

   (For an explanation of each type of claim, see the instructions for this form in the instruction booklet.)

		Total claim	Priority amount	Nonpriority amount
2.1	**Indiana Department of Revenue** Priority Creditor's Name **100 N. Senate Ave. Room N203** **Indianapolis, IN 46204** Number Street City State Zip Code	**$0.00**	**$0.00**	**$0.00**

Last 4 digits of account number _____

When was the debt incurred? _____

As of the date you file, the claim is: Check all that apply

☐ Contingent

☐ Unliquidated

☐ Disputed

Who incurred the debt? Check one.

☐ Debtor 1 only

☐ Debtor 2 only

■ Debtor 1 and Debtor 2 only

☐ At least one of the debtors and another

☐ **Check if this claim is for a community debt**

Is the claim subject to offset?

■ No

☐ Yes

Type of PRIORITY unsecured claim:

☐ Domestic support obligations

■ Taxes and certain other debts you owe the government

☐ Claims for death or personal injury while you were intoxicated

☐ Other. Specify _____

Notice Only

2.2 **Internal Revenue Service** — Last 4 digits of account number _____ — $6,000.00 — $6,000.00 — $0.00
Priority Creditor's Name
575 North Pennsylvnia Street
Room 469 Stop SB450
Indianapolis, IN 46204
Number Street City State Zip Code

When was the debt incurred? **2018 & 2019**

Who incurred the debt? Check one.
- ☐ Debtor 1 only
- ☐ Debtor 2 only
- ■ Debtor 1 and Debtor 2 only
- ☐ At least one of the debtors and another
- ☐ **Check if this claim is for a community debt**

Is the claim subject to offset?
- ■ No
- ☐ Yes

As of the date you file, the claim is: Check all that apply
- ☐ Contingent
- ☐ Unliquidated
- ☐ Disputed

Type of PRIORITY unsecured claim:
- ☐ Domestic support obligations
- ■ Taxes and certain other debts you owe the government
- ☐ Claims for death or personal injury while you were intoxicated
- ☐ Other. Specify **Income Taxes**

Part 2: List All of Your NONPRIORITY Unsecured Claims

3. **Do any creditors have nonpriority unsecured claims against you?**
   - ☐ No. You have nothing to report in this part. Submit this form to the court with your other schedules.
   - ■ Yes.

4. **List all of your nonpriority unsecured claims in the alphabetical order of the creditor who holds each claim.** If a creditor has more than one nonpriority unsecured claim, list the creditor separately for each claim. For each claim listed, identify what type of claim it is. Do not list claims already included in Part 1. If more than one creditor holds a particular claim, list the other creditors in Part 3.If you have more than three nonpriority unsecured claims fill out the Continuation Page of Part 2.

Total claim

4.1 **Capital One** — Last 4 digits of account number **1234** — **$8,000.00**
Nonpriority Creditor's Name
PO Box 30285
Salt Lake City, UT 84130-2085
Number Street City State Zip Code

When was the debt incurred? _____

Who incurred the debt? Check one.
- ■ Debtor 1 only
- ☐ Debtor 2 only
- ☐ Debtor 1 and Debtor 2 only
- ☐ At least one of the debtors and another
- ☐ **Check if this claim is for a community debt**

Is the claim subject to offset?
- ■ No
- ☐ Yes

As of the date you file, the claim is: Check all that apply
- ☐ Contingent
- ☐ Unliquidated
- ☐ Disputed

Type of NONPRIORITY unsecured claim:
- ☐ Student loans
- ☐ Obligations arising out of a separation agreement or divorce that you did not report as priority claims
- ☐ Debts to pension or profit-sharing plans, and other similar debts
- ■ Other. Specify **Charge Account**

4.2 **Chase**
Nonpriority Creditor's Name
P.O. Box 15298
Wilmington, DE 19850-5298
Number Street City State Zip Code

Last 4 digits of account number 0000 — **$6,000.00**

When was the debt incurred? _____

As of the date you file, the claim is: Check all that apply

Who incurred the debt? Check one.

- ☐ Debtor 1 only
- ■ Debtor 2 only
- ☐ Debtor 1 and Debtor 2 only
- ☐ At least one of the debtors and another
- ☐ **Check if this claim is for a community debt**

Is the claim subject to offset?

- ■ No
- ☐ Yes

- ☐ Contingent
- ☐ Unliquidated
- ☐ Disputed

Type of NONPRIORITY unsecured claim:

- ☐ Student loans
- ☐ Obligations arising out of a separation agreement or divorce that you did not report as priority claims
- ☐ Debts to pension or profit-sharing plans, and other similar debts
- ■ Other. Specify **Charge Account**

4.3 **Franciscan Alliance**
Nonpriority Creditor's Name
28044 Network Place
Chicago, IL 60673-1280
Number Street City State Zip Code

Last 4 digits of account number 1111 — **$2,000.00**

When was the debt incurred? _____

As of the date you file, the claim is: Check all that apply

Who incurred the debt? Check one.

- ☐ Debtor 1 only
- ■ Debtor 2 only
- ☐ Debtor 1 and Debtor 2 only
- ☐ At least one of the debtors and another
- ☐ **Check if this claim is for a community debt**

Is the claim subject to offset?

- ■ No
- ☐ Yes

- ☐ Contingent
- ☐ Unliquidated
- ☐ Disputed

Type of NONPRIORITY unsecured claim:

- ☐ Student loans
- ☐ Obligations arising out of a separation agreement or divorce that you did not report as priority claims
- ☐ Debts to pension or profit-sharing plans, and other similar debts
- ■ Other. Specify **Medical Services**

Part 3: List Others to Be Notified About a Debt That You Already Listed

5. Use this page only if you have others to be notified about your bankruptcy, for a debt that you already listed in Parts 1 or 2. For example, if a collection agency is trying to collect from you for a debt you owe to someone else, list the original creditor in Parts 1 or 2, then list the collection agency here. Similarly, if you have more than one creditor for any of the debts that you listed in Parts 1 or 2, list the additional creditors here. If you do not have additional persons to be notified for any debts in Parts 1 or 2, do not fill out or submit this page.

Part 4: Add the Amounts for Each Type of Unsecured Claim

6. Total the amounts of certain types of unsecured claims. This information is for statistical reporting purposes only. 28 U.S.C. §159. Add the amounts for each type of unsecured claim.

				Total Claim
	6a. **Domestic support obligations**	6a.	$	0.00
Total claims from Part 1	6b. **Taxes and certain other debts you owe the government**	6b.	$	6,000.00
	6c. **Claims for death or personal injury while you were intoxicated**	6c.	$	0.00
	6d. **Other.** Add all other priority unsecured claims. Write that amount here.	6d.	$	0.00
	6e. **Total Priority.** Add lines 6a through 6d.	6e.	$	6,000.00
				Total Claim
	6f. **Student loans**	6f.	$	0.00
Total claims from Part 2	6g. **Obligations arising out of a separation agreement or divorce that you did not report as priority claims**	6g.	$	0.00
	6h. **Debts to pension or profit-sharing plans, and other similar debts**	6h.	$	0.00

6i.	**Other.** Add all other nonpriority unsecured claims. Write that amount here.	6i.	$ 16,000.00
6j.	**Total Nonpriority.** Add lines 6f through 6i.	6j.	$ 16,000.00

Fill in this information to identify your case:

Debtor 1: **John Doe Debtor** (First Name / Middle Name / Last Name)

Debtor 2 (Spouse if, filing): **Jane Ann Debtor** (First Name / Middle Name / Last Name)

United States Bankruptcy Court for the: SOUTHERN DISTRICT OF INDIANA

Case number (if known) _____

☐ Check if this is an amended filing

Official Form 106G

Schedule G: Executory Contracts and Unexpired Leases

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, copy the additional page, fill it out, number the entries, and attach it to this page. On the top of any additional pages, write your name and case number (if known).

1. **Do you have any executory contracts or unexpired leases?**
   - ■ No. Check this box and file this form with the court with your other schedules. You have nothing else to report on this form.
   - ☐ Yes. Fill in all of the information below even if the contacts of leases are listed on *Schedule A/B:Property* (Official Form 106 A/B).

2. **List separately each person or company with whom you have the contract or lease. Then state what each contract or lease is for (for example, rent, vehicle lease, cell phone).** See the instructions for this form in the instruction booklet for more examples of executory contracts and unexpired leases.

	Person or company with whom you have the contract or lease Name, Number, Street, City, State and ZIP Code	**State what the contract or lease is for**
2.1	Name Number Street City State ZIP Code	
2.2	Name Number Street City State ZIP Code	
2.3	Name Number Street City State ZIP Code	
2.4	Name Number Street City State ZIP Code	
2.5	Name Number Street City State ZIP Code	

Fill in this information to identify your case:			
Debtor 1	**John Doe Debtor**		
	First Name	Middle Name	Last Name
Debtor 2 (Spouse if, filing)	**Jane Ann Debtor**		
	First Name	Middle Name	Last Name
United States Bankruptcy Court for the:	SOUTHERN DISTRICT OF INDIANA		
Case number (if known)			

☐ Check if this is an amended filing

Official Form 106H
Schedule H: Your Codebtors

12/15

Codebtors are people or entities who are also liable for any debts you may have. Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, copy the Additional Page, fill it out, and number the entries in the boxes on the left. Attach the Additional Page to this page. On the top of any Additional Pages, write your name and case number (if known). Answer every question.

1. Do you have any codebtors? (If you are filing a joint case, do not list either spouse as a codebtor.

■ No
☐ Yes

2. Within the last 8 years, have you lived in a community property state or territory? (*Community property states and territories* include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.)

