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SURVEY

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

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INTRODUCTION

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

I. RULE AMENDMENTS

In October 2024, the Indiana Supreme Court issued an order amending Rule 11 of the Indiana Rules of Appellate Procedure, to become effective January 1, 2025.² Rule 11 governs “Duties of Court Reporter” in appeals and covers the preparation of the transcript designated in the notice of appeal, the deadline for

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1. The survey period is between October 1, 2024, and September 30, 2025.

2. Order Amending Rules of App. Proc., No. 24S-MS-1 (Ind. Oct. 18, 2024).

filing the transcript with the trial court clerk or administrative agency, extensions of time to file transcripts, and motions to compel if the court reporter does not file the transcript within the time allowed.³ The prior version of Rule 11 required the court reporter to serve a copy of a motion for extension only on the parties to appeal and required the appellant to serve a copy of the motion to compel only on the court reporter.⁴ The current version amended subsection (C) and now “require[s] a court reporter to serve a copy of a motion for extension of time to file the transcript on the trial judge in addition to the parties to the appeal.”⁵ It also amended subsection (D), “requir[ing] the appellant to serve a motion to compel on the trial judge and parties to the appeal.”⁶ Indiana Appellate Rule 11 reads, in pertinent part:

Rule 11. Duties of Court Reporter

....

C. Extension of Time to File Transcript.

If the Court Reporter believes the Transcript cannot be filed within the time period prescribed by this rule, then the Court Reporter must promptly move the Court on Appeal designated in the Notice of Appeal for an extension of time to file the Transcript pursuant to Rule 35 (A) and must state in such motion the factual basis for inability to comply with the prescribed deadline despite exercise of due diligence. (See Form # App.R. 11-2). The Court Reporter must serve a copy of the motion on the trial judge and the parties to the appeal in accordance with Rule 24. Motions for extension of time in interlocutory appeals, appeals involving worker’s compensation, issues of child custody, support, visitation, paternity, adoption, determination that a child is in need of services, and termination of parental rights are disfavored and must be granted only in extraordinary circumstances.

D. Failure to Complete Transcript.

If the Court Reporter fails to file the Transcript with the trial court clerk within the time allowed, the appellant must seek an order from the Court on Appeal compelling the Court Reporter to do so. The motion to compel must be verified and

3. IND. APP. R. 11.

4. Order Amending Rules of App. Proc., *supra* note 2.

5. *Id.*

6. *Id.*

affirmatively state that the motion was served on the Court Reporter and that the appellant has complied with the agreement for payment made in accordance with Rule 9(H). The motion to compel must be served on the trial judge and parties to the appeal. Failure of appellant to seek such an order not later than seven days after the Transcript was due to have been filed with the trial court clerk must subject the appeal to dismissal.⁷

The order did not make any amendments to subsections (A) and (B) of Rule 11.

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

II. CASE LAW INTERPRETING APPELLATE RULES

The Court of Appeals and Supreme Court issued a number of decisions analyzing the Appellate Rules, including further developing Indiana's jurisprudence on issues such as the appealability of certain trial court orders, preserving an adequate record for appeal, and appellate court jurisdiction.

A. Appealability of Orders

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

In *M.K.D.-H. v. D.H.*, the trial court granted a biological grandfather's petition for visitation rights, and the adoptive parents challenged the order on appeal, asserting that the order was a final judgment.⁸ The Court of Appeals disagreed with the adoptive parents and dismissed the appeal.⁹

The Court of Appeals first explained the general principle that “[a] party may appeal from a final judgment and certain interlocutory orders.”¹⁰ And, under Indiana Appellate Rule 2(H), a judgment is a final judgment if any of the following are met:

- (1) it disposes of all claims as to all parties;
- (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties;

7. IND. APP. R. 11.

8. 247 N.E.3d 1233, 1234 (Ind. Ct. App. 2024).

9. *Id.* at 1237.

10. *Id.* at 1234 (citing IND. APP. R. 5, 9(A)).

