SEPTEMBER 2025

INDIANA STATE BAR ASSOCIATION

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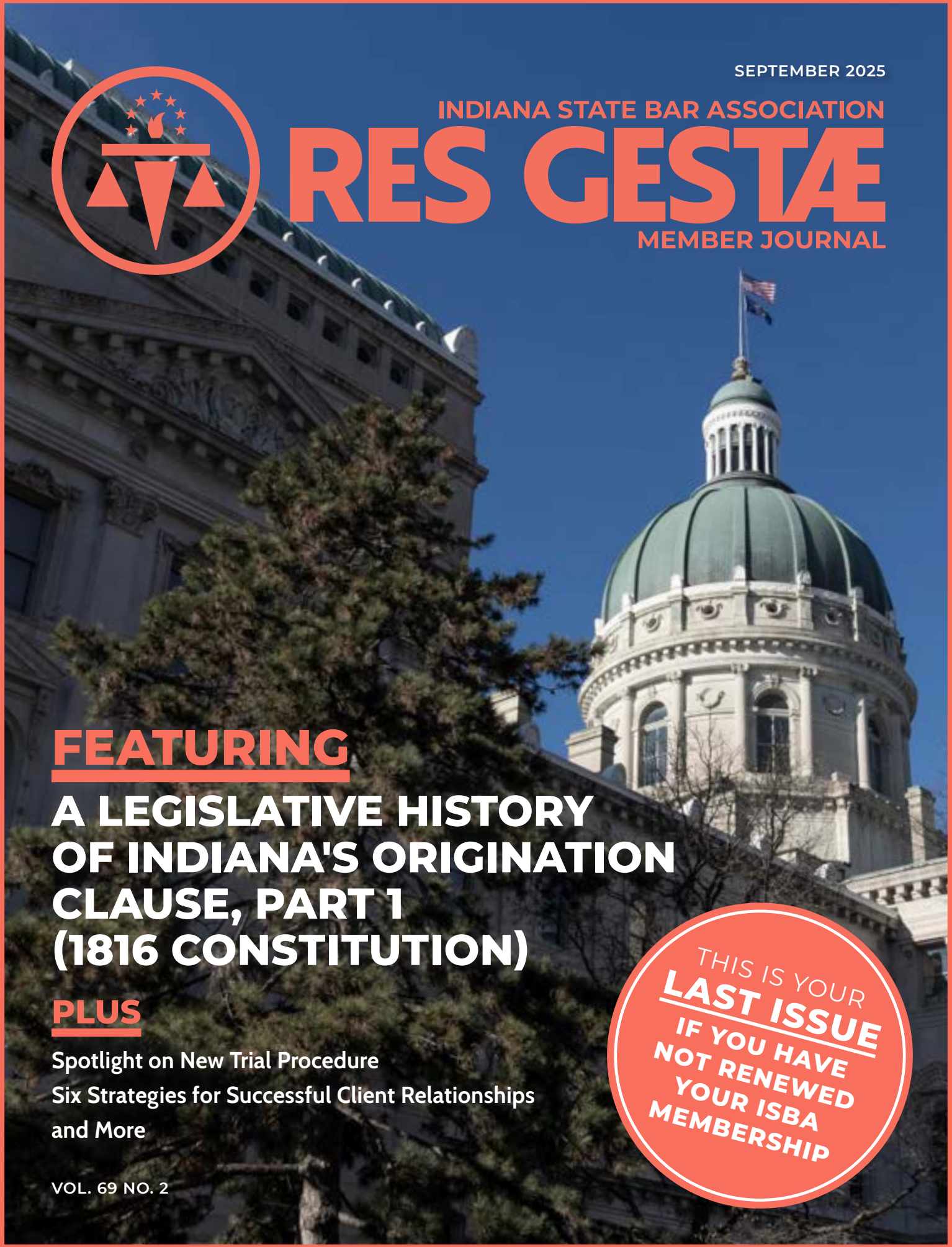

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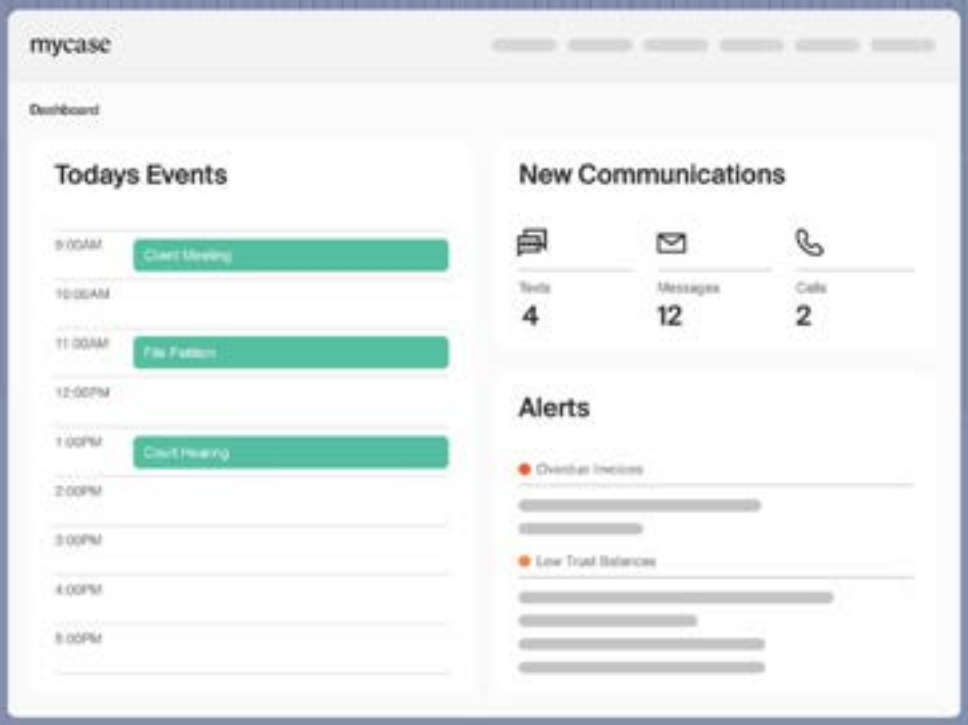

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COMMUNITY CORNER BLOG

Your home to stories that connect members and initiate conversations. Stay up to date with what ISBA groups are doing, gain unique insights into the profession, and celebrate what it means to be a member of the ISBA.

THERE'S MORE ONLINE:

Read these articles and more like them at inbar.org/CommunityCorner

SUBMIT CONTENT

ISBA members are encouraged to submit articles to the Community Corner blog. If you have a story you'd like to tell, contact Abigail Hopf (ahopf@inbar.org) with a description of the article or idea and why you think it should be shared.

Around the Corner: ISBA Sections & Committees in Action

The Pro Bono Committee won the 2025 ABA Harrison Tweed Award, the Tax Section awarded three law student scholarships, and more...

Not Every Lawyer Follows the Flowchart: Starting a Solo Practice as a New Attorney

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The Rule of Law: Additional Resources and Commentary

The July/August 2025 issue of Res Gestae included perspectives on the rule of law and the role that legal professionals play in protecting, upholding, and educating others about it. Now it's time for you to continue the conversation...

President's Perspective

PASSING THE TORCH: REFLECTIONS ON THIS JOURNEY AND THE ROAD AHEAD

By Michael Jasaitis

PRESIDENT'S PERSPECTIVE

As I prepare to pass the gavel to incoming President John Maley, I find myself reflecting on the profound privilege it has been to serve alongside the exceptional lawyers, judges, and staff who make up our Indiana legal community. As a first-generation college student with no lawyers in my family tree, I never imagined I would one day lead this distinguished association. My path serves as a reminder that in our profession, like in our great state, opportunity doesn't discriminate based on pedigree. Whether you hail from the historic halls of higher education or the cornfields of rural Indiana, whether your family lineage traces back to legal legends or to hardworking steel mill folks who never stepped foot in a courtroom, your voice matters, your perspective is valuable, and your potential is limitless.

This has been a year of remarkable progress. From the historic Law Day gathering at the Birch Bayh Federal Building, where we reaffirmed our non-partisan commitment to the Rule of Law, to our groundbreaking legal incubator program and the acceptance of a national award at the ABA Annual Meeting in Toronto, we have consistently demonstrated that the Indiana legal community is both rooted in tradition and forward-looking in vision.

Our attorney shortage plan, developed through collaboration between our task forces and the Supreme Court's Commission on Indiana's Legal Future, represents exactly the kind of innovative thinking our profession needs. We have learned that it's better to take thoughtful, strategic action than to stand still while the world changes around us.

The enthusiasm I witnessed at our 2024 Annual Summit was refreshing. Your willingness to tackle difficult questions about paths to licensure, alternative practice models, and rural practice solutions proved once again that our strength lies in our collective wisdom and shared commitment to justice. We worked together with precision and purpose in efforts to propel the practice.

Throughout this year, I've also been continually inspired by the spirit of community that defines our profession. Whether watching my daughter speak about the powerful example set by accomplished women in our profession or witnessing the collaborative spirit at the Great Rivers Bar Conference, I have seen how our connections not only strengthen the practice of law but also the very fabric of society. Many of you have embodied what it means to be both vigilant guardians and caring lookouts. You

"Whether you hail from the historic halls of higher education or the cornfields of rural Indiana, whether your family lineage traces back to legal legends or to hardworking steel mill folks who never stepped foot in a courtroom, your voice matters, your perspective is valuable, and your potential is limitless."

have coached new attorneys, reached out to overwhelmed colleagues, and shown up for one another in both celebration and challenge. These acts of community care make our Indiana legal family truly exceptional.

This is why our efforts to build a "feeder system" for the legal profession are crucial. Just as Carmel High School's 37th consecutive swimming championship demonstrates the power of nurturing young talent, we, too, must invest in inspiring the next generation. Through classroom visits, mock trials, and programs like We the People, we can plant seeds of justice in young minds. Sometimes the beautiful game of mentorship creates the most lasting impact, one careful pass of wisdom at a time.

And none of this year's accomplishments would have been possible without extraordinary dedication from so many. To our ISBA staff, led by Executive Director Joe Skeel, you are truly the backbone of everything we do. To the past presidents who generously shared their wisdom, thank you for demonstrating that honoring traditions can coexist with embracing necessary change. To Chief Justice Loretta Rush and our entire judiciary, thank you for your partnership and inspiring leadership. To my fellow task force members, the Board of Governors, and my Executive Committee, your commitment to thoughtful analysis exemplifies the very best of strategic and selfless leadership.

