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SURVEY

DEVELOPMENTS IN INDIANA APPELLATE PROCEDURE: RULE AMENDMENTS, REMARKABLE CASE LAW, AND COURT GUIDANCE FOR APPELLATE PRACTITIONERS

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INTRODUCTION

The Indiana Supreme Court promulgates the Indiana Rules of Appellate Procedure ("Appellate Rules" or "Rules"), and Indiana's appellate courts—the Indiana Supreme Court ("Supreme Court"), the Indiana Court of Appeals ("Court of Appeals"), and the Indiana Tax Court—interpret and apply the Rules. This Article summarizes amendments to the Rules, analyzes cases interpreting the Rules, and highlights potential pitfalls appellate practitioners should avoid. This Article does not cover every case interpreting the Rules that occurred during the survey period.[1] Instead, it focuses on the most significant decisions.

I. RULE AMENDMENTS

In October 2023, the Indiana Supreme Court issued an order amending Rule 22(A) of the Indiana Rules of Appellate Procedure to become effective January 1, 2024.[2] Rule 22 governs the "citation form" for appellate filings, and the prior

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1. The survey period is between October 1, 2023, and September 30, 2024.

2. Order Amending Rules of Appellate Procedure, No. 23S-MS-10 (Ind. Oct. 4, 2023) [hereinafter October 2023 Order].

version allowed only the Bluebook citation form and required parallel citations for certain cases.[3] The current version of Rule 22 now allows the use of the Association of Legal Writing Directors (ALWD) Guide to Legal Citation, eliminates any requirement for parallel citations, and provides clarity as to citations of more recent memorandum decisions, pinpoint citations, and designations of disposition of petitions to transfer.[4] Indiana Appellate Rule 22(A) reads:

(A) Citation to Cases.

> (1) All published opinions must be cited by giving the title of the case followed by the volume and page of the regional reporter (or official reporter if no regional reporter exists), the court of disposition, and the year of the opinion. *E.g.*, *In re Leach*, 34 N.E. 641 (Ind. 1893); *Todd v. Coleman*, 119 N.E.3d 1137 (Ind. Ct. App. 2019). Parallel citations to two or more reporters are not required.
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> (2) Memorandum decisions issued after January 1, 2023, must be cited by giving the title of the case followed by the appellate case number, the court of disposition, and the month, day, and year of the opinion followed by "(mem.)." *E.g.*, *Steele v. Taber*, No. 22A-CT-925 (Ind. Ct. App. Jan. 17, 2023) (mem.).
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> (3) Pinpoint citations must be included to the specific page(s) on which information appears. *E.g.*, *Livingston v. State*, 113 N.E.3d 611, 614 (Ind. 2018) (per curiam); *Martinez v. State*, No. 22A-CR-1196, at *4 (Ind. Ct. App. Jan. 26, 2023) (mem.), *trans. denied*.
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> (4) Designation of disposition of petitions for transfer must be included. *E.g.*, *State ex rel. Mass Transp. Auth. of Greater Indianapolis v. Ind. Revenue Bd.*, 242 N.E.2d 642 (Ind. Ct. App. 1968), *trans. denied by an evenly divided court* 244 N.E.2d 111 (Ind. 1969); *Coplan v. Miller*, 179 N.E.3d 1006 (Ind. Ct. App. 2021), *trans. denied*.[5]

The order did not make any amendments to subsection (B) of Appellate Rule 22, which addresses citations to Indiana statutes, regulations, court rules, and county-local court rules.[6]

The above order was the only one amending the Indiana Rules of Appellate Procedure during the survey period.

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3. *Id.*
4. IND. R. APP. P. 22.
5. *Id.*
6. *Id.*; *see* October 2023 Order, *supra* note 2.

II. CASE LAW INTERPRETING APPELLATE RULES

The Court of Appeals and Supreme Court issued a number of decisions analyzing the Appellate Rules, including further developing Indiana's jurisprudence on issues such as the appealability of certain trial court orders, contents for a notice of appeal, and the proper appellate remedy after a trial court issues a deficient dispositional order.

A. Appealability of Orders

The survey also included three decisions involving the appealability of trial court orders—all from the Indiana Court of Appeals.