- (3) it is deemed final under Trial Rule 60(C);
- (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or
- (5) it is otherwise deemed final by law.¹¹

As to finality, the Court of Appeals held that while the trial court's order granted the grandfather's request for visitation, "the order did not dispose of all claims as to all parties."¹² Instead, the trial court's order directed the parties to mediation or to work with a parenting time coordinator to determine a visitation schedule, with provisions for a hearing if mediation failed to produce an agreement.¹³ Additionally, the panel emphasized that the trial court's order did not include the requisite language under Indiana Trial Rule 54 because it did not state there was "no just reason for delay."¹⁴ The Court of Appeals further rejected the adoptive parents' argument that the order constituted a final judgment because it disposed of "some distinct and definite branch of the proceedings."¹⁵ The panel explained that, under Indiana Supreme Court precedent, Indiana Trial Rules 54(B) and 56(C) had "superseded the distinct and definite branch doctrine of finality and that such appeals may now proceed only by leave of court."¹⁶

The Court of Appeals thus classified the trial court's order as interlocutory rather than final.¹⁷ First noting that parties may appeal certain interlocutory orders "as a matter of right" under Indiana Appellate Rule 14(A), the panel determined the trial court's order did not fall within any of those categories.¹⁸ The Court of Appeals then examined whether the adoptive parents had properly sought permission for a discretionary appeal under Indiana Appellate Rule 14(B) or whether an interlocutory appeal was provided by statute per Indiana Appellate Rule 14(D).¹⁹ The panel found "no indication that Adoptive Parents sought certification from the trial court or permission from [the Court of Appeals] to file a discretionary interlocutory appeal, and they [had] not stated a statutory right to appeal."²⁰

M.K.D.-H. reinforces important general principles regarding the

11. IND. APP. R. 2(H).

12. *M.K.D.-H.*, 247 N.E.3d at 1236.

13. *Id.*

14. *Id.*

15. *Id.* at 1235.

16. *Id.* (quoting *Berry v. Huffman*, 643 N.E.2d 327, 328 (Ind. 1994)).

17. *Id.* at 1236.

18. *Id.* (citing IND. APP. R. 14(A)).

19. *Id.* (citing IND. APP. R. 14(B), (D)).

20. *Id.* at 1236–37.

appealability of trial court orders and offers practitioners an important reminder on when—and how—interlocutory orders may be appealed. Had the adoptive parents properly sought certification from the trial court and permission from the Court of Appeals pursuant to Indiana Appellate Rule 14(B), it is possible that their appeal would have been heard on the merits, instead of being dismissed.

Bernacchi v. Lindborg is another Court of Appeals opinion dismissing an appeal.²¹ This case involved defendants moving for summary judgment on jurisdictional grounds, arguing that plaintiffs had failed to exhaust administrative remedies.²² The trial court denied summary judgment and purported to certify the order as a final judgment under Indiana Trial Rule 56(C), including “magic language” that there was no just reason for delay and directing the entry of judgment.²³ The defendants appealed the order as a final judgment under Indiana Appellate Rule 2(H)(2).²⁴

The panel analyzed whether the trial court’s order constituted a “final judgment” under Trial Rule 56(C).²⁵ To be properly certifiable under this rule, the “magic language” from Trial Rule 56(C) was not enough; rather, “a trial court order must possess the requisite degree of finality[] and must dispose of at least a single substantive claim.”²⁶ The Court of Appeals determined that the trial court’s denial of summary judgment failed both requirements.²⁷

Specifically, the panel held that “an order denying a motion for summary judgment cannot be a final appealable judgment because it does not foreclose any rights.”²⁸ Instead, such denial “merely places the parties’ rights in abeyance pending ultimate determination by the trier of fact.”²⁹ Accordingly, when a party seeks review of a denial of a summary judgment motion, the party must pursue an interlocutory appeal under Indiana Appellate Rule 14.³⁰

The Court of Appeals then acknowledged that while the order could not qualify as a final judgment, it potentially could be the subject of an interlocutory appeal under Appellate Rule 14(B), which permits appeals from “other

21. 260 N.E.3d 1006, 1008 (Ind. Ct. App.), *trans. denied*, 270 N.E.3d 954 (Ind. 2025).