■ No. Go to line 3.
☐ Yes. Did your spouse, former spouse, or legal equivalent live with you at the time?

3. In Column 1, list all of your codebtors. Do not include your spouse as a codebtor if your spouse is filing with you. List the person shown in line 2 again as a codebtor only if that person is a guarantor or cosigner. Make sure you have listed the creditor on Schedule D (Official Form 106D), Schedule E/F (Official Form 106E/F), or Schedule G (Official Form 106G). Use Schedule D, Schedule E/F, or Schedule G to fill out Column 2.

	Column 1: **Your codebtor** Name, Number, Street, City, State and ZIP Code	*Column 2:* **The creditor to whom you owe the debt** Check all schedules that apply:
3.1	Name Number Street City State ZIP Code	☐ Schedule D, line _____ ☐ Schedule E/F, line _____ ☐ Schedule G, line _____
3.2	Name Number Street City State ZIP Code	☐ Schedule D, line _____ ☐ Schedule E/F, line _____ ☐ Schedule G, line _____

Fill in this information to identify your case:

Debtor 1 **John Doe Debtor**

Debtor 2 (Spouse, if filing) **Jane Ann Debtor**

United States Bankruptcy Court for the: SOUTHERN DISTRICT OF INDIANA

Case number (If known) _____

Check if this is:
- ☐ An amended filing
- ☐ A supplement showing postpetition chapter 13 income as of the following date:

MM / DD/ YYYY

Official Form 106I

Schedule I: Your Income

12/15

Be as complete and accurate as possible. If two married people are filing together (Debtor 1 and Debtor 2), both are equally responsible for supplying correct information. If you are married and not filing jointly, and your spouse is living with you, include information about your spouse. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Employment

1. **Fill in your employment information.**

   If you have more than one job, attach a separate page with information about additional employers.

   Include part-time, seasonal, or self-employed work.

   Occupation may include student or homemaker, if it applies.

	Debtor 1	Debtor 2 or non-filing spouse
Employment status	■ Employed ☐ Not employed	■ Employed ☐ Not employed
Occupation	Manager	Self Employed
Employer's name	Walmart	ABC Corporation
Employer's address	3221 W. 86th Street Indianapolis, IN 46268	123 UnEasy Street Carmel, IN 46032
How long employed there?	7 Years	15 Years

Part 2: Give Details About Monthly Income

Estimate monthly income as of the date you file this form. If you have nothing to report for any line, write $0 in the space. Include your non-filing spouse unless you are separated.

If you or your non-filing spouse have more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

		For Debtor 1	For Debtor 2 or non-filing spouse
2.	**List monthly gross wages, salary, and commissions** (before all payroll deductions). If not paid monthly, calculate what the monthly wage would be.	2. $ 3,916.66	$ 0.00
3.	**Estimate and list monthly overtime pay.**	3. +$ 0.00	+$ 0.00
4.	**Calculate gross Income.** Add line 2 + line 3.	4. $ 3,916.66	$ 0.00

Debtor 1 **John Doe Debtor**
Debtor 2 **Jane Ann Debtor** Case number (*if known*) _____

			For Debtor 1:		For Debtor 2 or non-filing spouse:
	Copy line 4 here	4.	$ 3,916.66		$ 0.00
5.	**List all payroll deductions:**				
5a.	**Tax, Medicare, and Social Security deductions**	5a.	$ 587.50		$ 0.00
5b.	**Mandatory contributions for retirement plans**	5b.	$ 0.00		$ 0.00
5c.	**Voluntary contributions for retirement plans**	5c.	$ 100.00		$ 0.00
5d.	**Required repayments of retirement fund loans**	5d.	$ 0.00		$ 0.00
5e.	**Insurance**	5e.	$ 350.00		$ 0.00
5f.	**Domestic support obligations**	5f.	$ 0.00		$ 0.00
5g.	**Union dues**	5g.	$ 0.00		$ 0.00
5h.	**Other deductions.** Specify: _____	5h.+	$ 0.00	+	$ 0.00
6.	**Add the payroll deductions.** Add lines 5a+5b+5c+5d+5e+5f+5g+5h.	6.	$ 1,037.50		$ 0.00
7.	**Calculate total monthly take-home pay.** Subtract line 6 from line 4.	7.	$ 2,879.16		$ 0.00
8.	**List all other income regularly received:**				
8a.	**Net income from rental property and from operating a business, profession, or farm** Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.	8a.	$ 0.00		$ 2,000.00
8b.	**Interest and dividends**	8b.	$ 0.00		$ 0.00
8c.	**Family support payments that you, a non-filing spouse, or a dependent regularly receive** Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.	8c.	$ 0.00		$ 0.00
8d.	**Unemployment compensation**	8d.	$ 0.00		$ 0.00
8e.	**Social Security**	8e.	$ 0.00		$ 0.00
8f.	**Other government assistance that you regularly receive** Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies. Specify: _____	8f.	$ 0.00		$ 0.00
8g.	**Pension or retirement income**	8g.	$ 0.00		$ 0.00
8h.	**Other monthly income.** Specify: _____	8h.+	$ 0.00	+	$ 0.00
9.	**Add all other income.** Add lines 8a+8b+8c+8d+8e+8f+8g+8h.	9.	$ 0.00		$ 2,000.00
10.	**Calculate monthly income.** Add line 7 + line 9. Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse.	10.	$ 2,879.16	+ $ 2,000.00	= $ 4,879.16

11. **State all other regular contributions to the expenses that you list in *Schedule J*.**
Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives.
Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in *Schedule J*.
Specify: _____ 11. +$ 0.00

12. **Add the amount in the last column of line 10 to the amount in line 11.** The result is the combined monthly income. Write that amount on the *Summary of Schedules* and *Statistical Summary of Certain Liabilities* and Related *Data*, if it applies 12. $ 4,879.16
Combined monthly income

13. **Do you expect an increase or decrease within the year after you file this form?**
■ No.
☐ Yes. Explain: _____

Fill in this information to identify your case:

Debtor 1: John Doe Debtor

Debtor 2 (Spouse, if filing): Jane Ann Debtor

United States Bankruptcy Court for the: SOUTHERN DISTRICT OF INDIANA

Case number (If known): _____

Check if this is:

☐ An amended filing

☐ A supplement showing postpetition chapter 13 expenses as of the following date:

_____
MM / DD / YYYY

Official Form 106J

Schedule J: Your Expenses

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach another sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Your Household

1. **Is this a joint case?**

   ☐ No. Go to line 2.

   ■ Yes. **Does Debtor 2 live in a separate household?**

   ■ No

   ☐ Yes. Debtor 2 must file Official Form 106J-2, *Expenses for Separate Household* of Debtor 2.

2. **Do you have dependents?** ☐ No

   Do not list Debtor 1 and Debtor 2.

   Do not state the dependents names.

   ■ Yes. Fill out this information for each dependent.....

Dependent's relationship to Debtor 1 or Debtor 2	Dependent's age	Does dependent live with you?
Son	13	☐ No ■ Yes
		☐ No ☐ Yes
		☐ No ☐ Yes
		☐ No ☐ Yes

3. **Do your expenses include expenses of people other than yourself and your dependents?** ■ No ☐ Yes

Part 2: Estimate Your Ongoing Monthly Expenses

Estimate your expenses as of your bankruptcy filing date unless you are using this form as a supplement in a Chapter 13 case to report expenses as of a date after the bankruptcy is filed. If this is a supplemental *Schedule J*, check the box at the top of the form and fill in the applicable date.

Include expenses paid for with non-cash government assistance if you know the value of such assistance and have included it on *Schedule I: Your Income* (Official Form 106I.)

		Your expenses
4.	**The rental or home ownership expenses for your residence.** Include first mortgage payments and any rent for the ground or lot.	4. $ 0.00
	If not included in line 4:	
4a.	Real estate taxes	4a. $ 0.00
4b.	Property, homeowner's, or renter's insurance	4b. $ 0.00
4c.	Home maintenance, repair, and upkeep expenses	4c. $ 100.00
4d.	Homeowner's association or condominium dues	4d. $ 0.00
5.	**Additional mortgage payments for your residence,** such as home equity loans	5. $ 0.00

Debtor 1 **John Doe Debtor**
Debtor 2 **Jane Ann Debtor** Case number (if known) _____

