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VOL. 69 NO. 3
OCT 2025

COVER STORY



12 A LEGISLATIVE HISTORY

A Legislative History of Indiana's Origination Clause, Part II (1851 Constitution)
By Gregory S. Mize

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PUBLISHER STATEMENT:
Res Gestae (USPS-462 500)
is published monthly,
except for Jan/Feb and
Jul/Aug. by the ISBA.
Periodicals postage paid at
Indianapolis and additional
mailing offices.

POSTMASTER: Send
address changes to

Res Gestae
c/o ISBA
201 N. Illinois St., Suite 1225
Indianapolis, IN 46204

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SHORT-TERM RENTALS LAW

By Patrick Jones

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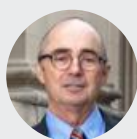
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President's Perspective TO SERVE AND ADVOCATE...

By John Maley

PRESIDENT'S PERSPECTIVE

With humility, I am honored to serve and advocate for the 10,000 members of the Indiana State Bar Association in our 130th year. Founded by Benjamin Harrison in 1896, our association is the largest legal organization in Indiana. Our mission is to empower our members (lawyers, judges, paralegals, law librarians, law students, and court administrators) to thrive professionally and personally. We work to find solutions to professional challenges, connect the legal community across the state, and advocate on behalf of the profession.

The vision of the association is to “serve and advocate on behalf of its members...and the public interest as the independent voice of the legal profession.” I have been asked by many, “What do you hope to do this year for the association?” Thanks to those who have come before me and led this association so skillfully, the answer is easy: *serve and advocate*.

I hope to do so by drawing on a combination of my small-town roots as the son of a trial lawyer; experiences working in and serving the third branch; decades of local, state, and national practice at Barnes & Thornburg; career-long bar service; and devoted admiration and respect for the law, lawyers, and judges.



WAYNE COUNTY ROOTS

While clerking for U.S. District Judge Larry McKinney, there was much to learn about the law, the practice, our courts, and life. One of his common statements was, “We are all the product of the sum of our life experiences.” So true. For me that started in Wayne County, growing up on Main Street in Richmond,

stopping most days after school to see my father, Robert Maley, at his law office downtown. The law library of his four-lawyer firm was intriguing and provided an “opportunity” (as Dad said) to fill weekly pocket parts in the books to keep them current.

I often helped prepare his trial boards (adhesive letters from Haag Drug, for those around before 1980) and went to court with him regularly in the summer.

The process was fascinating and the skill of the lawyers impressive. As for clients, although I did not fully appreciate it at the time, the amount of pro bono work Dad did was significant, and often from the front porch.

By high school my path was clear: become a Hoosier lawyer. Now with 37 years in practice from Indianapolis, the journey has been extraordinary. My roots have remained with me. I am proud to continue as a career-long member of the Wayne County Bar Association and to serve my hometown through the

**"I have been asked by many, 'What do you hope to do this year for the association?'
Thanks to those who have come before me and led this association so skillfully,
the answer is easy: *serve and advocate*."**



Whitewater Valley Pro Bono Commission, while also remaining active in the Indianapolis and Marion County Bar Associations.

Most of us have been inspired by great lawyers in service to clients, our system of justice, and the rule of law. For me that started early through my father, with whom I was able to share my Supreme Court admission in 1993.

YOUR ASSOCIATION

Through this association's excellent professional staff (thanks Joe Skeel and team!) and thousands of hours of service from member-volunteers, this association offers

so much to so many. For some, the member benefits are key, ranging from top-notch CLE to renowned events including the Solo & Small Firm Conference, mentorship opportunities, or vendor discounts.

For others, the robust sections and committees provide unique practice-enhancing networking and collaboration or focused means of impact with other members. A great example is the Pro Bono Committee, recognized this year by the ABA for the Indiana Walk-In Legal Clinic Series, which served more than 250 clients in the last year.

Others simply join and remain with us to support the mission

and vision, proud to be members of this outstanding organization. Some of my proudest moments in recent years as a member include: (a) the association's excellent work on the Attorney Shortage Plan; (b) the important service providing statewide judicial election information to voters; and (c) the celebration on Law Day this year reaffirming the Oath of Attorneys and the Rule of Law in our treasured system of justice.

For me, different levels of engagement have applied, and at different times during our family's journey. During the 90s—with five boys born in seven years (my wife

Vivian is a rockstar)—involvement was light. Reading *Res Gestae*, attending a reception or two, and doing Appellate Practice Section proposed rules work were just right. Later, serving as treasurer was an honor, and leading our Appellate Practice Section, collaborating alongside many of the best appellate judges and lawyers in our nation, was a joy. Now, in my final decade of active practice, I'm privileged to follow the outstanding prior presidents of this association, in particular the last three: Amy Dudas from Richmond, Hon. Tom Felts from Fort Wayne, and Michael Jasaitis from Crown Point. I take the baton committed to continue their important and impactful servant leadership.

MY ASK OF YOU

For current members, thank you. Please stay with us and let us help you, whatever stage of your career. Before the year ends, try one or two of our offerings you haven't used. Get active (or re-engaged) with a section or committee, or try our on-demand CLE, our Pro Bono Resource Center, or our Law Practice Management Hub.

Meanwhile, help us grow by inviting a colleague, opposing counsel, law student, or paralegal to join, whatever their background. And don't forget the in-house counsel or government attorneys you know. They are vital members of the Indiana Bar, and we need their talent, experience, and insights to further enhance our association.

Finally, for non-members or lapsed members, please give us a try; join online at inbar.org. If you have any questions, concerns, or hesitancy, please give me a chance to talk with you. Contact me at jmaley@btlaw.com or 317-432-5509(c). We're here to serve and advocate. Cheers. ☺

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ISBA has launched a new member benefit: a curated collection of on-demand CLE, articles, podcasts, and more, organized by career stage to help you solve real problems more quickly.

In speaking with members, tracking CLE feedback, and monitoring trends across the state, ISBA has identified common pain points among different levels of practice. New lawyers struggle translating theory into practice and navigating the unwritten rules of being a lawyer. Mid-career attorneys balance new responsibilities, student loans, and networking with looming career decisions and often first-time managerial roles. Partners juggle client development, firm management, and keeping track of what's happening in the profession. Retiring lawyers face the uncertainty of leaving practice and potential isolation.

ISBA addressed some of these knowledge gaps at the 2025 Annual Meeting. This new hub combines those topics with other resources,

offering practice support, answers to your pressing questions, and tools to further your personal and professional goals.

WHAT YOU'LL FIND

The Career Stage resource hub is organized into four main career stages:

- New Lawyers
- Mid-Level
- Partners
- Retirement & Succession Planning

Each stage has its own landing page, with additional content organized by core developmental areas, including soft skills, career planning, legal skills, leadership, and more. Resources are pulled from ISBA programming, other bar associations, and national industry leaders. They include on-demand CLE, podcasts and videos, articles, guides, and more.

Think of it as a new way to find the resources most relevant to your needs.

HOW TO ACCESS

Each career stage's landing page is accessible from the ISBA website. Visit www.inbar.org and log in with your ISBA credentials. (Need help? Email us at memberconcierge@inbar.org.) From the main navigation menu, click "Practice Resources," then "Career Stage." Select the stage that most resonates with you to begin exploring.

In addition to the four main career stages, ISBA also has resource pages for specific challenges that cross professional levels. The Imposter Syndrome Toolkit offers strategies to help you recognize imposter syndrome and build confidence. The Artificial Intelligence Hub outlines relevant AI strategies, tools, and procedures for use in the legal profession. The LPM Hub and Resource Page shares relevant articles, tools, and videos for those running a solo or small firm.

WHAT'S NEXT

The Career Stage resource hub is a living resource. ISBA staff will continue to create and curate content that reflects the changing realities of practice and provides solutions to common challenges. We are also working on pages designed for those who fall outside of the more traditional firm structure, including resources for paralegals and support staff, in-house counsel, and employees of government agencies.