As I prepare to hand the gavel to John Maley, I do so with complete confidence that our association will be in exceptional hands. John is truly a legend in our profession, a practitioner whose career embodies the highest ideals of the law, a mentor who has shaped countless attorneys, and a leader whose vision and integrity have already left an indelible mark on Indiana's legal landscape.

"Remember that true change often begins with small acts of courage and compassion: a returned phone call that guides someone through their darkest hour, a pro bono case that keeps a family in their home, or representing a student-athlete whose mental health hangs in the balance."

Throughout his distinguished career, John has demonstrated the rare combination of professional excellence and genuine care for others that defines the very best of our profession. His commitment to justice, contributions to the evolution of the bar exam, and dedication to unwavering ethical standards make him the ideal leader to guide us through the opportunities and challenges ahead. In this high-stakes game of leadership, John holds all the right cards.

John, as you take on this role, know that you have the full support of this association and the deep respect of your colleagues. Your experience, wisdom, and passion for our profession will undoubtedly lead us to even greater heights.

As I conclude my presidency, I want to leave you with this challenge: continue to be changemakers. Whether through the ISBA, local bar associations, pro bono work, community service, or coaching a youth sports team, find your passion and pursue it. For me, it began in 2002 when I started representing high school student-athletes navigating complex eligibility disputes. What began as a small part of my practice has evolved into one of my most meaningful endeavors: helping young people level the playing field when navigating a system that can seem overwhelming to families without legal representation. Personally, there are few things more satisfying than watching a young athlete take the field for their first game after months of appeals, reminding me why we became lawyers in the first place.

I encourage each of you to carve out time in your practice to serve those who need assistance but may not have the resources to secure it. Remember that true change often begins with small acts of courage and compassion: a returned phone call that guides someone through their darkest hour, a pro bono case that keeps a family in their home, or representing a student-athlete whose mental health hangs in the balance. Even when the spotlight isn't on you, your voice can make all the difference in someone's life.

To our experienced members: reach out to the younger generation. Like the legendary hospitality found in the hills of southern Indiana, welcome newcomers with open arms and generous spirit. Share your wisdom and create opportunities for them to grow. To our younger members: you are the lifeblood of our association. I cannot say this enough. Do not wait for an invitation; take the initiative. Your perspectives are necessary for the continued evolution of our profession.

As we look toward the future, let us remember that our commitment to the Rule of Law is not optional. We chose to join a profession dedicated to justice under the law. That choice carries obligations that extend beyond individual success to collective responsibility for maintaining our legal system's integrity. In the game of justice, every lawyer can be a valuable player in the starting lineup. Let us ensure that future generations inherit a legal system as strong as the one we inherited. This is our calling, our obligation, and our greatest service.

Thank you for the privilege of serving as your president. It has been the honor of a lifetime to work alongside such dedicated professionals. Together, we have emerged stronger, more innovative, and more united in our commitment to justice. Like the checkered flag at the end of a great race, this conclusion marks not an ending, but the celebration of a journey well-traveled and the promise of exciting roads ahead.

As we pass the torch to President Maley, I am filled with optimism about the future of our profession. With leaders like John at the helm and members like you committed to excellence, I have no doubt that the Indiana State Bar Association will continue to thrive and serve as a beacon of justice for all Hoosiers.

Thank you for this incredible journey. The future of law in Indiana is bright indeed.

ISBA UPDATE

By Res Gestae Editor

YOUR GUIDE TO THE 2025 ISBA ANNUAL MEETING

Reconnect with your purpose, your peers, and your profession at the 2025 ISBA Annual Meeting, held October 9–10 at the Marriott Indianapolis North Hotel.

At this year's meeting, you will:

- Earn up to 6.2 hours of CLE, including 1 hour of Ethics
- Level up your practice through breakout sessions focused on your career stage and professional goals
- Gain insight and peer-to-peer mentorship through career-diverse homeroom groups
- Celebrate ISBA leadership and welcome the new president and board of governors

Learn more about the meeting and register at www.inbar.org/annualmeeting.

WHAT TO EXPECT

The Annual Meeting combines professional development with community-building, networking, and leadership opportunities. Registration includes CLE programming led by expert facilitators and legal leaders, a welcome reception, evening social, breakfast, and lunch.

THURSDAY, OCTOBER 9

- 12:00 – 1:00 p.m.
  - ➔ ISBA Board of Governors Lunch
- 1:00 – 3:00 p.m.
  - ➔ ISBA Board of Governors Meeting
- 3:30 – 5:30 p.m.
  - ➔ House of Delegates Meeting
- 5:30 – 7:00 p.m.
  - ➔ Reception
- 9:00 p.m.
  - ➔ Social, hosted by the Young Lawyers Section

FRIDAY, OCTOBER 10

- 8:15 – 9:00 a.m.
  - ➔ Breakfast and Homeroom Roundtables
- 9:05 a.m. – 12:25 p.m.
  - ➔ Morning Breakouts
- 12:30 – 2:00 p.m.
  - ➔ Lunch with Assembly Meeting
- 2:00 – 3:40 p.m.
  - ➔ Afternoon Breakouts
- 3:45 – 4:30 p.m.
  - ➔ Wrap up and Homeroom Roundtables

PROGRAMMING HIGHLIGHTS

This year's CLE programming addresses the big-picture personal and professional challenges attorneys face across their careers. Topics will include:

- Strengthening your legal toolkit, from writing strategies to navigating the billable hour
- Finding your place in the legal community and building professional relationships
- Identifying your goals and learning how to balance them with the priorities of your organization
- Marketing yourself to new clients and colleagues
- Balancing a heavy workload and an ever-evolving set of responsibilities
- Hiring and retaining skilled professionals
- Developing an effective strategy for the next stage of your career
- Thinking beyond day-to-day management to long-term leadership and innovation

In addition to traditional CLE programs, you will also meet in small "homeroom" groups—facilitated conversation groups designed for reflection and peer-to-peer mentorship. You'll hear different perspectives on the CLE you've attended, gain insight into how others navigate common challenges, and walk away with ideas you can apply in your own practice.

View the full schedule of breakout tracks and learn more about homerooms at www.inbar.org/annualmeeting.

GET INVOLVED WITH THE HOUSE OF DELEGATES

The House of Delegates (HOD) is ISBA's supreme legislative body, represented by delegates from each Indiana county and ex officio members from ISBA leadership. The HOD Meeting on October 9 is your opportunity to vote on key matters and hear updates from ISBA leadership, the Indiana Supreme Court, the Indiana Bar Foundation, and more.

Members can serve as voting delegates by representing their county. Each county is allotted a certain number of delegates, calculated based on the number of ISBA members within that county. For counties in which local bars have not selected their delegate(s), ISBA members are invited to self-nominate.

If you'd like to serve as a delegate:

1. Check if your county has an open spot at www.inbar.org/about-HOD. You must live or work in the county you select to represent.
2. Register for the HOD Meeting at www.inbar.org/annualmeeting. Be sure to select "Yes, I will attend as a voting delegate" for the House of Delegates Meeting option, then select which county you will be representing.
3. All registered delegates will receive official meeting materials in advance as required by ISBA bylaws.

If you have any questions, please contact Kim Latimore-Martin at klatimore-martin@inbar.org.

The Annual Meeting is your space to invest in your professional growth, strengthen your network, and chart your path forward. We hope to see you there.

A LEGISLATIVE HISTORY OF INDIANA'S ORIGINATION CLAUSE, PART I (1816 CONSTITUTION)

FEATURE

By Gregory S. Mize

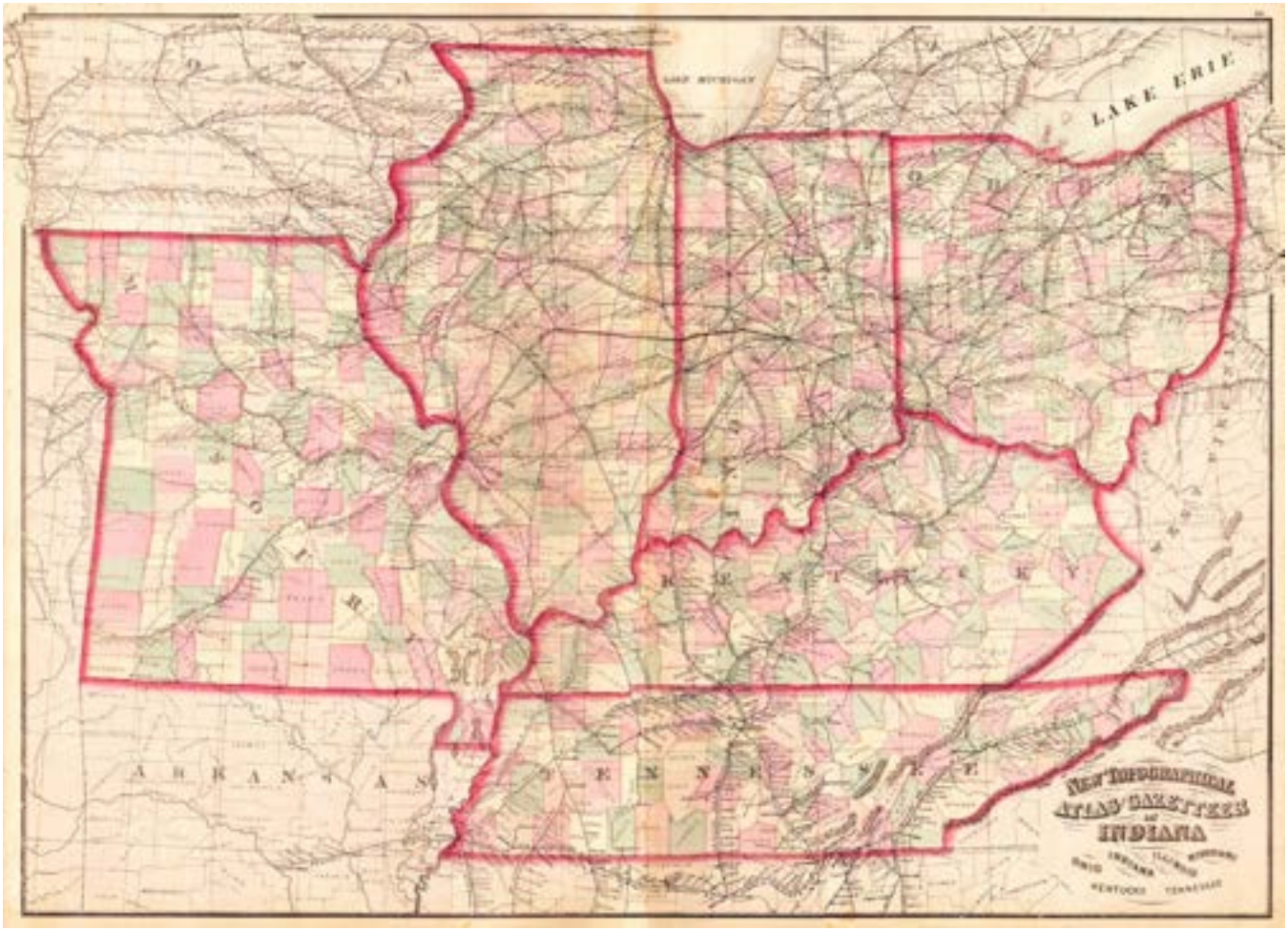
This is part one of a two-part article on the legislative history of Indiana's Origination Clause. Part two, discussing the Constitutional Convention of 1850–51, will appear in October's issue of *Res Gestae*.