In *Anonymous Provider 2 v. Estate of Askew*, the trial court denied the defendant's motion to dismiss a medical malpractice claim under Indiana Trial Rule 12(B)(1).[7] The trial court certified the denial order as a "final and appealable judgment" pursuant to Indiana Trial Rule 54(B).[8] The defendant then appealed the denial order, and the plaintiff filed a motion to dismiss the appeal.[9]

The Court of Appeals dismissed the appeal.[10] The appellate court first noted that "[a] party may appeal from a final judgment and certain interlocutory orders."[11] The Court of Appeals then held that the appealed order was not a final judgment under Indiana Appellate Rule 2(H)[12] because the order "did not dispose of the [plaintiff's] single claim"; the order "did not possess the requisite degree of finality to be certifiable under Trial Rule 54(B)"; and none of the other categories of Appellate Rule 2(H) were applicable.[13] In so holding, the appellate court relied on several of its past cases, which collectively held that Trial Rule 54(B)[14] does not apply to actions involving single claims and a trial court's use

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7. 223 N.E.3d 727, 728–29 (Ind. Ct. App. 2023).

8. *Id.* at 729.

9. *Id.*

10. *Id.* at 732.

11. *Id.* at 730 (citing IND. APP. RS. 2(H), 5, 9(A)).

12. Indiana Appellate Rule 2(H) reads in full: "A judgment is a final judgment if: (1) it disposes of all claims as to all parties; (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties; (3) it is deemed final under Trial Rule 60(C); (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or (5) it is otherwise deemed final by law." IND. R. APP. P. 2(H).

13. *Anonymous Provider 2*, 233 N.E.3d at 731–32.

14. Trial Rule 54(B) reads in full: "When more than one [1] claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which

of Trial Rule 54(B)'s "magic language" does not automatically make an order a final judgment.[15] The Court of Appeals further held that the defendant was not properly appealing from an interlocutory order because the defendant did not "assert the right to appeal from the interlocutory order under Appellate Rule 14(A)"; the defendant had not "sought certification from the trial court or permission from this Court to file a discretionary interlocutory appeal" under Appellate Rule 14(B); and the defendant did "not state[] a statutory right to appeal."[16]

Anonymous Provider 2 is an important reminder for practitioners to understand that Trial Rule 54(B) does not apply to "single claim action[s]," and a trial court's use of Trial Rule 54(B)'s language in certifying an order as a final and appealable judgment does not definitely render that order appealable under Indiana Appellate Rule 2(H)(2). In single claim actions where the order does not dispose of that single claim, practitioners must "follow the proper procedure for bringing an interlocutory appeal."[17] Pursuing an appeal without taking into consideration these established appellate principles will prove ineffective, leading to dismissal of the appeal, as in *Anonymous Provider 2*.

Anonymous Provider 2 was not the only case addressing the appealability of orders denying motions to dismiss. In *Chitwood v. Guadagnoli*, the Court of Appeals reiterated that "[a]bsent specific exceptions . . . this court has jurisdiction only over final judgments and appeals from interlocutory orders, and [g]enerally the denial of a motion to dismiss under T.R. 12(B)(6) is not itself a final appealable order."[18] The Court of Appeals explained, "To be a final appealable order, the order 'must dispose of all issues to all parties, ending the particular case and leaving nothing for future determination.'"[19] *Chitwood* reinforces important concepts regarding what constitutes a final judgment.

In a case involving a testator's will, *Gerth v. Estate of Bloemer*, the Court of Appeals addressed the appealability of a trial court's order directing "certain

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adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. A judgment as to one or more but fewer than all of the claims or parties is final when the court in writing expressly determines that there is no just reason for delay, and in writing expressly directs entry of judgment, and an appeal may be taken upon this or other issues resolved by the judgment; but in other cases a judgment, decision or order as to less than all the claims and parties is not final." IND. R. TRIAL P. 54(B).

15. *Id.* (citing and relying on Legg v. O'Connor, 557 N.E.2d 675, 676 (Ind. Ct. App. 1990); Cardiology Assocs. of NW. Ind., P.C. v. Collins, 804 N.E.2d 151, 153 (Ind. Ct. App. 2004)).

16. *Id.* at 732.

17. *Id.* at 731.

18. 230 N.E.3d 932, 939 n.4 (Ind. Ct. App. 2024) (second alteration in original) (citing IND. R. APP. P. 5; Sch. City of Gary v. Cont'l Elec. Co., Inc., 301 N.E.2d 803, 808 (Ind. Ct. App. 1973)). The bulk of the *Chitwood* opinion addressed issues not relevant to the subject matter of this law review article: judicial notice of certain court records and whether a default judgment had expired.