We encourage you to share your own feedback, as well. If there are questions you don't know the answers to, topics you'd like to learn more about, or resources you think the broader membership would benefit from, please let us know. You can share feedback and ideas at www.inbar.org/suggest-a-topic.

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A LEGISLATIVE HISTORY OF INDIANA'S ORIGINATION CLAUSE, PART II (1851 CONSTITUTION)



FEATURE

By Gregory S. Mize

This is part two of a two-part article on the legislative history of Indiana's Origination Clause. Part one appeared in September's *Res Gestae*.

This is the second part of a two-part article on the legislative history of Indiana's Origination Clause. The first part appeared in last month's issue (*Res Gestae*, Vol. 69, No. 2, pg. 12). That article chronicled the changes that were made to the legislative provisions during the Constitutional Convention of 1816. Inferences were then drawn based on contemporary events and concerns at the time to provide some context for the inclusion of an Origination Clause in the state's initial constitution.

This article takes a similar approach to the Constitutional Convention of 1850–51 and provides some direct evidence of what the delegates were considering with regard to an Origination Clause at the convention. Unlike the Constitutional Convention of 1816, the records for this convention include both a journal of proceedings and a record of the debates.

INDIANA CONSTITUTION OF 1851

In his annual address to the legislature in 1848, Governor James Whitcomb called for a constitutional convention to amend the 1816 Constitution.¹ In the address, he emphasized the need for legislative reform, especially regarding local and special legislation which was consuming much of the legislators' time during sessions.² It was thought that the General Assembly should meet less frequently. There was also a statewide demand for lower taxes, less expense in operating the government, and legislative restrictions in financial matters.³

A referendum on amending the 1816 Constitution was authorized on January 15, 1849, and the public question was placed on the general election ballot on August 6, 1849. This was the fifth time such a voter referendum had been called since the state's inception.⁴ The public question passed with 81,500 votes in favor and 57,418 against.⁵

With this approval, the General Assembly enacted a bill for a constitutional convention on January 18, 1850;



"As a result, the constitutional convention in Indiana generally reflected the values of the era of Jacksonian Democracy."

convention delegates were elected on August 6, 1850; and a convention to amend the 1816 Constitution was convened in Indianapolis on October 7, 1850. This was a period of significant territorial expansion for the United States following the Mexican-American War and the Oregon Treaty with Great Britain defining the country's northwest border with Canada. The state of California was admitted to the Union shortly before the convention. It was also during the formative stages of the Industrial Revolution. The population of the country was increasing exponentially, and transportation networks were being built, including close to 30,000 railroad miles constructed from 1830 to 1860.⁶

The political landscape in Indiana was also shifting during this time. In the 1840s, following the state's fiscal crisis discussed in more detail below, control of the state's government changed hands from the national Republican or Whig party to Democrat. As a result, the constitutional convention in Indiana generally reflected the values of the era of Jacksonian Democracy. Of the 150 delegates to the convention, 95 were Democrats and 55 were Whigs.⁷

At the convention, each section of the 1816 Constitution was referred to a standing committee for consideration. The committee could report the existing section to the convention without change, revise the language of the section,

or exclude it in its report. The rules allowed for resolutions and motions for recommitments to refer instructions to the committee.⁸

The Committee on the Legislative Department, which was tasked with drafting Article IV of the current Indiana Constitution, consisted of nine members,⁹ all but one of whom served in the General Assembly prior to the convention. There were four farmers, two teachers, two lawyers, and one physician.¹⁰ Seven of the committee members were Democrats and two members were Whigs.¹¹ Michael G. Bright chaired the committee.¹²

On October 31, 1850, the committee submitted its report to the convention referring 31 legislative

sections for consideration, including an Origination Clause in Section 17.¹³ The Origination Clause reported out of the committee is a revised version from the 1816 Constitution combining both Section 16 and Section 19 from that document. It reads:

Sec. 17. Bills may originate in either House, but may be altered, amended, or rejected in the other; except that bills for raising revenue shall originate in the House of Representatives.

Although minority reports were submitted with this committee report, none of those reports proposed any changes or alternative to Section 17.¹⁴

However, once submitted to the convention floor, a significant debate did take place when Section 17 was placed on second reading. The debate was not focused on the Origination Clause text. Instead, on December 11, 1850, a motion was made to amend Section 17 to add a single subject rule to that section.¹⁵ The debate over the single subject rule played out over several days with numerous delegates arguing for or against its inclusion, including in subsequent motions to recommit Section 17 to remove the single subject rule once it had been added.¹⁶ Section 17 was not recommitted to the legislative committee with instructions,¹⁷ but it was ultimately amended on the floor of the convention to include a single subject rule.¹⁸ Near the end of the debate, John Pettit, who had reservations about amending Section 17 to add a single subject rule,¹⁹ made a motion to “indefinitely postpone” or table the section altogether.²⁰

Pettit was a lawyer from Tippecanoe County who would later serve as

a justice of the Indiana Supreme Court. At the time, he was 43 years old and was reportedly “one of the acknowledged leaders of the democrats” at the convention.²¹ He began his political career in 1838, serving one term in the Indiana House of Representatives. In 1839, he was appointed U.S. Attorney for Indiana where he served from 1839

to 1843. He was then elected to three terms in the United States House of Representatives prior to the convention, serving there from 1843 to 1849.²²

Pettit echoed some of the founders in his opposition to an Origination Clause.²³ He pointed out that the basis for an origination requirement

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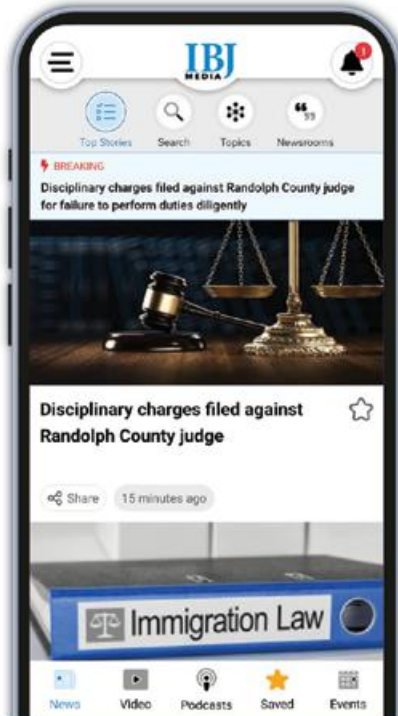
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"Pettit echoed some of the founders in his opposition to an Origination Clause. He pointed out that the basis for an origination requirement in England did not carry over to Indiana and that there was no reason to include it in the state's constitution."

in England did not carry over to Indiana and that there was no reason to include it in the state's constitution. He said:

Now, as to the origin of bills, I ask gentleman what is the difference between bills originating in the Senate and in the House of Representatives? Not one single bit. The Senator is as directly the representative of the people as the Representative himself. They may be brothers; they may come from the same county, from the same house, from the same log cabin. Sir, this is a principle which we have derived from the British Constitution. In that country it was well enough, but there is no necessity for it here. Who will say that our Senate is to be compared to the British House of Lords, temporal and spiritual? And unless there be some similarity there is no need for such a provision. In England it was well enough, because the Lords were an estate of themselves, and had no sympathies in common with the people; and as the revenues were to come from the masses, they decided that those who represented their condition in life should hold the purse strings. But that is not the case here. Our Senators and Representatives are all of the same kind of people. In England the Lord has no constituency at all. He is born a ruler. Not so with the House of

Commons; they have to look to the people from whom the money has to be raised.

Now let us not travel right along, step by step, without meaning, following in the wake of Great Britain. What they have that is good I am willing we should copy; but for what reason should we adopt their provisions and institutions which are not at all adapted to the nature of our government? Do you suppose that if England were revolutionized, and they should establish a government like ours, they would elect Senators from the masses of the people? Would they put into their Constitution any such absurdity as this? No, sir; they would say, the Senator is as responsible to us as the Representative, and will not be any more likely to oppress us with taxation than he would be. Sir, they never would disgrace themselves by adhering to this principle where the reason for it did not exist.²⁴

Pettit did not argue that the origination requirement created contention or was unworkable.²⁵ He makes no mention of any problems applying the Origination Clause under the old Indiana Constitution. Nor does he reference his experience in Congress regarding the federal Origination Clause. Rather, Pettit looked to the underpinnings and rationale for

an Origination Clause as it applied in England and concluded that it was unnecessary in Indiana. His was a practical appeal as a Democrat, to frame the provision as an anachronism of British parliamentary procedure.