The Origination Clause in Article IV of the Indiana Constitution imposes a procedural constraint on the legislative branch. That fact creates some tension in terms of judicial review. There are very few Indiana Supreme Court cases interpreting the provision—all of which were decided more than 50 years ago—and there is little secondary authority specific to Indiana for guidance. I hope this article may contribute some useful research on this provision of the state's constitution.

The Indiana Constitution provides that bills for raising revenue must originate in the House of Representatives. This requirement is an exception to the general rule that bills may begin in either legislative chamber and is commonly referred to as an Origination Clause. Indiana is one of 20 states that currently have state constitutions that contain this requirement.[1] The federal Constitution has a similar provision for acts of Congress.[2]

Indiana's Origination Clause constitutionalizes a rule of legislative procedure and can be viewed as requiring members of the House of Representatives to take the political initiative in proposing revenue raising legislation.[3] It also arguably provides a "first-mover advantage" to the House of Representatives to frame the fiscal agenda.[4] It does not prohibit the Senate from amending a revenue raising bill that passes over from the House of Representatives, subject to the rule of germaneness, altering the bill, or simply not taking the bill up for consideration or refusing to concur.

This type of legislative prerogative developed in English common law[5] and was carried over to the colonies in drafting early state constitutions.[6] An Origination Clause was included in the federal constitution after significant debate and proposals to amend the language. In the end, the Origination Clause was adopted as part of a compromise or "counterpoise" to some exclusive powers afforded to the Senate,[7] the representational advantage for small states in the Senate, and the representation in the House of Representatives based on population.[8]



"The territorial laws allowed for a progressively more representative government as the territory developed, and Harrison's administration as territorial governor received increasing opposition as that process took place."

The following is a brief legislative history of how an Origination Clause ended up in the Indiana Constitution. It focuses on the political environment, the economic and fiscal concerns at the time, as well as the personalities and motivations of the convention delegates that may have contributed to the inclusion of an Origination Clause in the Indiana Constitution.

THE INDIANA TERRITORY FROM 1800 TO 1816

Indiana existed as a territory for 16 years under the Northwest Ordinance before pursuing statehood in 1816. The history of the Indiana Territory and events leading up to the convention provide some context for considering the origins of Indiana's Origination Clause.

Territorial government under the Northwest Ordinance consisted of a governor appointed by Congress, and in a second stage, a five-member legislative council and a House of Representatives, which could be formed once the population of the territory reached 5,000. The members of the House of Representatives were elected, and the members of the legislative council were appointed by Congress

from a list of nominees. The governor had discretion to convene the legislature and held absolute veto power over any laws passed.[9] The legislative council and the House of Representatives had joint authority to appoint a non-voting member to Congress.[10]

The Indiana Territory was formed with the division of the Northwest Territory into two separate governments in 1800 and further divided in 1805 and again in 1809 to the state's current geographic boundaries.[11] Willam Henry Harrison and later Thomas Posey served as territorial governor during this time. The territorial laws allowed for a progressively more representative government as the territory developed, and Harrison's administration as territorial governor received increasing opposition as that process took place. Factions formed between Harrison's "office-holding clique of friends and appointees," referred to as "Harrisonites" or "aristocrats," and those in opposition, referred to as the "popular party." Harrison used his veto power to prevent moving the capital from Vincennes to Madison during his time as territorial governor. Representation in the legislature was also a point of contention during this period.[12]

The popular party or faction gained legislative control as the population increased. In 1809, Jonathan Jennings was elected as the territory's delegate to Congress at 25 years of age in an election described as "one of the biggest political upsets in the region's history" over Harrison's handpicked candidate.[13] Jennings led the opposition to the Harrison administration and held his seat in Congress for the remainder of the territorial period.

The population of the Indiana Territory was 63,897 when Congress passed an enabling act authorizing the territory to pursue statehood on April 19, 1816.[14] Jennings chaired the congressional committee that considered the territorial request, and he drafted and introduced the enabling legislation. Delegates to the convention were elected on May 13, 1816.

INDIANA CONSTITUTION OF 1816

Indiana began the process of writing a state constitution on June 10, 1816, in Corydon, Indiana, and was approved for statehood that same year. The aristocrats in the territorial government were the minority or opposition group at the constitutional convention and included Benjamin Parke of Knox

"In drafting, the convention delegates drew heavily, both in 'substance and phraseology,' from the Ohio Constitution of 1802 and the Kentucky Constitution of 1799."

County and James Dill of Dearborn County. The popular party held the majority at the convention and was led by Jonathan Jennings and James Noble, an attorney from Brookville and former speaker of the territorial House of Representatives. Jennings was elected president of the convention. The members adopted procedural rules, and committees were appointed to prepare the governing articles for the new constitution. The convention, which was criticized for its brevity, adjourned within 19 days with the adoption of the state's first constitution.[15]

The delegates to the Constitutional Convention of 1816 are described as "a responsible group, though hardly distinguished"[16] and as "clear minded, unpretending men of common sense."[17] Most were farmers with the addition of about a dozen preachers and a small number of lawyers.[18] In drafting, the convention delegates drew heavily, both in "substance and phraseology," from the Ohio Constitution of 1802 and the Kentucky Constitution of 1799.[19] English Professor William E. Wilson observed that "there was little that was original in the constitution that the delegates adopted in Corydon. They copied large parts of [the legislative article] word for word from the Ohio Constitution."[20] They did not "take time to create a constitution de novo."[21]

On the third day of the convention, Noble was appointed chair of the committee for the legislative department, and, illustrating the pace of the convention, the legislative committee submitted its report to the convention the next morning for consideration.[22] It is obvious that the Ohio Constitution served as a template for the legislative committee report submitted by Noble. Most of the reported sections are drawn verbatim from that constitution, including corresponding section numbers.

Notably, the Ohio Constitution of 1802 did not contain an Origination Clause. Instead, the Ohio Constitution explicitly provided otherwise. It read: "Bills may originate in either house, but may be altered, amended or rejected by the other."[23] This same provision was included in Noble's legislative committee report and ultimately adopted at the convention as Section 16, Article III, of the 1816 Constitution. An Origination Clause was not added until later.

The report submitted by Noble was referred to a committee of the whole convention on June 13, 1816. Benjamin Parke chaired the committee.[24] The Convention Journal indicates that on June 17, 1816, two meetings took place to consider the legislative committee report, first in the morning and again in the afternoon. At the end of that day, a motion was made by James Scott of Clark County to refer Section 19 of the committee report together with an unspecified proposed amendment to a select committee.[25] The next morning, the committee of the whole convened again and submitted an amended legislative article which was ordered engrossed for second reading.[26]

Although it is not explicit from the record, an Origination Clause was most likely introduced in the process at this point.[27] The sections of the legislative article contained in the committee report were reorganized to include an Origination Clause as Section 19. With this change, Section 19 of the initial committee report was renumbered as Section 20 and substantive changes to the language in that section were made. In addition, the age qualifications for legislators were reduced from 30 years of age in the initial committee report for both chambers to 21 years of age for representatives and 25 years of age for senators, and the length of term for senators was extended from two years to three years.

Section 19 of Noble's initial committee report prohibited the appointment of legislators, during their time in office, to any "civil office of this state" that is created, or the emoluments of which are increased, during such time. When renumbered to Section 20, the provisions were broadened to disqualify any state or federal officeholder from a seat in the General Assembly unless they resigned their office before the election, and to prohibit currently serving members of the General Assembly from being eligible for any office, the appointment of which is vested in the General Assembly.[28]

The legislative article was placed on second reading on June 20, 1816. Motions were made at that time to amend the qualifications and

length of the term for legislators. For example, a motion was made to remove, as part of the qualifications for representatives, a requirement that candidates "shall have paid a State or county tax." This motion was defeated by a vote of 19 to 23.[29] A motion was also made to reduce the term of senators from three years to two years back to the original language of the committee report, which was defeated by a vote of 17 to 25.[30] Motions were adopted regarding the residency requirements for representatives and to make a grammatical change, and the legislative article was referred to the committee of revision.

The legislative article was taken up again on June 26, 1816. William Cotton of Switzerland County made a motion to add the following sentence to Section 20, which completed the language of that section as it appears in the state's first constitution:

> *Provided*, That nothing, in this constitution shall be so construed as to prevent any member of the first session of the first general assembly from accepting any office that is created by this constitution, or the Constitution of the United States, and the salaries of which are established.

This last-minute exception to the legislative appointment provision narrowly passed by a vote of 22 to 19.[31] It may also have prompted James Smith of Gibson County to thereafter make a motion to remove Section 20 altogether, which failed by a vote of 9 to 28.

Finally, motions were adopted to move two sections of the legislative article to the article containing general provisions.[32] One of the sections described the residency requirements for appointments for county offices.[33] The other section established compensation for state office holders, including legislators, which could not be increased for three years.[34]

As amended, the legislative article passed on third reading and was enrolled on June 27, 1816. The Origination Clause contained in Section 19, Article III, of the 1816 Constitution reads as follows:

> Sect 19. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject, as in other bills.

"It is not unreasonable to conclude that an Origination Clause was added to the state's first constitution as part of a compromise and incentive in reaching the necessary consensus needed to make the changes to the eligibility provisions for office and possibly in connection with the increased term length for senators."

This language is very similar to Kentucky's Origination Clause in that state's first constitution, with a few grammatical changes.[35]

No record of the debates was kept but considering the changes to the legislative article, it appears that there were at least two possibly competing agendas or policy goals discussed in the committee meeting of the whole that day regarding the legislative article. The first being the matter of funding the new state government and the resulting new taxes that would entail, and second, who would be eligible to fill the newly created offices.