22. *Id.*

23. *Id.* at 1008–09 (quoting *Ramco Indus., Inc. v. C & E Corp.*, 773 N.E.2d 284, 287–88 (Ind. Ct. App. 2002)).

24. *Id.* at 1009. Indiana Appellate Rule 2(H)(2) states that a judgment is final if the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties[.]

IND. APP. R. 2(H)(2).

25. *Bernacchi*, 260 N.E.3d at 1009–10.

26. *Id.* at 1009 (alteration in original) (quotation marks omitted) (quoting *Ramco*, 773 N.E.2d at 288).

27. *Id.*

28. *Id.* at 1009–10 (citing *Anonymous Dr. A v. Sherrard*, 783 N.E.2d 296, 299 (Ind. Ct. App. 2003)).

29. *Id.* at 1010 (quoting *Sherrard*, 783 N.E.2d at 299).

30. *Id.*

interlocutory orders if the trial court certifies its order and the Court of Appeals accepts jurisdiction over the appeal.”³¹ However, the panel found that neither condition was satisfied in this case.³² Specifically, the trial court did not certify its order for interlocutory appeal, and the Court of Appeals did not accept jurisdiction over the appeal.³³ The Court of Appeals emphasized that “the Bernacchis never asked either court for its respective authorization.”³⁴

As with *M.K.D.-H.*, the *Bernacchi* panel reinforced some principles regarding finality of trial court orders—most importantly, that a summary judgment denial is interlocutory in nature because it does not resolve any claims but rather allows litigation to proceed toward trial. Appellants should be well aware that even if a trial court order denying summary judgment contains “magic language”—that there is no just reason for delay and directing the entry of judgment—that order is not appealable as a final judgment. Rather, appellants must pursue an interlocutory appeal and proceed under Indiana Appellate Rule 14.

Unlike either of the two cases described above, *City of South Bend v. Cao* involved appellants who had properly pursued a discretionary interlocutory appeal under Indiana Appellate Rule 14(B).³⁵

Cao was a breach of contract case where three companies and their owner (“companies”) alleged breach of contract against the city.³⁶ The trial court denied the city’s motion for summary judgment, and the city filed both a motion to reconsider the summary judgment denial and a motion to certify the denial for interlocutory appeal.³⁷ Four months later, the trial court entered an “order denying the motion to reconsider and certifying issues for interlocutory appeal[.]”³⁸ A few days after, the city filed a renewed motion requesting that the trial court certify for interlocutory appeal the trial court’s denial of the motion to reconsider.³⁹ The same day, the trial court granted the city’s renewed motion, and the city then petitioned the Court of Appeals to accept the interlocutory appeal, which was granted.⁴⁰

The companies cross-appealed and argued that the appellate court lacked jurisdiction, relying on *Wise v. State*⁴¹ as precedent for dismissing improperly

31. *Id.* (quoting IND. APP. R. 14(B)).

32. *Id.*

33. *Id.*

34. *Id.*

35. 267 N.E.3d 1029, 1042 (Ind. Ct. App.), *trans. denied*, 272 N.E.3d 956 (Ind. 2025). In *Cao*, the Court of Appeals unanimously determined that the appeal was properly in front of it. *Id.* However, the decision was split as to the merits of the appellate claim raised. *Id.* (Vaidik, J., concurring in part and dissenting in part).

36. *Id.* at 1031–32 (majority opinion).

37. *Id.* at 1036.

38. *Id.* (alteration in original).

