

In the
Indiana Supreme Court



CAUSE NUMBER: 94S00-1101-MS-17

ORDER AMENDING INDIANA RULES FOR ADMISSION TO THE BAR
AND THE DISCIPLINE OF ATTORNEYS

Under the authority vested in this Court pursuant to Article 7, Section 4 of the Indiana Constitution providing for the admission and discipline of attorneys in this state, Indiana Admission and Discipline Rules 2, 3 and 23 are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

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Rule 2. Registration and Fees

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(c) **Annual Registration Fee--Inactive Attorneys.** One-half (1/2) of the registration fee referred to in section (b) shall be required of an attorney who files with the Clerk, on or before October 1 of each year, an affidavit of inactivity, stating that he or she is currently in active good standing or wishes to retain inactive standing, and that he or she neither holds judicial office nor is engaged in the practice of law in this state. A delinquent fee in the amount of fifty dollars (\$50.00) shall be added to the registration fee for fees paid after October 1 and on or before October 15 of each year; and a delinquent fee in the amount of one hundred dollars (\$100.00) shall be added to the registration fee for fees paid after October 15 of each year. An attorney who has paid the registration fee under this section and any applicable delinquent fees shall be considered to be in inactive good standing. An inactive attorney shall promptly notify the Clerk of a desire to return to active status, and pay the applicable registration fee for the current year, prior to any act of practicing law.

Rule 3. Admission of Attorneys

Section 1. Admission of Attorneys.

The Supreme Court shall have exclusive jurisdiction to admit attorneys to practice in Indiana. Admission to practice law by the Court pursuant to Rule 21 shall entitle attorneys to practice in any of the courts of this state.

Section 2. Temporary Admission on Petition.

- (a) *Requirements for Temporary Admission on Petition.* ~~Any court of the State of Indiana The Supreme Court, the Court of Appeals, the Tax Court, or a trial court~~, in the exercise of discretion, may permit a member of the bar of another state or territory of the United States, or the District of Columbia, not admitted pursuant to Rule 21, to appear in ~~any a~~ particular ~~case or~~ proceeding, only if the court before which the attorney wishes to appear ~~or in the case of an administrative proceeding, the Supreme Court~~, determines that there is good cause for such appearance and that each of the following conditions is met:
- (1) A member of the bar of this state has appeared and agreed to act as co- counsel.
 - (2) The attorney is not a resident of the state of Indiana, regularly employed in the state of Indiana, or regularly engaged in business or professional activities in the state of Indiana.
 - (3) The attorney has made payment to the Clerk of the Supreme Court an annual registration fee in the amount set forth in Admission and Discipline Rule 2(b), accompanied by a copy of the Verified Petition for Temporary Admission that the attorney intends to file pursuant to subdivision (4) below. Upon receipt of the registration fee and petition, the Clerk of the Supreme Court will issue a temporary admission attorney number and payment receipt to the attorney seeking admission. If the attorney's verified petition for temporary admission is thereafter denied, the attorney shall provide a copy of the order denying temporary admission to the Clerk of the Supreme Court, and the Clerk shall issue a refund of the registration fee.
 - (4) The attorney files a verified petition, co-signed by co-counsel designated pursuant to subdivision (a)(1), setting forth:
 - (i) The attorney's residential address, office address, office telephone number, electronic mail address, and the name and address of the attorney's law firm or employer, if applicable;
 - (ii) All states or territories in which the attorney has ever been licensed to practice law, including the dates of admission to practice and any attorney registration numbers;
 - (iii) That the attorney is currently a member in good standing in all jurisdictions listed in (ii);
 - (iv) That the attorney has never been suspended, disbarred or resigned as a result of a disciplinary charge, investigation, or proceeding from the practice of law in any jurisdiction; or, if the attorney has been suspended, disbarred or resigned from the practice of law, the petition shall specify the jurisdiction, the charges, the address of the court and disciplinary authority which imposed the sanction, and the reasons why the court should grant temporary admission notwithstanding prior acts of misconduct;
 - (v) That no disciplinary proceeding is presently pending against the attorney in any jurisdiction; or, if any proceeding is pending, the petition shall specify the jurisdiction, the charges and the address of the disciplinary authority investigating the charges. An attorney admitted under this rule shall have a continuing obligation during the period of such admission promptly to advise the court of a disposition made of pending charges or the institution of new disciplinary proceedings;
 - (vi) A list of all ~~cases and~~ proceedings, including caption and ~~cause case~~ number, in

which either the attorney, or any member of a firm with which the attorney is currently affiliated, has appeared in any ~~of the courts~~ or administrative agency of this state during the last five (5) years by temporary admission.

