JUNE 2026

INDIANA STATE BAR ASSOCIATION

# RES GESTÆ

MEMBER JOURNAL

## FEATURING:

## THE FUTURE OF THE CLIENTS' FINANCIAL ASSISTANCE FUND

### PLUS

The Future of Adult Guardianship

Your Clients Have Estate Plans. Their Digital Lives Probably Don't

and More

VOL. 69 NO. 10

# RES GESTÆ

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## COVER STORY




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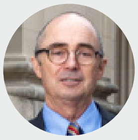

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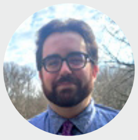

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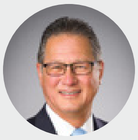

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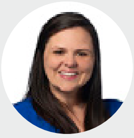

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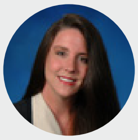

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# RULE OF LAW UNDER PRESSURE

***By John Maley***

**PRESIDENT'S PERSPECTIVE**

I write this from some distance while attending the ISBA's Ireland CLE Abroad program (I highly recommend the ISBA's annual CLE Abroad programs—it is an amazing experience). The separation from our United States has allowed a deeper reflection on the Rule of Law and its vital importance in our democracy and justice system.

Many scholars trace the modern origins of the Rule of Law to the Magna Carta. While in Dublin, we were privileged to see a copy of the Magna Carta in Trinity College's library.

As one author summarizes, "The Magna Carta established a legal system that limited the powers of the king and provided greater protection for his subjects. Over time, the principles embodied in the Magna Carta significantly influenced the development of the English common law and subsequently the U.S. Constitution, particularly the Bill of Rights."[1]

Our history in enforcement of our Constitution is incomplete at best. As another scholar writes:

> Many Americans and outside observers assume that the United States of America was founded upon a cluster of principles known as the "Rule of Law." Indeed, Articles I, II, and III of the United States Constitution of 1789, purportedly establish the rights and authorities of three co-equal branches of government: the legislative, executive, and judicial branches. Adherence to the Rule of Law in the United States, however, has a much shorter history.
>
> During the 18th, 19th, and early 20th centuries, the President of the United States—leader of the executive branch—often ignored or contradicted decisions by the judiciary when it served their ambitions. Monumental architecture and actions by early Justices on the U.S. Supreme Court also testify that the judiciary was the least respected branch in the U.S. government. Not until 1954 with the landmark U.S. Supreme Court decision of *Brown v. Board of Education* and its vigorous enforcement by the President of the United States—nearly 200 years after America's founding—can the United States accurately be described as a nation that consistently follows the Rule of Law.[2]

That scholar further writes that with the "tactics deployed by the [current] administration, however, this period of the Rule of Law...in the United States (and

**"When not constantly protected and cultivated, the Rule of Law can and will wither."**

elsewhere) must be vigorously protected and nurtured. For in the end, the Rule of Law is merely an idea, a belief that must be acted upon to be realized. When not constantly protected and cultivated, the Rule of Law can and will wither."[3]

Meanwhile, we are all observers to personal attacks on judges themselves rather than the substance of judicial rulings—from the masses in social media and the rostrum from governmental officials—and sadly now from violent physical attacks such as recent shootings in Indiana.

## WHAT TO DO?

So, what are we to do as members of Indiana's legal profession to protect and defend the Rule of Law for our clients, families, friends, and the generations that follow us? Your Indiana State Bar Association has been and remains very active on this important topic.

Most recently, we held our Rule of Law Under Pressure Symposium in late April to a sell-out audience of 140 attendees, featuring Chief Justice Loretta Rush and U.S. District Judge Tanya Walton Pratt, along with leading attorneys and professors. This two-hour CLE Symposium will be replayed around the state this summer and fall with local bar associations for wider impact and discussion.

Chief Justice Rush described the threats that Indiana judges have been receiving and her visits to Intensive Care Units after judicial shootings. She urged our vigilance in protecting and defending the Rule of Law, noting that the Indiana judiciary adjudicates over one million matters annually for Indiana litigants. Trust in the Rule of Law is vital for those parties to accept and respect that they were afforded due process under the law.

Judge Pratt offered her perspective on the importance of Rule of Law and wisdom on how we can respond in this time of pressure. She quoted a poet, Clarissa Pinkola Estés, whose words on a different topic in 2001 have particular import presently:

> I implore you to please not spend your spirit dry by bewailing these difficult times. Especially do not lose hope, most particularly because the fact is you are made for these times. For years, all of us have been learning, practicing,

been in training for, and just waiting to meet on this exact plane of engagement.

Do not focus on what is wrong and un-mended. Ours is not the task of fixing the entire world all at once, but of stretching out to mend the part of the world that is within our reach. Any small, calm thing that you can do to help another, to assist some portion of this poor suffering world will help immensely.

It is not given to us to know which acts or by whom will cause the critical mass to tip toward an enduring good. We do know that it does not take everyone on earth to bring justice and peace, but only a small, determined piece, a group who will not give up during the first, the second, or the hundredth gale.

I want each of you to be a part of this group. There are times you will feel discouraged. I too have felt despair many times in my life, but I do not keep a chair for it. I will not entertain it. It is not allowed to eat from my plate.[4]

**"Meanwhile let's all help educate family, friends, and the public at large on the importance of the Rule of Law in our democracy and system of justice."**

## MY ASK OF US...

Please join us in serving as ambassadors for and protectors of the Rule of Law. As the video replay of our Rule of Law Under Pressure Symposium is held in your area, please join your colleagues locally for two hours to learn more on this important topic. Meanwhile let's all help educate family, friends, and the public at large on the importance of the Rule of Law in our democracy and system of justice. Let's be knowledgeable of the leading court decisions and be able to explain them on their merits. Let's add calm, apolitical reason to the discussions of the day. If we can help you or your local bar in these efforts, please contact me at jmaley@btlaw.com or 317.432.5509(c). Cheers.

## ENDNOTES

1. Ajay K. Mehrotra, PhD, *Rule of Law*, The Gilder Lehrman Institute & Annenberg Public Policy Center: The Civic Mission of Nation, https://www.gilderlehrman.org/sites/default/files/file_media/RuleOfLawByAjayMehrota_GilderLehrmanCommunityCollegeCivicsGuide.pdf.
2. Ryan Rowberry, *The Short History of the Rule of Law in the United States*, 79 Studia Iuridica 27 (2019).
3. *Id*.
4. Clarissa Pinkola Estés, Ph.D., *Letter to a Young Activist During Troubled Times*.

ISBA UPDATE

*By Res Gestae Editor*


# CONGRATULATIONS TO CLASS 14

**THIS IS LDA.**

It starts with the small moments. Trailing Professor Sullivan through hallways of paintings and posters. Teaming up to help a random patron at the Fort Ben Pub. The quiet check-ins between sessions and the realization, somewhere between awkward introductions and late-night socials, that the room is full of people who just might stay in your orbit long after the program ends.

There are the moments you couldn't plan for. Singing karaoke past midnight, only to be back the next morning walking through the Indiana Statehouse. Falling to friendly fire in a game of paintball. Crawling through a steam tunnel at Muscatatuck Urban Training Center, trying to catch the attention of the Dutch trainees on site. Kissing the bricks at the IMS, and sneaking muscle relaxers so you can recover from a ride on The Raven.

There are the conversations that stay with you. Having a real talk with Chief Justice Loretta Rush on the challenges facing Indiana's legal profession, the need for more young leaders, and the confidence it takes to *just go for it*. Brainstorming practical ways to shrink the bench-bar gap with Retired Justice Steven David. Hearing from leaders who are willing to be honest about what leadership actually looks like on the ground.

And there are the experiences you won't forget. Racing go karts one evening, then climbing into semi-trucks and heavy machinery the next morning. Singing Happy Birthday to a classmate over 28 candles perched precariously on a cookie cake. Waking at the crack of dawn to run drills in an old warehouse. Standing in places most people never see, asking questions you never thought you'd be able to ask.

Somewhere along the way, a group of 23 attorneys became more than a cohort. They became sounding boards, collaborators, future referrals.

That is LDA.