39. *Id.*

40. *Id.*

41. 997 N.E.2d 411 (Ind. Ct. App. 2013).

certified appeals.⁴² In *Wise*, an appeal was dismissed for lack of jurisdiction when the trial court tried to grant certification after it had already been “deemed denied” under Indiana Appellate Rule 14(B)(1)(e).⁴³ Specifically, under Indiana Appellate Rule 14(B)(1)(e), if a trial court fails to rule on a motion for certification within thirty days, the motion is automatically deemed denied.⁴⁴

The companies argued that the same result as in *Wise* should follow because the city’s initial motion for certification had been deemed denied under Indiana Appellate Rule 14(B)(1)(e).⁴⁵ However, the *Cao* panel distinguished the case from *Wise* because the city had filed a renewed motion to certify.⁴⁶ The Court of Appeals found this procedurally proper under Indiana Supreme Court precedent that “held that even orders on a repetitive motion or a motion to reconsider fall within the broad ambit of Appellate Rule 14(B)’s authorization to appeal other interlocutory orders[.]”⁴⁷ The Court of Appeals then elaborated,

We attain jurisdiction so long as a party clears two discretionary judicial hurdles—certification by the trial court and acceptance by this court. The moving party must move for certification by the trial court within thirty days of the trial court’s entry of an order on the Chronological Case Summary, App. R. 14(B)(1)(a), and then petition this court for acceptance within thirty days of the trial court’s certification. App. R. 14(B)(2)(a).

On October 26, the trial court entered an order on its docket, and on October 30, the City asked the trial court to certify that order for interlocutory appeal. The trial court granted that motion on the same day. The City then asked this court to accept its interlocutory appeal on November 27, 2023, and we granted the City’s motion. As such, the City cleared both discretionary hurdles to our having jurisdiction, and we turn to the merits of the City’s appeal.⁴⁸

Cao is valuable precedent that emphasizes Indiana’s discretionary interlocutory appeal procedures under Indiana Appellate Rule 14(B). Appellants pursuing a discretionary interlocutory appeal should avail themselves of any

42. *Cao*, 267 N.E.3d at 1035–36.

43. *Id.* at 1036 (citing *Wise*, 997 N.E.2d at 413).

44. *See id.* Indiana Appellate Rule 14(B)(1)(e) states:

In the event the trial court fails for thirty (30) days to set the motion for hearing or fails to rule on the motion within thirty (30) days after it was heard or thirty (30) days after it was filed, if no hearing is set, the motion requesting certification of an interlocutory order shall be deemed denied.

IND. APP. R. 14(B)(1)(e).

45. *Cao*, 267 N.E.3d at 1036.

46. *Id.* at 1037.

47. *Id.* (alteration in original) (quotation marks omitted) (quoting *NCAA v. Finnerty*, 191 N.E.3d 211, 217–18 (Ind. 2022)).

48. *Id.* at 1037 (footnote omitted) (citation omitted) (quotation marks omitted).

appropriate opportunity to renew a motion for certification, as the city did in *Cao*, if an initial motion for certification is deemed denied by operation of Indiana Appellate Rule 14(B)(1)(e).

B. Preserving an Adequate Record for Appeal

During the survey period, the Court of Appeals of Indiana also addressed the importance of preserving an adequate record for appeal.

In *Maw v. Pringle*, after a hearing and within a written order, the trial court denied parenting time to an incarcerated father who had been convicted of child molesting.⁴⁹ During the hearing preceding the written order, both parties had appeared and presented evidence.⁵⁰

The father appealed the trial court's order, raising three "evidence-related arguments."⁵¹ The Court of Appeals, however, did not reach the merits of any of the arguments because they rested on information that the court lacked.⁵² Specifically, the father had failed to provide either a transcript of the hearing or any other record of the proceedings as required by Indiana Appellate Rule 9(F)(5).⁵³