There were eight delegates to the Constitutional Convention of 1816 who voted against pursuing statehood on the second day of the convention and whose opposition centered on fiscal concerns.[36] Historian Donald F. Carmony noted that the increased tax burden that came with transitioning to the second stage of territorial government and then to statehood was of concern throughout development of the Northwest Territory.[37] Territorial government may have been autocratic and less representative, but it also came with low taxes and significant federal subsidies that kept them low.[38] Those federal subsidies would be lost with the transition to statehood.[39] Before the convention, it was commonly believed that taxes would double to support the new state government and some argued that statehood should be delayed to allow further settlement which would increase the population and expand the tax base.[40]

Former Chief Justice Brent Dickson observed that the structure of government under the 1816 Constitution can be viewed

as "a reaction to the powerful, centralized territorial government set up by the Northwest Ordinance."[41] The addition of an Origination Clause in the legislative article would seem to address those sentiments as it related to the new state's taxing authority as well as provide a legislative check on the increased tax burden anticipated to come with statehood. Perhaps the lower chamber of the legislature would be more circumspect in crafting the state's initial taxing policy.

Moreover, there was considerable jockeying taking place at the convention regarding the newly created offices both in the state and federal government. There were deals to be made at the state's first constitutional convention.[42] The leaders of the popular party were looking ahead to the spoils of their political success.[43] One contemporary several years later recorded that the leaders at the convention "recognized that personal political conflicts must arise between them unless the proper arrangements were made to avoid them," that they agreed to aid each other in their pursuit of their political goals, and that the final amendment to Section 20 of the legislative article was made in furtherance of those goals.[44]

The popular party assumed most of the offices coming out of the convention. For example, Noble was elected to the House of Representatives following the convention and on the fourth day of the first session of the General Assembly he was appointed to the United States Senate.[45] Under the federal Constitution at the time senators were chosen by the state legislatures and not by popular vote.[46] The series of amendments to Section 20 of the legislative article during the course of the convention ultimately made this type of appointment possible. As provided in Noble's initial committee report, the appointment would have been acceptable. That changed when amendments were made in the committee meeting of the whole chaired by Benjamin Parke. Then at the end of the convention an exception was made, but only for the first session of the General Assembly.

It is not unreasonable to conclude that an Origination Clause was added to the state's first constitution as part of a compromise and incentive in reaching the necessary consensus needed to make the changes to the eligibility provisions for office and possibly in connection with the increased term length for senators. The delegates accepted most all the legislative provisions copied from the Ohio Constitution without significant change, except for those provisions, which were likely a central topic in the committee meeting of the whole and that were revised again at the end of the convention by a narrow vote. An Origination Clause was added as part of that process.

In an editorial in the Vincennes *Western Sun* prior to the convention, one of the opponents to statehood lamented the existing territorial tax burden that was sure to increase with the loss of federal funding and the "enormous expenses that must accumulate to support a great increase of offices" created with statehood.[47] This was no small proportion of the territory's operating budget,[48] and raising this point in opposition to the convention seems to confirm that the fiscal concerns with statehood were probably closely tied during the debates with the provisions that would apply to the newly created offices.

CONCLUSION

Finally, it is worth noting that the Origination Clause added in Section 19 appears to be an exception to Section 16, if not contradictory. The provisions are not combined in the same section. If read separately, Section 16 taken from the Ohio Constitution allows bills for raising revenue to originate in either chamber, while Section 19 prohibits them from originating in the Senate. Whether that was intentional is not apparent. It may be that it was overlooked by the committee of revision, but there is also some possibility that it was left alone perhaps to diminish the significance of Section 19.[49] At any rate, the inclusion of an Origination Clause in Indiana's first constitution appears to have been a matter of bargaining or compromise, although the record of the convention is absent as to what, if any, objections or supporting arguments for an Origination Clause may have been made at the time.

ENDNOTES

1. Ala. Const. art. IV, § 70; Colo. Const. art. V, § 31; Del. Const. art. VIII, § 2; Ga. Const. art. III, § 5, para. II; Id. Const. art. III, § 14; Ind. Const. art. 4, § 17; Ky. Const. § 47; La. Const. art. III, § 16; Me. Const. art. IV, pt. 3, § 9; Mass. Const. pt. 2, ch. I, § 3, art. VII; Minn. Const. art. IV, § 18; N.H. Const. pt. 2, art. 18; N.J. Const. art. IV, § 6, 1; Okla. Const. art. V, § 33; Or. Const. art. IV, § 18; Pa. Const. art. III, § 10; S.C. Const. art. III, § 15; Tex. Const. art. III, § 33; Vt. Const. ch. II, § 6; Wyo. Const. art. 3, § 33.
2. U.S. Const. art. I, § 7.
3. Thomas L. Jipping, *TEFRA and the Origination Clause: Taking the Oath Seriously*, 35 Buff. L. Rev. 633, 649 (1986).
4. Adrian Vermeule, *The Constitutional Law of Congressional Procedure*, 71 U. Chi. L. Rev. 361, 423-24 (2004).
5. 1 William Blackstone, *Commentaries on the Laws of England* 163 (1765).

6. The Delaware Constitution of 1776, South Carolina Constitution of 1778, and Massachusetts Constitution of 1780 all contained an Origination Clause.
7. *The Federalist No. 66* (Alexander Hamilton).
8. 1 *The Records of The Federal Convention of 1787* 233-34, 522-47 (Max Farrand ed., 1911).
9. Northwest Territory Ordinance of 1787.
10. Congress approved an act in 1809 authorizing the direct election of the Indiana territorial delegate to Congress as well as the members of the legislative council. John D. Barnhart and Donald F. Carmony, *Indiana: From Frontier to Industrial Commonwealth* 114 (1954) [hereinafter *Indiana: From Frontier to Industrial Commonwealth*].
11. Hubert H. Hawkins, *Indiana's Road to Statehood: A Documentary Record* 24-26, 42-32, 48-50 (1964).
12. *Indiana: From Frontier to Industrial Commonwealth*, *supra* note 10, at 143-45, 149.
13. Randy K. Mills, *Jonathan Jennings: Indiana's First Governor* 97 (2005).
14. William E. Wilson, *Indiana: A History* 88 (1966).
15. William P. McLauchlan, *The Indiana State Constitution: A Reference Guide* 4 (1996) (noting that the constitution of 1816 became effective upon the signature of the convention delegates on June 29, 1816; it was not submitted to the people for ratification).
16. Wilson, *supra* note 14, at 91.
17. John B. Dillon, *A History of Indiana: From 1816 to 1856* 559 (1859).
18. R. Carlyle Buley, *The Old Northwest: Pioneer Period, 1815-1840* 69 (1983).
19. Charles Kettleborough, *Constitution Making in Indiana* 16 (reprinted version 1917).
20. Wilson, *supra* note 14, at 93.
21. James Albert Woodburn, *Constitution Making in Early Indiana: An Historical Survey*, 10 Ind. Mag. of Hist. 237, 240 (1994).
22. *Journal of the Convention of the Indiana Territory* 13, 15 (1816) [hereinafter *Journal of 1816*].
23. Ohio Const. of 1802, art. I, § 16.
24. Benjamin Parke was an attorney from Vincennes who served as judge of the Indiana Territory from 1808 to 1816 and was appointed as U.S. District Judge for Indiana following the convention. Parke was a close ally of William Henry Harison during the territorial period and is described as "probably the most able and most experienced member of the convention." *Indiana: From Frontier to Industrial Commonwealth*, *supra* note 10, at 152.
25. *Journal of 1816*, *supra* note 22, at 32-33 (The Convention Journal reads: "It was then moved by Mr. Scott, that the nineteenth section of said article, together with the amendment proposed, be referred to a select committee.").
26. *Id*. at 34.
27. Historian Charles Kettleborough points out that "[n]o section corresponding to Section 19 [the Origination Clause] was reported by the [legislative] committee and there is no record of the time or manner of its adoption. * * * An amendment, the nature of which is not indicated, was proposed to original Section 19 in committee of the whole, and it was then moved that Section 19 and the proposed amendment be referred to a select committee. There is no evidence that the motion was adopted or acted upon."1 Charles Kettleborough, *Constitution Making in Indiana: A Source Book of Constitutional Documents with Historical Introduction and Critical Notes* 94, fns. 15 and 16 (1916). Granted, the Convention Journal fails to indicate that Scott's motion was adopted, nor is there any record of the select committee meeting or any indication that an amended committee report was submitted by the select committee with the proposed changes. Nevertheless, it is telling that no motions were made on the record to add an Origination Clause in the legislative article it was placed on second reading, which tends to show that it was already added prior to engrossment.
28. Ind. Const. of 1816, art. III, § 20.
29. *Journal of 1816*, *supra* note 22, at 39.
30. *Id*. at 40.
31. *Id*. at 59.
32. *Id*. at 60.
33. Ind. Const. of 1816, art. XI, § 14.
34. Ind. Const. of 1816, art. XI, § 16.
35. Ky. Const. of 1792, art. I, § 26 ("All Bills for raising revenue shall originate in the House of Representatives; but the Senate may propose amendments as in other bills.").
36. Donald F. Carmony, *Fiscal Objections to Statehood in Indiana*, 42 Ind. Mag. of Hist. 311, 311-21 (1946).
37. *Id*.; *see also Indiana: From Frontier to Industrial Commonwealth*, *supra* note 10, 101-02, 107-08; and John D. Barnhart and Dorothy L. Riker, *Indiana to 1816: The Colonial Period* 413-14 (1971). In 1801, William Henry Harrison successfully opposed the transition of the territorial government to the second stage of representation by calling attention to "the increased costs which the people would have to bear" with the expansion. Harrison reversed his position three years later and the Territory moved to the second stage of government in 1804. Again in 1811, members of the territorial House of Representatives opposed a memorial seeking statehood at that time citing the cost-effective advantages of remaining a territory and suggesting that expenditures would increase by fourfold with statehood.
38. Two-thirds of territorial expenditures were paid from federal appropriations. *Id*. at 313.
39. There was also fiscal concern regarding statehood because of the tax exemption for public land sales. Buley, *supra* note 18, at 68-69. As part of the Enabling Act of 1816, federal lands sold in the state would be exempt from any tax during a period of five years. In turn, 5% of the net proceeds from the sales would be reserved for making public roads and canals in or leading to the state. Hawkins, *supra* note 11, at 64-67.
40. Carmony, *supra* note 36, at 319.
41. Brent E. Dickson, *Indiana's Constitutional Past*, 68 Ind. Hist. Bull. 2 (1997).
42. Woodburn, *supra* note 21, at 240-241.
43. Wilson, *supra* note 14, at 97 ("As to the 'people's party,' the men in control had begun their crusade against the Harrison forces with laudable intentions and at Corydon formed, on the whole, an excellent constitution, but their idealistic beginnings quickly deteriorated into selfish trade in public offices that revealed them as clever politicians but hardly statesman.").
44. Oliver H. Smith, *Early Indiana Trials and Sketches* 84 (1858).
45. Ind. H. Journal, 1st. Gen. Assemb., Reg. Sess. 15 (1816).
46. U.S. Const. of 1787, art. I, § 3.
47. Editorial, *To the People of Indiana*, Western Sun, Vincennes, Indiana (April 20, 1816), *available at* https://newspapers.library.in.gov/?a=d&d=WS18160420.1.1&e=-------en-20--1--txt-txIN-------.
48. *Indiana: From Frontier to Industrial Commonwealth*, *supra* note 10, at 318 ("During the years 1800 to 1816 the total annual cost of the territorial government averaged less than $10,000, about two-thirds of which was provided by a direct subsidy from the federal treasury. Salaries to executive, legislative, and judicial officials consumed most of the total….").
49. "Often in legislative drafting purposeful ambiguity in which both sides can claim victory or at least not feel they have been defeated can be important to achieving success." U.S. Senator Mitch McConnell, video recorded lecture on the Legacy of Henry Clay given at the University of Kentucky (September 6, 2012), *available at* https://www.c-span.org/video/?307973-1/us-senator-mitch-mcconnell-henry-clay.