Please join us in congratulating the 23 members of the ISBA Leadership Development Academy Class 14:

- **Zac Bailey**, Marc Lopez Law Firm
- **Hannah Brady**, Hume Smith Geddes Green & Simmons, LLP
- **Catherine Braun**, Plews Shadley Racher & Braun LLP
- **Tom Crishon**, The Arc of Indiana
- **Kristin Froehle**, Barnes & Thornburg LLP
- **Rebecca Gray**, Vaughn Gray Trial Attorneys
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- **Glorify Mandima**, FBT Gibbons LLP
- **Robert Miller**, Charitable Allies, Inc.
- **Trenton Morton**, Mercy for Animals
- **Shana Paula**, Brown Carrington, PLLC
- **April Satow**, Schwartz Bankruptcy Law Center
- **J. Cecelia Satterthwaite**, Taft Stettinius & Hollister LLP
- **Autumn Seib**, Wagner Reese LLP
- **Ben Shoptaw**, Marc Lopez Law Firm
- **George Sorrells**, Indiana Supreme Court
- **Jamie Sutton**, Sutton Law Office
- **Cameron Trachtman**, FBT Gibbons LLP
- **Adam Willfond**, Tokio Marine HCC

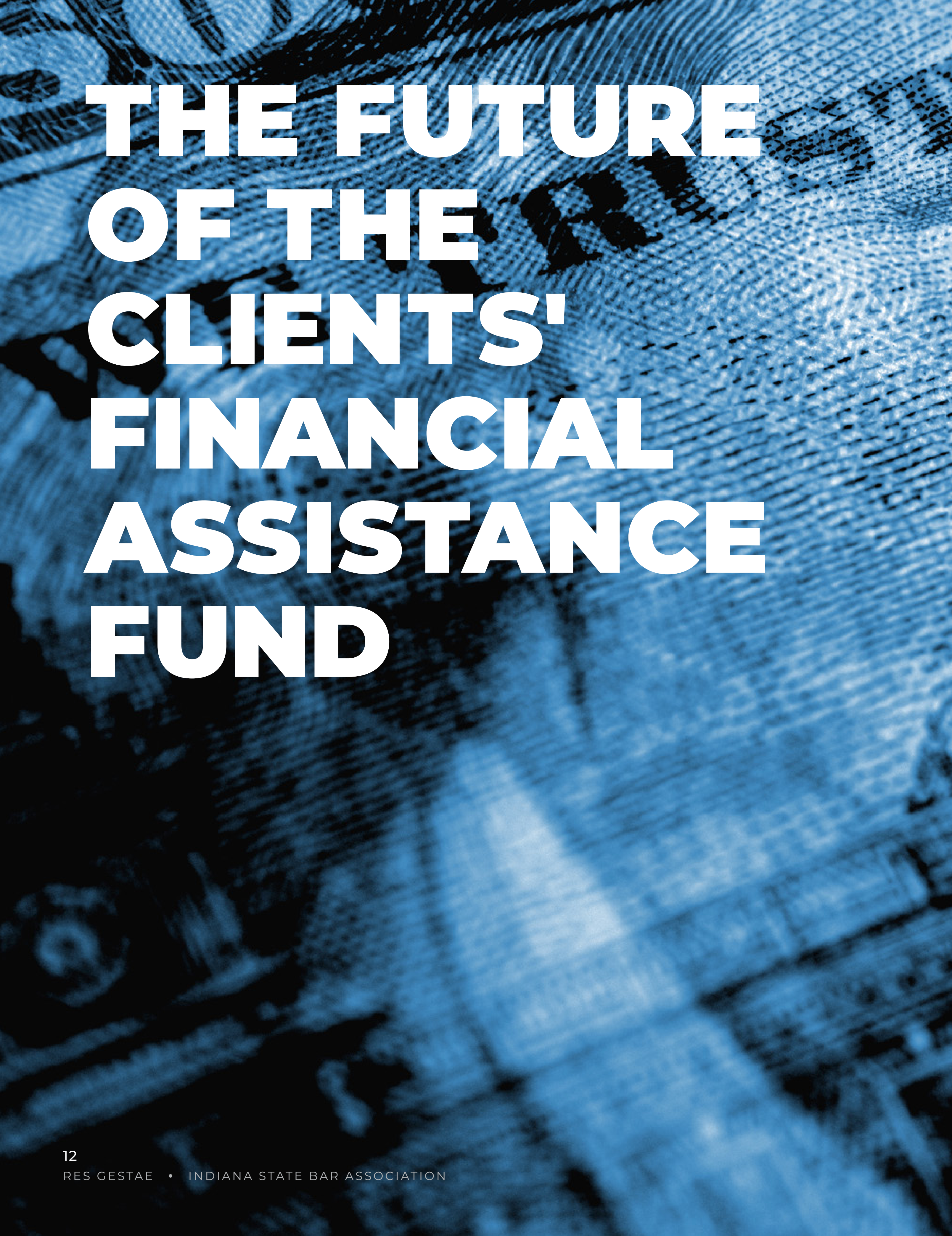
And, as always, this program could not be successful without the speakers, mentors, and committee members who shared their experiences with the class. Thank you to this year's speakers:

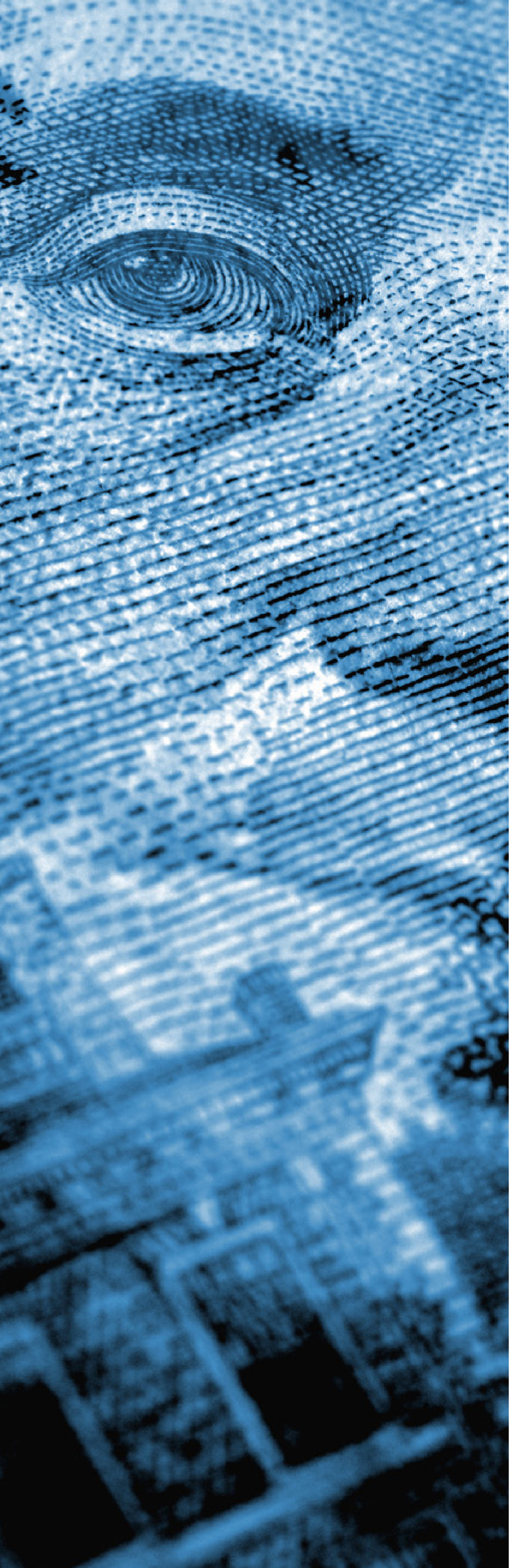
- Professor Frank Sullivan, Jr. and Cheryl Sullivan
- April Keaton, Amy Osborn, Kaylin Cook, and Ashley Moise
- Hon. Mark Massa
- Tiffany Lemons and Catherine Matthews
- Hon. Geoffrey Slaughter
- Hon. Robert Altice, Jr., Hon. Melissa May, and Hon. Elizabeth Tavitas
- Kent Winingham
- Anne Fuchs
- Hon. Christopher Goff
- Hon. Steven David
- Lucy Dollens, Deborah Pollack-Milgate, and Chasity Thompson Osborn
- Tarah Baldwin
- Ashley Hart
- Hon. Maria Granger, Steven Mennemeyer, and Hon. Vicki Carmichael
- Sonja Shah
- Hon. Loretta Rush
- Jimmie McMillian
- Joe Skeel
- Jim Riley
- Matt Eckert
- Joshua Claybourn

The Leadership Development Academy is a professional development program for attorneys five to fifteen years in practice. Over five months, participants discover their strengths, learn from key community leaders, and practice making the tough calls that leadership demands.