6.	**Utilities:**		
	6a. Electricity, heat, natural gas	6a. $	250.00
	6b. Water, sewer, garbage collection	6b. $	40.00
	6c. Telephone, cell phone, Internet, satellite, and cable services	6c. $	300.00
	6d. Other. Specify:	6d. $	0.00
7.	**Food and housekeeping supplies**	7. $	900.00
8.	**Childcare and children's education costs**	8. $	40.00
9.	**Clothing, laundry, and dry cleaning**	9. $	100.00
10.	**Personal care products and services**	10. $	100.00
11.	**Medical and dental expenses**	11. $	75.00
12.	**Transportation.** Include gas, maintenance, bus or train fare. Do not include car payments.	12. $	300.00
13.	**Entertainment, clubs, recreation, newspapers, magazines, and books**	13. $	100.00
14.	**Charitable contributions and religious donations**	14. $	0.00
15.	**Insurance.** Do not include insurance deducted from your pay or included in lines 4 or 20.		
	15a. Life insurance	15a. $	0.00
	15b. Health insurance	15b. $	0.00
	15c. Vehicle insurance	15c. $	120.00
	15d. Other insurance. Specify:	15d. $	0.00
16.	**Taxes.** Do not include taxes deducted from your pay or included in lines 4 or 20. Specify:	16. $	0.00
17.	**Installment or lease payments:**		
	17a. Car payments for Vehicle 1	17a. $	0.00
	17b. Car payments for Vehicle 2	17b. $	0.00
	17c. Other. Specify:	17c. $	0.00
	17d. Other. Specify:	17d. $	0.00
18.	**Your payments of alimony, maintenance, and support that you did not report as deducted from your pay on line 5, *Schedule I, Your Income* (Official Form 106I).**	18. $	0.00
19.	**Other payments you make to support others who do not live with you.** Specify:	19. $	0.00
20.	**Other real property expenses not included in lines 4 or 5 of this form or on *Schedule I: Your Income*.**		
	20a. Mortgages on other property	20a. $	0.00
	20b. Real estate taxes	20b. $	0.00
	20c. Property, homeowner's, or renter's insurance	20c. $	0.00
	20d. Maintenance, repair, and upkeep expenses	20d. $	0.00
	20e. Homeowner's association or condominium dues	20e. $	0.00
21.	**Other:** Specify: **Misc**	21. +$	50.00
	Pet Expenses	+$	100.00
	Gym Membership	+$	40.00

22.	**Calculate your monthly expenses**		
	22a. Add lines 4 through 21.	$	2,615.00
	22b. Copy line 22 (monthly expenses for Debtor 2), if any, from Official Form 106J-2	$	
	22c. Add line 22a and 22b. The result is your monthly expenses.	$	2,615.00
23.	**Calculate your monthly net income.**		
	23a. Copy line 12 *(your combined monthly income)* from Schedule I.	23a. $	4,879.16
	23b. Copy your monthly expenses from line 22c above.	23b. -$	2,615.00
	23c. Subtract your monthly expenses from your monthly income. The result is your *monthly net income.*	23c. $	2,264.16

24. **Do you expect an increase or decrease in your expenses within the year after you file this form?**
For example, do you expect to finish paying for your car loan within the year or do you expect your mortgage payment to increase or decrease because of a modification to the terms of your mortgage?

■ No.
☐ Yes. Explain here:

Fill in this information to identify your case:			
Debtor 1	**John Doe Debtor**		
	First Name	Middle Name	Last Name
Debtor 2 (Spouse if, filing)	**Jane Ann Debtor**		
	First Name	Middle Name	Last Name
United States Bankruptcy Court for the:	SOUTHERN DISTRICT OF INDIANA		
Case number (if known)			

☐ Check if this is an amended filing

Official Form 106Dec

Declaration About an Individual Debtor's Schedules

12/15

If two married people are filing together, both are equally responsible for supplying correct information.

You must file this form whenever you file bankruptcy schedules or amended schedules. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Sign Below

Did you pay or agree to pay someone who is NOT an attorney to help you fill out bankruptcy forms?

■ No

☐ Yes. Name of person _____ Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119)

Under penalty of perjury, I declare that I have read the summary and schedules filed with this declaration and that they are true and correct.

X _____
John Doe Debtor
Signature of Debtor 1

Date _____

X _____
Jane Ann Debtor
Signature of Debtor 2

Date _____

Fill in this information to identify your case:	
Debtor 1	**John Doe Debtor**
Debtor 2 (Spouse, if filing)	**Jane Ann Debtor**
United States Bankruptcy Court for the:	Southern District of Indiana
Case number (if known)	

Check as directed in lines 17 and 21:

According to the calculations required by this Statement:

- ■ 1. Disposable income is not determined under 11 U.S.C. § 1325(b)(3).
- ☐ 2. Disposable income is determined under 11 U.S.C. § 1325(b)(3).
- ■ 3. The commitment period is 3 years.
- ☐ 4. The commitment period is 5 years.

☐ Check if this is an amended filing

Official Form 122C-1

Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period

04/20

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Calculate Your Average Monthly Income

1. **What is your marital and filing status?** Check one only.
   - ☐ **Not married.** Fill out Column A, lines 2-11.
   - ■ **Married.** Fill out both Columns A and B, lines 2-11.

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write $0 in the space.

			Column A Debtor 1	Column B Debtor 2 or non-filing spouse
2.	**Your gross wages, salary, tips, bonuses, overtime, and commissions** (before all payroll deductions).		$ 0.00	$ 0.00
3.	**Alimony and maintenance payments.** Do not include payments from a spouse if Column B is filled in.		$ 0.00	$ 0.00
4.	**All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.** Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Do not include payments from a spouse. Do not include payments you listed on line 3.		$ 0.00	$ 0.00
5.	**Net income from operating a business, profession, or farm**	Debtor 1		
	Gross receipts (before all deductions)	$ 0.00		
	Ordinary and necessary operating expenses	-$ 0.00		
	Net monthly income from a business, profession, or farm	$ 0.00	Copy here -> $ 0.00	$ 0.00
6.	**Net income from rental and other real property**	Debtor 1		
	Gross receipts (before all deductions)	$ 0.00		
	Ordinary and necessary operating expenses	-$ 0.00		
	Net monthly income from rental or other real property	$ 0.00	Copy here -> $ 0.00	$ 0.00

	Column A Debtor 1	Column B Debtor 2 or non-filing spouse
7. **Interest, dividends, and royalties**	$ 0.00	$ 0.00
8. **Unemployment compensation**	$ 0.00	$ 0.00

Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here:

For you $ 0.00

For your spouse $ 0.00

9. **Pension or retirement income.** Do not include any amount received that was a benefit under the Social Security Act. Also, except as stated in the next sentence, do not include any compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. If you received any retired pay paid under chapter 61 of title 10, then include that pay only to the extent that it does not exceed the amount of retired pay to which you would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.	$ 0.00	$ 0.00
10. **Income from all other sources not listed above.** Specify the source and amount. Do not include any benefits received under the Social Security Act; payments made under the Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19); payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism; or compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. If necessary, list other sources on a separate page and put the total below.		
_____	$ 0.00	$ 0.00
_____	$ 0.00	$ 0.00
Total amounts from separate pages, if any.	+ $ 0.00	$ 0.00
11. **Calculate your total average monthly income.** Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.	$ 0.00 +	$ 0.00 = $ 0.00
		Total average monthly income

Part 2: Determine How to Measure Your Deductions from Income

12. **Copy your total average monthly income from line 11.** $ 0.00

13. **Calculate the marital adjustment.** Check one:

- ☐ You are not married. Fill in 0 below.
- ■ You are married and your spouse is filing with you. Fill in 0 below.
- ☐ You are married and your spouse is not filing with you.

  Fill in the amount of the income listed in line 11, Column B, that was NOT regularly paid for the household expenses of you or your dependents, such as payment of the spouse's tax liability or the spouse's support of someone other than you or your dependents.

  Below, specify the basis for excluding this income and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page.

  If this adjustment does not apply, enter 0 below.

_____	$ _____
_____	$ _____
_____	+$ _____
Total	$ 0.00

Copy here=> - 0.00

14. **Your current monthly income.** Subtract line 13 from line 12. $ 0.00

15. **Calculate your current monthly income for the year.** Follow these steps:

15a. Copy line 14 here=> $ 0.00

	Multiply line 15a by 12 (the number of months in a year).	x 12
15b.	The result is your current monthly income for the year for this part of the form.	$ 0.00

16. **Calculate the median family income that applies to you.** Follow these steps:

16a. Fill in the state in which you live. IN

16b. Fill in the number of people in your household. 3

16c. Fill in the median family income for your state and size of household. $ 78,113.00

To find a list of applicable median income amounts, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

17. **How do the lines compare?**

17a. ■ Line 15b is less than or equal to line 16c. On the top of page 1 of this form, check box 1, *Disposable income is not determined under 11 U.S.C. § 1325(b)(3).* **Go to Part 3.** Do NOT fill out *Calculation of Your Disposable Income* (Official Form 122C-2).

17b. ☐ Line 15b is more than line 16c. On the top of page 1 of this form, check box 2, *Disposable income is determined under 11 U.S.C. § 1325(b)(3).* **Go to Part 3 and fill out Calculation of Your Disposable Income (Official Form 122C-2).** On line 39 of that form, copy your current monthly income from line 14 above.

Part 3: Calculate Your Commitment Period Under 11 U.S.C. § 1325(b)(4)

18. **Copy your total average monthly income from line 11 .** $ 0.00

19. **Deduct the marital adjustment if it applies.** If you are married, your spouse is not filing with you, and you contend that calculating the commitment period under 11 U.S.C. § 1325(b)(4) allows you to deduct part of your spouse's income, copy the amount from line 13.

19a. If the marital adjustment does not apply, fill in 0 on line 19a. -$ 0.00

19b. **Subtract line 19a from line 18.** $ 0.00

20. **Calculate your current monthly income for the year.** Follow these steps:

20a. Copy line 19b $ 0.00

Multiply by 12 (the number of months in a year). x 12

20b. The result is your current monthly income for the year for this part of the form $ 0.00

20c. Copy the median family income for your state and size of household from line 16c $ 78,113.00

21. **How do the lines compare?**

■ Line 20b is less than line 20c. Unless otherwise ordered by the court, on the top of page 1 of this form, check box 3, *The commitment period is 3 years.* Go to Part 4.

☐ Line 20b is more than or equal to line 20c. Unless otherwise ordered by the court, on the top of page 1 of this form, check box 4, *The commitment period is 5 years.* Go to Part 4.

Part 4: Sign Below

By signing here, under penalty of perjury I declare that the information on this statement and in any attachments is true and correct.