19. *Id.* (citing Ramsey v. Moore, 959 N.E.2d 246, 251 (Ind. 2012)).

assets be distributed as specific bequests" to the testator's mother.[20] The testator's sister appealed, "purport[ing] to appeal from a final judgment," and the estate argued that the appellate court lacked jurisdiction over the appeal.[21]

The Court of Appeals disagreed that it lacked jurisdiction. The appellate court noted that, under Indiana Appellate Rule 5, it had jurisdiction "in all appeals from final judgments and 'over appeals of interlocutory orders under Rule 14.'"[22] The Court of Appeals first determined that the relevant order was not "a final judgment as defined by Indiana Appellate Rule 2(H)" and that Indiana Appellate Rule 14(B), which governs discretionary interlocutory appeals, also did not apply.[23] However, the appellate court determined that Indiana Appellate Rule 14(A)—which governs appeals that may be taken as a matter of right from certain interlocutory orders, including those for the payment of money—applied.[24] The Court of Appeals determined that the trial court's interlocutory order was for the payment of money because it "directed the Estate to pay $119,312.80 to [the testator's mother]" and that this "order obviously work[ed] to the detriment of [the testator's sister], who would stand to inherit approximately $11,185.58 if those funds are considered part of the residuary estate."[25] Accordingly, the Court of Appeals denied the estate's request to dismiss the appeal.[26]

In so holding, the Court of Appeals recognized some uncertainty existed as to whether Indiana Appellate Rule 14(A)(1) requires that an order for the payment of money directs a party to pay a specific sum to another party or to the court by a "date certain."[27] Recognizing that certain uncitable memorandum decisions read such a "date certain" requirement into Appellate Rule 14(A)(1), the *Gerth* panel declined to do so because the plain language of the rule contains no such requirement.[28]

Gerth reinforces general principles regarding appealability of orders and provides an interesting and arguably unconventional example of an interlocutory order that is for the payment of money and thus an interlocutory appeal of right. And in a published opinion, the Court of Appeals put to rest some uncertainty caused by prior memorandum decisions that had improperly read a "date certain" requirement into Indiana Appellate Rule 14(A)(1).

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20. 240 N.E.3d 702 (Ind. Ct. App. 2024).
21. *Id.* at 705.
22. *Id.* (quoting IND. R. APP. P. 5).
23. *Id.*
24. *Id.* at 705–06.
25. *Id.* at 706.
26. *Id.*
27. *Id.* at 706 n.1.
28. *Id.*

B. Contents of a Notice of Appeal

The Indiana Court of Appeals briefly addressed one of the requisite contents of a notice of appeal during the survey period.

In *Sumrall v. LeSEA, Inc.*, the Court of Appeals addressed an appeal of an order granting a motion for judgment lien on real estate.[29] The factual and procedural history of the case is complex but ultimately unnecessary to delve into for purposes of highlighting Sumrall's significant in interpreting the appellate rules.[30]

After recounting the case's history and dealing with a weighty substantive issue,[31] the Court of Appeals briefly addressed the procedural issue of whether, under Indiana Appellate Rule 9(F)(3)[32] and 9(F)(8)(a),[33] a party forfeited a right to appeal the denial of a motion for continuance because the party failed to identify and include the order in its notice of appeal.[34] Pointing out that the party had raised the continuance issue in his appellant's brief and appendix and that the opposing party had addressed the substance of the issue on appeal, the Court of Appeals determined the issue was not forfeited.[35]

While the party in Sumrall was excused for his failure to strictly follow the Appellate Rules, practitioners are well advised to understand and include the necessary contents of a notice of appeal to avoid appellate challenges on this basis.

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29. 234 N.E.3d 230, 232 (Ind. Ct. App. 2024).

30. *See id.* at 232–34.

31. *Id.* at 232–40.

32. Indiana Appellate Rule 9(F)(3) explains that a notice of appeal must include the following: "(a) [t]he date and title of the judgment or order appealed; (b) [t]he date on which any Motion to Correct Error was denied or deemed denied, if applicable; (c) [t]he basis for appellate jurisdiction, delineating whether the appeal is from a Final Judgment, as defined by Rule 2(H); an interlocutory order appealed as of right pursuant to Rule 14(A) or 14(D); an interlocutory order accepted for discretionary appeal pursuant to Rule 14(B) or 14(C); or an expedited appeal pursuant to Rule 14.1; and (d) A designation of the court to which the appeal is taken." IND. R. APP. P. 9(F)(3)

33. Indiana Appellate Rule 9(F)(8) describes the necessary attachments to a notice of appeal: "(a) [a] copy of the judgment or order being appealed (including findings and conclusions in civil cases and the sentencing order in criminal cases); (b) [a] copy of the order denying the Motion to Correct Error or, if deemed denied, a copy of the Motion to Correct Error, if applicable; (c) A copy of all orders and entries relating to the trial court or agency's decision to seal or exclude information from public access, if applicable; (d) [a] copy of the order from the Court of Appeals accepting jurisdiction over the interlocutory appeal, if proceeding pursuant to Rule 14(B)(3) or 14(C)(5); (e) The documents required by Rule 40(C), if proceeding *in forma pauperis*." IND. R. APP. P. 9(F)(8).