Interested in being part of the next class? Learn more at inbar.org/LDA.

# THE FUTURE OF THE CLIENTS' FINANCIAL ASSISTANCE FUND





FEATURE

*By ISBA Staff*

For more than 60 years, the Indiana State Bar Association's Clients' Financial Assistance Fund (the Fund) has intended to work on rebuilding public trust in Indiana's legal profession. The Fund offers financial relief to individuals harmed by dishonest attorneys, trying to fulfill the "debt of honor which the profession owes to the public."

Now, the Board of Governors is asking members to consider whether the ISBA can better address that debt.

At its April 2026 meeting, the board voted to recommend that the House of Delegates sunset the Fund as an active ISBA program, using the remaining balance to support projects that better reflect the Fund's initial goals. The resolution will be presented for discussion and vote at the ISBA House of Delegates meeting on Thursday, September 24.

The recommendation follows a multi-year review of the Fund's sustainability, summarized below. Members are encouraged to review the Fund's history, share their perspectives, and serve as delegates at the September meeting.

## THE CLIENTS' FINANCIAL ASSISTANCE FUND

In September 1961, the ISBA created the Fund to reimburse members of the public who suffered a monetary loss as the result of their attorney's dishonest actions. This effort followed a national trend and a recommendation by the American Bar Association to improve public goodwill toward the legal profession by promoting public confidence in the integrity, trustworthiness, and professionalism of attorneys.

The goal, as Telford Orbison, chair of the original ISBA committee on client protection funds, shared was to "show to the public that we…are keenly aware of the duties and responsibilities which we assume when we become lawyers and that we want to do what we can within our power to protect our professional integrity."

### How the Fund Works

Two dollars from each attorney member's ISBA dues are allocated to the Fund each year. These, combined with net investment income, generate revenue for the Fund to offer as reimbursement for victimized clients.

# CFAF Review Process

| | |
|---|---|
| 1 | **Claimant submits initial application.** |
| 2 | **ISBA staff screens initial application to ensure it meets eligibility requirements. (See inbar.org/CFAF).** |
| 3 | **ISBA staff sends full application form to the claimant, including a request for all contracts, bills, and associated documents.** |
| 4 | **Claimant returns completed, notarized application.** |
| 5 | **Volunteer from the CFAF Committee reviews the application, investigates as needed, and makes a recommendation to approve or deny the claim.** |
| 6 | **The CFAF Committee discusses the volunteer's recommendation and findings, then votes to reject the claimant's request, accept, or accept with partial payment.** |

The Fund only awards reimbursement to clients suffering monetary losses as the result of an Indiana attorney's intentional misconduct. This typically includes embezzlement, dishonesty, or refusals to return unearned fees—offenses that cannot be reclaimed through malpractice insurance or small claims court. It is usually a final recourse for applicants, who have reported the attorney to the Indiana Supreme Court's Disciplinary Commission, explored other ways of reclaiming their loss, or no longer have the financial means or knowledge to pursue other options. In July 2024, the board limited claim eligibility even further to include only clients harmed by ISBA members.

Once a claim has been submitted and screened, the Clients' Financial Assistance Fund Committee (CFAF Committee)—a dedicated group of core volunteers, many of whom have served for decades—investigates the applicant's claims. Volunteers read through lengthy applications, investigate past or pending court cases, and reach out to the parties involved to get more information. They then weigh all the circumstances, including the severity of hardship, available funds, the amount of work the attorney did complete, and the total number of claims associated with that attorney. They recommend a course of action to the full committee, which then votes to reject, accept, or accept with partial payment each eligible claim.

It's a careful and thorough process that strives to give back to clients harmed by the profession, who have no other option of recourse. However, the Fund's current model may limit its effectiveness.

## CHALLENGES IN ADMINISTERING THE FUND

In 2023, the Board of Governors convened a Taskforce to assess whether the Fund, in its current form, met its intended purpose.

The Taskforce reviewed financial records, spoke with claimants, and researched how other states administer their client protection funds. In 2025, they presented their findings to the board: The Fund's mission is critical, but the current model raises questions about long-term sustainability and may minimize the Fund's ability to restore public confidence.

### Financial Sustainability

The Fund's balance has fluctuated over time due to different claim payouts, market fluctuations, and administrative costs. But the overall

> **"It's a careful and thorough process that strives to give back to clients harmed by the profession, who have no other option of recourse. However, the Fund's current model may limit its effectiveness."**

trend is downwards. In fiscal year 1997, the Fund stood at $617,019.31. By 2025, the balance stood at $354,918.26.

For a more detailed look at the Fund's last five financial statements, see Table One.

Over the past five years, the total amount of annual claim payouts ranged from $11,000 to $45,000 (in years where payouts were made). Broader administrative support and staff time—including talking with potential claimants, screening applications, organizing committee meetings, etc.—are expensed from the ISBA's operating budget rather than the Fund itself, so they are not noted in Table One. However, administrative expenses can range from $14,000 (in years after the board limited payouts to victims of ISBA members) to $28,000 annually.

Current allocated membership dues generate approximately $14,000 annually for the Fund. Most of the Fund's long-term growth, therefore, depends on its investment performance. When the market performs well, the Fund's losses in claim payouts are mitigated—and in many years have led to a boost in the Fund's overall growth. When the market does not perform well, as in fiscal year 2021–22, investment losses exacerbate the overall downwards trend.

These trends put the long-term stability of the Fund into question. Without additional funding sources, operational changes, or further restrictions on payouts, the Fund will ultimately die on its own.

**Limited Scope**

The Fund only reimburses clients who are harmed by the intentional *dishonest* act of an Indiana attorney; and, as of 2024, only victims of active ISBA members.

| Table One: Summary of the Fund, Last Six Years | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Fiscal Year** | **Applications Received** | **Claims Approved** | **Total Claim Payout** | **Contributions (from Dues)** | **Net Investment Activity** | **Starting Balance** | **Ending Balance*** |
| 2024–25 | 12 | 4 | $34,175 | $14,296 | $20,735.28 | $354,061.98 | $354,918.26 |
| 2023–24 | 23 | 4 | $11,090 | $18,525.32 | $21,965.02 | $324,661.64 | $354,061.98 |
| 2022–23 | 28 | 7 | $44,929.74 | $14,430 | $12,974.17 | $342,256.58 | $324,661.64 |
| 2021–22 | 15 | 1 | ($900) | $14,780 | ($30,963.13) | $357,567.39 | $342,256.58 |
| 2020–21 | 15 | 2 | $18,500 | $14,604 | $18,022.33 | $343,105.06 | $357,567.39 |
| 2019–20 | 22 | 7 | $15,500 | $15,093 | $18,066.65 | $325,253.66 | $343,105.06 |

*Please note: The overall ending balance does not include administrative costs (including staff time, mailing, printing, etc.), which are expensed directly from ISBA's overall budget and averaged $14,000 in 2024-25 and $28,000 in years previous.

This automatically excludes a fair number of applicants who are seeking help with fee disputes or malpractice claims. Over the past five fiscal years, 93 applications have been submitted to the CFAF Committee for review. Only 18 were approved for payout.

There is value in giving individuals a venue to be heard and to make their complaints, even if their application doesn't make it past the initial screening. But the automatic rejection for individuals who don't understand the eligibility requirements, who have already faced maltreatment at the hands of an attorney, and who ultimately lack means to explore other forms of recourse can be frustrating. For some applicants who are denied or receive only a small percentage of their losses back, it only further breaks the trust the Fund seeks to rebuild in the first place.

The Fund also faces a catch-22 when it comes to promotion and public knowledge. In order to rebuild public trust, the Fund should reach as many individuals as possible. But the Fund has a finite balance at the end of the day—the more applications received; the more strain placed on staff, volunteers, and the Fund's overall balance. If too many applications are approved, it becomes more difficult for future claimants to receive payouts.

At the end of the day, the Fund and its volunteers are left to decide whether it's better in the long-term to make a smaller payout to a larger number of claimants or to give a smaller number of claimants the full payout they request.

### Structural Challenges

Indiana is unique in that it is the only voluntary bar association that funds the state's client protection program. It relies on voluntary membership dues and investment income, which fluctuate from year to year.