X _____
John Doe Debtor
Signature of Debtor 1

Date _____
MM / DD / YYYY

X _____
Jane Ann Debtor
Signature of Debtor 2

Date _____
MM / DD / YYYY

If you checked 17a, do NOT fill out or file Form 122C-2.

If you checked 17b, fill out Form 122C-2 and file it with this form. On line 39 of that form, copy your current monthly income from line 14 above.

Current Monthly Income Details for the Debtor

Debtor Income Details:
Income for the Period **03/01/2021** to **08/31/2021.**

Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Form 2010)

This notice is for you if:

You are an individual filing for bankruptcy, and

Your debts are primarily consumer debts. *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

The types of bankruptcy that are available to individuals

Individuals who meet the qualifications may file under one of four different chapters of Bankruptcy Code:

Chapter 7 - Liquidation

Chapter 11 - Reorganization

Chapter 12 - Voluntary repayment plan for family farmers or fishermen

Chapter 13 - Voluntary repayment plan for individuals with regular income

You should have an attorney review your decision to file for bankruptcy and the choice of chapter.

Chapter 7: Liquidation

	$245	filing fee
	$78	administrative fee
+	$15	trustee surcharge
	$338	total fee

Chapter 7 is for individuals who have financial difficulty preventing them from paying their debts and who are willing to allow their non-exempt property to be used to pay their creditors. The primary purpose of filing under chapter 7 is to have your debts discharged. The bankruptcy discharge relieves you after bankruptcy from having to pay many of your pre-bankruptcy debts. Exceptions exist for particular debts, and liens on property may still be enforced after discharge. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

However, if the court finds that you have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge.

You should know that even if you file chapter 7 and you receive a discharge, some debts are not discharged under the law. Therefore, you may still be responsible to pay:

most taxes;

most student loans;

domestic support and property settlement obligations;

most fines, penalties, forfeitures, and criminal restitution obligations; and

certain debts that are not listed in your bankruptcy papers.

You may also be required to pay debts arising from:

fraud or theft;

fraud or defalcation while acting in breach of fiduciary capacity;

intentional injuries that you inflicted; and

death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs.

If your debts are primarily consumer debts, the court can dismiss your chapter 7 case if it finds that you have enough income to repay creditors a certain amount. You must file *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A–1) if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income that applies in your state.

If your income is not above the median for your state, you will not have to complete the other chapter 7 form, the *Chapter 7 Means Test Calculation* (Official Form 122A–2).

If your income is above the median for your state, you must file a second form —the *Chapter 7 Means Test Calculation* (Official Form 122A–2). The calculations on the form— sometimes called the *Means Test*—deduct from your income living expenses and payments on certain debts to determine any amount available to pay unsecured creditors. If your income is more than the median income for your state of residence and family size, depending on the results of the *Means Test*, the U.S. trustee, bankruptcy administrator, or creditors can file a motion to dismiss your case under § 707(b) of the Bankruptcy Code. If a motion is filed, the court will decide if your case should be dismissed. To avoid dismissal, you may choose to proceed under another chapter of the Bankruptcy Code.

If you are an individual filing for chapter 7 bankruptcy, the trustee may sell your property to pay your debts, subject to your right to exempt the property or a portion of the proceeds from the sale of the property. The property, and the proceeds from property that your bankruptcy trustee sells or liquidates that you are entitled to, is called *exempt property*. Exemptions may enable you to keep your home, a car, clothing, and household items or to receive some of the proceeds if the property is sold.

Exemptions are not automatic. To exempt property, you must list it on *Schedule C: The Property You Claim as Exempt* (Official Form 106C). If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

Chapter 11: Reorganization

	$1,167	filing fee
+	$571	administrative fee
	$1,738	total fee

Chapter 11 is often used for reorganizing a business, but is also available to individuals. The provisions of chapter 11 are too complicated to summarize briefly.

Read These Important Warnings

Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. Only an attorney can give you legal advice about what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help you fill out the forms properly and protect you, your family, your home, and your possessions.

Although the law allows you to represent yourself in bankruptcy court, you should understand that many people find it difficult to represent themselves successfully. The rules are technical, and a mistake or inaction may harm you. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.

You should not file for bankruptcy if you are not eligible to file or if you do not intend to file the necessary documents.

Bankruptcy fraud is a serious crime; you could be fined and imprisoned if you commit fraud in your bankruptcy case. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Chapter 12: Repayment plan for family farmers or fishermen

	$200	filing fee
+	$78	administrative fee
	$278	total fee

Similar to chapter 13, chapter 12 permits family farmers and fishermen to repay their debts over a period of time using future earnings and to discharge some debts that are not paid.

Chapter 13: Repayment plan for individuals with regular income

	$235	filing fee
+	$78	administrative fee
	$313	total fee

Chapter 13 is for individuals who have regular income and would like to pay all or part of their debts in installments over a period of time and to discharge some debts that are not paid. You are eligible for chapter 13 only if your debts are not more than certain dollar amounts set forth in 11 U.S.C. § 109.

Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, usually using your future earnings. If the court approves your plan, the court will allow you to repay your debts, as adjusted by the plan, within 3 years or 5 years, depending on your income and other factors.

After you make all the payments under your plan, many of your debts are discharged. The debts that are not discharged and that you may still be responsible to pay include:

domestic support obligations,

most student loans,

certain taxes,

debts for fraud or theft,

debts for fraud or defalcation while acting in a fiduciary capacity,

most criminal fines and restitution obligations,

certain debts that are not listed in your bankruptcy papers,

certain debts for acts that caused death or personal injury, and

certain long-term secured debts.

Warning: File Your Forms on Time

Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information about your creditors, assets, liabilities, income, expenses and general financial condition. The court may dismiss your bankruptcy case if you do not file this information within the deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

For more information about the documents and their deadlines, go to:
http://www.uscourts.gov/forms/bankruptcy-forms

Bankruptcy crimes have serious consequences

If you knowingly and fraudulently conceal assets or make a false oath or statement under penalty of perjury—either orally or in writing—in connection with a bankruptcy case, you may be fined, imprisoned, or both.

All information you supply in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the U.S. Trustee, the Office of the U.S. Attorney, and other offices and employees of the U.S. Department of Justice.

Make sure the court has your mailing address

The bankruptcy court sends notices to the mailing address you list on *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). To ensure that you receive information about your case, Bankruptcy Rule 4002 requires that you notify the court of any changes in your address.

A married couple may file a bankruptcy case together—called a *joint case*. If you file a joint case and each spouse lists the same mailing address on the bankruptcy petition, the bankruptcy court generally will mail you and your spouse one copy of each notice, unless you file a statement with the court asking that each spouse receive separate copies.

Understand which services you could receive from credit counseling agencies

The law generally requires that you receive a credit counseling briefing from an approved credit counseling agency. 11 U.S.C. § 109(h). If you are filing a joint case, both spouses must receive the briefing. With limited exceptions, you must receive it within the 180 days ***before*** you file your bankruptcy petition. This briefing is usually conducted by telephone or on the Internet.

In addition, after filing a bankruptcy case, you generally must complete a financial management instructional course before you can receive a discharge. If you are filing a joint case, both spouses must complete the course.

You can obtain the list of agencies approved to provide both the briefing and the instructional course from:
http://www.uscourts.gov/services-forms/bankruptcy/credit-counseling-and-debtor-education-courses.

In Alabama and North Carolina, go to:
http://www.uscourts.gov/services-forms/bankruptcy/credit-counseling-and-debtor-education-courses.

If you do not have access to a computer, the clerk of the bankruptcy court may be able to help you obtain the list.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

Case Name: **John Doe Debtor**
Jane Ann Debtor

Case No.

RIGHTS AND RESPONSIBILITIES OF CHAPTER 13 DEBTORS AND THEIR ATTORNEYS

It is important for debtors who file a bankruptcy case under Chapter 13 to understand their rights and responsibilities. It is also important that debtors know what their attorney's responsibilities are and understand the importance of communicating with their attorney to make the case successful. Debtors should also know that they may expect certain services to be performed by their attorney. In order to assure that debtors and attorneys understand their rights and responsibilities in the bankruptcy process, the following guidelines provided by the Court are hereby agreed to by the debtors and their attorney.

BEFORE THE CASE IS FILED

The debtor agrees to:

1. Provide the attorney with complete, accurate and current financial information.
2. Discuss with the attorney the debtor's objectives in filing the case.
3. Disclose any previous bankruptcies filed in the previous 8 years.
4. Unless excused under 11 U.S.C. § 109(h), receive a briefing from an approved nonprofit budget and credit counseling agency and provide the attorney with a copy of the certificate from the agency showing such attendance, as well as a copy of the debt repayment plan, if any, developed through the agency.
5. Disclose to the attorney any and all domestic support obligations.