- (vii) Absent good cause, repeated appearances by any person or by members of a single law firm pursuant to this rule shall be cause for denial of the petition. A demonstration that good cause exists for the appearance shall include at least one of the following:
 - (a) the cause in which the attorney seeks admission involves a complex field of law in which the attorney has special expertise,
 - (b) there has been an attorney-client relationship with the client for an extended period of time,
 - (c) there is a lack of local counsel with adequate expertise in the field involved,
 - (d) the cause presents questions of law involving the law of the foreign jurisdiction in which the applicant is licensed, or
 - (e) such other reason similar to those set forth in this subsection as would present good cause for the temporary admission.
- (viii) A statement that the attorney has read and will be bound by the Rules of Professional Conduct adopted by the Supreme Court, and that the attorney consents to the jurisdiction of the State of Indiana, the Indiana Supreme Court, and the Indiana Supreme Court Disciplinary Commission to resolve any disciplinary matter that might arise as a result of the representation.
- (ix) A statement that the attorney has paid the registration fee to the Clerk of the Supreme Court in compliance with subdivision (a)(3) of this rule, together with a copy of the payment receipt and temporary admission attorney number issued by the Clerk of the Supreme Court pursuant to subdivision (3).

(b) *Notice of Temporary Admission.* All attorneys granted temporary admission under the provisions of subsection 2(a) shall file a Notice with the Clerk of the Supreme Court within thirty (30) days after a court grants permission to appear in the case or proceeding. A separate Notice of Temporary Admission must be filed with the Clerk of the Supreme Court for each case or proceeding in which a court grants permission to appear. Failure to file the notice within the time specified shall result in automatic exclusion from practice within this state. The notice shall include the following:

- (1) A current statement of good standing issued to the attorney by the highest court in each jurisdiction in which the attorney is admitted to practice law; and
- (2) A copy of the verified petition requesting permission to appear ~~in the court~~ proceedings, along with the ~~court~~ order granting permission.

(c) *Renewal of Registration for Temporary Admission.* If an attorney continues to appear on the basis of a temporary admission in any case or proceeding pending as of the first day of a new calendar year, the attorney shall pay a renewal fee equal to the annual registration fee set out in Admission and Discipline Rule 2(b). This renewal fee shall be due within thirty (30) days of the start of that calendar year and shall be tendered to the Clerk of the Supreme Court, accompanied by a copy of the Notice of Temporary Admission for each continuing case or proceeding in which a court has granted permission to appear. Failure to pay the required renewal fee within the time specified shall result in automatic exclusion from practice within this state. The Clerk of the

Indiana Supreme Court shall notify the trial court or administrative agency of the attorney's exclusion. If the proceeding has concluded or if the attorney has withdrawn his or her appearance, the attorney must so notify the Clerk of the Supreme Court by the deadline for renewal of registration.