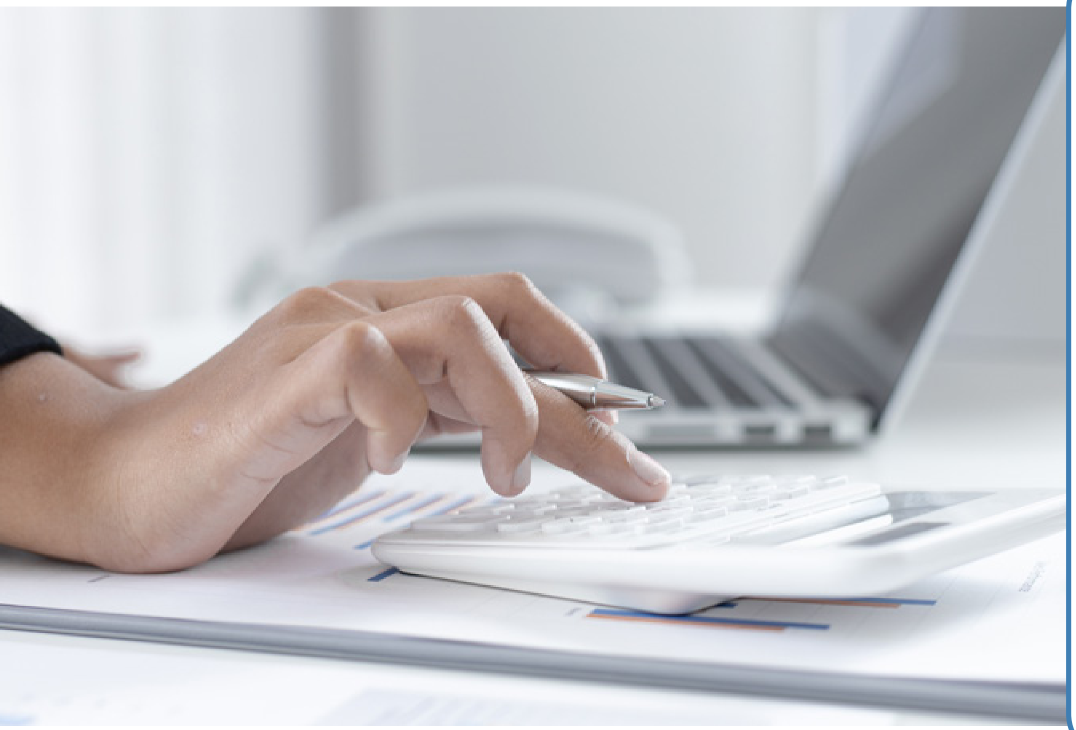
> **"This is not a decision to be made lightly. The need for a strong, sustainable client protection system in Indiana remains; and if the House of Delegates votes to sunset the Fund, Indiana would be the only state without an active client protection program."**

As the ABA's Model Rules for Lawyers' Funds for Client Protection note, "Voluntary contribution is the weakest funding method; it does not provide the Fund with broad-based and permanent income." Instead, the ABA recommends funding client protection programs through mandatory fee assessments. This is how all other U.S. jurisdictions fund their programs—through mandatory attorney licensure fees. And in many states, the judiciary or state regulatory authority oversees the funds' administration and allocations.

As part of its assessment, the Taskforce explored whether alternative funding or partnerships could sustain the Fund, including conversations with the Indiana Supreme Court. However, limited budgets and the desire to not raise attorney fees left no viable path forward at this time.

### THE BOARD OF GOVERNOR'S RECOMMENDATION

In the Fall of 2025, following discussions with interested groups, review of the history and purpose of the Fund, and input



Read the Board of Governors' resolution.

Read the CFAF Committee's position statement.

**"The House of Delegates will consider and vote on the board's resolution at the ISBA Annual Meeting in Indianapolis on September 24."**

from other members, the taskforce recommended—and the Board of Governors supports—sunsetting the Fund as an active ISBA program.

In its place, the Board of Governors proposes allocating the remaining balance, approximately $350,000, to initiatives that:

- Protect members of the public from financial or other significant harm caused by attorney misconduct;
- Address attorney substance abuse, mental health conditions, and other root causes of misconduct;
- Expand access to legal services for unrepresented, underserved, and/or vulnerable members of the public;
- Improve public goodwill toward the legal profession; and/or
- Promote public confidence in the integrity, trustworthiness, and professionalism of Indiana attorneys.

These initiatives could include ideas like:

- Providing the remaining funds as a starter endowment should another entity or the court decide to take on administration of the Fund;
- Supporting ISBA's Pro Bono Committee or other legal clinics, helping them expand access to free legal aid for the clients most likely to be victimized by a dishonest attorney;
- Donating to the Indiana Judges & Lawyers Assistance Program, to address attorney misconduct at the source.

If the resolution is approved, the Board of Governors would oversee the allocation of the remaining funds and report back both the payments transferred and an explanation for each allocation. You can read the full resolution at inbar.org/CFAF-resolution.

ISBA's CFAF Committee respectfully disagrees with the resolution and recommends it be rejected. They encourage the ISBA to instead undertake targeted efforts to strengthen the Fund, including modest dues adjustments and/or enhanced voluntary contributions. You can read the CFAF Committee's full position statement at inbar.org/commentary-on-CFAF.

This is not a decision to be made lightly. The need for a strong, sustainable client protection system in Indiana remains; and if the House of Delegates votes to sunset the Fund, Indiana would be the only state without an active client protection program (which may only exacerbate the breakdown of public trust in legal systems that we're seeing across the nation today). However, under the current model, the Fund struggles to grow and is not sustainable long-term. Sunsetting the Fund might create an opportunity to redirect resources toward solutions that more consistently and meaningfully protect the public and strengthen trust in the profession.

## WHAT'S NEXT

The House of Delegates will consider and vote on the board's resolution at the ISBA Annual Meeting in Indianapolis on September 24. As ISBA's legislative body, the House of Delegates represents members from across the state, with delegates allocated by county and ex officio members representing section leaders, past presidents, and other community partners.

You are encouraged to participate in this process by:

- Reviewing the full resolution at inbar.org/CFAF-resolution.
- Sharing your perspectives at inbar.org/commentary-on-CFAF.
- Attending and participating in the House of Delegates as a representative.

For information about serving as a delegate, visit inbar.org/about-HOD. Additional details about the Annual Meeting are available at inbar.org/AnnualMeeting.

The Fund reflects decades of meaningful work by dedicated volunteers. That work matters. It has always mattered. The question up for consideration now is how to pay back that "debt of honor" to the public in ways that are sustainable, effective, and capable of making a broad impact.

# THE FUTURE OF ADULT GUARDIANSHIP

***By Nick Parker***

*Originally printed in Indiana Court Times, Issue 35.2.*

Guardianship is an area of law that continues to grow and evolve. In recent years, new laws and policies have re-evaluated how society views this legal arrangement, including what a guardian's proper rights and responsibilities are for providing care to an adult in need of services.

Framing this role will become more important than ever in the near future, as some studies predict that the number of Americans aged 65 and over will more than double by 2040. With an expected 80 million or more retirement-aged people in the United States, more Hoosiers will interact with the guardianship system, creating additional needs and unique challenges for the court system.

The challenges the judiciary faces now will only become more acute as courts continue to address communication gaps and reduce silos within the guardianship system while simultaneously facing increasing caseloads. Recognizing these challenges and the need for alignment, the Indiana Supreme Court convened the Guardianship Oversight Task Force in December 2024.

The task force was directed by the court to develop a report that includes research on recommended guardianship best practices and innovative programming.

**"With an expected 80 million or more retirement-aged people in the United States, more Hoosiers will interact with the guardianship system, creating additional needs and unique challenges for the court system."**

The report was to assess the potential impact of reform efforts and develop improvements to lead to better outcomes for all guardianship stakeholders and the judiciary overall. In total, it contains 26 recommendations for improving the judicial response to guardianship cases while also managing and improving the interactions between stakeholders. You can read the full report at https://on.in.gov/go-report-2026.

If implemented, these recommendations will lead to a higher-functioning guardianship system in 2026 and beyond. Though the primary focus of the task force was adult cases, the recommendations will improve tracking and data for minor guardianship cases as well.

The report is divided into three sections that holistically address issues arising before a guardianship is filed, during the court review, and after the final order is signed:

**Education, Resources, and Data**

- Comprehensive education and training for guardians, including a standard curriculum as well as initial and ongoing training on quality performance metrics.

- Promotion of resources and innovative support for guardians, protected persons,


and other stakeholders, including new navigation tools and opportunities, a best practice guide, and a central online portal for guardianship information.