The attorney agrees to:

1. Meet with the debtor to review the debtor's debts, assets, liabilities, income and expenses.
2. Counsel the debtor regarding the advisability of filing either a Chapter 7 or Chapter 13 case, provide debtor with the notice required under 11 U.S.C. § 342(b) if applicable, discuss both procedures with the debtor and answer the debtor's questions.
3. Explain what payments will be made to creditors directly by the debtor and what payments will be made through the Chapter 13 plan, with particular attention to mortgage and vehicle loan payments, any other debts that accrue interest, domestic support obligations and leases.
4. Explain to the debtor how, when and where to make payments, pursuant to the plan, to the Chapter 13 trustee and of the necessity to include the debtor's case number, name and current address on each payment item.
5. Explain to the debtor how the attorney and trustee's fees are paid and provide an executed copy of this document to the debtor.
6. Explain to the debtor that the first payment due under Chapter 13 must be made to the trustee within 30 days of filing of the bankruptcy petition.
7. Advise the debtor of the requirement to attend the Section 341 Meeting of Creditors and instruct the debtor as to the date, time and place of the meeting and of the necessity to bring both picture identification and proof of the debtor's social security number to the meeting.
8. Advise the debtor of the necessity of maintaining liability, collision and comprehensive insurance on leased vehicles or those securing loans, and of the obligation to bring copies of the declaration page(s) documenting such insurance to the Meeting of Creditors.
9. Advise debtors engaged in business of the necessity to maintain liability insurance, workers compensation insurance, if required, and any other insurance coverage required by law.
10. Timely prepare and file the debtor's petition, plan, statements, schedules, and any other papers or documents required under the Bankruptcy Code.

AFTER THE CASE IS FILED

The debtor agrees to:

1. Timely make all required payments to the Chapter 13 trustee that first become due 30 days after the case is filed. Also, if required, turn over any tax refunds, personal injury settlement proceeds or any other property as requested by the trustee.

2. Timely make all post-petition payments due to mortgage lenders, holders of domestic support obligations, lessors, and any other creditor that debtor agreed or is obligated to pay directly.

3. Cooperate with the attorney in the preparation of all pleadings and attend all hearings as required.

4. Keep the trustee, attorney and Court informed of any changes to the debtor's address and telephone number.

5. Prepare and file any and all federal, state and local tax returns within 30 days of filing the petition.

6. Inform the attorney of any wage garnishments or attachments of assets which occur or continue to occur after the filing of the case.

7. Contact the attorney promptly with any information regarding changes in employment, increases or decreases in income or other financial problems or changes.

8. Contact the attorney promptly if the debtor acquires any property after the petition is filed. Such property might include, but is not limited to, personal injury proceeds, inheritances, lottery winnings, etc.

9. Inform the attorney if the debtor is sued during the case.

10. Inform the attorney if any tax refunds to which the debtors are entitled are seized or not returned to the debtor by the IRS, the Indiana Department of Revenue or any other taxing authority.

11. Contact the attorney to determine whether court approval is required before buying, refinancing or selling real property or before entering into any long-term loan agreement.

12. Pay any filing fees and courts costs directly to the attorney.

13. If the requirements of 11 U.S.C. § 109(h) were waived by the Court when the case was first filed, receive a briefing from an approved nonprofit budget and credit counseling agency within 30 days of the case being filed (unless the Court, for cause, extends such time) and provide counsel with the certificate from the agency stating that the debtor attended such briefing.

14. Unless such attendance is excused under 11 U.S.C. § 1328(f), complete an instructional course concerning personal financial management and shall promptly submit to the debtor's attorney a signed and completed Certification of Completion of Instruction Course Concerning Personal Financial Management.

15. Cooperate fully with any audit conducted pursuant to 28 U.S.C. § 586(a).

16. After all plan payments have been made, and if the debtor is eligible for a discharge, timely provide counsel with the information needed to complete any documents required by the Court before a discharge will be entered.

The attorney agrees to provide the following legal services:

1. Appear at the Section 341 Meeting of Creditors with the debtor.

2. Respond to objections to plan confirmation and, where necessary, prepare an amended plan.

3. Timely submit properly documented profit and loss statements, tax returns and proof of income when requested by the trustee.

4. Prepare, file and serve necessary modifications to the plan.

5. Prepare, file and serve necessary amended statements and schedules, in accordance with information provided by the debtor.

6. Prepare, file and serve necessary motions to buy, sell or refinance property when appropriate.

7. Object to improper or invalid claims, if necessary, based upon documentation provided by the debtor or trustee.

8. Represent the debtor in motions for relief from stay and motions to dismiss and/or convert.

9. Where appropriate, prepare, file, serve and notice motions to avoid liens on real or personal property.

10. Where appropriate, prepare, file and serve a summons and complaint to avoid a wholly unsecured mortgage.

11. Be available to respond to debtor's questions throughout the life of the plan.

12. Negotiate with any creditor holding a claim against the debtor that is potentially nondischargeable to determine if the matter can be resolved prior to litigation. Discuss with debtor the cost and advisability of litigating the dischargeability of the claim. The attorney is not required, however, to represent the debtor in any adversary proceeding to determine the nondischargeability of any debt pursuant to these Rights and Responsibilities.

13. Represent the debtor with respect to any audit conducted pursuant to 28 U.S.C. § 586(a).

14. Negotiate all reaffirmation agreements and appear with the debtor at any hearing on same.

15. After all plan payments have been made, and if the debtor is eligible for a discharge, prepare, file and serve any documents required by the Court before a discharge will be entered.

The total fee charged in this case is $**4,000.00**. If this fee later proves to be insufficient to compensate the attorney for the legal service rendered in the case, the attorney has the right to apply to the court for any additional attorney fees. Fees shall be paid through the plan unless otherwise ordered. The attorney may not receive additional fees directly from the debtor other than the initial retainer. If an attorney has elected to be compensated pursuant to these guidelines, but the case is dismissed prior to confirmation of the plan, absent contrary order, the trustee shall pay to the attorney, to the extent funds are available, an administrative claim equal to 50% of the unpaid fee balance if a properly documented fee claim (for the entire fee balance) has been filed by the attorney and served upon the trustee.

If the debtor disputes the legal services provided or the fees charged by the attorney, an objection must be filed with the Court.

Dated: _____

John Doe Debtor
Debtor

Dated: _____

Jane Ann Debtor
Debtor

Dated: _____

Mark S. Zuckerberg 13815-49
Attorney for Debtor(s)

B2030 (Form 2030) (12/15)

United States Bankruptcy Court
Southern District of Indiana

In re **John Doe Debtor**
Jane Ann Debtor
Debtor(s)

Case No. _____
Chapter **13**

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U .S.C. § 329(a) and Fed. Bankr. P. 2016(b), I certify that I am the attorney for the above named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	$	**4,000.00**
Prior to the filing of this statement I have received	$	**1,170.00**
Balance Due	$	**2,830.00**

2. $ **310.00** of the filing fee has been paid.

3. The source of the compensation paid to me was:

■ Debtor ☐ Other (specify):

4. The source of compensation to be paid to me is:

■ Debtor ☐ Other (specify):

5. ■ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

6. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
d. Representation of the debtor in adversary proceedings and other contested bankruptcy matters;
e. [Other provisions as needed]

7. By agreement with the debtor(s), the above-disclosed fee does not include the following service:
Any services or advice except as set forth above.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Date

Mark S. Zuckerberg 13815-49
Signature of Attorney
Bankruptcy Law Office of Mark S. Zuckerberg
429 N. Pennsylvania Street - Suite 100
Indianapolis, IN 46204
317-687-0000 Fax: 317-687-5151
filings@mszlaw.com
Name of law firm

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

In re:	)	Case No. _____
John Doe Debtor	)	
Jane Ann Debtor	)	☐ Check if this form is submitted with an amended creditor list.
_____	)	
Debtor(s).	)	

VERIFICATION OF CREDITOR LIST

(I/We) declare under penalty of perjury that all entities included or to be included in Schedules D, E/F, G, and H are listed in the creditor list submitted with this verification. This includes all creditors, parties to leases and executory contracts, and codebtors.

(I/We) declare that the names and addresses of the listed entities are true and correct to the best of (my/our) knowledge.

(I/We) understand that (I/we) must file an amended creditor list and pay an amendment fee if there are entities listed on (my/our) schedules that are not included in the creditor list submitted with this verification.

Dated: _____

_____
John Doe Debtor
Signature of Debtor

_____
Jane Ann Debtor
Signature of Joint Debtor

(Note: Certificate of Service not required.)

JOHN DOE DEBTOR
123 UNEASY STREET
CARMEL, IN 46032

JANE ANN DEBTOR
123 UNEASY STREET
CARMEL, IN 46032

MARK S. ZUCKERBERG
BANKRUPTCY LAW OFFICE OF MARK S. ZUCKERBERG
429 N. PENNSYLVANIA STREET - SUITE 100
INDIANAPOLIS, IN 46204

CAPITAL ONE
PO BOX 30285
SALT LAKE CITY, UT 84130-2085

CHASE
P.O. BOX 15298
WILMINGTON, DE 19850-5298

FEIWELL & HANNOY, P.C.
P.O. BOX 44141
251 N. ILLINOIS ST., STE. 1700
INDIANAPOLIS, IN 46204

FRANCISCAN ALLIANCE
28044 NETWORK PLACE
CHICAGO, IL 60673-1280

FREEDOM MORTGAGE
907 PLEASANT VALLEY AVE, STE 3
MOUNT LAUREL, NJ 08054

INDIANA DEPARTMENT OF REVENUE
100 N. SENATE AVE. ROOM N203
INDIANAPOLIS, IN 46204

INTERNAL REVENUE SERVICE
575 NORTH PENNSYLVNIA STREET
ROOM 469 STOP SB450
INDIANAPOLIS, IN 46204

PNC BANK
2730 LIBERTY AVENUE
PITTSBURGH, PA 15222

Section Thirteen

Student Loan Panel

Mark S. Zuckerberg
Bankruptcy Law Office of Mark S. Zuckerberg, P.C.
Indianapolis, Indiana

John R. Schaaf, CPA
Schaaf CPA Group, LLC
Westfield, Indiana

Amanda Fishman
Assistant Director
IUPUI Office of Student Financial Services
Indianapolis, Indiana