SPOTLIGHT ON NEW TRIAL PROCEDURE AND ADMINISTRATIVE RULES

By Hon. Marianne L. Vorhees

The Indiana Supreme Court Committee on Rules of Practice and Procedure[1] has heard over the years that local rules can vary greatly from county to county, and they can create "traps" for unwary litigators. In 2022, the Civil Litigation Taskforce[2] issued a report, which included proposed changes to eliminate local rules that conflict with the Trial Rules.

The Rules Committee responded to these concerns by proposing rule changes, which the Supreme Court adopted effective January 1, 2025.[3]

WHAT DO YOU NEED TO KNOW ABOUT THE NEW RULES?

Rule 3.1(H): Attorneys in a law firm can now file a substitution of appearance to change counsel in a case.

Rule 3.1(K): "Ten day letters" prior to withdrawing are not required in (1) criminal, juvenile, or family law cases, where no motion is pending and no trial or hearing is set; and (2) in any case, after another attorney files an appearance on the party's behalf.

Rule 6(B): A party can obtain one automatic, thirty-day enlargement of time without a court order by filing a notice on or before the original due date.

Rule 6(D): State-wide, there is now one rule for responses to a pleading or motion: twenty days service. Replies are due within fourteen days after the response is served.[4]

Rule 7(C): If you are requesting a hearing on a motion, file the request for the hearing by separate motion. This ensures the court sees your request for the hearing.

Rule 7(D): Written motions for continuance now require much more detail, in order to assist the court and to ensure fairness to the opposing party. The motion must state whether the opposing party agrees or objects; if you don't know their position, you must include how and when you tried to contact them and the result. If you could not give any notice, you must state how you tried to give notice and why actual notice should not be required. You must also tell the court how much time is required when rescheduling the hearing and how much time should elapse before the hearing is rescheduled.

Rule 10: The Trial Rules now include state-wide requirements for forms of pleadings, motions, memoranda, and briefs, which incorporate the same requirements in the Appellate Rules. Inconsistent local rules requiring certain fonts, spacing, etc. are abrogated.

The Rules Committee accepts suggested rule amendments at https://www.in.gov/courts/iocs/committees/rules/rule-proposal/. We look forward to your comments and suggestions!

ENDNOTES

1. Most refer to us as the Rules Committee.
2. The Supreme Court established the Civil Litigation Taskforce in January 2021, to analyze and recommend steps "to make Indiana's system of justice more efficient, less expensive, and easier to navigate while continuing to ensure that justice is fairly administered, and the rights of all litigants protected." You can read the taskforce's recommendations at https://www.in.gov/courts/admin/files/innovation-cltf-report.pdf.
3. You can find the amendments, with tracked changes, in the court's order dated October 30, 2024, available at https://www.in.gov/courts/files/order-rules-2024-1030-admin-trial.pdf.
4. Exceptions: motions to continue (TR 7), summary judgment motions (TR 56), and motions to correct error (TR 59).

SIX STRATEGIES FOR SUCCESSFUL CLIENT RELATIONSHIPS

By Tony Paganelli

The only thing worse than having no clients?

Having the wrong ones.

Every attorney wants a thriving practice, but taking on bad clients can lead to stress, unpaid bills, and professional headaches. Managing client relationships effectively—from intake to final billing—requires strategy, boundaries, and clear communication.

A well-run practice isn't just about legal expertise. It's about selecting the right clients, setting clear expectations, maintaining strong communication, and ensuring you get paid for your work. When done right, you avoid many of the pitfalls that make practicing law unnecessarily frustrating.

Here are six strategies for managing clients successfully, from the first consultation to staying on their radar long after the case is closed.

1. DECIDE WHEN TO SAY NO

Early in your career, it's tempting to take any client who walks through the door. But not every potential client is a good fit. In fact, some will make your life miserable. Bad clients don't just take up your time—they dispute bills, refuse to listen, and can damage your reputation.

So how do you spot a bad client? There are warning signs you should never ignore. If a potential client says any of the following, proceed with caution:

- **"I fired my last two lawyers."** This usually means they're difficult, unrealistic, or both.
- **"You're more expensive than everyone else I talked to."** If they don't see the value in your services, they'll argue over every invoice.
- **"Do you really need a retainer? I'm good for it."** If they resist paying upfront, chances are they'll resist paying later.

- **"I can pay you as soon as I start my new job."** A client who doesn't have the money now isn't suddenly going to have it later.
- **"My friend is a lawyer, and he says my case is a slam-dunk."** They're going to second-guess your judgment and push unrealistic expectations.

Bad clients just aren't worth it. A single bad client can consume more time and energy than 10 good ones. They'll call at all hours and demand immediate responses, ignore your advice but blame you when things go wrong, and argue over every invoice, forcing you to chase payments.

A strong intake process helps you filter out the wrong clients before they become your problem. If your gut tells you it's a bad client, don't take them on.

2. THINK LIKE A LANDLORD: SET BOUNDARIES EARLY

Successful landlords don't rent out apartments without a lease, a security deposit, and clear expectations. Your legal practice should be no different.

- **Use engagement letters**. Treat them like a lease—they define the relationship and set expectations.
- **Get a retainer**. Think of it as a security deposit to ensure payment.
- **Keep your clients informed**. Regular communication prevents problems before they arise.

A strong engagement letter protects both you and the client. It should include the identity of the client (is it the company, or an individual?), the scope of work and what is not included, fee structure and payment terms, expense policies, retainer amount and renewal policies, litigation hold and document retention policies, and personal guaranty (if applicable).

One of the most common mistakes attorneys make is assuming a handshake agreement is enough. It's not. Make sure your client signs the engagement letter before you begin work.

3. THINK LIKE A CLIENT: MANAGE EXPECTATIONS

Clients hire you because they need help—but that doesn't mean they understand the legal process. In fact, most don't. Their biggest concerns are speed and cost, not the intricacies of the law.

Clients often want their case to be fast, cheap, and good, but that's not possible. You must manage expectations from day one.

- **Fast and cheap?**
  ➔ It won't be good.
- **Fast and good?**
  ➔ It won't be cheap.
- **Good and cheap?**
  ➔ It won't be fast.

To clients, speed often matters more than victory. Many clients aren't looking for a dramatic courtroom victory. They just want the problem to go away. If you understand this, you can serve them better and avoid unnecessary conflict.

So set expectations early. Unspoken expectations lead to resentment. Clients will assume the best-case scenario unless you explain otherwise. If you don't tell them their case will take months, they'll

"Good fences make good neighbors. Setting clear expectations, communicating proactively, and knowing when to walk away are all essential to running a successful law practice."

expect it to wrap up in weeks. If you don't explain legal fees clearly, they'll assume costs will be low. Don't let clients set unrealistic expectations for you—set them yourself.

4. GET PAID

Every lawyer has a story about a client who refused to pay. The best way to avoid this is to set clear expectations and stick to a consistent billing process. To get paid on time:

- **Send bills early and often**. Clients prioritize paying those who bill them consistently.
- **Make it easy to pay**. Accept credit cards, online payments, or automatic billing.
- **Follow up immediately on late payments**. The longer you wait, the harder it is to collect.

If a client doesn't pay, instead of demanding payment aggressively, start with a simple email: "Bob, my bookkeeper tells me your bill is about a week past due. Is everything okay?"

This approach opens the door for communication and helps you gauge the situation. Possible responses:

- "I didn't get the bill. Can you resend it?"
- "I forgot. I'll pay now."
- "The bill was too high."
- "I lost my job."

By addressing non-payment quickly, you can often resolve issues before they escalate.

5. KNOW WHEN (AND HOW) TO EXIT

Sometimes, the best decision is to walk away. If a client's invoice is 60 days past due, chances are they'll never catch up. If they're trying to get free work and keep dodging payments, they may never intend to pay. If the relationship has soured, become disrespectful, or unreasonably demanding, it's time to move on.

You can withdraw ethically:

- **Follow professional conduct rules**. In Indiana litigation, you must give 10 days' written notice before moving for leave to withdraw. Check your local rules for potential additional requirements.

- **Inform the client clearly**. Outline the status of their case and potential consequences of withdrawal.
- **Prepare to transfer the file**. You can't hold a file hostage for unpaid fees.

If a client fires you, move to withdraw immediately, get written consent to transfer the file, and handle it professionally.

6. STAY ON CLIENTS' RADARS

Happy clients are your best referral source. But if you don't stay in touch, they'll forget you. Stay connected with simple touches throughout the year.

- **Send birthday and holiday messages**—a simple email or card keeps relationships warm.
- **Engage on LinkedIn and social media**. Congratulating clients on promotions or milestones helps maintain connections.
- **Calendar in quarterly check-ins**. A short "Hope all is well" email keeps you on their radar.

Past clients can become future clients—or refer you to someone who needs legal help.

Good fences make good neighbors. Setting clear expectations, communicating proactively, and knowing when to walk away are all essential to running a successful law practice. And when in doubt? Pick up the phone.