- Improved tracking and data collection, including enhancements to the Guardianship Registry and a new statewide guardianship data dashboard with up-to-date information and statistics.

**Standardized Practices and Procedures**

- Consistent forms and reports for both guardianship filers and judicial officers, including a standard medical report and court order for guardianships that can be used across the state.
- Law and process improvements, including refinements and modifications to the Indiana Code that would align stakeholders and promote synergy.
- Enhanced court monitoring, including expansion of a pilot program and adoption of guidelines for Guardians ad Litem and oversight work.
- Increased support for guardians, including an increase in monthly Medicaid rates for professional guardians and a pipeline for high-functioning family guardians to take an active role in volunteer-based guardianship programs.

**Alternatives and Limiting Guardianship**

- Preventive measures, including avoiding lapses in guardian supports and more frequent review of cases involving “emerging adults” (ages 15–25).

**"If these recommendations are implemented, Indiana will be on the cutting edge of streamlined and effective judicial responses that meet the needs of and enhance the experiences of guardianship stakeholders across Indiana."**

- Clear off-ramps from guardianship, including supports to challenge guardianship, a "temporary suspension" for guardians who abuse power, and a "sunset clause" that would encourage court reporting by removing their authority if a guardian fails to file their biennial report.
- Promoting usage of limited guardianship, including a standard Supported Decision-Making Agreement and providing educational materials to third parties in the financial, education, and healthcare fields.

The work of the Guardianship Oversight Task Force will continue this year and beyond. Its focus will become implementation of the recommendations, addressing the logistics for funding, and organizational changes that may be needed. Targeted workgroups will address specific topics and work toward implementation, with periodic reporting to the Indiana Supreme Court.

If these recommendations are implemented, Indiana will be on the cutting edge of streamlined and effective judicial responses that meet the needs of and enhance the experiences of guardianship stakeholders across Indiana. The system envisioned could better address the increased demands and unique challenges resulting from increased interactions with the guardianship system. It could also provide responsible and ethical guardianship best practices for managing the care and support of thousands of Hoosier protected adults.

The Adult Guardianship Office within the Indiana Office of Court Services provides support to judicial officers, court staff, and guardians. For more information on the office, please visit courts.in.gov/iocs/adult-guardianship or email nick.parker@courts.in.gov.

# YOUR CLIENTS HAVE ESTATE PLANS. THEIR DIGITAL LIVES PROBABLY DON'T.

***By Michael C. Maschke, Sharon D. Nelson, and John W. Simek***

Most people have at least a basic estate plan, a will, maybe a trust, beneficiary designations, and powers of attorney. The traditional pieces are usually there.

What is missing is everything else.

Today, much of a person's life exists entirely in digital form, including financial accounts, payment platforms, photos, documents, cloud storage, loyalty points, and even smart home systems. As a recent SANS OUCH newsletter points out, when someone dies without a plan for those assets, families can face financial disruption, security risks, and the permanent loss of important data.

## DIGITAL ASSETS ARE REAL ASSETS

The concept of digital inheritance is no longer theoretical. It is simply the extension of estate planning into modern life. Digital assets can include such things as email accounts, online banking, cryptocurrency wallets, and subscription services.

The problem is that these assets are often invisible. There is no paper trail in a file cabinet. There is no physical key to hand over. Access is controlled by passwords, multi-factor authentication, and platform policies that may not recognize traditional legal authority. This creates a practical problem for families. Even if someone has the legal right to access an account, they may lack the technical ability to do so.

### THE RISK IS NOT JUST INCONVENIENCE

When digital assets are not properly planned for, the consequences go well beyond inconvenience.

The SANS guidance highlights several real risks. Families may be unable to access funds or meet ongoing financial obligations. Active accounts can be targeted for takeover or fraud. Important documents and personal memories can be lost entirely.

There is also an emotional component. Unresolved online accounts, social media profiles, and digital identities can cause confusion and distress for loved ones. In some cases, accounts remain active indefinitely, raising privacy concerns and potential security risks. For law firms advising clients, this is not an issue to overlook. It is a growing category of risk that intersects finance, privacy, and security.

### THE LAW HAS NOT FULLY CAUGHT UP

Part of the challenge is that legal frameworks are still catching up to digital reality.

Traditional estate planning assumes that assets can be identified, valued, and transferred. Digital assets are different. They may be governed by terms of service agreements, subject to licensing restrictions, or controlled by providers that limit access after death.

Even when statutes address digital assets, implementation can be inconsistent. As a result, practical access often depends less on legal authority and more on preparation. In other words, having the right documents is necessary but not always sufficient.

**"Traditional estate planning assumes that assets can be identified, valued, and transferred. Digital assets are different."**

### WHAT LAWYERS SHOULD BE DOING DIFFERENTLY

The takeaway is not that estate planning needs to become more complicated. It needs to become more complete. There are several practical steps lawyers can incorporate into their process.

First, inventory matters. Clients should identify which digital assets exist, where they are stored, and how they are accessed. Without that baseline, everything else becomes guesswork.

Second, access planning is critical. This does not mean writing passwords in a will. It means using secure mechanisms, such as password managers, digital vaults, or designated access tools, to ensure trusted individuals can access accounts when needed.

"Digital legacy is not just about account access. It is about how identity, memory, and value persist after death."

Third, clients should designate a digital executor or, at a minimum, provide clear instructions on who will manage digital assets. Traditional fiduciaries may not always have the technical expertise required.

Fourth, platform-level settings should not be ignored. Many major providers now offer legacy contact or account management features that let users define what happens to their data if they are incapacitated or deceased.

Finally, this needs to be part of the conversation. If lawyers are not asking about digital assets, clients are unlikely to raise the issue on their own.

## THE BIGGER PICTURE

Digital legacy is not just about account access. It is about how identity, memory, and value persist after death. Increasingly, people leave behind not only financial assets but also entire digital footprints that reflect their relationships, history, and personal lives.

That footprint can have lasting meaning for families. It can also pose a risk if unmanaged. In modern estate planning, what you cannot see may be just as important as what you can.

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CRIMINAL JUSTICE NOTES

*By Jack Kenney*

# MARCH CASES ADDRESS DOUBLE JEOPARDY AND STACKED CONVICTIONS, NON-CONTACT ORDERS, AND MORE

**In March, a divided Indiana Supreme Court addressed double jeopardy limits on stacked confinement convictions, while the Court of Appeals decided cases involving the scope of no-contact orders, involuntary psychiatric placement of minors in DCS custody, pretrial good time credit, belated appeals, and appellate sentence revision.**

## INDIANA SUPREME COURT

### DOUBLE JEOPARDY—ONLY ONE CONVICTION FOR A SINGLE CONTINUOUS CONFINEMENT AND NOT MULTIPLE DISCRETE ACTS

Indiana's substantive double jeopardy doctrine bars multiple convictions for the "same offense" arising from a single criminal act or transaction. Courts have long struggled to determine when two charges under the same statute constitute one offense or two—a question that turns on how the legislature defined the unit of prosecution. In *Moyers v. State*, No. 25S-CR-86 (Ind. March 20, 2026), the Indiana Supreme Court addressed whether a defendant may be convicted of multiple counts of criminal confinement arising from a single, uninterrupted episode of restraint. Marvin Moyers was convicted of both Level 3 felony criminal confinement (while armed with a deadly weapon) and Level 4 felony criminal confinement (resulting in moderate bodily injury) following a six-hour violent ordeal in which he held the victim captive at gunpoint in his own home. On appeal, Moyers argued he had been improperly punished twice for the same offense.

In a 3-2 decision, the court agreed, holding that Moyers' convictions for different levels of criminal confinement under the same statute constitute a single statutory offense. When a statute defines a base offense and elevated forms of that offense, all elevated offenses constitute a single "statutory offense," meaning the *Powell* multiplicity test (not the *Wadle* included-offense test) governs the analysis. To provide guidance for future cases, the court established a three-category framework for analyzing similar questions: (1) statutes with a single base offense and elevated offense levels based on different enhancing circumstances (apply *Powell*); (2) statutes with distinct, separate base offenses (apply *Wadle*); and (3) statutes creating a base offense with alternative elements requiring closer interpretation. Because both the Level 3 and Level 4 confinement convictions arose from the same base offense under Indiana's criminal confinement statute, the *Powell* test controlled.

Applying *Powell*, the court found that Moyers had imposed only one continuous confinement on the victim—who was never actually free, nor felt free, until he escaped—and therefore only one confinement conviction could stand.