- (d) *Responsibilities of Attorneys.* Members of the bar of this state serving as co-counsel under this rule shall sign all briefs, papers and pleadings in the cause and shall be jointly responsible therefore. The signature of co-counsel constitutes a certificate that, to the best of co-counsel's knowledge, information and belief, there is good ground to support the signed document and that it is not interposed for delay or any other improper reason. Unless ordered by the trial court, local counsel need not be personally present at proceeding before the court.
- (e) *Failure to Register, Renew, or Otherwise Perform as Required.* Any foreign attorney who fails to register or pay the registration fee as required under subsection (a), fails to file a Notice of Temporary Admission under subsection (b), or fails to pay a renewal registration fee required under subsection (c) shall be subject to discipline in this state. Members of the bar of this state serving as co-counsel under this rule shall be subject to discipline if the attorney admitted under this rule fails to pay the required fees or otherwise fails to satisfy the requirements of this rule.
- (f) *Scope and Effect of Automatic Exclusion from Practice Within the State.*
- (1) When an attorney is automatically excluded from practice within the state under Section 2(b) or (c), any further action taken by that attorney in any case or proceeding in the state shall constitute the unauthorized practice of law.
 - (2) An attorney may seek relief from the automatic exclusion from practice within the state by filing a "Petition for Relief from Automatic Exclusion" with the Supreme Court. The petition shall be captioned: "In re Temporary Admission of [Attorney's name]." The petition shall describe the circumstances causing the exclusion, shall list all pending cases or proceedings, including court or administrative agency and case number, in which the attorney had been granted temporary admission prior to the automatic exclusion, and shall be accompanied by a "Notice of Temporary Admission" if the exclusion is under Section 2(b) or a renewal admission fee, together with a delinquent fee in the amount of one hundred and ~~thirty-fourty-five~~ thirty-fourty-five dollars (~~\$130.00~~145.00), if the exclusion is under Section 2(c).
 - (3) If the Supreme Court grants the petition, the exclusion from practice shall be lifted and the Clerk of the Supreme Court shall notify all courts and administrative agencies in which the attorney had been granted temporary admission to practice in cases or proceedings pending at the time of the automatic exclusion. Unless the Supreme Court directs otherwise, all actions taken by the attorney during the period of automatic exclusion from practice shall be deemed valid to the extent the actions would have been valid if the attorney had not been subject to automatic exclusion. However, the attorney remains subject to a charge of the unauthorized practice of law for actions taken during the automatic exclusion.

The amendments apply only to requests for Temporary Admission on Petition filed on or after January 1, 2007.

If an attorney files the notice with the Clerk of the Supreme Court and pays the fee required by subpart (b) of the Rule in one case or proceeding in any given calendar year, the attorney need not pay another fee for any other case in which the attorney seeks Temporary Admission on

Petition during that same calendar year.

If an attorney files the notice with the Clerk of the Supreme Court and pays the fee required by subparts (a) and (b) of the Rule in a particular calendar year, and a new calendar year begins and the attorney is still appearing in any case [or proceeding](#) pursuant to a Temporary Admission on Petition, the attorney must file a new notice and pay a fee within 30 days of the start of the new calendar year.

If more than one (1) attorney from one firm is appearing pursuant to a Temporary Admission on Petition in a particular case [or proceeding](#) on behalf of the same client, each attorney appearing nevertheless has an individual obligation to comply with the Rule as amended.

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Rule 23. Disciplinary Commission and Proceedings

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Section 3. Types of Discipline and Suspension

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(d) Notice of permanent disbarment, resignation under Section 17, suspension, reinstatement (except automatic reinstatement), revocation of probation, release from probation, or public reprimand shall be communicated to the parties to the proceeding, the Clerk of this Court;² the Clerk of the United States Court of Appeals for the Seventh Circuit;² the Clerk of each of the Federal District Courts in this State;² the Clerk of the United States Bankruptcy Courts in this State;² the Clerk of the Court, [Circuit and Superior Court judges](#), and Bar Association of each county in which the attorney maintains an office;² the Clerk of the Court, [Circuit and Superior Court judges](#), and Bar Association of each contiguous county;² a newspaper of general circulation in each county in which the attorney maintains an office;² the official publication of the Indiana State Bar Association;² and the American Bar Association. In addition, notice of disbarment, resignation under Section 17 or suspension of one year or more shall be communicated to the Clerk of the United States Supreme Court. Notice of private reprimand shall be communicated to the parties to the proceeding and the Clerk of this Court. In cases where probation is imposed by this Court, the Clerk shall notify such persons as the Court may direct of the action taken and of the restriction, conditions or limitations.

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Section 27. Attorney Surrogates

(a) *Definitions for purposes of this section only:*

“Attorney Surrogate” means a senior judge certified by the Indiana Judicial Nominating Commission or another member of the bar of this State, in good standing, who has been appointed by a court of competent jurisdiction to act as an attorney surrogate for a

lawyer.

“Court of competent jurisdiction” means a court of general jurisdiction in the county in which a Lawyer maintains or has maintained a principal office.