34. *Sumrall*, 234 N.E.3d at 241.

35. *Id.*

C. Appellate Remedy Following Deficient Dispositional Order

In *G.W. v. State*, a juvenile case, the Indiana Supreme Court addressed, in part, the proper appellate remedy after a trial court issues a deficient dispositional order.[36] In that case, the juvenile court issued a dispositional order committing the juvenile to the Department of Correction (DOC) but included no specific findings to support the juvenile's commitment, as required by statute. Ind. Code section 31-37-18-9(a).[37] On appeal, the Court of Appeals affirmed, finding no abuse of discretion in the trial court's commitment of G.W. to the DOC because the record revealed G.W.'s history of delinquent behavior and failure to rehabilitate.[38] The appellate court recognized that the trial court's order lacked the statutorily required findings and remanded the case "for an amended dispositional order which includes the written findings and conclusions required by the statute."[39]

After the Court of Appeals issued its decision—but before it certified it—the juvenile court amended its dispositional order, including the findings required by statute.[40] G.W. successfully sought transfer.[41]

In a split opinion, the Indiana Supreme Court that in these cases—"[w]hen a juvenile court fails to enter the requisite findings of fact in its dispositional order"—an appellate court should "remand the case under Indiana Appellate Rule 66(C)(8) while holding the appeal in abeyance."[42] The Court set forth detailed instructions on the procedure:

> Appellate Rule 66(C)(8) expressly permits a reviewing court to issue an order directing the trial court to enter findings or to modify a judgment under Trial Rule 52(B). Trial Rule 52(B), in turn, applies when (among other circumstances) the required "special findings of fact" by the trial court "are lacking, incomplete," or otherwise "inadequate in form or content."
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> Pending remand, and unless the DOC deems otherwise, the appellate court should maintain the juvenile's placement in the DOC to avoid disruption of rehabilitation and to ensure the safety of others. To limit potential harm to the juvenile from the delay in proceedings, the appellate court should instruct the juvenile court to issue its findings promptly—typically within 30 days. Upon entry of those findings, the

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36. 231 N.E.3d 184, 189 (Ind. 2024).

37. *Id.*

38. G.W. v. State, No. 22A-JV-3076, 2023 WL 3476513, at *2–3 (Ind. Ct. App. May 16, 2023).

39. *Id.* at *3.

40. *G.W.*, 231 N.E.3d at 188.

41. *Id.*

42. *Id.* at 189–90.

> clerk of the juvenile court must certify them to the clerk of the appellate court for inclusion in the record.
>
> During this time, the appellate court retains jurisdiction to see that its instructions are carried out. If the juvenile court fails to comply with the order on remand, whether intentionally or by mistake, the juvenile may promptly seek a writ of mandate from the Court issuing the order to enforce compliance with its terms. [43]

The Indiana Supreme Court determined that this process served three "important purposes": (1) adherence to the statutory requirements, which exist to balance the competing interests of imposing the least restrictive setting for the child, community safety, and the best interests of the child; (2) preserving the distinct roles of trial courts and appellate courts and recognizing that appellate courts are not properly equipped to make factual findings; and (3) justification of the cost of juvenile detention.[44]

The Court pointed out that, in this case, the trial court acted "prematurely" because it issued its amended dispositional order while it lacked jurisdiction.[45] That is, under Appellate Rule 8, the Court of Appeals had "acquire[d] jurisdiction on the date the Notice of Completion of Clerk's Record is noted in the Chronological Case Summary," which was December 8, 2022.[46] At that point, the trial court "los[t] its jurisdiction over the case, and any judgment it render[ed] at that point [was] void."[47] And while the trial court's order—issued on June 27, 2023—followed the May 16, 2023, issuance of the Court of Appeals' decision, the appellate decision had not yet been certified, meaning the juvenile court had lacked jurisdiction to issue its amended order per Appellate Rule 65(E), which prohibits a trial court from taking "any action in reliance upon the opinion or memorandum decision" until it is certified.[48]

However, in G.W.'s specific case, the Indiana Supreme Court used its discretion under Indiana Appellate Rule 1[49] and remanded to the juvenile court for entry of the amended order, without holding the appeal in abeyance.[50] The Court so proceeded because both G.W. and the State agreed that the trial court's amended dispositional order was sufficient for resolution of the case.[51]

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43. *Id.* at 190 (internal citations and quotation marks omitted).