Section Thirteen

Student Loan Panel…….. Mark S. Zuckerberg
John R. Schaaf, CPA
Amanda Fishman

PowerPoint – Tax Aspects of Student Loans – John Schaaf, CPA

PowerPoint – Federal Student Loan Panel – Amanda Fishman

Tax Aspects of Student Loans

Schaaf CPA Group, LLC

John Schaaf, CPA

110 N Union Street

Westfield, IN 46074

317-867-5427

john@schaafcpa.com

Deducting Student Loan Interest

- **Deduct up to $2,500**
- **Phaseout between 70K and 85K if single**
- **Phaseout between 140K and 170K if MFJ**
- **Can’t deduct if MFS**
- **Can’t deduct if you are a dependent on another return**

Deducting Student Loan Interest

- **Taxpayer must be legally obligated to repay the loan**
- **Interest must actually be paid during the year**
- **Related-party loans don't count**
- **Loans must have been incurred to pay for college or vocational expenses for you, spouse, or dependent**
- **Reported on 1098-E (might have to download)**

Loans - Miscellaneous

- **Student loans can be paid using 529 funds**
- **Lifetime limit of 10K from 529s towards your loans**
- **Lifetime limit of 10K from your 529 towards each of your sibling's loans**
  - **Can't deduct portion of interest paid with tax-free 529 earnings**
  - **No Federal Tax or penalty on 529 earnings-portion of the 10K**
  - **Still have to pay Indiana tax on earnings and recapture Indiana 529 credits (Indiana decoupled)**

MFS versus MFJ

- **Lost Credits**
  - **Earned income credit**
  - **Credit for the elderly or the disabled**
  - **Child and dependent care credit (Unless spouses lived apart for last 6 months of the year)**
  - **Adoption credit (Unless spouses lived apart for last 6 months of the year)**
- **Lost Education Benefits**
  - **Education credits**
  - **Student loan interest deduction**
  - **Tuition and fees deduction**
  - **US savings bond interest exclusion**

MFS versus MFJ

- **Standard Deduction/Itemized Deduction**
  - **If one spouse itemizes deductions, the other must also itemize**
- **Taxable Social Security**
  - **A greater percentage of social security benefits may be taxable**
- **IRAs**
  - **Traditional IRA deduction and Roth IRA contributions phased out at 10K AGI (Unless spouses lived apart for the entire year)**
  - **Spousal IRA rules do not apply**

MFS versus MFJ

- **Passive Losses**
  - **Rental real estate loss allowance is limited to $12,500 per spouse ($0 if spouses lived together at any time during the year)**
  - **One spouse's passive income cannot be offset by the other spouse's passive loss**
- **Filing Requirement**
  - **Regardless of the age of taxpayer, if gross income is at least $5, a tax return must be filed**

MFS versus MFJ – Real Life Examples

- **Spouses each make 60K with no kids**
  - **MFJ tax is same as combined MFS tax**
- **Spouses each make 60K with no kids, but with 2.5K of student loan interest**
  - **Lose interest deduction**
  - **MFJ tax is $550 less than combined MFS**
- **Spouses each make 60K with 1 child**
  - **MFJ tax is same as combined MFS tax**
- **Spouses each make 60K with 1 child and 6K daycare expense**
  - **Lose dependent care credit**
  - **MFJ tax is $3K less than combined MFS**
- **Taxpayer makes 60K and spouse makes 10K with no kids**
  - **MFJ tax is 1.2K less than combined MFS**

MFS versus MFJ – Real Life Examples

- **Taxpayer makes 60K and spouse makes 10K with no kids and 4K of spouse tuition**
  - **Lose education credit of 2.5K**
  - **MFJ tax is 3.7K less than combined MFS**

Student Loan Forgiveness

- **Prior to APRA (PL 117-2) 3/11/21:**
  - **PSLF (non-profit or government, 120 payments, IBR) discharge was tax-free**
  - **Perkins Loan Forgiveness discharge was tax-free**
  - **IDR plans: IBR and PAYE and ICR discharge was taxable**
  - **Not taxable if discharged due to disability (until 2025)**
  - **Not taxable if discharged due to death (until 2025)**
  - **Not taxable if discharged due to school-based misconduct**
  - **Unpaid accumulated student loan interest was never taxable**
  - **If taxable, income might be excluded under other rules (insolvency)**

Student Loan Forgiveness

- **After APRA (PL 117-2):**
  - **All discharge (all loans for any reason) is tax-free**
  - **Unpaid accumulated student loan interest was never taxable**
  - **Applies to discharge in 2021-2025 – so in 2026 and after, revert to prior rules unless this provision is extended**
  - **Section 9675 language is:**
    - **Any loan provided expressly for postsecondary educational expenses, regardless of whether provided through the educational institution or directly to the borrower, if such loan was made, insured, or guaranteed by…US, a state, an educational institution, a private lender (and designated as a education loan)**
  - **Indiana follows rules prior to ARPA (so IDR discharge is taxable by Indiana)**

COVID Forbearance

- **Payments made by government are not taxable**
- **Interest NOT PAID is not deductible**

Federal Student Loan Panel

Amanda Fishman
Assistant Director , IUPUI Office of Student Financial Services

Types of Loans Borrowers Could Have

Direct Subsidized/Unsubsidized/PLUS Loans
Federal Family Educational Loans (FFEL)
Subsidized/Unsubsidized/PLUS Loans
Federal Consolidation Loans (Direct/Federal Family Educational Loans)
Federal Perkins Loans
Federal Nursing Loans
Private Educational Loans

Types of Loans Borrowers Could Have

Where can I find what type of loans that I borrowed?

- Visit https://studentaid.gov/dashboard/ find the “My Aid” section, and select “View loan servicer details”
- Call the Federal Student Aid Information Center (FSAIC) at 1-800-433-3243

Basic servicer information:

https://studentaid.gov/manage-loans/repayment/servicers

Federal Loan Moratorium

- Moratorium on payments began March 13th, 2020
- Loans were brought current

  Loan payments were paused

  0% interest rate

  Collection ceased on defaulted loans
- Payment resume January 31st, 2022

Returning to Repayment

All borrowers were made current but..

- 3 Servicers have advised they will not renew their contract.
    - Navient, PHEEA (Fed Loan), NHHEAF (Granite State)
    - 16 Million borrowers could be under a new servicer
- Massive amounts of job loss/change due to COVID
- Everyone is in different a status: (forbearance/repayment/deferment)

Returning to Repayment

Things to consider as Borrowers return to repayment.

- Make sure your Bio/Demo data in Studentaid.gov is up to date
- Know who your loan servicer is, payment amount, repayment plan, history of payments
- Download/Save record of all payments made to the servicer
- Create a file for correspondence between you and servicer
- Know when your payment is due- especially if you have an auto payment created

Federal Loan Transfer

1. Prior to transfer- borrower will receive email/letter from Federal Student Aid with the new servicer's name and contact information.
2. Once transfer is completed- borrower is again notified that the transfer is completed

Federal Loan Transfer

What is transferred:

Loan Status: Forbearance/Deferment/Repayment

What is not transferred:

Account Services: Auto Debits/Electronic Correspondence Preference

Loan Simulator

Use the Federal Student Aid Loan Simulator to choose a loan repayment option/decide if you should consolidate your student loans.

Standard

Eligible Borrowers

All borrowers are eligible for this plan.

Monthly Payment and Time Frame

Payments are a fixed amount that ensures your loans are paid off within 10 years (within 10 to 30 years for Consolidation Loans).

Standard

Eligible Loans

Direct Subsidized and Unsubsidized Loans
FFEL Subsidized and Unsubsidized Loans
all PLUS Loans (Direct or FFEL)
all Consolidation Loans (Direct or FFEL)

Graduated Repayment Plan

Eligible Borrowers

All borrowers are eligible for this plan.

Monthly Payment and Time Frame

Payments are lower at first and then increase, usually every two years, and are for an amount that will ensure your loans are paid off within 10 years

Graduated Repayment Plan

Eligible Loans

Direct Subsidized and Unsubsidized Loans

FFEL Subsidized and Unsubsidized Federal Loans

All PLUS loans (Direct or FFEL)

All Consolidation Loans (Direct or FFEL)

Extended Repayment Plan

Eligible Borrowers

If you're a Direct Loan borrower, you must have more than $30,000 in outstanding Direct Loans.

Eligible Loans

Direct Subsidized and Unsubsidized Loans

FFEL Subsidized and Unsubsidized Federal Loans

PLUS loans (Direct or FFEL)

Consolidation Loans (Direct or FFEL)

Extended Repayment Plan

Monthly Payment and Time Frame

Payments may be fixed or graduated and will ensure that your loans are paid off within 25 years.

Revised Pay As You Earn Repayment Plan (REPAYE)

Eligible Borrowers

Direct Loan Borrower

Eligible Loans

Direct Subsidized and Unsubsidized Loans
Direct PLUS loans
Direct Consolidation Loans that do not include PLUS loans (Direct or FFEL) made to parents

Revised Pay As You Earn Repayment Plan (REPAYE)

Monthly Payment and Time Frame

Your monthly payments will be 10 percent of discretionary income.

Payments are recalculated each year and are based on your updated income and family size.

You must update your income and family size each year, even if they haven't changed.

Revised Pay As You Earn Repayment Plan (REPAYE)

Monthly Payment and Time Frame

If you're married, both your and your spouse's income or loan debt will be considered, whether taxes are filed jointly or separately (with limited exceptions).