“Disabled” means that a Lawyer has a physical or mental condition resulting from accident, injury, disease, chemical dependency, mental health problems or age that significantly impairs the Lawyer's ability to practice law.

“Fiduciary Entity” means a partnership, limited liability company, professional corporation, or a limited liability partnership, in which entity a Lawyer is practicing with one or more other members of the Bar of this State who are partners, shareholders or owners.

“Lawyer” means a member of the Bar of this State who is engaged in the private practice of law in this State. “Lawyer” does not include a member of the Bar whose practice is solely as an employee of another Lawyer, a Fiduciary Entity or an organization that is not engaged in the private practice of law.

(b) *Designation of Attorney Surrogate*

- (1) At the time of completing the annual registration required by Ind. Admission and Discipline Rule 2(b), a Lawyer may designate an attorney surrogate ~~on~~in the ~~annual registration form~~ Clerk of Courts Portal (www.in.gov/judiciary/cofc/license) provided by the Clerk of the Supreme Court by specifying the ~~name, office address and residence address~~ attorney number of the attorney surrogate and certifying that the attorney surrogate has agreed to the designation in a writing in possession of both the lawyer and the surrogate. The designation of an attorney surrogate shall remain in effect until revoked by either the designated attorney surrogate or the Lawyer designating the attorney surrogate. The Lawyer who designates the attorney surrogate shall notify the Clerk of the Supreme Court of any change of designated attorney surrogate within thirty (30) days of such change. The Clerk shall keep a list of designated attorney surrogates and their addresses.
- (2) A Lawyer, practicing in a Fiduciary Entity, shall state the name and address of the Fiduciary Entity where indicated in the attorney surrogate designation section of the ~~Lawyer's annual registration form~~ Clerk of Courts Portal (www.in.gov/judiciary/cofc/license). Because of the ongoing responsibility of the Fiduciary Entity to the clients of the Lawyer, no attorney surrogate shall be appointed for a Lawyer practicing in a Fiduciary Entity.
- (3) A lawyer not practicing in a Fiduciary Entity who does not designate an attorney surrogate pursuant to subsection (1) above, Unless otherwise designated on the annual registration form required by Ind. Admission and Discipline Rule 23 § 21(D) pursuant to subsection (1) above, a Lawyer not practicing in a Fiduciary Entity will be deemed to designate a senior judge or other suitable member of the bar of this State in good standing appointed by a court of competent jurisdiction to perform the duties of an attorney surrogate.

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**INDIANA SUPREME COURT DISCIPLINARY COMMISSION RULES GOVERNING
ATTORNEY TRUST ACCOUNT OVERDRAFT REPORTING**

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Rule 2. Approval of Financial Institutions

- A. Indiana Admission and Discipline Rule 23, Section 29(a)(1) requires that attorneys maintain trust accounts only in financial institutions that are approved by the Disciplinary Commission. A financial institution shall be approved by the Disciplinary Commission as a depository for trust accounts if it files with the Disciplinary Commission a written agreement, in the form attached hereto as Exhibit A, whereby it agrees to report to the Disciplinary Commission whenever it has actual notice that any properly payable instrument is presented against a trust account containing insufficient funds, irrespective of whether or not the instrument is honored.
- B. The written agreement of any financial institution is binding upon all branches of the financial institution.
- C. The Disciplinary Commission will maintain a public listing of all approved financial institutions and will publish ~~it on its website the same each year in the December issue of *Res Gestae*, the monthly journal of the Indiana State Bar Association.~~ The names of approved financial institutions will also be available ~~at other times~~ by written or telephone inquiry to the Disciplinary Commission.
- D. The written agreement of any financial institution will continue in full force and effect and be binding upon the financial institution until such time as the financial institution gives thirty (30) days notice of cancellation in writing to the Disciplinary Commission, or until such time as its approval is revoked by the Disciplinary Commission.

These amendments shall take effect January 1, 2012, except that the amendments to Admission and Discipline Rule 23 § 27 shall be effective upon the date of this Order.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Public Defender's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration;

Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and Thomson Reuters. The Clerk is also directed to post this Order to the Court's website.

Thomson Reuters is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 20th day of September, 2011.

/s/Randall T. Shepard
Randall T. Shepard
Chief Justice of Indiana

All Justices concur.