The *Maw* panel noted that the father had filed a "Motion for Copy of Transcript" and "Motion to Compel Transcript"; however, the Court of Appeals had denied both because the father had not arranged to pay for the preparation of the transcript.⁵⁴ The Court of Appeals acknowledged that preparing transcripts can be expensive, especially for indigent appellants such as the father, but noted that this "does not dictate . . . the conclusion that indigent civil appellants are entitled to have a complete record of the proceedings, including a transcription, prepared for them at public expense."⁵⁵ Rather, Indiana Appellate Rule 31(A) provides an alternative procedure for appellants who cannot obtain a transcript due to unavailability, including unavailability due to indigency.⁵⁶

Specifically, under Indiana Appellate Rule 31(A), if no transcript is available, "a party or the party's attorney may prepare a verified statement of the evidence from the best available sources, which may include the party's or the attorney's recollection."⁵⁷ A party must "then file a motion to certify the statement of evidence with the trial court or Administrative Agency" and submit the statement of evidence with that motion.⁵⁸ The Court of Appeals noted that

49. 263 N.E.3d 790, 791–92 (Ind. Ct. App. 2025).

50. *Id.* at 792.

51. *Id.* at 791–92.

52. *Id.* at 793.

53. *Id.*

54. *Id.*

55. *Id.* at 793–94 (quoting *Campbell v. Criterion Grp.*, 605 N.E.2d 150, 160 (Ind. 1992)).

56. *Id.* at 794.

57. *Id.* (quoting IND. APP. R. 31(A)).

58. *Id.* (quoting IND. APP. R. 31(A)).

there was no indication that the father had attempted to produce such a statement of evidence or had demonstrated that preparing one would be inadequate to review the issues he raised.⁵⁹

The Court of Appeals thus applied the waiver doctrine: because it did not have the transcription of testimony or any record of the evidence presented, the panel was unable to analyze on appeal any of the father's claims, all of which relied on a review of the evidence presented at the hearing.⁶⁰ Accordingly, the Court of Appeals affirmed the trial court's order.⁶¹

Maw is an important reminder for appellants that meaningful appellate review can occur only when the appellate court has the necessary information to evaluate the appellate arguments raised. If appellants fail to provide the requisite information to the appellate court, they risk being subject to the waiver doctrine.

C. Appellate Court Jurisdiction

One case from the Indiana Supreme Court addressed, in part, appellate jurisdiction over discovery orders, as well as the effect of interlocutory appeals on trial court jurisdiction.

AMW Investments, Inc. v. Town of Clarksville's procedural history involved a prior appeal and trial court activity during the pendency of that prior appeal.⁶² The dispute between the town and the company began when the town suspended the company's adult entertainment license and imposed civil fines for violating local ordinances.⁶³ After further violations, the town revoked the company's license.⁶⁴

The company sought judicial review of the license revocation, and the town responded with counterclaims related to the ordinance violations and also obtained a preliminary injunction barring the company from operating the adult entertainment venue.⁶⁵ The town moved to impose additional fines, and the company appealed the preliminary injunction as a matter of right under Indiana Appellate Rule 14(A).⁶⁶ The trial court deferred its ruling on the pending fines motion, but "[n]either the trial nor appellate court stayed proceedings below while the appeal was pending."⁶⁷

During the pendency of the company's interlocutory appeal, the town served the company with written discovery requests.⁶⁸ After the trial court

59. *Id.*

60. *Id.*

61. *Id.*

62. 246 N.E.3d 1213, 1216 (Ind. 2024).

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

granted the company an extension, the company initially responded by objecting only on jurisdictional grounds, claiming the pending appeal divested the trial court of jurisdiction over discovery matters.⁶⁹

The Court of Appeals ultimately affirmed the trial court's entry of the injunction, and the Indiana Supreme Court denied transfer.⁷⁰ Thirteen months after the town's initial discovery requests and three months after the injunction appeal had concluded, the company served another discovery response with unexplained redactions and numerous new boilerplate objections.⁷¹ Upon the town's motion to compel, the trial court ordered the company to respond to the town's discovery requests and to not withhold anything on the basis of any objection the company had failed to raise in its initial responses.⁷²