As managing attorney at PLG, Tony Paganelli is responsible for the firm's business operations in Indianapolis and Bloomington. He also practices in the areas of business and real estate litigation, mediation, and business law, and he frequently advises corporate officers, senior executives, and professionals on employment law matters.

By Suzy St. John

JUNE CASES DISCUSS APPEALS IN JUVENILE DELINQUENCY PROCEEDINGS, SPEEDY TRIAL VIOLATIONS, MORE

In June, the Indiana Supreme Court addressed the state's authority to appeal in juvenile delinquency proceedings, while the Court of Appeals decided issues involving speedy trial violations, ineffective assistance of counsel during jury selection, and voluntariness in contraband possession cases.

INDIANA SUPREME COURT

THE STATE FORFEITED ITS RIGHT TO APPEAL BY MISSING THE 30-DAY DEADLINE, DESPITE UNCERTAIN STATUTORY AUTHORITY

In *State v. B.H.*, 25S-JV-47 (Ind. June 30, 2025), the state sought approval to file a juvenile delinquency petition after B.H. allegedly battered a correctional officer while incarcerated. The incident occurred when B.H. was 17, but the state didn't seek approval to file the petition until after B.H. turned 18. The trial court denied approval, citing "LACK OF JURISDICTION," and denied the state's motion to correct error, reasoning that the state "did not file a case against [B.H.] until he reached" age 18. The state sought and was granted permission to file an interlocutory appeal.

The Indiana Supreme Court concluded it need not resolve whether Indiana Code section 35-38-4-2 authorized the state's appeal from the trial court's order denying approval of the delinquency petition. The court noted tension in applying this criminal statute to juvenile proceedings, observing that much of the statute uses terminology like "indictment or information" and "prosecution," which doesn't fit juvenile delinquency cases. Also, the trial court's order did not grant a motion to "dismiss" but rather denied the state's request to approve its petition. In a footnote, the court welcomed legislative clarification on the statute's applicability to juvenile delinquency cases.

The court found that even if the statute authorized the appeal, the state forfeited its right to appeal by filing an untimely notice of appeal. The court declined to reinstate the forfeited right because the state did not present "extraordinarily compelling reasons" for doing so under *In re O.R.*, 16 N.E.3d 965 (Ind. 2014). Unlike cases involving fundamental liberty interests, the state is "a sophisticated litigant with ample resources" to ensure compliance with appellate rules. The court dismissed the state's appeal.

INDIANA COURT OF APPEALS

TRIAL COURT POLICIES THAT SHIFT BURDEN OF TIMELY PROSECUTION TO DEFENDANTS VIOLATE INDIANA CRIMINAL RULE 4(C)

In *Heitz v. State*, 24A-CR-802 (Ind. Ct. App. June 6, 2025), the Court of Appeals reversed a denial of a motion to dismiss under Criminal Rule 4(C). Heitz was charged with identity theft in December 2022, but discovery issues plagued the case for nearly 11 months as multiple prosecutors struggled to collect and redact necessary documents. The trial court had a policy of asking defendants whether they wanted a trial date set and attributing any delay to defendants who declined, even when the state also had not sought trial dates.

When Heitz finally requested a trial date in December 2023 after discovery was complete, the court scheduled trial for March 11, 2024—15 months after charges were filed. The trial court denied Heitz's motion to dismiss, finding that her repeatedly declining to seek trial dates were defendant-caused delays under Criminal Rule 4(C).

The Court of Appeals found the trial court's policy misapplied Criminal Rule 4(C) by improperly shifting the state's burden of timely prosecution to the defendant. The state bears the sole responsibility for bringing defendants to trial within one year. The court distinguished this case from situations where defendants affirmatively seek continuances, explaining that Heitz's declination of trial dates while discovery remained outstanding was reasonable and did not constitute "delays caused by a defendant." Applying the discovery exception (to the general rule attributing delay from defendant's continuance motions), the court held that delays from the state's failure to provide mandatory discovery could not be charged to Heitz. Because the Rule 4(C) deadline had expired before the scheduled trial date, dismissal should have been granted.

Judge Felix dissented, arguing that Heitz affirmatively delayed proceedings in February 2023 and that the discovery exception should not apply absent specific discovery requests.

THE STATE'S CONTINUANCE REQUEST UNDER INDIANA CRIMINAL RULE 4(D) WAS REASONABLE WHEN WITNESS NEEDED EMERGENCY SURGERY

In *Moore v. State*, 24A-CR-2507 (Ind. Ct. App. June 23, 2025), the Court of Appeals affirmed the denial of a motion for dismissal under Criminal Rule 4(C). Moore was charged with child neglect and battery. The state subpoenaed a pediatrician to testify at trial. Eleven days before the trial, the state learned the witness was having emergency surgery and would be unavailable.

The trial court initially denied the state's continuance motion. However, after the state moved for reconsideration citing Criminal Rule 4(D), which allows for a 90-day extension of the Rule 4(C) deadline under certain conditions, the court granted the continuance over Moore's objection.

Moore argued the state did not exercise reasonable diligence because the witness worked a half-day on the original trial date, suggesting she was available to testify. The court held that the state satisfied Criminal Rule 4(D)'s requirements: the witness's testimony was evidence that the state was entitled to present, it was presently unavailable due to emergency surgery, the state made reasonable efforts to secure the witness's presence, and the testimony could be obtained within 90 days. The court found that the witness working a half-day did not show she was available for the six-hour round trip to testify, especially given evidence that she still had vertigo and did not drive herself to work that day. The court affirmed the decision to continue the trial under Rule 4(D) rather than dismiss the charges against Moore.

TRIAL COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO ERRONEOUS VOIR DIRE PROCEDURES DESPITE JUDGE'S WARNING IT WAS AN APPEALABLE ISSUE

In *Scott v. State*, 24A-PC-2482 (Ind. Ct. App. June 25, 2025), the Court of Appeals reversed a murder conviction and remanded for a new trial based on ineffective assistance of trial counsel. Scott was charged with murder and claimed self-defense. Before jury selection, the trial court announced it would not allow attorneys to directly examine prospective jurors, explicitly saying it disagreed with the Court of Appeals' recent decision in *Doroszko v. State*, which found such procedures violated Trial Rule 47(D).

The trial court told trial counsel: "If things do go [the state's] way, I'm giving [trial counsel] an issue to appeal" and "I've given you an issue should things not go your way." Despite these warnings about creating an appealable issue, trial counsel did not object to the procedures or make a record regarding prejudice.

On direct appeal, the Court of Appeals found the issue waived due to lack of objection and affirmed under the fundamental error standard. Shortly after, the Indiana Supreme Court granted transfer in *Doroszko*, reversing the murder conviction where there had been a claim of self-defense and emphasizing that "when a trial court completely forecloses voir dire examination related to a defendant's claim of self-defense, reversal is generally required." *Doroszko v. State*, 201 N.E.3d 1151, 1157 (Ind. 2023).

The Court of Appeals found Scott's trial counsel's performance was deficient because no reasonable attorney would fail to object to procedures that a recent opinion had declared erroneous, particularly when the judge explicitly said he was creating an issue for appeal. The court noted that its *Doroszko* opinion had provided a "specific roadmap" for avoiding harmless error by developing the record on prejudice, which Scott's trial counsel ignored. Scott was prejudiced because a proper objection would have resulted in review under the more favorable harmless error standard rather than fundamental error.

VOLUNTARINESS DEFENSE SUCCEEDS WHEN OFFICERS DID NOT WARN OR SEARCH INTOXICATED DEFENDANT FOR CONTRABAND BEFORE PLACING HIM IN JAIL

In *Gary v. State*, 24A-CR-2712 (Ind. Ct. App. June 23, 2025), the Court of Appeals reversed a conviction for possessing material capable of causing bodily injury by an inmate. Gary was arrested while heavily intoxicated and described as "like a rag doll." Officers found and seized a methamphetamine pipe during a pre-transport search but did not conduct a thorough search at the jail.

Four officers carried the limp Gary directly into a dry cell without searching or patting him down. Later, as Gary became more coherent, he informed jail staff he had a knife and "starter kit" (pepper spray and lighter). When officers approached his cell, Gary said: "It's all my fault? You all brought me in here with that on me."

The court distinguished this case from *Baker v. State*, 208 N.E.3d 626 (Ind. Ct. App. 2023), where a defendant had been warned about bringing contraband into jail and chose to conceal it. Gary was not given any warning or opportunity to disclose the items before entering jail. No evidence showed that Gary made a voluntary choice to enter the jail while possessing prohibited items. Because Gary volunteered information about the items and the "criminal action" of voluntarily failing to dispose of or disclose items before entering jail was not present, there was insufficient evidence to support his conviction.

Suzy St. John is a staff attorney at the Indiana Public Defender Council and part-time appellate public defender.

ETHICS

By Meg Christensen and Katie Jackson

SWITCHING TEAMS: ETHICS OF LAWYERS CHANGING FIRMS

The 2025 Indiana Pacers gave us a season to remember. With grit, unselfish play, and a little postseason magic, they stunned the East and marched all the way to the NBA Finals. The Fieldhouse was electric—Reggie Miller sat courtside with his son, Lance Stephenson hyped up the crowd, Pat McAfee reminded the world that basketball runs through Indiana, and the Indy 500 winner showed up, fresh off Victory Circle, to cheer on the blue and gold.

Then came heartbreak. Tyrese Haliburton went down in Game 7, and the energy shifted. Just weeks later, Myles Turner announced he was heading to a rival. (One of the authors may or may not have named her child after him, so we're taking the news a little hard. Hence, this ethics article.)

Law firm departures can feel just as emotional. Lawyers, like athletes, move for opportunity, culture fit, or a better shot at winning big cases. But unlike NBA front offices, lawyers aren't trading jerseys—they're carrying client relationships, confidences, and ethical obligations with them. That's why lateral moves raise significant issues under the Indiana Rules of Professional Conduct.

"As ABA Formal Opinion 489 puts it, lawyers can leave firms, but the transition must not interfere with the client's ability to choose counsel freely."

This article explores the key ethical considerations when lawyers "switch teams," focusing on:

- Rule 1.6 (Confidentiality),
- Rule 1.9 (Duties to Former Clients), and
- Rule 1.10 (Imputation of Conflicts).

We'll also draw on ABA guidance, Indiana disciplinary opinions, and case law to help firms and lawyers handle transitions the right way.

CLIENTS ARE NOT TRADE ASSETS

In the NBA, teams trade players like assets. But in the legal world, clients are not transferable assets. They are not bound by franchise tags or multi-year contracts. Clients have the right to choose their lawyer, and no lawyer or firm can claim exclusive ownership over them.