Thomas Walpole, who was a Whig member of the legislative committee, opposed tabling the section and responded to Pettit's argument. Walpole was a trial attorney from Hancock County. He survived being permanently disbarred during his first year of practice in 1835, managed to get reinstated the next year,²⁶ and went on to become "quite successful as a lawyer" in Greenfield. He is described as a "tactful and resourceful" person with a "magnetic personality" who "was aristocratic and devoted much care to his personal appearance in matters of dress."²⁷

As a Whig politician, Walpole served in the General Assembly, first in the House of Representatives from 1836 to 1838 and from 1840 to 1841, and then in the Senate from 1841 to 1843 and from 1847 to 1849.²⁸ In 1842, he was elected president pro tempore of the Senate for one session.²⁹

For Walpole, the origination requirement provided a democratic check on potentially arbitrary tax legislation. He stated:

I will not consent to the indefinite postponement of the



section. A portion of it, I will readily admit, should be laid upon the table; but to part with that principle of government which makes us immediately responsible to our constituents, I will never consent to. Your Senators are elected for four years and your Representatives for only two; and when you give to the Senator power to present a tax bill, who is four years remote from the people, and to press before the House of Representatives his notions about taxation, it would be arbitrary, *as every form of government has always conferred upon the immediate representatives of the people the power to originate revenue measures. There is not a government in the United States that has adopted a contrary principle.* It is right and proper that all revenue measures should originate with the representatives of the people,

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"For Walpole, the origination requirement provided a democratic check on potentially arbitrary tax legislation."



and that the influence of the Senate should not be brought to bear upon the Representatives in this respect.³⁰

Walpole's articulation of the basis for an Origination Clause closely reflects the Jacksonian ideals of the 1850–51 convention to “check and regulate the legislative branch” and return power to the people. The rationale being that members of the House of Representatives are subject to election more often, the House has more members than the Senate, and as a result the House was thought to more directly represent the people. This was the prevailing opinion of the convention. Section 17 passed as amended on third reading by a vote of 93 to 34.³¹

Pettit and Walpole were the two main delegates to speak on the adoption of the Origination Clause at the convention.³² Their arguments frame the proposing and opposing views. It is curious, however, that Walpole was not questioned on his claim that “every form of government has always” had an origination requirement as part of its fundamental law. That was not the case in 1816 when Indiana adopted its first constitution as discussed in the previous article. And it was not the case when Walpole made the statement. Of the five states formed out of the Northwest Territory, only Indiana included an Origination Clause in its constitution. Ohio does not have one, nor does Illinois, Michigan, or Wisconsin. A treatise contemporary to the time indicates that 13 of the 31 states admitted to the Union as of 1850 had an origination requirement in their constitutions.³³

It seems unlikely that Walpole was misinformed. Having served as president pro tempore of the Senate, Walpole presumably had direct experience interpreting and applying the Origination Clause in

the old constitution. Maybe more so than any other attorney in the state at that time, he had reason and occasion to look to other states for persuasive authority in determining whether bills introduced in the Indiana Senate would violate the Origination Clause.

It also seems unlikely that the point was missed by Pettit and others at the convention. There were a considerable number of attorneys among the convention delegates.³⁴ Moreover, a reading of the debates shows that the delegates often referred to provisions in other state constitutions in making their arguments.³⁵

Instead, the fact that Walpole went unchallenged on his claim could indicate that the opposing delegates had little interest in a serious fight on the issue. While legislative reform was the primary theme of the convention, there seems to be no indication that the origination requirement in the 1816 Constitution was a point of contention in the early sessions of the General Assembly. I was unable to discover any case from this period challenging the validity of an act of the General Assembly based on a violation of the Origination Clause.³⁶

On the other hand, there was concern expressed when the convention was called that negative amendments could be made in the new constitution that would outweigh the legislative improvements, such as prohibiting local and special legislation, that were the basis for the convention.

In adopting legislative reforms, the removal of the Origination Clause in the new constitution may have been difficult to justify as an improvement to the legislative

branch. In the decade leading up to the convention, considerable fiscal challenges confronted the state of Indiana, which had fallen into insolvency by the early 1840s.

The state pursued an aggressive state funded internal improvements plan adopted in 1836 that went bust. A relatively enormous debt, more than 10 times annual state revenue, was incurred for a network of canals, roads, and railroads throughout the state preceded by the adoption of an ad valorem property tax anticipating increases in the land values resulting from the construction. The country fell into an economic depression shortly thereafter, the improvement projects faltered, the state was unable to carry the interest on the debt, and in 1847, a bondholder settlement was reached, which

included the state's resumption of payments on the debt.³⁷ Taxes were increased during this period, but there was little or nothing in terms of internal improvements to show for it. The state had just recently regained solvency by the time of the convention.

Considering the state's financial crisis leading up to the convention of 1850–51 and the failures in the legislative branch that precipitated it, it is plausible that the convention delegates felt constrained to some extent to retain the origination requirement from the old constitution and not dispose of it going forward, especially since it related to fiscal policy. The Origination Clause can be viewed as a valuable reflection of the democratic ideals that were the

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central focus of the convention. That is how Walpole framed it, even though it is not a universal principle as he claimed on the convention floor.

Viewed in this context, whether an Origination Clause is a necessary institutional prerogative may have been less important to convention delegates than the expression of those ideals in the new constitution submitted to the people of the state of Indiana for ratification.

Before the close of the convention, the provisions in Section 17 were separated and renumbered by the committee on revision, arrangement, and phraseology with an Origination Clause in Section 17 and the single subject rule in Section 19, as they appear in the Indiana Constitution today.³⁸

CONCLUSION

What consideration, if any, should be given to legislative history in the interpretation of Indiana's Origination Clause? Maybe none. Application of the Origination Clause in practice most often involves an analysis of the "revenue raising" aspect of legislation. The term "for raising revenue" is narrowly constructed by the courts in Indiana in the few cases that have interpreted the Origination Clause, without any analysis of its origins or purpose.³⁹ There is arguably, however, an unanswered question regarding the Origination Clause for which its legislative history may be useful. In *U.S. v. Munoz-Flores*,⁴⁰ the United States Supreme Court considered whether federal courts have authority to review Origination Clause cases under the separation of powers and expressly reserved jurisdiction to do so, concluding that the federal Origination Clause is judicially enforceable. On the other hand, the Pennsylvania Supreme

Court reached the opposite conclusion in a case interpreting that state's Origination Clause. The court found the Origination Clause to be a "purely procedural" directive, the violation of which does not present a justiciable question.⁴¹ The issue has never been presented to a court in Indiana under our state's Origination Clause.

Finally, it is interesting to note that most midwestern states saw no need for this type of provision in their state constitutions. Indiana took a contrary view in forming its constitution, although there is insufficient historical record from the conventions to adequately identify a rationale. Nonetheless, the legislative history does reflect a continuum of concern with heavy tax burdens and an antipathy to unchecked executive and legislative authority that helps to explain the particular sentiments in Indiana that led to the inclusion of an Origination Clause in the state's constitution. ④

ENDNOTES

1. Ind. H. Journal, 33rd. Gen. Assemb., Reg. Sess. 23-36 (1848).
2. *Id.*
3. Donald F. Carmony, *The Indiana Constitutional Convention of 1850-1851* 11-13 (1931).
4. William P. McLauchlan, *The Indiana State Constitution: A Reference Guide* 5 (1996). There were referendums in 1823, 1828, 1840, and 1846.
5. Riker and Thornbrough, *Indiana Election Returns 1816-1851* 377 (1960).
6. Jean-Paul Rodrigue, *The Geography of Transport Systems* 32 (5th ed., 2020).
7. Charles Kettleborough, *Constitution Making in Indiana* 79 (reprinted version 1917) [hereinafter *Constitution Making in Indiana*].
8. *Journal of the Convention of the People of the State of Indiana to Amend the Constitution* 37, 73, 91-94 (1850) (A.H. Brown ed., 1851) [hereinafter *Journal of 1850*].
9. *Id.* at 53. Michael G. Bright (Jefferson County), Ross Smiley (Fayette County), Othniel L. Clark (Tippecanoe County), Rudolphus Schoonover (Washington County), Thomas D. Walpole (Hancock and Madison Counties), Benjamin R.