But the company "again asserted boilerplate objections . . . and withheld responsive documents."⁷³ The trial court ultimately held the company in contempt, imposing a \$30,000 sanction that the company could avoid if it fully answered the town's discovery requests and awarding attorney's fees and expenses to the town.⁷⁴ The company appealed.⁷⁵

After a divided Court of Appeals panel reversed, the Indiana Supreme Court granted transfer.⁷⁶ The Supreme Court first addressed whether parties appealing contempt sanctions may also challenge the underlying discovery order they violated.⁷⁷ The Court noted that the contempt sanction, as an order for the payment of money, was appealable as of right under Indiana Appellate Rule 14(A)(1); however, the discovery order was not.⁷⁸ The Court then held "as a matter of first impression that appealing a monetary sanction necessarily brings up for review the propriety of the underlying discovery order."⁷⁹

In so holding, the Supreme Court relied on *Allstate Insurance Co. v. Scrogan*, explaining that "a discovery sanction is improper if the underlying discovery order is erroneous"⁸⁰ because "[i]f the [discovery] order is invalidated, the contempt judgment falls with it."⁸¹ The Court further explained that "reviewing discovery orders during sanction appeals affords relief to parties from

69. *Id.*

70. *Midwest Ent. Ventures, Inc. v. Town of Clarksville*, 158 N.E.3d 787 (Ind. Ct. App. 2020), *trans. denied*, 166 N.E.3d 913 (Ind. 2021).

71. *AMW Invs.*, 246 N.E.3d at 1217, 1220.

72. *Id.* at 1217.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 1217–18 (citing *AMW Invs., Inc. v. Town of Clarksville*, 227 N.E.3d 898, 899, 905 (Ind. Ct. App.), *trans. granted*, 235 N.E.3d 135 (Ind. 2024)).

77. *Id.* at 1218.

78. *Id.*

79. *Id.*

80. *Id.* (citing *Allstate Ins. v. Scrogan*, 851 N.E.2d 317, 322 (Ind. Ct. App. 2006)).

81. *Id.* (second alteration in original) (quoting *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 726 F.2d 1150, 1157 (7th Cir. 1984), *rev'd on other grounds*, 470 U.S. 373 (1985)).

particularly egregious and burdensome orders”⁸² and that appellate review prevents the “hollow victory” of winning an appeal after protected information has already been disclosed.⁸³

The Indiana Supreme Court then turned to the issue of the effect of the company’s interlocutory appeal on the trial court’s jurisdiction.⁸⁴ After noting that no court stayed proceedings pending the appeal, the Indiana Supreme Court explained that “appealing an interlocutory order through Rule 14 divests the trial court of jurisdiction over the subject of the interlocutory order, but not over the entire action.”⁸⁵ Consequently, “jurisdiction in the trial court remains over matters unrelated to the subject of the appeal.”⁸⁶ Applying this principle, the Court determined that the company’s injunction appeal “did not affect the trial court’s jurisdiction to oversee other matters unrelated to the injunction,” including discovery disputes.⁸⁷ The Supreme Court then reviewed the merits of the company’s appellate arguments, ultimately determining that the trial court’s discovery order and contempt sanction were not an abuse of discretion.⁸⁸

AMW Investments provides clarity to practitioners regarding the scope of appellate review when challenging contempt sanctions based on discovery violations. The Indiana Supreme Court case also emphasizes that discovery proceedings should continue in the normal course during interlocutory appeals unless those discovery proceedings are related to the subject of the appeal or specifically stayed by a court.

III. REFINING OUR APPELLATE PROCEDURE

During the survey period, Indiana’s appellate courts began dealing with the growing issue of parties likely using generative artificial intelligence to draft briefs and citing cases, statutes, and Trial Rules that do not exist or that do not support the cited proposition. When practitioners use artificial intelligence, they must ensure that the cited authorities both exist and support the cited proposition.