44. *Id.* at 190–91.

45. *Id.* at 192.

46. *Id.* (citing IND. R. APP. P. 8).

47. *Id.* (citing Jernigan v. State, 894 N.E.2d 1044, 1046 (Ind. Ct. App. 2008)).

48. *Id.* (citing IND. R. APP. P. 65(E)).

49. Indiana Appellate Rule 1 states, "These Rules shall govern the practice and procedure for appeals to the Supreme Court and the Court of Appeals. The Court may, upon the motion of a party or the Court's own motion, permit deviation from these Rules." IND. R. APP. P. 1.

50. *G.W.*, 231 N.E.3d at 192–93 (majority opinion).

51. *Id.*

Justice Slaughter dissented.[52] The dissent agreed that the trial court committed an error by not including the requisite statutory findings but believed that the error was subject to a harmless error review. "Requiring an automatic remand in these circumstances strikes me as busywork. It prevents an appellate court from reviewing the trial record independently to determine whether the juvenile court abused its discretion in placing a juvenile with the department of correction."[53] Justice Slaughter continued, "Busy appellate judges can insist that juvenile courts do what the statute requires of them. But if an appellate panel opts to do the juvenile court's legwork for it, I would not hold that the panel's undertaking is necessarily inadequate."[54] The dissent pointed out that, in this case, the Court of Appeals was entitled to affirm the juvenile court's judgment "given G.W.'s extensive history of delinquent behavior and his failure to respond to prior attempts at rehabilitation."[55]

G.W. provided significant detail on appellate procedure when there is an appeal of a deficient dispositional order. But *G.W.*'s impact may prove more far-reaching than in just juvenile matters, as the opinion interprets several different appellate rules, including on appellate jurisdiction.

III. REFINING OUR APPELLATE PROCEDURE

During the survey period, the Court of Appeals offered advice to practitioners to help them avoid various appellate-rule pitfalls.

A. A Party Must First Seek an Appellate Stay with the Trial Court

The Indiana Supreme Court reminded parties that Appellate Rule 39 requires parties to first seek an appellate stay at the trial court. In *Morales v. Rust*, the trial court "judge blocked enforcement of the law, finding it unconstitutional for a variety of reasons, triggering direct appeal to this Court."[56] The Indiana Supreme Court "point[ed] out that, while the State originally requested a stay with our Court, it bypassed Appellate Rule 39, which provides that 'a motion for stay pending appeal may not be filed . . . unless a motion for stay was filed and denied by the **trial court**. . . .'"[57] "That condition was not satisfied. While we nonetheless stayed the trial court's order, we admonish the State to follow the proper procedures in the future."[58] The Court emphasized

52. *Id.* at 193–94 (Slaughter, J., dissenting).
53. *Id.*
54. *Id.* at 194.
55. *Id.*
56. 228 N.E.3d 1025, 1030 (Ind. 2024), *reh'g denied* (Apr. 22, 2024), *cert. denied*, No. 23-1369, 2024 WL 4426707 (U.S. Oct. 7, 2024).
57. *Id.* at 1030 n.2 (quoting IND. R. APP. P. 39(B)).
58. *Id.*

that "we did not grant the State's motion, but instead ordered a stay on our own accord."[59]

B. Briefing Concludes with the Reply Brief

The Court of Appeals reminded parties that the reply brief ends briefing and additional motions should not be filed to extend briefing. The proper remedy in such a circumstance is a motion to strike. Appellate Rule 42 provides the following:

> Upon motion made by a party within the time to respond to a document, or if there is no response permitted, within thirty (30) days after the service of the document upon it, or at any time upon the court's own motion, the court may order stricken from any document any redundant, immaterial, impertinent, scandalous or other inappropriate matter.[60]

In *Tempest v. Fifth Third Bank, National Ass'n*, "[a]fter Tempest filed his reply brief on December 4, 2023, Tempest filed various repetitive and defective motions seeking leave to file an amended brief and amended appendices."[61] "Tempest's motions are inappropriate because briefing concluded when he submitted his reply brief, and Tempest's effort to reopen and prolong the briefing period is fundamentally unfair to Fifth Third. Therefore, by separate order, we grant Fifth Third's motion to strike."[62]

C. Each Appellants' Brief Must Contain a Facts Section

In *Matter of R.L.*, different parents of a blended family challenged an order finding children in need of services.[63] One parent "filed his own brief in this appeal on October 6, 2023. His Statement of Case and Statement of Facts were largely confined to the facts and procedural history pertinent to the issue he raised."[64] The other parents "filed a joint brief on October 10, adopting and incorporating by reference the Statement of Case and Statement of Facts from O.A.'s brief."[65] The Court of Appeals noted that Appellate Rule 46 "allows an *appellee* to do this, there is no provision for an *appellant* to do so."[66] The

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59. *Id*.