Justice Molter concurred separately to caution that the dissent's call to overrule both *Wadle* and *Powell* was unprompted by either party—and that any correction to the court's double jeopardy framework should come through adversarial briefing, not sua sponte judicial action.

Justice Slaughter, joined by Justice Massa, dissented, arguing that Indiana's substantive double jeopardy analysis should be governed solely by the included-offense statute, Ind. Code § 35-38-1-6, with no room for judicially created categorical exceptions. The dissent also identified an internal tension in the majority opinion: Having disclaimed reliance on *Wadle* and the included-offense framework, the majority nonetheless borrowed that framework's remedy—vacating the lesser conviction.

## INDIANA COURT OF APPEALS

### NO-CONTACT ORDER LIMITED TO POST-RELEASE CONTACT COULD NOT SUPPORT INVASION OF PRIVACY CONVICTION FOR CALLS MADE WHILE INCARCERATED

Brandon French was charged with serious felonies involving his girlfriend and a no-contact order was entered in that case. While awaiting trial in the county jail, French repeatedly contacted his girlfriend through jail tablets, three-way phone calls, and third-party intermediaries, resulting in five convictions for invasion of privacy. The Court of Appeals reversed the convictions in *French v. State*, No. 25A-CR-1906 (Ind. Ct. App. March 11, 2026), finding that the plain language of the no-contact order restricted contact only during release from custody pending trial—not during incarceration. Although Ind. Code § 35-33-8-3.2(a)(4) expressly authorized the trial court to prohibit contact during incarceration, it had not done so here, and the substance of the order controls over its caption or apparent purpose. In support of its holding, the court relied on *Cruz v. State*, No. 25A-CR-1308 (Ind. Ct. App. Dec. 30, 2025), a recent unpublished decision involving an identically worded no-contact order, which held that a defendant who contacts a protected person from jail does not violate an order restricting contact only "while released from custody pending trial." *French*, slip op. at 6-7.

### DCS'S WARDSHIP ALONE DOES NOT AUTHORIZE INVOLUNTARY PSYCHIATRIC PLACEMENT

In *Matter of D.S.*, No. 25A-JC-1881 (Ind. Ct. App. March 23, 2026), the Court of Appeals held that the Indiana Department of Child Services' (DCS's) wardship over a minor does not authorize involuntary psychiatric placement without a formal civil commitment proceeding. D.S., a 15-year-old with serious mental health diagnoses and a history of self-harm, had been adjudicated a Child in Need of Services. When DCS sought involuntary placement in a state psychiatric hospital, the trial court approved it based on DCS's general placement authority under the CHINS statutes—without requiring civil commitment proceedings.

In a 2-1 decision, the Court of Appeals reversed. Because such placement implicates the child's fundamental liberty interests, the court held that the full civil commitment framework must be followed. That framework affords protections absent from CHINS proceedings—including the right to appointed counsel under Indiana Code § 12-26-2-2(b)(4) and a clear-and-convincing evidence standard rather than the preponderance standard applicable in CHINS dispositions. And the fact that DCS has been granted wardship over a child does not extinguish the child's right to resist involuntary psychiatric confinement through proper process.

### PRETRIAL CREDIT REVOCATION REVERSED FOR LACK OF HEARING; CONFRONTATION RIGHT FORFEITED BY WRONGDOING

In *Taylor v. State*, No. 25A-CR-2032 (Ind. Ct. App. March 19, 2026), the Court of Appeals addressed two distinct issues arising from a defendant's repeated violations of a no-contact order while awaiting trial on charges of rape, robbery, and criminal confinement. On the first issue, the court reversed the trial court's revocation of Keenah Taylor's pretrial good time credit, finding that the state had failed to request the hearing required by statute before credit may be revoked, and that the error was not harmless.

On the confrontation issue, the court affirmed admission of the victim's out-of-court statements. Taylor's repeated no-contact order violations caused the victim's unavailability at trial, thus he forfeited his Sixth Amendment right to confrontation through wrongdoing. Taylor made more than 40 calls to the victim, directly instructing her not to appear, and later used another inmate's jail PIN after authorities restricted his own account. The court affirmed in part and reversed in part to restore Taylor's credit time.

### EXTRAORDINARILY COMPELLING REASONS WARRANTED BELATED APPEAL

Indiana Post-Conviction Rule 2 provides a mechanism for defendants to file belated appeals from their conviction or sentence, but the rule is restricted to appealing a criminal "conviction or sentence." In *Chandler v. State*, No. 25A-CR-2553 (Ind. Ct. App. March 31, 2026), the defendant initially waived his appeal from a probation revocation, then changed his mind—but his attorney didn't learn of the change until the deadline had passed. Because Post-Conviction Rule 2 does not extend to probation revocations, the trial court denied relief, even while acknowledging it would have allowed the appeal out of "equity" had it possessed the power to do so.

The Indiana Court of Appeals agreed on the interpretation of PC Rule 2, but found that extraordinarily compelling circumstances warranted invoking the court's inherent authority to allow the appeal to proceed—including Chandler's request for counsel that went unheeded before the deadline passed, his diligence upon discovering the issue, and the significant liberty interest at stake. The court therefore remanded the case with instructions to permit Chandler to file a belated notice of appeal.

### REJECTION OF INSANITY DEFENSE AFFIRMED, BUT DEFENDANT'S MENTAL ILLNESS WARRANTED SENTENCE REVISION

A guilty-but-mentally-ill verdict does not reduce criminal exposure, but it can anchor a sentence revision argument on appeal—particularly where the trial court underweighted the GBMI finding at sentencing. In *Guilfoyle v. State*, No. 25A-CR-1406 (Ind. Ct. App. March 6, 2026), the Court of Appeals affirmed the jury's rejection of an insanity defense but exercised its authority under Indiana Appellate Rule 7(B) to revise a near-maximum sentence. Gregory Guilfoyle shot his wife at point-blank range, dragged her outside into below-zero conditions, and later retrieved her and called 911. She survived. The jury rejected his insanity defense and returned a guilty-but-mentally-ill verdict on two counts of attempted murder and related offenses. The court affirmed the verdict, finding that conflicting expert testimony presented a question of fact properly resolved by the jury.

However, the court reduced the aggregate 100-year sentence to 80 years, citing significant mitigating factors: no prior criminal history, volunteer service and a career in law enforcement, permanent paralysis from a self-inflicted wound, and—most critically—the jury's own guilty-but-mentally-ill finding, which established that mental illness had substantially disturbed Guilfoyle's thinking and functioning at the time of the offenses.

ETHICS

**By Meg Christensen and Katie Jackson**

# YOURS, MINE, AND OURS: GUIDANCE FOR INDIANA LAWYERS WITHDRAWING FROM REPRESENTATION

**Undertaking a client representation is not a promise of perpetual representation. Often, the representation concludes when the agreed scope is concluded (for example, after closing of a deal or after a trial concludes). In other instances, the representation concludes when either the lawyer or the client terminates the representation. The client retains free choice of counsel and can almost always terminate a lawyer's representation. Lawyers may[1] generally terminate representation any time that there will not be material adverse effects on the client and *must* withdraw to avoid violating the Rules of Professional Conduct, if they are impaired, or are discharged.[2]**

A lawyer's duties to the client do not conclude immediately upon termination of the representation. Importantly, no matter whether the client or the lawyer ended the representation, Rule 1.16(d) requires that upon termination, "a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law." Thus, the typical withdrawal checklist includes:

- Give notice to client;
- Give notice to court and other parties;
- Seek extensions of court deadlines and deal deadlines to allow the client to retain successor counsel;
- Return the file, documents, and property to the client; and
- Return unearned fees.

After completing the checklist, the withdrawing lawyer still owes ongoing duties to the client. Rule 1.9 requires ongoing confidentiality. The lawyer may also owe a duty to convey *material information known to the lawyer but not memorialized* in the file to the former client or successor counsel.

> **"The lawyer may also owe a duty to convey *material information known to the lawyer but not memorialized* in the file to the former client or successor counsel."**

## ABA FORMAL OPINION 520

On January 21, 2026, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 520, addressing a practical gap in many lawyers' file-closing routines: Even after surrendering the client's file, some ongoing communication may be a step that is "reasonably practicable" to "protect a client's interests." For example, withdrawing counsel may need to disclose off-the-record events, strategic reasons for decisions, and un-memorialized client communications to allow the successor counsel to step into their shoes.