Any outstanding balance on your loan will be forgiven if you haven't repaid your loan in full after 20 years (if all loans were taken out for undergraduate study) or 25 years (if any loans were taken out for graduate or professional study).

Pay As You Earn Repayment Plan (PAYE)

Eligible Borrowers

You must be a new borrower on or after 10/1/07, and must have received a disbursement of a Direct Loan on or after 10/1/11

Eligible Loans

Direct Subsidized and Unsubsidized Loans

Direct PLUS Loans made to students

Direct Consolidation Loans that do not include PLUS loans (Direct or FFEL) made to parents

Pay As You Earn Repayment Plan (PAYE)

Monthly Payment and Time Frame

Your monthly payments will be 10 percent of discretionary income, but never more than you would have paid under the 10-year Standard Repayment Plan. Payments are recalculated each year and are based on your updated income and family size.

Pay As You Earn Repayment Plan (PAYE)

Monthly Payment and Time Frame

You must update your income and family size each year, even if they haven’t changed.

If you're married, your spouse's income or loan debt will be considered only if you file a joint tax return.

Any outstanding balance on your loan will be forgiven if you haven't repaid your loan in full after 20 years.

Income Based Repayment Plan (IBR)

Eligible Borrowers

You must have a high debt relative to your income.

Eligible Loans

Direct Subsidized and Unsubsidized Loans
FFEL Subsidized and Unsubsidized Federal Loans
PLUS loans made to students (Direct or FFEL)
Consolidation Loans (Direct or FFEL) that do not include PLUS loans (Direct or FFEL) made to parents

Income Based Repayment Plan (IBR)

Monthly Payment and Time Frame

Your monthly payments will be either 10 or 15 percent of discretionary income (depending on when you received your first loans), but never more than you would have paid under the 10-year Standard Repayment Plan.

Income Based Repayment Plan (IBR)

Monthly Payment and Time Frame

Payments are recalculated each year and are based on your updated income and family size.

You must update your income and family size each year, even if they haven’t changed.

If you're married, your spouse's income or loan debt will be considered only if you file a joint tax return.

Income Based Repayment Plan (IBR)

Monthly Payment and Time Frame

Any outstanding balance on your loan will be forgiven if you haven't repaid your loan in full after 20 years or 25 years, depending on when you received your first loans.

You may have to pay income tax on any amount that is forgiven.

Income-Contingent Repayment Plan (ICR)

Eligible Borrowers

Any Direct Loan borrower with an eligible loan type may choose this plan.

Eligible Loans

Direct Subsidized and Unsubsidized Loans
Direct PLUS Loans made to students
Direct Consolidation Loans

Income-Contingent Repayment Plan (ICR)

Monthly Payment and Time Frame

Your monthly payment will be the lesser of

20 percent of discretionary income, or

the amount you would pay on a repayment plan with a fixed payment over 12 years, adjusted according to your income.

Income-Contingent Repayment Plan (ICR)

Monthly Payment and Time Frame

Payments are recalculated each year and are based on your updated income, family size, and the total amount of your Direct Loans.

You must update your income and family size each year, even if they haven't changed.

Income-Contingent Repayment Plan (ICR)

Monthly Payment and Time Frame

If you're married, your spouse's income or loan debt will be considered only if you file a joint tax return or choose to repay your Direct Loans jointly with your spouse.

Any outstanding balance will be forgiven if you haven't repaid your loan in full after 25 years.

Income-Sensitive Repayment Plan

Eligible Borrowers

Available only for FFEL Program loans, which are not eligible for PSLF.

Eligible Loans

FFEL Subsidized and Unsubsidized Federal Loans

FFEL PLUS Loans

FFEL Consolidation Loans

Income-Sensitive Repayment Plan

Monthly Payment and Time Frame

Your monthly payment is based on annual income, but your loan will be paid in full within 15 years.

Forgiveness…

- Public Service Loan Forgiveness
- Teacher Loan Forgiveness
- Closed School Discharge
- Perkins Loan Cancellation and Discharge
- Total and Permanent Disability Discharge
- Discharge Due to Death
- Discharge in Bankruptcy (in rare cases)
- Borrower Defense to Repayment
- False Certification Discharge
- Unpaid Refund Discharge

Resources

Federal Student Aid (studentaid.gov)

Loan Type

https://studentaid.gov/understand-aid/types/loans

https://studentaid.gov/sites/default/files/federal-loan-programs.pdf

https://studentaid.gov/loan-simulator/

Covid Relief

https://studentaid.gov/announcements-events/coronavirus#zero-percent-interest

Loan Repayment

https://studentaid.gov/manage-loans/repayment/plans

https://studentaid.gov/h/manage-loans

Transfer Loans

https://studentaid.gov/articles/your-loan-was-transferred-whats-next/

Forgiveness

https://studentaid.gov/manage-loans/forgiveness-cancellation#types

https://studentaid.gov/announcements-events/pslf-limited-waiver *** Limited time*** 10/31/2021

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Section Fourteen

THE INDIANA LAWYER

3 things about responding to online criticism as a lawyer

February 17, 2021 | James J. Bell and Stephanie Grass

KEYWORDS 3 THINGS TO KNOW ABOUT ETHICS: JAMES J. BELL AND STEPHANIE L. GRASS / ATTORNEY DISCIPLINE / ETHICS & PROFESSIONAL RESPONSIBILITY / OPINION / SOCIAL MEDIA

We've all scoped a Yelp review, been turned off by a customer's dismal review and chosen a new restaurant. While restaurant management has the ability to respond to unfavorable online reviews, for a lawyer, it's not that simple. The American Bar Association's Standing Committee on Ethics and Professional Responsibility issued its first Ethics Opinion of 2021 with Formal Opinion 496: Responding to Online Criticism and gave us some ethical guidance on responding to online criticism. Here are three things to know about responding to online criticism as a lawyer.

1. What not to do: Do not respond with your side of the story.

As lawyers we are trained to advocate our position. But when it comes to responding to a negative Avvo review about your representation, in most cases, you will not be able chime in with your side of the story as it will risk revealing confidential information. Indiana Professional Conduct Rule 1.6(a) prohibits lawyers from disclosing confidential information: "A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)." The definition of "confidential information" is broad and "has been construed to include all information relating to the representation regardless of the source." *In re Goebel*, 703 N.E.2d 1045, 1047 (Ind. 1998). As further explained in Comment 4 to Rule 1.6, the prohibition on revealing information "also applies to disclosures by a lawyer that do not in themselves reveal protected information **but could reasonably lead to the discovery of such information by a third person."** (Emphasis added).

The Indiana Supreme Court has disbarred an attorney for, among other rule violations, "actively manipulat[ing his] Avvo reviews by monetarily incentivizing positive reviews, and

punishing clients who write negative reviews by publicly exposing confidential information about them." *In re Steele*, 45 N.E.3d 777, 779 (Ind. 2015). Indeed, the Respondent "posted client confidences and falsehoods on a legal marketing website in order to 'punish' certain clients and inflate Respondent's own website ranking." *Id*. at 780.

Even if your intentions are not quite so nefarious and you simply want to explain why Joe Client got things wrong in his public review about your legal services, you should consider not taking the bait. Any explanation puts you at risk of revealing confidential information or what "could reasonably lead to the discovery of such information."

2. What not to do: Setting the record straight is not 'self-defense' under 1.6(b)(5).

While Rule 1.6(b)(5) does provide an exception for revealing confidential information "to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client," the ABA Standing Committee on Ethics and Professional Responsibility found that was not applicable to responding to online criticisms. The committee stated, "A negative online review, alone, does not meet the requirements of permissible disclosure in self-defense under Model Rule 1.6(b)(5) and, even if it did, an online response that discloses information relating to a client's representation or that would lead to discovery of confidential information would exceed any disclosure permitted under the Rule." (Opinion 496 at p. 1).

3. What can you do?

The ABA opinion advises that lawyers may request the website or search engine host remove the information, as long as you don't reveal confidential information. "If the post was made by someone pretending to be a client, but who is not, the lawyer may inform the host of the website or search engine of that fact." (Opinion 496 at p. 5). If the person who posts isn't even your client, you can simply state the person is not your current or former client because you do not owe that person any ethical duty of confidentiality. "However, a lawyer must use caution in responding to posts from nonclients. If the negative commentary is by a former opposing party or opposing counsel, or a former client's friend or family member, and relates to an actual representation, the lawyer may not disclose any information relating to the client or former client's representation without the client or former client's informed consent." (Opinion 496 at p. 6).

If the post was from a current or former client, the ABA Opinion alternatively suggests you may post an invitation to contact the lawyer privately to resolve the matter. (Opinion 496 at p. 6). Another permissible response to a negative post by a client or former client is to indicate professional considerations preclude a response. (Opinion 496 at p. 6).

Conclusion

Many attorneys have been frustrated by what they perceive as unfair online criticism. These same attorneys are even more frustrated when they find that there may be little they can do to combat these issues. This ABA opinion and our summary of it does little to alleviate this frustration. Therefore, we invite those attorneys to go online and give our article one star.•

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THE INDIANA LAWYER

Bell and Grass: 3 things to know about speaking with represented people

August 4, 2021 | James Bell and Stephanie Grass

KEYWORDS 3 THINGS TO KNOW ABOUT ETHICS: JAMES J. BELL AND STEPHANIE L. GRASS / ETHICS & PROFESSIONAL RESPONSIBILITY / INDIANA RULES OF PROFESSIONAL CONDUCT

Can a criminal defense attorney depose the victim in a domestic violence incident without getting the consent of the victim's divorce lawyer? Can a family law attorney depose the opposing party about a personal injury lawsuit without the personal injury lawyer's consent? That depends on what those lawyers want to ask about and whether they have the witness's counsel's consent.