60. IND. R. APP. P. 42.

61. Tempest v. Fifth Third Bank, Nat'l Ass'n, No. 23A-MF-2245, 2024 WL 2747525, at *3 n.3 (Ind. Ct. App. May 29, 2024), *aff'd on reh'g*.

62. *Id*.

63. *In re* R.L., 237 N.E.3d 652, 655 (Ind. Ct. App.), *trans. denied sub nom.*, A.A. v. Indiana Dep't of Child Servs., 245 N.E.3d 1019 (Ind. 2024).

64. *Id.* at 659 n.8.

65. *Id.*

66. *Id*.

Court of Appeals reminded parties that the appellate rules require appellants to include facts and procedural history relevant to the issues they raise on appeal:

> But even if R.L. and Mother could adopt and incorporate O.A.'s Statements of Case and Facts to cut down on repetition, they did not add the facts or procedural history relevant to the unrelated issues they raise. Their failure to include the relevant facts and procedural history has hindered our review of their separate appeal, and we remind them the Appellate Rules require an Appellant's Brief to have a Statement of Case and Statement of Facts describing the course of the proceedings and the facts "relevant to the issues presented for review."[67]

D. Parties Need to Cite the Record in Accordance with Appellate Rule 46

The Court of Appeals reminded parties to cite the record in accordance with Appellate Rule 46.

Appellate Rule 46(A)(8)(d) provides that "[i]f the admissibility of evidence is in dispute, citation shall be made to the pages of the Transcript where the evidence was identified, offered, and received or rejected, in conformity with Rule 22(C)."[68] In *Taylor v. State*, the Court of Appeals reminded a party that they needed to cite the transcript where a challenged exhibit was admitted:

> Additionally, in violation of Appellate Rule 46(A)(8)(d), Taylor does not cite the pages of the Transcript where Exhibits 18, 19, 28, and 29 were identified or where the State offered and the trial court admitted Exhibits 28 and 29. We remind counsel that this court should not have to search the record to find a basis for a party's argument.[69]

Appellate Rule 46(A)(8)(e) provides that "[w]hen error is predicated on the giving or refusing of any instruction, the instruction shall be set out verbatim in the argument section of the brief with the verbatim objections, if any, made thereto." In *Hamilton v. State*, the Court of Appeals noted that "Hamilton did not provide Bohdan's verbatim objection to this jury instruction as required by Indiana Appellate Rule 46(A)(8)(e)."[70]

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67. *Id.* (quoting IND. R. APP. P. 46(A)(5) & (6)).

68. IND. R. APP. P. 46(A)(8)(d).

69. Taylor v. State, 236 N.E.3d 700, 710 (Ind. Ct. App. 2024).

70. Hamilton v. State, 233 N.E.3d 461, 478 (Ind. Ct. App.), *trans. denied*, 241 N.E.3d 1128 (Ind. 2024).

E. Parties Need to Comply with the Appellate Rules and Maintain a Civil Tone

The Court of Appeals reminded parties to both comply with the Appellate Rules and to maintain a civil tone:

> Before addressing Mother's allegations of error, we must note our concerns about the brief and appendices filed by Mother's counsel.
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> Counsel's filings fail to comply with the Appellate Rules in several respects. To mention but a few, the appendix contains the CCS, the appealed order, and exhibits that are already included in the transcript, but it contains no pleadings. *See* Ind. Appellate Rule 50(a)(2)(f), (h) (stating an appendix should include pleadings necessary for resolution of the issues and should not include record material already included in the transcript). In this particular case, at the very least Mother's two Notices of Intent to Relocate were necessary for resolution of the issues she raises. Also, the statement of the facts section of the brief—which is intended to be a vehicle for informing this Court—improperly contains self-serving statements and argument which prevented us from relying on it as an accurate representation of the proceedings. *See* App.R. 46(A)(6) (instructing that facts should be stated "in accordance with the standard of review").
>
> But we are most troubled by the tone and content of Counsel's brief. The brief includes many instances of inappropriate editorializing and unfounded characterizations of Father and the magistrate. We caution counsel to temper his language and avoid the generally inflammatory tone of this brief in future filings with this Court. *See Clark v. Clark*, 578 N.E.2d 747, 749 (Ind. Ct. App. 1991) (noting a brief should not be used "as a vehicle for the conveyance of hatred, contempt, insult, disrespect, or professional discourtesy of any nature") (quotation omitted); *see also WorldCom Network Servs., Inc. v. Thompson*, 698 N.E.2d 1233, 1236–37 (Ind. Ct. App. 1998) ("[O]verheated rhetoric is unpersuasive and ill-advised. Righteous indignation is no substitute for a well-reasoned argument.") (footnote omitted) (opinion on reh'g). And—as will be discussed below—Counsel relies on statutory language that was amended or removed altogether at least three years before the brief was filed in support of an argument. We remind counsel of his professional responsibility to provide competent representation to his client by, in part, "keep[ing] abreast of changes in the law[.]" Ind. Professional Conduct Rule 1.1, Cmt. ¶ 6. "A brief should not only present the issues to be decided on appeal, but it should be of material assistance to the court in deciding those issues." *Young v. Butts*, 685