Edmonston (Dubois County), Mark A. Duzan (Boone County), Walter E. Beach (Elkhart County), and Smith Miller (Dubois, Gibson, and Pike Counties).

10. *1 A Biographical Directory of the Indiana General Assembly, 1816-1899* (1980) (Michael G. Bright, lawyer, Democrat; Ross Smiley, teacher/merchant, Democrat; Othniel L. Clark, physician, Whig; Rudolphus Schoonover, teacher/merchant, Democrat; Thomas D. Walpole, lawyer, Whig; Benjamin R. Edmonston, farmer, Democrat; Mark A. Duzan, farmer, Democrat; Walter E. Beach, farmer, Democrat; Smith Miller, farmer, Democrat).
11. *Id.*
12. Michael G. Bright was an attorney from Madison who had held the office of Agent of State in the 1840s and was instrumental in the settlement of the internal improvement debt obligations during that period. He submitted a report of an accounting of the debt to the legislature in December 1842. Report of Agent of State, *Documents of the Senate of the State of Indiana*, 27th Gen. Assemb., Reg. Sess. 5-58 (1842); William W. Woolen, *Biographical and Historical Sketches of Early Indiana* 449-456 (1883).
13. *Journal of 1850*, *supra* note 8, at 166-70.
14. *Id.* at 170-71.
15. When placed on second reading, Alexander Stevenson proposed adding the following sentence: "Every law shall embrace but one subject which shall be expressed in the title." The motion passed by a vote of 105 to 21. The language was thereafter amended, and a single subject rule was added to Section 17 at this point in the convention, with Section 17 being engrossed for third reading. *Id.* at 413-15. However, the next day a motion to reconsider the engrossment of Section 17 was adopted and it was placed back on second reading. *Id.* at 429.
16. For example, Micheal G. Bright moved to recommit Section 17 to remove the single subject rule, which was defeated by a vote of 57 to 66. *Id.* at 428-29. John L. Spann made a similar motion that was defeated by a vote of 42 to 78. *Id.* at 901-02.
17. *2 Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana* 1122-24 (1850) (A.H. Brown ed., 1851) [hereinafter *2 Report of the Debates*].
18. For a detailed discussion and analysis of the debates regarding the single subject rule at the 1850-51 Convention, see Justin W. Evans and Mark C. Bannister, *The Meaning and Purposes of State Constitutional Single Subject Rules: A Survey of States and the Indiana Example*, 49 Valpo. Law Rev. 1 (2014).

19. *2 Report of the Debates*, *supra* note 17, at 1119.
20. *Id.* at 2010.
21. *Constitution Making in Indiana*, *supra* note 7, at 85.
22. Biographical Directory of the United States Congress, online edition, *available at* <https://bioguide.congress.gov/search/bio/p000277>.
23. At the federal Constitutional Convention, James Madison argued that “[t]he Senate would be the representatives of the people as well as the 1st branch [the House of Representatives]” and that an Origination Clause “is nothing more than a nominal privilege.” *1 The Records of the Federal Convention of 1787* 233, 535 (Max Farrand ed., 1911) [hereinafter Farrand]. Pierce Butler from South Carolina saw no analogy between the House of Lords in Great Britain and the Senate and therefore no reason to include an Organization Clause in the federal Constitution, describing it as a degradation on the Senate. *Id.* at 233. James Wilson of Pennsylvania asked “[w]here is the difference, in which branch it [a money bill] begins if both must concur, in the end?” *Id.* at 545.
24. *2 Report of the Debates*, *supra* note 17, at 2009-10.
25. Robert Pickney from South Carolina warned during the federal constitutional debates that the Origination Clause in that state’s constitution had been “a source of pernicious disputes between” the two chambers and that it was circumvented by “informal schedules of amendments handed from [the] Senate to the other House.” Farrand, *supra* note 23, at 234. James Madison and James Wilson made similar arguments that an Origination Clause “was a source of frequent and obstinate altercations” both in Great Britain and in the states. *Id.* at 527, 546.
26. George J. Richman, *History of Hancock County, Its People, Industries and Institutions* 439, 449-50 (1916). Walpole was admitted to the bar on February 27, 1834, disbarred on February 27, 1835, and reinstated April 4, 1836.
27. *Id.* at 330.
28. *Id.* at 81-83.
29. Ind. H. Journal, 27th. Gen. Assemb., Reg. Sess. 5 (1842).
30. *2 Report of the Debates*, *supra* note 17, at 2010 (emphasis added).
31. *Journal of 1850*, *supra* note 8, at 916; *2 Report of the Debates*, *supra* note 17, at 2014.
32. Pettit withdrew his motion without any vote being taken.
33. Thomas M. Cooley, *Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 131, fn. 2 (1868) (Alabama, Massachusetts, Delaware, Minnesota (admitted in 1858), Mississippi, New Hampshire, New Jersey, Pennsylvania, South Carolina, Vermont, Indiana, Oregon (admitted in 1859), Kentucky, Louisiana, and Maine).
34. Brent E. Dickson, Thomas A. John, and Katherine A. Wyman, *Lawyers and Judges as Framers of Indiana’s 1851 Constitution*, 30 Ind. Law Rev. 397 (1997). There were 56 delegates to the Constitutional Convention of 1850-51 who are considered to have been attorneys.
35. Several states had recently amended their constitutions or adopted a new one by 1850. For example, California adopted its initial state constitution in 1849, which was referenced numerous times by delegates during the debates. California’s new constitution did not contain an Origination Clause nor does it now.
36. Governor Whitcomb in his annual address in 1848 indicated that there was broad support for amending the constitution, but that there was also concern that changes would be made that would outweigh the improvements. Ind. H. Journal, *supra* note 1, at 26.
37. John D. Barnhart and Donald F. Carmony, *Indiana: From Frontier to Industrial Commonwealth* 321-343; Donald F. Carmony, *Indiana, 1816-1850: The Pioneer Era* 157-63, 196 (1998); John Joseph Wallis, *The Property Tax as a Coordinating Device: Financing Indiana’s Mammoth Internal Improvement System, 1835 to 1842*, National Bureau of Economic Research, Historical Paper No. 136 (November 2001), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=290379.
38. *Journal of 1850*, *supra* note 8, at 942; *2 Report of the Debates*, *supra* note 17, at 2066.
39. *Stith Petroleum Co. v. Department of Audit & Control*, 211 Ind. 400, 404 (Ind. 1937) (“The term ‘for raising revenue’ is confined to bills to levy taxes in the strict sense of the word and does not apply for other purposes which may incidentally create revenue.”); *Ennis v. State Highway Com.*, 231 Ind. 311 (Ind. 1952); and *Orbison v. Welsh*, 242 Ind. 385 (Ind. 1962).
40. *U.S. v. Munoz-Flores*, 495 U.S. 385 (1991).
41. *Mikell v. School Dist.*, 359 Pa. 113 (Pa. 1948).