Opinion 520 interprets Model Rule 1.16(d): Upon termination, a lawyer must take reasonably practicable steps to protect the client's interests, and at times that includes conveying *unrecorded* information to the former client or successor counsel. The opinion stresses this is "a limited duty," often satisfied by prompt surrender of a complete file, but triggered when a request shows that unrecorded information is necessary to protect the client's interests in the same matter.

The material, unrecorded information category is broader than many lawyers expect. Opinion 520 identified examples including: (a) factual information that could have been memorialized, such as what happened off the record in court or in settlement negotiations; (b) the original lawyer's strategic or tactical reasons for actions taken; (c) impressions of witness credibility; and (d) un-memorialized communications with the client.

The post-withdrawal duty imposed by Rule 1.16(d) is not unlimited. There is no duty to provide information readily accessible elsewhere once the file has been provided. There is no duty to generate new work product like affidavits or memos, retrieve information not in the lawyer's possession, or refresh memory by reviewing court files. There is no duty to respond when the request is for a different matter, including matters that "grew out of" the earlier representation like a prospective malpractice suit. And of course, the responding lawyer should confirm the former client's consent for disclosure to successor counsel under Rule 1.9(c).

Opinion 520 also makes two temporal points: the obligation can apply even if the request comes "later" because file-surrender duties are not inherently time-limited; and the practical feasibility depends on recollection—memory fades, and there is no obligation to perform further work to refresh recollection. Opinion 520 plainly states, "[i]f the lawyer does not recall the answer to a request, there is no obligation to perform further work, such as reviewing a court file, to refresh the lawyer's recollection."

## INDIANA AUTHORITY ON FILES, LIENS, AND COURT COMPULSION

Indiana disciplinary case law repeatedly includes file-return failures as Rule 1.16(d) violations.[3] *Matter of Lansky* sets forth a foundational principle: "The practice of law is more than a mere vocation undertaken for profit. A lawyer has a duty to protect and preserve the rights and property of a client. A fiduciary relationship exists between a lawyer and client, and the confidence which

**"Even if the lawyer has been 'unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client.' This is the animating principle behind both Opinion 520 and Indiana's post-termination framework."**

the relationship begets between the parties makes it necessary for the lawyer to act in utmost good faith." Even if the lawyer has been "unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client." This is the animating principle behind both Opinion 520 and Indiana's post-termination framework.

In addition, Indiana Code § 33-43-1-9 authorizes a court to order an attorney who refuses to deliver money or papers to do so within a specified time or show cause why contempt should not apply. In *Johnson v. State*,[4] the Court of Appeals held the trial court erred by denying a motion to compel production of documents from former counsel. The court held, in light of Rule 1.16(d), "the granting of a motion to compel the production of documents which an attorney has received for a client in the course of his employment is not discretionary with the trial court."[5] The practical takeaway: "file transfer on termination" is not merely an ethics concept but also a potential court-order and contempt pathway.

Indiana recognizes attorney retaining liens, but the existence of lien doctrines does not license self-help that undermines client protection. In *In re Newman*,[6] the Indiana Supreme Court emphasized that an attorney is not "entitled to deny a client his or her own property when retention is wholly unnecessary to secure the attorney's claim" and that "a lawyer may not hold funds to which a client is indisputably entitled to coerce the client into accepting the lawyer's contention in a dispute over attorney fees." The court found that the attorney's retention of the client file provided "nothing of value except unfair leverage in the fee dispute with his former client" and imposed an 18-month suspension.

Where uncertainty exists about the precise scope of "client file" contents, the safest course is to prioritize protecting client interests under Rule 1.16(d), rely on consent and confidentiality limitations under Rules 1.6 and 1.9(c), and—as Opinion 520 now makes explicit—respond to reasonable requests for material unrecorded information when doing so is necessary to protect the client's interests and reasonably practicable.

### PRACTICAL IMPLEMENTATION FOR INDIANA PRACTITIONERS

1. **Adopt a "520-ready" closing protocol:** Treat termination as requiring not just file transfer and refund accounting, but a brief transition memo capturing current posture, deadlines, and undocumented but material decisions—so successor counsel doesn't need to rely on your fading memory. The Indiana Supreme Court's disbarment decision in *In re Hamilton*,[7] provides a comprehensive framework for proper practice wind-down that aligns with Opinion 520's approach. The court stated: "Whatever the

reason, the attorney's ethical obligation to protect clients' interests is clear. Among many other things, key practice management records (such as client files and business and trust accounts) should be in order and reconciled, clients should be notified and kept fully and accurately informed of matters relating to their case, fee issues should be resolved, and appropriate contingency plans for transitioning clients' cases to successor counsel should be implemented." While *Hamilton* addressed the extreme case of practice abandonment, the court's enumerated obligations—reconciled records, informed clients, resolved fees, and successor counsel transition plans—describe precisely what a "520-ready" closing protocol should accomplish.

## COMMON PITFALLS AND BEST PRACTICES

**PITFALL 1**

**Confusing file delivery with full compliance.** You withdraw from a matter, upload the file, and assume you are done. Successor counsel asks: "Why did you decide not to call Witness X?" Your notes are minimal; your memory is intact. You refuse: "Not my case anymore." Risk: Opinion 520 treats this as a request for unrecorded strategy reasons—potentially necessary to protect the client—and says refusal may violate Rule 1.16(d) when reasonably practicable and necessary.

**BEST PRACTICE**

Treat successor counsel's request as a three-question test: (1) Has the client consented? (2) Is this the same matter and necessary to protect the client? (3) Is compliance reasonably practicable with information you already know? If yes, answer narrowly and document the interaction.

**PITFALL 2**

**Retaining lien as leverage.** You are discharged and claim a retaining lien over the client file for unpaid fees, delaying delivery to successor counsel. Risk: While Indiana recognizes retaining liens, Rule 1.16(d) still demands reasonably practicable steps to protect client interests. In *In re Newman*, the court held that an attorney's retention of a client file provided "nothing of value except unfair leverage" and imposed an 18-month suspension. In *In re O'Farrell*, 942 N.E.2d 799 (Ind. 2011), the court quoted approvingly from the New York Court of Appeals: nonrefundable fee agreements can relegate clients to "hostage status in an unwanted fiduciary relationship—an utter anomaly."

**BEST PRACTICE**

Separate security for fees from client protection: deliver what is needed for the client not to be prejudiced; if you intend to assert a lien, do so through lawful mechanisms that do not impair the client's ability to proceed with new counsel.

2. **Do not let fee disputes delay client protection:** Refund unearned fees, segregate disputed funds, and use lawful security mechanisms rather than withholding the file as leverage. Remember: restitution only after a grievance is filed does not qualify as mitigation.

3. **Define the "new matter" boundary early:** If successor counsel's questions appear aimed at evaluating malpractice or building a claim against you, Opinion 520 says you are not obligated to answer because that is a different matter.

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### ENDNOTES

1. Of course, a lawyer's decision to withdraw from a litigation matter is subject to court order. See Ind. R. Prof. Cond. 1.16(c).
2. See Ind. R. Prof. Cond. 1.16 (a) & (b).
3. *See, e.g.*, *In re Suarez*, 244 N.E.3d 557 (Ind. 2025) (attorney who failed to file a brief, withdraw his appearance after being fired, or respond to successor counsel's requests for the client file received a 30-day suspension); and *Matter of Lansky*, 678 N.E.2d 1114 (Ind. 1997) (attorney suspended for 30 days after failing to deliver file materials to successor counsel, including photographs relevant to the personal injury claim).
4. 762 N.E.2d 222 (Ind. Ct. App. 2002).
5. *Id.* at 223 (internal citations and quotations omitted).
6. 958 N.E.2d 792 (Ind. 2011).
7. 34 N.E.3d 1204 (Ind. 2015).

CIVIL LAW UPDATES

***By Maggie L. Smith***

# MARCH CIVIL CASES DISCUSS ADMINISTRATIVE REMEDIES, SPOLIATION, AND MORE

**In March 2026, the Indiana Supreme Court issued three civil opinions, and the Indiana Court of Appeals issued 15 published civil opinions.**

## INDIANA SUPREME COURT

### SUPREME COURT HOLDS THAT EXHAUSTING ADMINISTRATIVE REMEDIES DOES NOT MEAN A PARTY TO ADMINISTRATIVE PROCEEDING IS REQUIRED TO START OVER AND GO BACK TO AN ADMINISTRATIVE AGENCY WHEN SEEKING PREVAILING PARTY ATTORNEY FEES AND PREJUDGMENT AGAINST THAT AGENCY.