ABA Formal Opinion 99-414 and Indiana Disciplinary Commission Opinion #1-25[1] emphasize that both departing lawyers and firms owe a duty to communicate clearly and promptly with clients. Respect for the client's autonomy is paramount. When a lawyer plans to leave a firm, the firm *and the lawyer* "each owe a duty of clear communication so that clients can make an informed decision regarding the representation in their matters moving forward." *See* Ind. Disciplinary Comm'n Advisory Op. 1-25 and Rules 1.4(a)(3) and 1.4(b).

In Advisory Op. 1-25, the Commission advises that if a departing lawyer "has maintained significant client contact," the best practice is a joint communication explaining that the lawyer is leaving and giving clients three clear options: stay with the firm, go with the lawyer, or get their files and choose new counsel or represent themselves. This letter should include practical details such as how files will be transferred, any upcoming deadlines, and the status of outstanding fees. The tone should be neutral and informative.

Clients with "significant contact" with the departing lawyer must be notified. In ABA Formal Opinion 489, the ABA Standing Committee on Ethics and Professional Responsibility opined, "'Significant client contact' would include a client identifying the departing lawyer, by name, as one of the attorneys representing the client. A departing attorney would not have 'significant client contact,' for instance, if the lawyer prepared one research memo on a client matter for another attorney in the firm but never spoke with the client or discussed legal issues with the client."

As ABA Formal Opinion 489 puts it, lawyers can leave firms, but the transition must not interfere with the client's ability to choose counsel freely. Indiana Rule 1.4 reinforces this by requiring that clients receive enough information to make informed decisions about their representation.

To avoid breaching fiduciary duties owed to their employer or partners, departing lawyers should not secretly solicit clients before notifying the firm. That's akin to tampering under NBA rules—trying to poach players mid-season. After giving appropriate notice to the firm, lawyers may contact clients with whom they have a significant relationship. The outreach should be professional and make it clear that the client has options. It is never acceptable to disparage the former firm or pressure clients to follow.

CASE SPOTLIGHT: CLIENT CHOICE AND DEPARTING LAWYERS

The Indiana Supreme Court's decision in *In re Truman*, 7 N.E.3d 260 (Ind. 2014), illustrates how *not* to handle a lawyer's departure from a firm. In that case, the managing attorney enforced a "Separation Agreement" that blocked a departing associate from contacting clients, required that only the firm could notify clients about the departure, and imposed steep financial disincentives for the associate to continue representing clients post-departure. Worse, the firm's notices to clients failed to inform them that they could choose to remain with the associate and withheld his contact information unless it was specifically requested.

The court found this violated both Rule 1.4(b)—failure to provide clients with information necessary for informed decision-making—and Rule 5.6(a), which prohibits

restrictive covenants that limit a lawyer's right to practice law after leaving a firm (except in the context of retirement benefits). The court explained that such restrictions not only compromise a lawyer's professional autonomy, but more importantly, undermine the client's freedom to choose their lawyer.

The case is a cautionary tale: a lawyer's exit plan cannot come at the expense of transparency, fairness, or client agency.

CONFIDENTIALITY: GUARDING THE PLAYBOOK (RULE 1.6)

When a player is traded, they don't bring their former team's playbook to the new locker room. Similarly, lawyers must protect confidential client information when they change firms. The lawyer's duty of confidentiality is one of the cornerstones of the attorney-client relationship.

Indiana Rule 1.6 prohibits disclosure of any information relating to client representation without informed consent. This duty is broad and continues even after the representation ends. Rule 1.9(c) reinforces the concept for former clients, explicitly barring the use or disclosure of information to the disadvantage of a former client.

One challenge arises when the departing lawyer is seeking to join a new firm: how to run a proper conflicts check without violating Rule 1.6. ABA Formal Opinion 09-455 provides some clarity, permitting limited disclosure of information necessary to detect and resolve conflicts of interest, such as the names of parties and a brief description of the general issues involved. However, even that disclosure must be narrowly tailored and not extend beyond what is reasonably necessary to search the conflicts database. Indiana has not adopted the Model Rule 1.6(b)(7) exception that expressly permits such disclosures, but the Commission wrote in Advisory Opinion #1-25 that Indiana's Rule 1.6 indicates that such disclosures can be seen as "impliedly authorized" to carry out the representation.

Additionally, the firm receiving this information must use it solely for conflicts checking and not for solicitation. ABA Formal Opinion 99-414 suggests reaching an agreement between the old and new firms that any shared information will be used only for ethical compliance, not for client recruitment. This agreement can help ease tensions and ensure that all parties are acting within ethical boundaries.

As a practical matter, many lawyers complete at least preliminary conflict checks to ensure commercial viability of a proposed transition between law firms. At that preliminary stage, of course, they cannot seek client permission to disclose representation to a new firm, because the lawyer has usually not yet informed their current firm of their intent to leave. This poses a roadblock to seeking client permission to disclose the representation, as doing so would likely violate the lawyer's fiduciary duties to their current partners or employer. Instead, lawyers must walk a fine line, disclosing only what is reasonably necessary to detect conflicts (such as client and opposing party names and general matter types). Of

"The takeaway: lawyers cannot jump from representing a client in one matter to representing the opposing side in a related matter."

course, the firm vetting potential conflicts for a potential lateral hire must also maintain such information confidentially, as with any information related to the representation of a potential client.

NO SWITCHING SIDES (RULE 1.9)

In basketball, switching teams is part of the game. Players go from rivals to teammates and back again. But in law, you can't switch sides on a client. Rule 1.9 sets clear boundaries: a lawyer who has formerly represented a client in a matter may not later represent another person in the same or a substantially related matter if that person's interests are materially adverse to the interests of the former client, unless the former client gives informed consent confirmed in writing.

Why? Because clients have the right to trust that their lawyer will not later use information learned during the representation against them. The rule protects not only confidential information but also the client's confidence in the legal system. Notably, Rule 1.9 restricts representation adverse to a client of the lawyer's prior firm only "when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c)." *See* Rule 1.9, Cmt. [5]. Of course, this is a fact sensitive determination, aided by inference and presumption. If there is a dispute, the burden of proof lies on the firm whose disqualification is sought. *Id.*, Cmt. [6].

Comment 3 to Rule 1.9 explains that matters are "substantially related" for purposes of Rule 1.9 "if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter."

The takeaway: lawyers cannot jump from representing a client in one matter to representing the opposing side in a related matter. Just as you wouldn't coach one team during the playoffs and then assist the opponent in the finals, you can't help a new client to the detriment of a former one.

IMPUTED CONFLICTS AND ETHICAL SCREENS (RULE 1.10)

A single foul can put the whole team in the penalty. One lawyer's conflict can penalize an entire firm under the ethics rules. Similarly, under Rule 1.10, a lawyer's conflict is generally imputed to the entire firm. This means that if one lawyer is barred from representing a client due to a conflict, the entire firm is considered conflicted as well.

However, there is a path forward: Indiana Rule 1.10(c) allows firms to avoid disqualification if they take appropriate steps to screen the lawyer with the conflict. The rule requires three things:

1. The lawyer had no primary responsibility for the matter at the former firm;
2. The lawyer is timely and properly screened from any participation in the matter and does not share in the fee; and
3. Written notice is promptly given to any affected former client to enable them to ascertain compliance with the provisions of this rule.

Screening is more than a paper memo. It must be timely, effective, and documented. That means physical and electronic barriers to the matter, restrictions on communication, and internal firm policies to reinforce the screen. The lawyer must also be excluded from any profits derived from the matter.

This screening mechanism helps balance the protection of client confidences with the reality of lawyer mobility. Without it, firms could be discouraged from hiring experienced lawyers, and clients might be deprived of the counsel of their choice.

Properly implemented, a screen protects everyone involved: the former client, the new client, the lawyer, and both firms. Moreover, "[w]here the conditions of paragraph (c) are met, imputation is removed, and consent to the new representation is not required." Rule 1.10, Cmt. [6].

ETHICAL MINEFIELD: THE MIGRATORY LAWYER

Fast forward to the moment every firm dreads: trial is ten days away, and an associate announces they're leaving to join opposing counsel's firm. That's the setup for Ethical Minefield #4 from Disciplinary Commission Opinion #3-22.[2]

Fortunately, Indiana Rule 1.10(c) offers a framework for how to manage this ethically—and without derailing the case. If the departing associate is not the primary attorney on the matter, the new firm can avoid disqualification by (1) screening the associate from all involvement, (2) ensuring they do not share in any fee from the matter, and (3) providing timely written notice to the affected client. These steps, if documented and enforced rigorously, protect client confidences while preserving the opposing party's choice of counsel.

The opinion outlines what effective screening looks like: protocols barring access to files, communication firewalls within the firm, and exclusion from revenue related to the case. However, if the associate had primary responsibility, screening isn't enough—the conflict cannot be cured without client consent.

This "migratory lawyer" rule recognizes the realities of lawyer mobility while safeguarding the duties of loyalty and confidentiality. Like a midseason trade, it may shake up the roster—but with the right safeguards, everyone can still play their position.

CONCLUSION: IT'S ALL ABOUT TEAMWORK AND INTEGRITY

We'll never forget the 2025 Pacers—the fight, the unity, the joy of a deep playoff run that electrified the city and reminded everyone why basketball matters in Indiana. The end of the season brought roster shakeups and mixed emotions, but that's part of the game.

Transitions, whether in sports or in law, are inevitable. What matters most is that they're handled with professionalism, respect, and integrity.

When changing firms, lawyers must protect confidences (Rule 1.6), stay loyal to former clients (Rule 1.9), and avoid firm-wide disqualification through proper screening (Rule 1.10). They should communicate openly and respectfully, avoid sneaky solicitation, and help ensure a smooth transition for clients. Most importantly, they must respect that clients decide which lawyers are on their team.

Handled ethically, a lateral move can be a new beginning. And like a great player on a new team, a lawyer can still honor where they came from, even while building what comes next. The profession is better when lawyers conduct themselves with the kind of professionalism and sportsmanship that defines both a great season and a great career.

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ENDNOTES

1. Occasionally, the Indiana Disciplinary Commission issues formal advisory opinions to guide lawyers on emerging ethical issues. Opinion #1 25, *Navigating a Lawyer's Departure from a Law Firm*, issued in April, 2025, can be found at https://www.in.gov/courts/ojar/files/dc-opn-1-25.pdf.
2. Ind. Supreme Court Disciplinary Comm'n, *Ethical Minefields Faced by Migratory Lawyers* (Opinion #3 22, June 2022), https://www.in.gov/courts/ojar/files/dc-opn-3-22.pdf.