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SHORT-TERM RENTALS LAW

By Patrick Jones



GROWTH AND TENSION

Short-term rentals first entered the market in the mid-1990s.¹ Since then, the popularity of short-term rentals has risen dramatically on platforms such as Vrbo and Airbnb. It is estimated that, in 2024, short-term rentals generated \$183 billion in global rental revenue.² In terms of market share, the short-term rental share of the United States hotel market spiked from 8% in 2018 to 15% in 2023, only five years later.³ This means more than 2.4 million properties are being used as short-term rentals by 785,000 hosts in the United States.⁴

The growth in popularity of short-term rentals for both consumers and property owners has led to tension between a variety of competing interests. On the one hand, rising hotel costs⁵ have led consumers to seek alternatives to the traditional, chain-brand hotel model. Likewise, property owners have sought ways to monetize residential real estate in a more flexible way than is provided under a year-long or month-to-month lease. At the same time, local communities have pushed back against this trend, citing concerns over a reduction in affordable housing options, higher rents, the erosion of social capital, parking availability, public safety, and many others.⁶

Indiana is no exception to this struggle. Concerns relating to short-term rentals have been raised in numerous communities as local governmental units have attempted to grapple with the issues being raised by residents. Numerous approaches have been proposed, enacted, or explored by communities, from registries in Indianapolis,⁷ to a potential moratorium in Jeffersonville,⁸ to an outright

ban on properties with certain zoning classifications in Tippecanoe County.⁹

Given this, it is essential that Indiana practitioners—particularly those assisting clients with real estate transactions, assisting clients in zoning matters, or representing units of local government—be well-versed in the law regarding short-term rentals, both at the state level and in their local geographic areas of practice. This article attempts to provide such practitioners with a brief primer to assist them in navigating short-term rental related issues.

STATE LAW AND SHORT-TERM RENTALS

During the 2018 session, Indiana's legislature enacted House Bill 1034 (codified at Ind. Code § 36-1-24) (the "Act") in an attempt to establish uniform standards governing how and when local units of government can regulate short-term rentals.

Essential Definitions

First, the Act defines "short-term rental" as the

rental of: (1) a single family home; (2) a dwelling unit in a single family home; (3) a dwelling unit in a two-family or multifamily dwelling; or (4) a dwelling unit in a condominium, cooperative, or time share; for terms of less than thirty (30) days at a time through a short-term platform.¹⁰

The Act then distills this definition down further into owner-occupied short-term rentals,¹¹ which are properties offered to the public as a short-term rental, but which are also simultaneously the property owner's primary residence, and those short-term rentals which are not simultaneously occupied by the owner as their primary residence.

"It is estimated that, in 2024, short-term rentals generated \$183 billion in global rental revenue."

The distinction drawn by the legislature between owner-occupied short-term rental property and short-term rental property which is not owner occupied is the most essential component of the Act. It is this distinction, under the Act, which will in most circumstances govern what regulations a unit of local government can impose on a particular piece of property as it relates to that property's use as a short-term rental.

Owner-Occupied Short-Term Rentals

Under the Act, local units of government have less ability to regulate owner occupied short-term rentals. For instance, an owner-occupied short-term rental property "is a permitted residential use under any applicable zoning ordinance of a unit and many not be disallowed by any zoning ordinance...in a zoning district or classification of a unit that permits residential use."¹²

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In other words, the Act provides that if residential use is permitted in a zoning district, so are owner-occupied short-term rentals.

Short-Term Rentals Not Owner-Occupied and Local Restrictions Generally

The Act provides that short-term rentals that are not owner-occupied may be subjected to additional regulation by local units of government. For example, a local unit of government “may require a special exception, special use, or zoning variance for the short term rental property that is in the residential zoning district or classification of a unit.”¹³ However, the local unit of government “may not interpret and enforce the unit’s zoning regulations for a special exception, special use, or

zoning variance in a manner that is intended or has the effect of prohibiting or unreasonably restricting short term rentals of property.”¹⁴

Likewise, the Act imposes additional restrictions on local units of government by limiting the types of regulations it can impose on short-term rentals. While a local unit of government may enact an ordinance regulating short-term rentals, it can only do so as it relates to: “(1) Protection of the public’s health and safety related to: (A) fire and building safety; (B) sanitation; (C) transportation; (D) traffic control; and (E) pollution control; if enforcement is performed in the same manner as enforcement that applies to similar properties that are not short term rentals.”¹⁵

A local unit of government may also restrict short-term rentals as it relates to noise, protection of welfare, property maintenance, and nuisance issues, but, again, any enforcement must be performed in the same manner as enforcement that applies to similar properties that are not short-term rentals.¹⁶ Finally, a local unit of government may expressly prohibit short-term rentals in only a few categories: (A) to house sex offenders; (B) to operate a structured sober living home; (C) to manufacture, exhibit, distribute, or sell illegal drugs, liquor, pornography, or obscenity; (D) to operate an adult entertainment establishment; or (E) within the boundaries of a conservancy district.¹⁷

The Act makes it difficult for local units of government to prohibit short-term rentals. Local units of government are, however, authorized under the Act to require an owner to obtain a permit for their short-term rental(s) by adopting an ordinance to that effect.¹⁸ Such a permit may require only the following information: (1) the owner’s name, street address, mailing address, electronic mail address, and telephone number; (2) if a corporation or partnership, the state of incorporation of the organization and the names, residence address, and telephone numbers of the principal officers; (3) any property manager’s name, street address, mailing address, electronic mail address, and telephone number; and (4) a description of how any short-term rental is being marketed or advertised.¹⁹ The permit may not require any additional information and its cost may not exceed \$150.²⁰

Applicability of the Act

The Act significantly curtails a local unit of government’s ability to regulate short-term rentals within

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"In short, what needs to be done to operate a short-term rental can be dramatically different from one place to the next, and it behooves a practitioner to be aware of those requirements in the geographical areas in which they practice."

its jurisdiction. This is generally a boon to owners of such properties. However, this is not always the case.

The Act "does not apply to a unit that has adopted a zoning ordinance or any other ordinance before January 1, 2018, that prohibits, regulates, or restricts short term rentals in any manner."²¹ The "in any manner" language contained in the Act is exceptionally broad. While it has not been interpreted by Indiana's Courts, its plain meaning gives local units of government with ordinances enacted prior to January 1, 2018, restricting rental properties (including short-term rental properties) the ability to continue their regulation. Likewise,

local units of government with such ordinances are authorized under the Act to "amend or delete any provision of the ordinance...without complying with or becoming subject to [the Act]."²² As a result, local units of government with ordinances regulating short-term rentals prior to January 1, 2018, are free to amend that ordinance to address changing circumstances without subjecting the unit to the Act's provisions. However, while that provision allows amendment or deletion of "any provision" of such an ordinance without becoming subject to the statute, a unit *does* become subject to the statute if it *repeals* the ordinance that "prohibits, regulates,

or restricts short term rentals in any manner."²³ What constitutes "repeal" versus an "amendment" or "deletion" is subject to interpretation.

LOCAL REGULATION OF SHORT-TERM RENTALS

Given the Act, practitioners may get the false impression that an awareness of local law as it relates to short-term rentals is not necessary. The reality, however, is that depending on the county, city, or town in which you are practicing, the administrative requirements as it relates to short-term rentals can shift dramatically. For instance, in some localities, depending on how a parcel of property is zoned, a

property owner may be required to obtain a special exception or the use of a short-term rental on that property may be prohibited altogether. Similarly, a property owner may be required to obtain a permit prior to operating a short-term rental in one county but may have no such obligation in the neighboring county. In short, what needs to be done to operate a short-term rental can be dramatically different from one place to the next, and it behooves a practitioner to be aware of those requirements in the geographical areas in which they practice.

CONCLUSION

Short-term rentals have been a growing trend for many years now. It does not appear as if that trend will reverse course significantly in the immediate future. As a result, it is essential that practitioners representing clients in related areas understand this trend and how it is being regulated by both the state and by the local governmental units in which they practice. ☞

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10. Ind. Code § 36-1-24-6.
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14. *Id.*
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JULY CASES ADDRESS JUVENILE RIGHTS ADVISEMENT, DISCOVERY OF POLICE REPORTS, DOUBLE JEOPARDY

During July, the Indiana Supreme Court decided a case involving juvenile rights advisements. The Court of Appeals issued opinions addressing discovery of police reports, double jeopardy, and a messy belated appeal from an expungement order.