Technology Insurance Company provided workers' compensation insurance under a statutory scheme administrated by the Indiana Compensation Rating Bureau. The company sought repayment, the bureau denied repayment, and the company went through its administrative remedies to finally obtain payment. The company then asked for an award of prevailing party attorneys' fees and prejudgment interest, but the bureau refused to pay, claiming—among other arguments—that the company had to start over and exhaust administrative remedies for any claim of fees and interest through separate administrative proceedings.


The Indiana Supreme Court rejected all the bureau's arguments in *Indiana Compensation Rating Bureau v. Technology Insurance Company*, N.E.3d, 2026 WL 747420 (Ind. 2026) (Slaughter, J.) The court held that the company did not need to start the administrative process all over again to obtain attorney fees and prejudgment interest because it "would advance none of the policy goals" of exhausting administrative remedies. "The Bureau has no special expertise regarding such awards. There was no need for the Bureau to prepare an adequate factual record, as these claims are collateral to the case's underlying merits. And, most importantly, requiring the Company to go back to the Bureau to exhaust its claims for fees would be the quintessence of a collateral, dilatory action."

Chief Justice Rush concurred with all the above but dissented as to whether the trial court or the Department of Insurance should be the entity to calculate and award the fees, believing that the matter should be remanded to the department to do so.

### SUPREME COURT MAJORITY HOLDS THE "FACT-INTENSIVE, CIRCUMSTANCES-SPECIFIC JUDGMENT CALLS ABOUT SPOLIATION" MUST BE LEFT TO THE TRIAL COURT'S DISCRETION AND WILL AFFIRM WHEN THAT DISCRETION IS REASONABLY EXERCISED.

A plaintiff sued after she tripped and fell on a floormat as she was leaving a hospital. A security guard made an incident report and the next day, the hospital's security supervisor reviewed all security footage. Per the hospital's custom and practice, he preserved any video that captured the plaintiff's fall—both before and after—but did not save footage from two other cameras in the area that did not capture the fall. Plaintiff claimed this constituted spoliation of evidence, arguing the hospital should have preserved video from all the cameras because "footage from the surrounding area still might have shown the mat was disheveled before she fell or led to the discovery of other evidence about the mat's condition."

The trial court found the hospital did not spoliate evidence, granted the hospital's motion in limine to exclude any mention of spoliation at trial, and denied the plaintiff's proposed spoliation jury instruction. The Indiana Supreme Court affirmed the trial court on all three grounds in *Rosen v. Community Healthcare System*, N.E.3d, 2026 WL 684427 (Ind. 2026) (Molter, J.). In reviewing all these decisions, the Supreme Court held, "we must continue to leave fact-intensive, circumstances-specific judgment calls about spoliation to our trial judges' discretion" and concluded "the trial court's evidentiary rulings were reasonable judgment calls within the trial judge's discretion, and we must defer to those rulings."

Justice Goff dissented, finding that, "In my view, whether the Hospital spoliated evidence here is a fact-sensitive issue that is more appropriately decided by a jury."

### UNANIMOUS SUPREME COURT HOLDS THAT WHETHER A MEDICAL PROVIDER IS ENTITLED TO STATUTORY IMMUNITY FROM A MEDICAL MALPRACTICE CLAIM IS AN ISSUE FOR LAW FOR THE TRIAL COURT—NOT THE MEDICAL-REVIEW PANEL—AND THE PROVIDERS HERE WERE IMMUNE UNDER STATE AND FEDERAL COVID-RELATED LAWS.

The General Assembly passed legislation immunizing healthcare workers from civil liability in certain cases where a patient's injury arose from actions taken in response to COVID-19. After the estate of a COVID-19 patient brought a medical malpractice claim, the medical providers utilized the "preliminary determination" proceeding in the Malpractice Act and sought to dismiss the action based on the COVID-19 statutory immunity.

A unanimous Indiana Supreme Court in *Waggoner v. Anonymous Health System, Inc.*, 274 N.E.3d 1245 (Ind. 2026) (Goff, J.), concluded this issue was properly before the court rather than the medical-review panel because it presented a pure issue of law. "By arguing they are immune, the Providers, for purposes of the preliminary determination, admit [causation.]" Accordingly, "expert opinion from the medical-review panel is not needed, and the court can interpret the relevant statutes to make a preliminary determination on immunity."

The Supreme Court rejected the argument that, because, while the patient initially tested positive for COVID-19, he was not testing positive "when he died, and instead, his death was caused by Providers' failure to treat his bed sore," there should be no immunity under the Indiana Healthcare Immunity Act or the Indiana Premises Immunity Act. The court held immunity applied when the death or injuries "arose from treatment in response to COVID-19" and the patient fell into this category.

The Supreme Court also rejected claims that the state law immunity had expired by the time the patient died, but held that if it had, the medical providers were still immune under the federal Public Readiness and Emergency Preparedness Act because the claims arise from the provision of a "covered countermeasure during the public-health emergency."

### INDIANA COURT OF APPEALS

- *Munster Medical Research Foundation, Inc. v. Clark*, N.E.3d, 2026 WL 846052 (Ind.Ct.App. 2026) (Felix, J.) (reversing award of attorney fees, holding "When a trial court grants a motion to compel responses to a request for admissions, it must award the requesting party its motion-related expenses, unless the responding party's opposition was substantially justified or an expenses award would be unjust. Before awarding such fees, the trial court must provide an opportunity for a hearing. It is error for a trial court to not hold a hearing on Trial Rule 37(A)(4) expenses, but such error may be harmless if the responding party cannot show that 'the lack of a hearing affected the sanction amount.'").

- *Renaissance Associates I L.P. v. City of Hammond, Indiana*, N.E.3d, 2026 WL 570517 (Ind. Ct.App. 2026) (Robb, S.J.) ("The legislature's 2015 amendment to the definitional statute, Indiana Code section 36-1-20-1.2, applied prospectively and is not remedial in nature. It therefore does not operate retroactively to create a refund obligation for fees that were lawfully collected before its enactment.").

- *Ludwig v. Flaherty & Collins, Inc.*, N.E.3d, 2026 WL 730709 (Ind. Ct.App. 2026) (DeBoer, J) ("Until recently…Indiana Trial Rule 37 did not permit the imposition of sanctions when ESI was 'lost as a result of the routine, good faith operation of an electronic information system.' Ind. Trial Rule 37(E) (2025). But effective January 1, 2026, that rule was amended to more closely resemble its federal counterpart. Unlike the federal rule, however, Rule 37 now makes an adverse inference instruction available without proof of intent so long as the non-spoliating party has been prejudiced by the loss of ESI… For the purposes of this opinion, we therefore assume without deciding that Indiana law permits the giving of an adverse inference instruction when there is evidence a party negligently or intentionally spoliated surveillance footage.").

- *Merchant v. Katz, Sapper & Miller, LLP*, N.E.3d, 2026 WL 741533 (Ind.Ct.App. 2026) (Bradford, J.) ("Indiana requires privity for the creation of a duty. It is undisputed that [accountant] KSM never had a contractual relationship with Merchant. Moreover, contrary to Merchant's suggestion, similar to [*Tekman v. Berkowitz*, 639 F. App'x 801, 805 (3d Cir. 2016)], we do not believe that Merchant's position as a member of iCube created privity between Merchant and KSM. Because Merchant was not in privity with KSM, KSM owed Merchant no duty. Without a duty, KSM could not legally be held liable to Merchant.").

- *Norfolk Southern Railway Company v. Sporner*, N.E.3d, 2026 WL 730223 (Ind.Ct.App. 2026) (Foley, J.) ("We find that [the Federal Railroad Safety Act] does not preclude Employee's [Federal Employers' Liability Act] claim, which is that, regardless of whether federal authority allowed a one-man [Remote Control Operator] RCO crew, Railroad was negligent in its use of a one-man RCO crew under the circumstances.").

- *Cleary v. Morlan*, N.E.3d, 2026 WL 629272 (Ind.Ct.App. 2026) (Felix, J.) (the Indiana Home Improvement Contracts Act applies to a "real property improvement" which must be "performed on something that already exists as opposed to something that is being constructed for the first time. Considering the definition of 'residential real property' together with the listed nouns reveals that a 'real property improvement' cannot be performed on a house that is being newly constructed.").



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