Appellate Rule 46(A)(8)(a) provides that “[e]ach contention must be supported by citations to the authorities[] [and] statutes . . . relied on.”⁸⁹ In *Williams v. Kirch*, Williams “cite[d] several ‘cases’ in his opening brief that do not exist.”⁹⁰ “As Kirch suggests, this may be the result of the use of ‘generative artificial intelligence,’ which can produce fictitious case citations.”⁹¹ “Citations

82. *Id.*

83. *Id.* (quoting *Allstate Ins.*, 851 N.E.2d at 322).

84. *Id.* at 1219.

85. *Id.* (citing IND. APP. R. 5(B); *Doe v. O’Connor*, 781 N.E.2d 672, 673 (Ind. 2003)).

86. *Id.*

87. *Id.*

88. *Id.* at 1220–23.

89. IND. APP. R. 46(A)(8)(a).

90. 268 N.E.3d 284, 288 (Ind. Ct. App. 2025).

91. *Id.*

to fictitious, AI-generated authority is a growing problem nationwide. Courts have sanctioned both attorneys and pro se litigants for including them in briefs.”⁹² The Court of Appeals “admonish[ed] Williams for citing fictitious cases in his brief.”⁹³ The court also “caution[ed] attorneys and pro se litigants alike against using AI to conduct legal research without independently verifying the citations generated. Judges must be able to rely on the authenticity of the authorities cited by the parties to make just decisions.”⁹⁴

Interestingly, Westlaw assigned the following “Editor’s Note” to the decision that the authors of this Article had never seen: “This decision contains discussion of citation references that are incorrect or do not actually exist. These invalid citations appeared in the original court opinion and have been preserved as written since they are part of the official record. Any links to these invalid citations have been removed.”⁹⁵

Similarly, in *Cingel v. Ferreri*, “Cingel cites 23 legal authorities in her Argument: 12 Indiana cases, 6 Indiana statutes, and 5 Indiana rules. Of those 23 legal authorities, 14 do not exist. The 14 nonexistent authorities include 11 cases, 2 statutes, and 1 trial rule.”⁹⁶ “Of the nine legal authorities Cingel cites that do exist, six are incorrectly cited or described.”⁹⁷ “Given Cingel’s citations to nonexistent legal authorities and to real legal authorities that have nothing to do with the propositions they purport to support, it is likely that Cingel used generative artificial intelligence to draft her brief, either in whole or in part.”⁹⁸ The Court of Appeals cautioned parties to verify citations generated by artificial intelligence.⁹⁹

IV. INDIANA’S APPELLATE COURTS

A. Case Data from the Indiana Supreme Court

During the 2024 fiscal year,¹⁰⁰ the Indiana Supreme Court disposed of 692 cases, including 319 criminal cases, 251 civil cases, 5 tax cases, 42 original actions, 0 board of law examiners case, 0 mandate of funds case, 69 attorney discipline cases, 2 judicial discipline cases, and 4 certified questions.¹⁰¹ The Court heard 50 oral arguments during the fiscal year, 42% of which were heard

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* at 284 (Westlaw editor’s note).

96. 269 N.E.3d 857, 859 (Ind. Ct. App. 2025).

97. *Id.* at 860.

98. *Id.* at 861.

99. *Id.*

100. The Indiana Supreme Court fiscal year ran from July 1, 2024, to June 30, 2025. *See* IND. SUP. CT., ANNUAL REPORT 2024–2025, at 11 (2025).

101. *Id.* at 11.

before the Court decided to grant transfer.¹⁰² The Court issued 50 majority opinions and 40 non-majority opinions.¹⁰³ Chief Justice Rush issued 8 majority opinions, Justice Massa issued 6 majority opinions, Justice Slaughter issued 11 majority opinions, Justice Goff issued 9 majority opinions, and Justice Molter issued 9 majority opinions.¹⁰⁴ The Court also issued 7 per curiam decisions.¹⁰⁵ The Court issued unanimous decisions 77% of the time.¹⁰⁶