INDIANA SUPREME COURT

TRIAL COURT FAILED TO PROVE ADEQUATE ADVISEMENT OF JUVENILE RIGHTS

The General Assembly has enacted several statutes that provide additional or different rights, beyond those afforded to criminal defendants, to children in juvenile delinquency cases. For example, Indiana Code section 31-37-12-5 provides:

The juvenile court shall inform the child and the child's parent, guardian, or custodian, if the person is present, of the following:

- (1) The nature of the allegations against the child.
- (2) The child's right to the following:
 - (A) Be represented by counsel.
 - (B) Have a speedy trial.



- (C) Confront witnesses against the child.
- (D) Cross-examine witnesses against the child.
- (E) Obtain witnesses or tangible evidence by compulsory process.
- (F) Introduce evidence on the child's own behalf.
- (G) Refrain from testifying against himself or herself.
- (H) Have the state prove beyond a reasonable doubt that the child committed the delinquent act charged.

(3) The possibility of waiver to a court having criminal jurisdiction.

(4) The dispositional alternatives available to the juvenile court if the child is adjudicated a delinquent child.

In *D.W. v. State*, 263 N.E.3d 151 (Ind. 2025), the juvenile court advised the juvenile of the rights in subsections (1) and (3)—the nature of the allegations

and the possibility of transferring jurisdiction to the adult court. But the court did not discuss the rights and dispositional alternatives detailed in subsections (2) and (4).

The unanimous opinion of the Indiana Supreme Court agreed with the juvenile that the Advisement Statute's inclusion of "shall" created an obligation for the juvenile court to issue a full and formal advisement. *Id.* at 158. The court relied on the plain and ordinary meaning of "shall," which is mandatory and not merely directory. *Id.* Beyond the clear and plain language, Indiana courts "pay special heed to statutes governing the juvenile court system," because it is "crucial for the inner workings of the juvenile system that the trial court conduct, perform, and otherwise execute whatever statutory instructions are given to ensure the statute's ultimate [rehabilitative] purpose is served." *Id.* at 159. Although a signed, written advisement may be sufficient under some circumstances, the record

included no evidence that "D.W. ever received a written advisement of rights despite being promised that he would by the juvenile court." *Id.*

The justices then turned to the state's argument that the juvenile court sufficiently complied with the procedural requirements in the Juvenile Waiver Statute. The waiver statute provides:

Any rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or *any other law* may be waived:

(1) by counsel retained or appointed to represent the child **if the child knowingly and voluntarily joins with the waiver;**

(2) by the child's custodial parent, guardian, custodian, or guardian ad litem if:

(A) that person knowingly and voluntarily waives the right;

- (B) that person has no interest adverse to the child;
 - (C) meaningful consultation has occurred between that person and the child; and
 - (D) **the child knowingly and voluntarily joins with the waiver**; or
- (3) by the child, without the presence of a custodial parent, guardian, or guardian ad litem, if:
- (A) **the child knowingly and voluntarily consents to the waiver**; and
 - (B) the child has been emancipated....

Ind. Code § 31-32-5-1 (court’s emphases).

Having established that D.W. was deprived of a formal advisement of rights and dispositional alternatives under subsections (2) and (4) of the Advisement Statute, the court noted that a valid waiver of that right under the Waiver statute would require not only that “an adult (counsel or custodian) waive the right, but the *child himself* must ‘knowingly and voluntarily’ join with the waiver.” *Id.* at 162. Although D.W.’s counsel may have wished to waive the reading of rights, the juvenile “court failed to **personally interrogate D.W.** as to whether D.W. wished to do the same.” *Id.* at 163.

Offering guidance for future cases, the court concluded that “the time it would take a juvenile court to secure a waiver of advisement might exceed the time it would take to simply provide the juvenile with the formal advisement of rights.” *Id.* It therefore encouraged trial courts “to err toward providing a formal advisement as required by the Advisement Statute.” *Id.* Regardless, a “juvenile court may only accept a waiver of a formal advisement when

the procedural requirements of the Juvenile Waiver Statute are met.” *Id.*¹

INDIANA COURT OF APPEALS

DISCOVERY OF POLICE REPORTS

Prosecutors in most Indiana counties provide liberal discovery in criminal cases, but recent cases have addressed and invalidated some notable exceptions. In *Minges v. State*, 192 N.E.3d 893 (Ind. 2022), a case from Dearborn County, the Indiana Supreme Court invalidated the prosecutor’s blanket assertion of the work product privilege to police reports. It concluded that Trial Rule 26(B)(3) provided “adequate guidance for the trial court to determine—on a case-by-case basis—whether a police report is protectible work product.” *Id.* at 902.

A July opinion from the Court of Appeals involved a different county and practice: the Elkhart County Prosecutor’s Office’s policy of withholding from discovery police reports, under the Access to Public Records Act (APRA), unless counsel executes a Discovery Agreement. *Sanchez v. State*, No. 24A-CR-2299, 2025 WL 1934129 (Ind. Ct. App. July 15, 2025).

The Court of Appeals held that APRA was not applicable in a criminal discovery matter. It relied on Criminal Rule 2.5, which became effective in 2024. Although it “does not expressly list police reports among the mandatory disclosure items found in subsections (B)(2) through (B)(4), the rule’s clear intent is to facilitate liberal discovery and provide a criminal defendant with the maximum amount of relevant, unprivileged information within the State’s possession.” *Id.* at 5. The appellate court reiterated that under “*Minges*, the State may not withhold police reports from a defendant in a criminal case as a matter of course;

it must establish that the particular police reports at issue are privileged.” *Id.* Likewise, because the state had not “established any other applicable privilege, the trial court abused its discretion by denying Sanchez’s motion to compel disclosure of the police reports.” *Id.* at *6.

DOUBLE JEOPARDY

In *Stone v. State*, No. 24A-CR-2602, 2025 WL 1833146, at *2 (Ind. Ct. App. July 3, 2025), the Court of Appeals applied *Powell v. State*, 151 N.E.3d 256 (Ind. 2020), which applies when a single criminal act or transaction leads to multiple convictions under a single statute, to a case involving multiple criminal recklessness convictions for firing multiple shots at a vehicle with multiple people inside. These actions could support only one criminal recklessness conviction because (1) the statute doesn’t clearly indicate a unit of prosecution, and (2) “the defendant’s actions were so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction.” *Id.* at *2.

In *Potts v. State*, No. 24A-CR-2072, 2025 WL 1909841, at *3 (Ind. Ct. App. July 11, 2025) the Court of Appeals found no double jeopardy violation, reiterating that “rape by sexual intercourse and rape by ‘other sexual conduct’ are two separately punishable acts, even when perpetrated close in time.”

DISMISSAL OF BELATED APPEAL OF EXPUNGEMENT

In *Khan v. State*, No. 24A-XP-2829, 2025 WL 2166341 (Ind. Ct. App. July 31, 2025), the trial court granted an expungement petition in part (expunging 13 counts) and denied it in part (refusing to expunge one count) in April. In October, the defendant requested a virtual hearing, and the trial court entered



an order later that month denying the expungement, although it wasn't clear if that order applied to all fourteen counts or simply one. Regardless, the October order was void, because the April order was "a final disposition of Khan's expungement petition, as it resolved all issues presented and left no issue for further determination." *Id.* at *2.

The appellate court made clear that the statutory language "unambiguously" allows partial expungement of only some convictions in a multi-count case. *Id.* at *3. Moreover, "[c]omputer system limitations do not restrict judicial authority or override clear statutory mandates." *Id.* That "the Odyssey system cannot accommodate statutorily authorized partial expungements...is an administrative and technological problem to be resolved by...appropriate entities—not a call for courts to disregard statutory mandates in order to accommodate technology limitations." *Id.*

As a final point, the Court of Appeals declined to reinstate Khan's forfeited appeal. It reasoned that "Khan had the resources and opportunity to comply with appellate deadlines but failed to do so. And Khan's expungement matter does not concern fundamental liberty interests." *Id.* at *4. ☞

ENDNOTE

1. D.W.'s adjudication was nevertheless affirmed based on harmless error. Although he argued that "the failure to formally read him his rights impacted his overall defense strategy," the Indiana Supreme Court concluded it was "not clear what more D.W. could or would have done differently." *Id.* at 164.