N.E.2d 147, 151 (Ind. Ct. App. 1997). This brief fails to meet that standard.[71]

IV. INDIANA'S APPELLATE COURTS

A. Case Data from the Indiana Supreme Court

During the 2023 fiscal year,[72] the Indiana Supreme Court disposed of 735 cases, including 368 criminal cases, 254 civil cases, 0 tax cases, 35 original actions, 0 board of law examiners case, 0 mandate of funds case, 73 attorney discipline cases, 2 judicial discipline case, 2 certified questions, and 1 miscellaneous case.[73] The court heard 44 oral arguments during the fiscal year, 20% of which were heard before the court decided to grant transfer.[74] The court issued 47 majority opinions and 29 non-majority opinions.[75] Chief Justice Rush issued 9 majority opinions, Justice Massa issued 7 majority opinions, Justice Slaughter issued 6 majority opinions, Justice Goff issued 10 majority opinions, and Justice Molter issued 8 majority opinions.[76] The Court also issued 7 per curiam decisions.[77] The court issued unanimous decisions 60% of the time.[78]

B. Case Data from the Indiana Court of Appeals

During 2023,[79] the Court of Appeals disposed of 2,979 cases.[80] This is an increase from 2022, when the Court of Appeals disposed of 2,971 cases, and 2021, when the Court of Appeals disposed of 2,564 cases.[81] In 2023, the court disposed of 1,596 criminal cases, 917 civil cases, and 466 other cases.[82] The court affirmed the trial court 84.2% of the time, with the court affirming 90.4% of criminal cases, 92.5% of post-conviction relief cases, and 68.4% of civil cases.[83] The average age of cases pending before the Court of Appeals at the end

71. Pilkington v. Pilkington, 227 N.E.3d 885, 892 n.4 (Ind. Ct. App. 2024).

72. The Indiana Supreme Court fiscal year ran from July 1, 2023, to June 30, 2024. *See* IND. SUP. CT., ANNUAL REPORT 2023–2024 11 (2024).

73. *Id.* at 11.

74. *Id.* at 15.

75. *Id.* at 18.

76. *Id.*

77. *Id.*

78. *Id.*

79. The Indiana Court of Appeals 2023 annual report covers January 1, 2023, through December 31, 2023. *See* IND. CT. OF APPEALS, 2023 ANNUAL REPORT 4 (2023).

80. *Id.* at 1.

81. *Id.*

82. *Id.*

83. *Id.* at 2.

of 2023 was 2.1 months, compared with 1.7 months at the end of 2022.[84] In addition to deciding cases, the court issued 7,834 orders.[85]

C. Judge Riley Retires from Indiana Court of Appeals.

On June 18, 2024, Judge Patricia A. Riley announced she would retire "from the Court of Appeals of Indiana on August 30, 2024."[86] Judge Riley was the "fourth woman ever to be appointed to the Court," and she "was appointed in 1994 by Governor Evan Bayh."[87] "During her thirty-year tenure, she has authored approximately 4,232 majority opinions and participated in 439 oral arguments."[88] "Prior to serving on the Court of Appeals, Judge Riley served the public as a Deputy Prosecutor in Marion County and as a Public Defender in Marion and Jasper counties. She also served as a judge of the Jasper Superior Court from 1990 to 1993."[89] Interestingly, Judge Riley had "extensive international legal experience":

