

## PUBLICATION UPDATE

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# Indiana Pleading and Practice with Forms

Publication 339

Release 87

November 2024

### HIGHLIGHTS

#### *Volumes 1 Through 6*

- The following chapters in volumes 1 through 6 have been updated:
- Chapter 3 Commencement of an Action
- Chapter 3.1 Appearance
- Chapter 4.15 Summons: Proof of Service—Return—Amendments—Defects
- Chapter 8 General Rules of Pleading
- Chapter 9 Pleading Special Matters
- Chapter 12 Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings
- Chapter 15 Amended and Supplemental Pleadings
- Chapter 17 Parties Plaintiff and Defendant—Capacity

- Chapter 24 Intervention
- Chapter 36 Requests for Admission
- Chapter 38 Jury Trial of Right
- Chapter 41 Dismissal of Actions
- Chapter 42 Consolidation—Separate Trials
- Chapter 56 Summary Judgment
- Chapter 59 Motion to Correct Errors
- Chapter 60 Relief from Judgment or Order
- Chapter 65 Injunctions
- Chapter 70 Judgment for Specific Acts; Vesting Title: Recordation
- Chapter 72 Trial Courts and Clerks
- Chapter 79 Special Judge—Selection: Circuit, Superior, Probate, Municipal, and County Courts

- Chapter 80 Procedure for Amending Rules

In volumes 1 through 6, highlights of the release include the following:

- Effective April 3, 2024, the Indiana Supreme Court amended Trial Rule 80 concerning the procedure for amending the Indiana Trial Rules. *See* ¶ 80.01.
- In *M.M. v. L.P.*, 2024 Ind. App. LEXIS 220, the Indiana Court of Appeals addressed whether Ind. T.R. 79 allows for a protective order petition filed by a party to a post-dissolution proceeding to be heard by a judge other than the judge presiding over the dissolution proceeding. *See* ¶ 79.09.
- In *Jeffrey Foster et al v. First Merchants Bank, N.A.*, 235 N.E.3d 1251 (Ind. 2024), the Indiana Supreme Court reaffirmed T.R.41(E)’s requirement, the “bright line rule,” that a motion to dismiss for failure to prosecute must be filed prior to the plaintiff’s resumption of prosecution, even if the case had laid idle for over a decade. *See* ¶ 41.09[2].
- In *Nemeth Props., LLC v. Panzica*, 234 N.E.3d 183 (Ind. Ct. App. 2024), the Indiana Court of Appeals made clear that a party seeking monetary damages via

an unjust enrichment claim is entitled to a jury trial under Ind. T.R. 38. *See* ¶ 38.06[2][B].

- In *Tingley v. First Fin. Bank*, 232 N.E.3d 1171 (Ind. Ct. App. 2024), the Indiana Court of Appeals provided further clarification that Indiana courts have subject matter jurisdiction to hear trust disputes, even involving out-of-state trusts, and therefore, the trial court erred in granting a motion to dismiss under Ind. T.R.12(B)(1) for lack of subject matter jurisdiction. *See* ¶ 12.07[1][A].
- In *Roush v. Roush*, 233 N.E.3d 1078 (Ind. Ct. App. 2024), the Indiana Court of Appeals made clear that Ind. T.R.3.1’s requirement that counsel provide a 10day written notice prior to withdrawing was not a recommendation, reversing the trial court’s order granting counsel’s withdraw for failure to comply with the notice requirement. *See* ¶ 3.1.01.
- In *Esposito v. Eppley*, 2024 Ind. Ct. App. LEXIS 183, the Indiana Court of Appeals made clear that missing the deadline to respond to an Ind. T.R.36 request for admission need not be fatal, noting the “increasingly frequent tactic” of using requests for admission to pre-

vent resolution of cases on the merits, finding the trial court erred in not permitting a party to withdraw their one-day-late admissions given that such subserved the presentation of the merits, and the movant failed to show any prejudice. *See* ¶ 36.09[2].

- In *Adducci v. Adducci*, 2024 Ind. App. LEXIS 206, the Indiana Court of Appeals addressed a cautionary tale to practitioners when failing to join necessary parties, reversing the trial court's order denying an Ind. T.R.24 motion to intervene post-judgment by the Indiana Family and Social Services Administration, which had filed a motion for relief from judgment under Ind. T.R.(60)(B) given that it had never been served, thus vacating the trial court's judgment. *See* ¶ 24.12[4], ¶ 60.08[2][F].
- In *In re Norrick*, 233 N.E.3d 403 (Ind. 2024), the Indiana Supreme Court, in an attorney discipline matter, made clear that a trial court may not issue a temporary restraining order under Ind. T.R.65(B) without adhering to all of the requirements of the rule, including the movant's affidavit and the trial court's specific findings. *See* ¶ 65.08[3].
- In *McConnell v. Doan*, 217 N.E.3d 1257 (Ind. Ct. App. 2023), the Indiana Court of Appeals looked to federal law to find the trial court did not err under Ind. T.R.70 in directing a third party to step into the shoes of a non-compliant party to execute a document as ordered by the court. *See* ¶ 70.05.
- In *Andry v. Thorbecke*, 218 N.E.3d 600 (Ind. Ct. App. 2023), the Indiana Court of Appeals stressed that a trial court clerk's notation of service on the chronological case summary is conclusive proof of service, thus precluding any argument for lack of notice under Ind. T.R.72(E); the trial court therefore erred in permitting untimely response to summary judgment under Ind. T.R.56 due to the party's claim of lack of service. *See* ¶ 56.06[3], ¶ 72.09[2].
- In a nonbinding but persuasive opinion by the Indiana Court of Appeals in *Farren v. A.F.*, 2024 Ind. App. Unpub. LEXIS 679, the court waived Ind. T.R.42(D)'s requirement that consolidation must be made into the court with the earliest filed case, affirming the trial court's order consolidating the matter into a later-filed case because both actions had common questions of law and fact, the same parties, and no showing of prejudice to

either party; the Court of Appeals noted that “we have often held that where the purpose of the rule is satisfied, this Court will not elevate form over substance.” *See* ¶ 42.06[1].

- In *Red Lobster Restaurants LLC v. Fricke*, 234 N.E.3d 159 (Ind. 2024), the Indiana Supreme Court addressed

what effect, if any, a plaintiff’s subsequent bankruptcy case had on her pending litigation; the Court affirmed the trial court’s denial of defendant’s motion for summary judgment based on standing because either the plaintiff or the trustee had standing. *See* ¶ 17.07.

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Publication 339    Release 87

November 2024

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