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*By Adrienne Meiring and
Hannah Dyer*

BREAKING UP DOESN'T HAVE TO BE HARD TO DO: ETHICAL CONSIDERATIONS WHEN A LAWYER LEAVES A FIRM

Discussing the ethical considerations of leaving a law firm may seem incongruous at a time when a new crop of lawyers will soon be admitted to the bar. However, with the increasing mobility of professionals, lawyers less often stay with one or two employers during their careers, choosing instead to advance to different opportunities every three to five years. Given this trend, lawyers and law firm management should take a few moments when beginning a new professional relationship to consider the procedures that will be applied if the lawyer later decides to leave the firm.

After all, even in the best circumstances, a lawyer leaving a firm (especially if the firm is a smaller outfit) can lead to disruption, disappointment, and challenges in deciding how clients will be informed and who will represent those clients. In Advisory Opinion #1-25,¹ the Disciplinary Commission discusses the ethical considerations at play and suggests best practices for law firm management and lawyers to use when a lawyer is departing a firm. For simplicity, these practices can be broken into three distinct phases.

INITIAL HIRING AND DEPARTURE POLICIES

At the onset, incoming lawyers and law firm management need to discuss each other's ethical responsibilities if the employment relationship ever dissolves. While talking about a lawyer's hypothetical departure when onboarding a new lawyer may appear to send the wrong message, good preparation

"While talking about a lawyer's hypothetical departure when onboarding a new lawyer may appear to send the wrong message, good preparation by law firm management (and incoming lawyers) can avoid ethical headaches later and lead to more amicable departures if such a situation ever comes to pass."

by law firm management (and incoming lawyers) can avoid ethical headaches later and lead to more amicable departures if such a situation ever comes to pass. When having these discussions and reaching appropriate agreements, a couple of items must be remembered:

- **Restrictions on future law practice are prohibited.** Although seasoned lawyers may want to protect their law practices and clients by restricting an incoming lawyer's ability to practice in the same geographic area or to take clients upon departure, agreements to restrict a lawyer's ability to practice violate Indiana Rule of Professional Conduct 5.6.²
- **Communication blackouts with clients also are prohibited.** Both law firms and departing lawyers owe a duty to clients to provide adequate communication about a lawyer's departure so that clients can make informed decisions about the future of the representation. Separation agreements or policies that attempt to block a lawyer's ability to communicate with clients upon notification of imminent departure are inconsistent with Indiana Rule of Professional Conduct 1.4 (duty to communicate).

Such restrictions in lawyer-employment agreements not only interfere with a lawyer's "professional autonomy" and the "freedom of clients to choose a lawyer,"³ but they also fail to recognize the fiduciary responsibilities that lawyers owe to clients. Clients are not property, and policies that attempt to treat them as commodities to be coveted are viewed with disfavor under the Rules of Professional Conduct.

However, law firms *can* and probably should have written policies to share with incoming lawyers about what notice must be provided prior to departure from the firm. Further, having a policy that the firm favors cooperation when notifying affected clients also would be acceptable so long as the policy does not prohibit the departing lawyer from communicating with clients if an

agreed joint communication cannot be reached. Finally, to avoid future problems, law firm managers should impress upon incoming lawyers during the onboarding process that they should keep detailed, organized, and accurate records to ensure that, should they leave the firm, there can be a smooth transition of cases to another lawyer.

Similarly, to curb ethical issues later, an incoming lawyer would be wise to keep a record of cases in which the lawyer has a significant role for future conflict checks should the lawyer ever leave the firm.

NOTIFICATION AND CLIENT COMMUNICATION REGARDING THE LAWYER'S DEPARTURE

As with the dissolution of any relationship, separations between lawyers and their firm require clear communication with those affected. If law firm management has developed and implemented a written policy about notification of departure and maintenance of client files, navigating a lawyer's departure may be smoother, and those involved can move on to the task of notifying clients about the lawyer's upcoming departure.

Ideally, the law firm and departing lawyer should send an agreed joint communication to clients with whom the departing lawyer had significant contact. A lawyer will be deemed to have "significant client contact" if the client would identify the departing lawyer, by name, as one of the attorneys representing the client.⁴

The communication should (1) notify the client of the lawyer's upcoming departure; (2) explain the options the client has regarding representation: stay with the firm, go with the departing lawyer, or obtain their client file to go to another firm or lawyer; (3) inform the client about the status of fees and how any property will be handled; and (4) indicate what is expected from the client in response to the communication. All involved should remember that only the clients possess the authority to make decisions about the future of their cases, including the decision as to who will represent them in the future.



"Because a lawyer's ethical duties to clients continue even after the lawyer's departure from the firm, a departing lawyer should take steps to ensure that the clients' interests are protected, regardless of whether a client chose to follow the departing lawyer to the new firm, decided to stay with the lawyer's former firm, or to retain other counsel."

Before sending the communication to clients, law firm management should assess whether the firm has other lawyers with the appropriate expertise to handle the cases of the departing lawyer, in the event that clients wish to stay with the firm rather than go with the departing lawyer. If no remaining lawyer at the firm has the requisite skillset to handle the case(s), then the client should be referred to other counsel. For example, if the departing lawyer gained expertise in a specialized area, such as patent law, and no other lawyer at the firm has any experience or training in patent law, then firm representatives would need to refer the clients to other qualified counsel to comply





with their ethical responsibilities under Indiana Rule of Professional Conduct 1.1 (duty of competence).

Unfortunately, not all lawyer departures from a firm are amicable. In such situations, a departing lawyer may be tempted to notify clients about the move to a different firm before notifying management at the existing firm. Lawyers are encouraged to avoid this temptation and are reminded that they owe a fiduciary duty to their existing firm, which includes cooperating to ensure a smooth transition of client matters. Firm management should be notified before telling clients about the lawyer's upcoming move.

In these less amicable situations, separate communication may be preferable if the relationship between the lawyer and other members of the firm is too strained or if the firm management or departing lawyer feels that they cannot give a good-faith endorsement of the other. In these separate communications, law firm management and the departing lawyer still must advise clients of their various options and the status of their fees and other property.

ENSURING A SMOOTH TRANSITION—AVAILABILITY AND CONFIDENTIALITY FOLLOWING THE LAWYER'S DEPARTURE

Because a lawyer's ethical duties to clients continue even after the lawyer's departure from the firm, a departing lawyer should take steps to ensure that the clients' interests are protected, regardless of whether a client chose to follow the departing lawyer to the new firm, decided to stay with the lawyer's former firm, or to retain other counsel. These steps include remaining available to the client throughout the transition period, providing a copy of the client's file to the lawyer's previous firm, ensuring that the prior client's information remains confidential, and maintaining an accurate and complete client list so that the lawyer can conduct conflict checks at any subsequent firm the lawyer joins.⁵

On the flip side, law firms must cooperate in the orderly transition of client files and remaining fees when a client decides to follow the departing lawyer to the new firm. Failure by either side to honor these continuing obligations not only constitutes a breach of fiduciary duties but also potentially could lead to ethical problems.

Ultimately, if lawyers and firm management remember their ethical duties and do periodic file maintenance checks throughout a lawyer's tenure, departures do not have to be painful. For further understanding of these duties, lawyers are encouraged to review Advisory Opinion #1-25⁶ and to submit specific ethics questions to the Disciplinary Commission's informal ethics guidance at www.in.gov/courts/ojar/attorney-resources/guidance. [Ⓢ]

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ENDNOTES

1. Indiana Supreme Court Disciplinary Commission, Advisory Op. #1-25, Navigating a Lawyer's Departure From a Firm (Apr. 7, 2025), <https://www.in.gov/courts/ojar/attorney-resources/opinions/>.
2. Ind. Prof. Cond. R. 5.6 (2025); *see also In re Truman*, 7 N.E.3d 260, 261 (Ind. 2014).
3. Ind. Prof. Cond. R. 5.6, cmt. 1; *see also Truman*, 7 N.E.3d at 261.
4. Ind. Sup. Ct. Disc. Comm. Adv. Op. 1-25, fn. 1 (citing to ABA Formal Opinion 489, p. 3 (2019)).
5. *See* Ind. Prof. Cond. R. 1.6, 1.7, 1.8, 1.9, and 1.16(d).
6. Ind. Sup. Ct. Disc. Comm. Adv. Op. #1-25 at <https://www.in.gov/courts/ojar/attorney-resources/opinions/>.