By Jane Dall Wilson and Matt Giffin

INDIANA SUPREME COURT ADDRESSES RIGHTS OF ACTION, SORA, AND MORE IN JUNE

This article highlights seven Indiana Supreme Court opinions issued in June 2025.

INDIANA SUPREME COURT

NO PRIVATE RIGHT OF ACTION AGAINST THE BMV TO SEEK DAMAGES FOR INACCURATE DRIVING RECORDS

In *Kelly v. Indiana Bureau of Motor Vehicles*, the plaintiff sued the BMV for failing to remove an incorrect suspended license notation from his driver record, alleging that this error had caused him to incur more than $1,000 in tow fees and a lost job opportunity. The trial court dismissed for failure to state a claim. The Court of Appeals concluded that IC § 9-14-12-3, the statute requiring the BMV to maintain individuals' driver records, conferred a private right of action and that the plaintiff had a common-law right of action for negligence.

The Supreme Court disagreed. Noting that the statute contains no express rights-conferring language, it applied the well-established two-part test for implicit creation of a private right of action. The court reasoned that independent enforcement mechanisms exist under the statute, including a "material review" administrative review process and an enforcement mechanism under AOPA, so the court need not "engraft" a civil cause of

action for damages, even though neither the material review process nor AOPA review would have afforded damages. And the court concluded that the statute's mandate that the BMV maintain accurate driver records protects the public at large, rather than the individual drivers whose records are maintained. The primary policy objective of up-to-date driver records is to "facilitate regulation of drivers in the interest of public safety," which independently weighs against recognizing a private right of action. The court further rejected as underdeveloped the argument that a common-law right of action could be derived from the BMV's general "duty to use ordinary care" toward the public.

NO WRONGFUL TERMINATION RIGHT OF ACTION BASED ON PREPARING TO FILE A WORKERS' COMPENSATION CLAIM WHEN MULTIPLE GROUNDS ARE ASSERTED FOR THE RETALIATORY CONSTRUCTIVE DISCHARGE

In *South Bend Community School Corp. v. Grabowski*, the Supreme Court reaffirmed the narrow scope of the exception to Indiana's employment-at-will doctrine that forbids discharge in retaliation for the employee's exercise of a "clear statutory right or duty."

The plaintiff, a second-grade teacher, sued the school corporation for wrongful termination, claiming that she was constructively discharged in retaliation for taking preparatory steps to seek workers' compensation. After the close of the plaintiff's evidence at trial, the defendant moved for judgment under Trial Rule 50(A), arguing that the plaintiff had no claim for wrongful termination as a matter of law because the exercise of her statutory right was not her sole claimed ground for retaliatory discharge. The trial court denied the motion, and the jury found for the plaintiff. The Court of Appeals affirmed the denial of the Rule 50(A) motion.

The Supreme Court reversed. Its ruling turned on the proper scope of the exception to Indiana's employment-at-will doctrine carved out by *Frampton v. Central Indiana Gas Co.*, 297 N.E.2d 425 (Ind. 1973). Under *Frampton*, "retaliatory discharge for filing a [workers'] compensation claim" is actionable to prevent workers' exercise of that statutory right being chilled. However, the court concluded that the plaintiff's case-in-chief could not support the inference that she was discharged *solely* for making a workers' compensation claim. Rather, the plaintiff's chief theory was that a school board member had driven the corporation to punish the teacher after learning the teacher had accused the member's grandchild of intentionally injuring her. Given *Frampton's* narrow policy focus on protecting the right to seek workers' compensation, the court reasoned that a claim asserting multiple theories of retaliation cannot be recognized under the correspondingly narrow *Frampton* exception to Indiana's employment-at-will doctrine.

SEX OFFENDER NO LONGER REQUIRED TO REGISTER

Under Indiana's Sex Offender Registration Act (SORA), a "sex or violent offender" who lives, works, or studies in Indiana must comply with certain in-person registration requirements. A person may qualify as an offender, among other ways, by being required to *register* as a sex or violent offender in another jurisdiction. SORA's borrowing statute provides that if another jurisdiction's law requires the offender to register for a longer period than would apply under Indiana law, the longer period applies.

The Supreme Court ruled in *Peters v. Quackenbush, et al.*, that SORA imports a registration requirement imposed by another state regardless of whether the other state's registration requirement stems from an offense committed within that jurisdiction. However, the out-of-state registration requirement is not enforced under SORA if the offender is not *currently* required to register in the state that is the source of the requirement. If initially triggered only by the offender's temporary presence in the state on vacation, as here, Florida's non-expiring obligation to register did not require "re-registration" and therefore is not incorporated against an Indiana resident by SORA's borrowing statute.

ERRONEOUS DENIAL OF A RULE 50(A) MOTION IN A MEDICAL MALPRACTICE CASE WAS HARMLESS ERROR GIVEN JOINT AND SEVERAL LIABILITY

In *Abbas, et al. v. Neter-Nu*, a patient sued a nurse, the nurse's supervising physician, and the hospital after an IV line inserted in his foot caused complications requiring amputation. A jury found for the plaintiff and awarded prejudgment interest. The defendants appealed on three grounds, alleging that the trial court erred (1) in denying the hospital's partial Rule 50(A) motion because the plaintiff had introduced no evidence that the hospital or providers other than the named defendants were negligent, (2) in refusing to provide jury instructions on superseding cause and the need to avoid judging in "hindsight," and (3) in excluding certain impeachment evidence. The Court of Appeals ruled for

the defendants on all three arguments, but the Supreme Court vacated that ruling and largely allowed the trial court judgment to stand.

The court agreed that the defendants' Rule 50(A) motion should have been granted. The plaintiff's evidence at trial pertained only to the liability of the named defendant nurse and physician and did not support an inference of the hospital's direct liability or any vicarious liability for the malpractice of anyone other than the named defendants. Without admissible expert evidence supporting an inference that other non-party hospital individuals fell below the standard of care, a directed verdict was proper. However, taking the question of the hospital's liability from the jury would not have altered the hospital's ultimate exposure under Indiana's doctrine of joint-and-several liability because of the liability of the nurse and supervising physician.

The court found no error as to the jury instructions because, among other matters, defendants' proffered instructions were effectively covered by the model instructions given. And it concluded that the challenged evidentiary rulings were likewise not abuses of discretion.

Ultimately, the court remanded only for recalculation of prejudgment interest. Under IC § 34-18-14-3(d)(1), when a provider is solely liable based on the conduct of its agent—as would have been the case had the Hospital's Rule 50(A) motion been properly granted—the total amount payable on behalf of both the provider and its agent is $250,000. With two liable agents, the statutory interest rate should have applied to a total of $500,000.

AN INDIVIDUAL WHO PRESENTS A DANGER TO HIMSELF CAN BE PROPERLY COMMITTED ON AN OUTPATIENT BASIS

In *In re Civil Commitment of J.W.*, the Supreme Court affirmed the trial court's decision to temporarily commit J.W., overturning the Court of Appeals' decision that had vacated the commitment. The Supreme Court found that the trial court had sufficient evidence to conclude that J.W. posed a danger to himself due to his mental illness, specifically bipolar II disorder, and that the commitment was necessary to ensure compliance with outpatient treatment.

The court emphasized that the trial court's decision was based on clear and convincing evidence that J.W. presented a danger to himself, as he had recently contemplated suicide and admitted he might lie about his suicidal thoughts to be released earlier. The Supreme Court determined that the Court of Appeals had improperly reweighed evidence by favoring J.W.'s testimony over expert psychiatric testimony, which the trial court had credited. The Supreme Court also clarified that outpatient treatment is a viable option for involuntary commitments when the record shows that all treatment options were considered. The court further noted that the trial court's empathetic statements aimed to establish a personal connection with J.W. and emphasize the seriousness of his condition and did not conflate any statutory requirements.

PRE-ELECTION CHALLENGE WAS MOOT AFTER ELECTION

In *Thomas v. Foyst*, the Supreme Court addressed the 2023 election of a Columbus City Council member. In that election, no candidate ran in the 2023 Republican primary, so the Republican Party held a caucus to choose a general election nominee. It chose Joseph Foyst, but the Bartholomew County Democratic Party chair sought a declaratory judgment that Foyst was not eligible because the Republican Party missed a statutory deadline related to Foyst's candidacy. Nonetheless, Foyst appeared on the ballot, was elected, and the trial court denied the challenge. The Court of Appeals reversed, with instructions to declare the second-place finisher the winner.

The Supreme Court vacated the Court of Appeals decision and remanded to the trial court with instructions to dismiss the case as moot. The court noted that the General Assembly "created two avenues for election disputes, each with distinct requirements—one avenue for preelection candidacy 'challenges' to determine who can be on the ballot, and another avenue for election 'contests' to determine who should be declared the winner." Because the Democratic Party chair did not file an "election contest," the remedy of

selecting the second-place finisher was not statutorily available. The only remedy for a pre-election challenge was to prohibit Foyst from appearing on the ballot, but he did, and the election is over, so the requested relief was moot. The Democratic Party chair failed to adhere to the statutory framework for election challenges, and the court was unwilling to unseat a popularly elected official in those circumstances.

CONSTRUCTION LIENS MUST RELATE TO IMPROVEMENTS BENEFITING THE PROPERTIES TO WHICH THEY ARE ATTACHED

In *EdgeRock Development, LLC v. C.H. Garmong & Son, Inc.*, a developer in Westfield initially fell behind in payments to one of its contractors. That contractor then recorded construction liens satisfied by a loan from First Bank Richmond, secured by a mortgage on the developer's lots. When the developer fell behind a second time, multiple contractors recorded cumulative construction liens on all five lots in the development regardless of whether the lien related to debt for work benefitting the owner of the lot. In other words, the contractors used multiple properties, which had different owners, to secure the same debt.

The Supreme Court concluded that construction liens can only secure debts for improvements directly benefiting the property to which the lien attaches. The court found that the construction liens were overstated because they were not limited to the debts for improvements directly benefiting the properties to which the liens attached, emphasizing that statutory language ties liens to property ownership, not contracts, and that duplicate liens on properties with different owners are improper. The court further determined that the bank's mortgage lien is senior to the construction liens for the amount loaned to satisfy the contractor's prior lien but junior for the remaining amounts, as they were not used for the specific project related to the lien. And it declined to apply equitable subrogation, finding that the loan was not a traditional refinancing.

Ultimately, the court affirmed in part, reversed in part, and remanded the case for the trial court to amend the judgment consistent with other specific determinations in the opinion.

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