> In 2008, she cofounded the Legal Aid Centre of Eldoret, Kenya (LACE), which provides legal access to justice for HIV/AIDS patients in the AMPATH medical center. In 2011, Judge Riley traveled with the Washington, D.C.-based International Judicial Academy to The Hague, Netherlands, to observe the International Criminal Court and two International Criminal Tribunals hearing cases from Sierra Leone and the former Yugoslavia. Then, in 2012, she participated in the 3rd Sino-U.S. Law Conference, which was held in Beijing at the National Judges College of the People's Republic of China, which oversees all aspects of that country's judicial training, placement and promotion. In 2013, she attended the Justice Academy of Turkey where she presented her paper about Ethics Rules in the United States. In 2014, the Pentagon granted her and others from IU McKinney's Program in International Human Rights Law special "NGO Observer Status" to monitor hearings at Guantanamo Bay, Cuba.[90]

"For these reasons and many more, the Court of Appeals will always be a better institution because of the contributions and service of Judge Patricia A. Riley."[91]

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84. *Id.*
85. *Id.*
86. *Court of Appeals of Indiana Judge Patricia A. Riley Announces Retirement*, IND. JUD. BRANCH (June 18, 2024), https://www.in.gov/courts/appeals/news/2024-0618/ [https://perma.cc/YV4U-3QT8].
87. *Id.*
88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.*

We thank Judge Riley for her distinguished service and for her many contributions to the Indiana judiciary.

D. Judge Crone Retires from Indiana Court of Appeals

On September 3, 2024, Judge Terry A. Crone announced that he would "retire from the Court of Appeals of Indiana on November 5, 2024."[92] Judge Crone was raised in South Bend, and he is "a graduate of DePauw University and Notre Dame Law School."[93] "He was elected to three terms as judge of the St. Joseph Circuit Court before Governor Kernan appointed him to the Court of Appeals in 2004."[94] Judge Crone authored "over 2,988 majority opinions and participat[ed] in over 245 oral arguments."[95] Judge Crone "has spent his career helping remove barriers to justice for disadvantaged populations":

> He helped found a program in South Bend to familiarize minority high school students with the law and related fields and was a founding member of the South Bend Commission on the Status of African-American Males and the St. Joseph County Coalition Against Drugs. As Circuit Court judge, he also initiated the first Spanish-speaking program for public defenders in St. Joseph County.[96]

Judge Crone has been a "tireless advocate of elevating the quality of the practice of law," serving on many committees and frequently speaking "at legal education programs."[97] "'Judge Crone's tenure on the Court of Appeals has been marked by his tenacity, dedication, and good humor,' said Chief Judge Robert R. Altice, Jr., current Chief Judge of the Court of Appeals. 'He will be missed both as a quality judge and a first-rate colleague.'"[98] We thank Judge Crone for his distinguished career and many contributions to Indiana's appellate practice.

E. Judge DeBoer Sworn in at Indiana Court of Appeals

On October 14, 2024, Judge Mary A. DeBoer was sworn in as a judge on the Indiana Court of Appeals.[99] Judge DeBoer "grew up in Kalamazoo,

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92. *Court of Appeals of Indiana Judge Terry A. Crone Announces Retirement*, IND. JUD. BRANCH (Sept. 3, 2024), https://www.in.gov/courts/appeals/news/2024-0903/ [https://perma.cc/XP6R-4CDL].

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Robing Ceremony of the Honorable Mary A. DeBoer*, IND. JUD. BRANCH (Nov. 14, 2024), https://www.in.gov/courts/appeals/news/2024-1114/ [https://perma.cc/5CSE-3T4D].

Michigan until she permanently relocated to Valparaiso, Indiana in 1990."[100] Judge DeBoer "graduated with honors from Western Michigan University in 1989 and Valparaiso University School of Law in 1993."[101] "Judge DeBoer served as a deputy prosecutor and then as magistrate for Starke and Porter Counties."[102] "From 2007 to 2010, her service as a deputy prosecutor was focused on domestic and family violence in Starke County."[103] "As a Porter Superior Court Magistrate, she started a family law facilitation program for indigent litigants to resolve dissolution issues."[104] "Governor Eric J. Holcomb appointed her to the Porter Circuit Court in 2019, and then to the Court of Appeals of Indiana in September 2024."[105] "Following her appointment to the Porter Circuit Court in 2020, she led the Domestic Violence Committee in Porter County until 2024, bringing together numerous community partners to collaborate on domestic and family violence issues."[106] We look forward to Judge DeBoer's service on the Court of Appeals for many years to come.

CONCLUSION

This survey period included one rule amendment and several decisions analyzing the appellate rules. Keeping abreast of these rules changes, as well as the guidance provided through case law, is key to a successful appellate practice.

100. *Judge Mary A. DeBoer*, IND. JUD. BRANCH, https://www.in.gov/courts/appeals/judges/mary-deboer/ [https://perma.cc/5UPK-VCR5] (last visited Apr. 4, 2025).

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*