**By Dakota C. Slaughter and
Farrah N. Goodall**

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LOCAL ELECTED OFFICIALS AS PART-TIME EMPLOYEES, COMMITMENT APPEALS, AND MORE IN JULY

In July 2025, the Indiana Supreme Court issued two civil opinions, one of which arose from its lone civil transfer grant that month. This article also highlights one Court of Appeals opinion from the month.

INDIANA SUPREME COURT

FULL-TIME DEBATE, PART-TIME COVERAGE: COURT SPLITS ON COUNTY OFFICIAL'S HEALTH INSURANCE COVERAGE

Perry County v. Huck, No. 24S-PL-297, 2025 WL 2047598, --- N.E.3d ---- (Ind. July 22, 2025) — In 2023, an elected member of the Perry County Common Council and his wife participated in Perry County's group health insurance program. Indiana law provides that public employers such as a county "may provide programs of group insurance for its employees..." but they "may, however, exclude part-time employees...from any group insurance coverage...." Ind. Code § 5-10-8-2.6(b). In June 2023, the Perry County Board of Commissioners voted to discontinue coverage for its part-time employees starting in 2024 and



classified local elected officials as part-time employees. As a result, the councilman lost coverage and sought a preliminary injunction against the county, arguing that as an elected official, he is not a “part-time employee” that the board can exclude from coverage.

The applicable statutory chapter defines “employee” in two relevant ways: (1) “an elected or appointed officer or official, or a full-time employee,” and (2) “for a local unit public employer, a full-time or part-time employee...” Ind. Code § 5-10-8-1(1)(A), 1(1)(C). However, the statutes do not define “full-time” or “part-time.” Thus, the two parallel definitions do not expressly address when an individual is an elected official of a “local unit public employer” such as a county.

Various interpretive approaches emerged and diverged. The trial court entered a preliminary injunction in the councilman’s favor, agreeing with his argument that as an elected official, he was not a “part-time employee.” On appeal, the Court of Appeals concluded that the councilman was an “employee” under the statutes but reasoned that the statutes give the board authority to discontinue coverage for elected officials who are *also* part-time employees. The court turned to the Internal Revenue Service definition of a “full-time employee”

as employed on average of 30 hours per week or 130 hours per month. With the undisputed evidence that the councilman averaged nine hours of work per month, the Court of Appeals reversed the preliminary injunction.

The Indiana Supreme Court granted transfer. The three-justice majority relied on the interpretive canon that a more specific provision controls over a general one and thus focused exclusively on subsection 1(1)(C) (“for a local unit public employer...”), which identifies only full-time or part-time employees. In that vein, the court reasoned that any local elected official paid under the county’s salary ordinance (as opposed to *state* elected officials) fell within the subsection, and thus the board had flexibility or discretion to classify elected officials as part-time. The court held that the councilman had not shown a reasonable likelihood of success on the merits, reversed the trial court, and vacated the preliminary injunction.

Chief Justice Rush concurred in the judgment. In her view, as the more specific definition of subsection (1)(1)(C) omits elected officials, the councilman was not an “employee,” and the statutory scheme did not prevent the board from excluding elected officials from

group health insurance. She further concluded that the councilman failed to show irreparable harm as required for injunctive relief, describing his loss of benefits as purely economic absent evidence of health-related harm or inability to secure other insurance.

Justice Goff dissented. Recognizing the competing definitions, he concluded the text of the statute is ambiguous and resorted to related statutes to aid interpretation. To that end, the Compensation Statute (Ind. Code § 36-2-5-13) provides that an “elected county officer...may not be compensated based on the number of hours worked” and expressly includes “health insurance” benefits as “compensation.” Therefore, Justice Goff reasoned that the councilman could not be classified as a part-time employee without considering hours worked, in violation of the statute, and thus the legislature intended elected officials to be their own category of employees. He concluded that the board could not discontinue an elected official’s compensation based on hours worked and would have affirmed the trial court’s entry of a preliminary injunction.

FROM MOOT TO MERITS: SUPREME COURT APPLIES RECENT PRECEDENT TO CORRECT CONFLICTING RULING ON COMMITMENT APPEALS

Matter of Commitment of M.C., 262 N.E.3d 836 (Ind. 2025)—A man exhibiting manic behavior arrived at a mental health facility. The facility petitioned for a temporary involuntary commitment. At the hearing, a treating psychiatrist testified that the man exhibited delusional and disorganized thinking, refused medication, and was fixated on traveling to Washington, D.C., to broadcast a “state of emergency.” The physician believed that if discharged, the fixation on travel and lack of stable income would impair the man’s ability to provide himself with food and shelter. The trial court found the man gravely disabled within the meaning of Indiana Code § 12-7-2-96 (“an individual, as a result of mental illness, is in danger of coming to harm because the individual...is unable to provide for that individual’s food, clothing, shelter, or other essential human needs”) and ordered a temporary commitment. The man appealed, arguing the facility presented insufficient evidence and that his appeal was not moot after his commitment had expired. The Court of Appeals dismissed his appeal as moot.

After the Court of Appeals’ dismissal, the Indiana Supreme Court decided *J.F. v. St. Vincent Hospital & Health Care Center, Inc.*, 256 N.E.3d 1260 (Ind. 2025) in May 2025, holding that a timely appeal from a temporary involuntary

civil commitment is not moot when the order expires unless the appellee proves the absence of collateral consequences. (In this context, collateral consequences refer to the lasting legal and practical effects of a commitment order, such as statutory firearms restrictions or possible impacts on employment opportunities.) Acknowledging the conflict with *J.F.*, the court granted transfer, vacated the dismissal, and affirmed the trial court’s order, concluding that the evidence supported the finding that the man was gravely disabled. Justice Slaughter dissented from the grant of transfer.

INDIANA COURT OF APPEALS

NO DETOUR AROUND EXHAUSTION: AOPA’S NARROW EXCEPTION REPLACES COMMON-LAW WORKAROUNDS

Shockley v. Indiana Real Estate Appraiser Licensure & Certification Board, 24A-PL-2064, 2025 WL 2078959, --- N.E.3d --- (July 24, 2025)—A licensed real estate appraiser faced disciplinary charges before the Indiana Real Estate Appraiser Licensure and Certification Board related to three eminent domain appraisals on the I-69 project. Before his administrative hearing, the appraiser moved to disqualify two of its five members for alleged bias (one had served as a settlement conference liaison, and another’s appraisal firm had contracts with INDOT) and to exclude the state’s expert witness, who lacked an Indiana appraiser’s license. The board denied his motions, and the appraiser petitioned a trial court for judicial review of the board’s preliminary rulings. The trial court granted a motion to dismiss the petition.

The Court of Appeals affirmed dismissal of the petition, holding that Indiana’s Administrative Orders and Procedures Act (AOPA) permits judicial review only after *final* agency action, unless the petitioner meets the statute’s narrow exception: showing both immediate and irreparable harm and no adequate remedy at law. In doing so, the court clarified that the AOPA’s statutory exception has supplanted broader common-law exceptions to the exhaustion requirement, such as those for futility or ministerial duties, that existed under the repealed Administrative Adjudication Act.

The court found no immediate, irreparable harm in allowing the challenged board members to participate or the expert to testify, reasoning that potential bias or improper evidence could be addressed through judicial review after a final order, with the possibility of a stay to prevent enforcement. Speculative harm, economic loss, or the inconvenience of continuing the hearing did



not qualify. Nor was there an absence of an adequate legal remedy, as the appraiser could raise these same objections in post-hearing judicial review. ⁽⁴⁾

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