B. Case Data from the Indiana Court of Appeals

During 2024,¹⁰⁷ the Court of Appeals disposed of 3,206 cases.¹⁰⁸ This is an increase from 2023, when the Court of Appeals disposed of 2,979 cases, and 2022, when the Court of Appeals disposed of 2,971 cases.¹⁰⁹ In 2024, the court disposed of 1,641 criminal cases, 1,029 civil cases, and 536 other cases.¹¹⁰ The Court affirmed the trial court 84.4% of the time, with the Court affirming 89.1% of criminal cases, 97% of post-conviction relief cases, and 69.1% of civil cases.¹¹¹ The average age of cases pending before the Court of Appeals at the end of 2024 was 1.9 months, compared with 2.1 months at the end of 2023.¹¹² In addition to deciding cases, the court issued 8,380 orders.¹¹³

C. Court of Appeals Elects Judge Tavitas Chief Judge

“The judges of the Court of Appeals of Indiana elected Judge Elizabeth F. Tavitas to serve a three-year term as Chief Judge starting on January 1, 2026.”¹¹⁴ She succeeds Judge Altice, “who served with distinction as Chief Judge of the Court of Appeals from January 1, 2023 to December 31, 2025.”¹¹⁵ “Judge Tavitas was appointed to the Court of Appeals by Governor Eric Holcomb and began her service on August 6, 2018.”¹¹⁶ “Prior to her appointment to the Court of Appeals, she served for more than twelve years as Judge of the Superior Court of Lake County, Civil Division from 2006-2018.”¹¹⁷ We look forward to Judge

102. *Id.* at 15.

103. *Id.* at 18.

104. *Id.*

105. *Id.*

106. *Id.*

107. The Indiana Court of Appeals 2024 annual report covers January 1, 2024, through December 31, 2024. *See* CT. OF APPEALS OF IND., 2024 ANNUAL REPORT 4 (2024).

108. *Id.* at 1.

109. *Id.*

110. *Id.*

111. *Id.* at 2.

112. *Id.*

113. *Id.*

114. *Court of Appeals Elects Elizabeth F. Tavitas as Chief Judge*, IND. JUD. BRANCH (Dec. 30, 2025), <https://www.in.gov/courts/appeals/news/2025-1230/> [<https://perma.cc/6XF4-D3PV>].

115. *Id.*

116. *Id.*

117. *Id.*

Tavitas' service as Chief Judge over the coming years.

D. Judge Scheele Sworn in at Indiana Court of Appeals

In December 2024, Governor Holcomb appointed Judge Stephen E. Scheele to the Indiana Court of Appeals, and he began service on January 8, 2025.¹¹⁸ Judge Scheele is a Lake County native, and he “earned his B.A. (International Studies/Political Science) from the University of Denver in 1993 and his J.D. from Indiana University’s Maurer School of Law in 1996.”¹¹⁹ “From 1996–1997, Judge Scheele participated in a year-long legal fellowship in Germany, which included an externship with the German Ministry of Justice and work at a Berlin law firm. He returned to Lake County in the fall of 1997 to practice law.”¹²⁰ “Throughout the next 20 years, Judge Scheele developed a wide-ranging legal practice in Indiana’s state and federal courts,” from “insurance defense” to “public defender work.”¹²¹ In 2016, Judge Scheele became “a magistrate in the Lake Circuit Court,” and “[i]n 2019, Governor Eric Holcomb appointed Judge Scheele to preside over Room 5 of the Lake Superior Court’s Civil Division.”¹²² We look forward to Judge Scheele’s service on the Court of Appeals for many years to come.

CONCLUSION

This survey period included one rule amendment, several decisions analyzing the appellate rules, and guidance regarding the pitfalls of using artificial intelligence to draft briefs. Keeping abreast of these rule changes, guidance provided through case law, and how to use emerging technology is key to a successful appellate practice.

118. *Judge Stephen E. Scheele*, IND. JUD. BRANCH, <https://www.in.gov/courts/appeals/judges/stephen-scheele/> [<https://perma.cc/YXY8-8XCF>] (last visited Feb. 2, 2026).

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*