Rule 4.2 of the Indiana Rules of Professional Conduct provides that "a lawyer shall not communicate about the *subject of the representation* with a person the lawyer knows to be represented by another lawyer in the *matter*, unless the lawyer has the consent of the other lawyer or is authorized by law or a court order." (Emphasis added.) In a recent disciplinary opinion, the Indiana Supreme Court gave guidance on what constitutes a "matter" and what conduct violates this rule. *In re P.M.*, 166 N.E.3d 345 (Ind. 2021). Here are three things to know about speaking with a represented person.

1. The 'matter' matters

In *In re P.M.*, the respondent represented Husband in post-dissolution litigation about his marriage to his first wife. After a domestic dispute led to criminal charges against his second wife, the deposition of the second wife was set. Respondent knew that the second wife was represented by counsel in the dissolution proceeding, but the respondent did not inform the second wife's attorney about the deposition. "At the deposition Respondent … elicited incriminating testimony from Second Wife and testimony about subjects relevant to the dissolution case, and Respondent later contacted the prosecutor and provided her with a copy of Second Wife's deposition." *In re P.M.*, 166 N.E.3d at 346.

The court found that this violated Rule 4.2 and noted that "all three underlying cases

involved overlapping subject matter, and Second Wife was a party to the other two cases." *Id*. The court rejected respondent's argument that the "matter" referenced in Rule 4.2 should be read narrowly to mean only the specific lawsuit in which the deposition was taken. In doing so, the court stated:

Respondent's interpretation … runs directly contrary to the purpose of the Rule, which we agree with the Commission is aimed at protection of the rights of a represented person with respect to the subject of the representation and not merely the protection afforded in any given proceeding. … This need is equally important whether the representation involves the same proceeding, a different proceeding, multiple proceedings, or no proceeding at all.

Id.

Based on *P.M.*, it is clear that, regardless of what cause number a deposition is being conducted under, if you know a witness is represented on the subject matter you wish to discuss, you should obtain the consent of the witness's counsel prior to communicating with the witness. Going back to our examples above, if the criminal defense lawyer believes that the victim's divorce impacts the victim's credibility in the criminal case or if the family lawyer thinks a personal injury matter impacts the property settlement in a divorce, then the lawyer who wants to take the depositions needs to obtain consent from the family lawyer and the personal injury lawyer.

2. Your client can talk to a represented person — but be careful

Parties are, of course, permitted to speak directly to each other. What can a lawyer's role be in this situation?

Comment 4 to Rule 4.2 provides in pertinent part, "[p]arties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make." However, be careful. There are limits to what role you can take on when you are "advising" in this fashion. Comment 4 also states that a "lawyer may not make a communication prohibited by this Rule through the acts of another." Where does the "adviser role" end and unethical communications "through the acts of another" begin?

One lawyer received a private reprimand for violating Rule 4.2 by giving his client (the witness's employer) an affidavit that the attorney wanted a witness (the client's employee) to sign in support of his client's motion. Here's the catch: The witness was represented by counsel on the subject matter of the affidavit. *In re Anonymous*, 819 N.E2d 376 (Ind. 2004). "[E]ven though his client may not have been acting as the respondent's agent in obtaining the signature on the affidavit, the respondent *ratified* his client's direct contact with the employee by failing to take steps to intervene when the client presented the affidavit for signature, by failing to take steps to contact employee's

counsel while he was waiting for him to sign the affidavit, by thereafter taking control of the affidavit once it was signed, and by filing the document with the federal court." *Id*. at 379. Based on this, it is clear that while you can advise on communications between parties, you cannot have parties make your communications for you.

3. When in doubt, don't just talk to the witness

If you are unsure as to what matter the lawyer represents the party on, it is best to pick up the phone and ask for counsel's consent. If you get the consent you need, follow up in writing and go talk to the witness. But what if you can't get a consent you feel entitled to? Comment 6 to Rule 4.2 provides, "A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order." Based on this, if you cannot obtain consent, take the step of addressing the issue with the court to make certain that you have the court's blessing when you go to speak to a witness.•

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THE INDIANA LAWYER

Bell and Grass: Confidentiality clauses, contraband and the duty to report

December 23, 2020 | James Bell and Stephanie Grass

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The Indiana Supreme Court recently issued a disciplinary opinion that addressed the issues of confidentiality clauses in settlement agreements, a lawyer's handling of contraband, and the tension between a lawyer's duty to report child abuse and the lawyer's duty of confidentiality. Here are three things to know from *In the Matter of M.B.*, 2020 WL 7233632 (Ind. Dec. 9, 2020):

1. Evaluate whether your confidentiality clause should have an exception for law enforcement.

The respondent in this matter was an employment lawyer who was hired to represent a school after it learned that a teacher had engaged in a series of "inappropriate electronic sexual communications with" a minor student. *Id*. at *1. Part of the disciplinary allegations involved a proposed settlement agreement with a confidentiality clause that prohibited the student and her family from disclosing matters involving her relationship with the teacher "to any other person or entity" besides her attorney and therapist. *Id*. at *2. This agreement was never executed by the parties.

When the respondent learned that the student had an interview scheduled with the Department of Child Services and law enforcement, he emailed the student's lawyer, stating "[d]iscussions with [DCS] and/or IMPD would not be permitted under the agreement" and that his client would "reevaluate" entering the agreement "if discussions with [DCS] or IMPD do occur." *Id*. As a result of this, the DCS interview was canceled. *Id*. at *4.

These actions and the proposed confidentiality clause were viewed by the court as an effort to silence the student and her family. *Id*. at *3. The court held that the respondent's

demand "actively sought to subvert justice." *Id*. Therefore, the court's majority found that the school's lawyer's "attempts to prevent Student and her family from cooperating with DCS or law enforcement amounted to incompetent representation in violation of Rule 1.1 and conduct prejudicial to the administration of justice in violation of Rule 8.4(d)." *Id.* at *4.

Not everyone on the court agreed with this conclusion, however. Notably, Justice Geoffrey Slaughter dissented and stated that the respondent's "approach would raise no eyebrows" and that he "should not be held incompetent for conduct not at odds with prevailing law." *Id*. at *11.

Based on the majority opinion, lawyers should be cautious of drafting boilerplate confidentiality provisions that could prevent clients from cooperating with law enforcement. In fact, a provision stating that it would not violate the settlement if the party responded to a subpoena, court order or a reasonable request of law enforcement may prevent disciplinary scrutiny.

Although it was not charged in this matter, practitioners should also evaluate settlement provisions in light of Rule 3.4(f) of the Indiana Rules of Professional Conduct, which states, in part, that a lawyer shall not "request a person other than a client to refrain from giving relevant information to another party." *See* ISBA Legal Ethics Comm. Op. 2014-1 (2014) (Non-disparagement provision in settlement agreement may violate Rule 3.4(f) if it prohibits lawyer from "privately and voluntarily providing evidence to third parties for their use in litigation, upon request.")

2. There remains a tension between a lawyer's duty to report suspected child abuse and the lawyer's duty to maintain client confidences.

The general rule under Indiana law is that any individual who becomes aware of possible child abuse is mandated to report to DCS or local law enforcement. *See* Ind. Code § 31-33-5-1. But what if the lawyer learns of possible child abuse through the attorney-client relationship? Does a lawyer's duty of confidentiality to clients trump the lawyer's duty to report?

The court touched on this issue by noting the opinion of the Indiana State Bar Association's Legal Ethics Committee that stated, "the lawyer's duty of confidentiality is generally paramount over the general duty to report." However, because the court was not required to do so under the facts presented in this matter, the court did not reach many other conclusions and did not further resolve the tension between an attorney's duty to report child abuse and the lawyer's ethical duty of confidentiality.

Instead, the court found that even if the respondent was mandated to report and failed to do so, "under the circumstances of this case any such criminality by Respondent lacks the requisite nexus to his professional fitness to support a Rule 8.4(b) violation.

Simply put, possibly guessing incorrectly about an unsettled legal matter, upon which reasonable minds can differ and indeed have differed, does not reflect adversely on Respondent's honesty, trustworthiness, or fitness as a lawyer." *Id*.

3. When a lawyer is in possession of contraband, notify law enforcement.

Another issue in this case related to the respondent's possession of explicit photographs of the minor student. Based on this, the Disciplinary Commission charged the respondent with another violation of Rule 8.4(b) for possession of these materials, which it argued amounted to criminal possession of child pornography under Ind. Code § 35-42-4-4 and 18 U.S.C. § 2252(a). However, the court found no violation, despite the fact that it determined the materials at issue were child pornography. *Id*. at *7.

In reaching this conclusion, the court stated "[o]ur narrow conclusion that the requisite nexus between Respondent's alleged criminality and his fitness has not been proven clearly and convincingly should not be read as an endorsement of Respondent's conduct. The best course of action for all who took possession of these materials, including Respondent, would have been to promptly involve law enforcement." *Id*. at *8.

No lawyer entered the practice of law so he or she could expose her client to criminal liability by handing evidence over to the police. At all times, lawyers should take whatever precautionary steps are necessary to never take possession of contraband. Regardless, try as we might, lawyers often find themselves in possession of contraband. When this happens, don't go it alone. While you should not unreasonably delay your response, it is best to stop, bend a colleague's ear and think carefully through the steps you will take (which will on most, if not all, occasions end with taking the uncomfortable step of involving law enforcement.)•

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