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

BRYAN H. BABB*
BRADLEY M. DICK**

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 Indiana Court of Appeals ("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 that appellate practitioners can avoid. The Article does not cover every case interpreting the appellate rules that has occurred during the survey period.[1] Instead, it focuses on the most significant decisions.

I. RULE AMENDMENTS

The Supreme Court amended the Appellate Rules, effective January 1, 2015, except for the amendment to Appellate Rule 2(G), which is retroactively effective to July 1, 2014, and the amendments affect sixteen Appellate Rules and four sample forms.[2]

The majority of the substantive rule changes relate to a substantial amendment to Indiana Administrative Rule 9(G), which changes the procedure for excluding a court record from public access.[3] The scope of the changes to Administrative Rule 9(G) is beyond the scope of this Article, but the changes will be discussed to the extent they effect the Appellate Rules. Rule 2(N) has been amended to incorporate definitions from Administrative Rule 9(C).[4] Rule 9(J) has been amended to reflect that when all court records are excluded from public access "the Clerk shall make the appellate Chronological Case Summary for the

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* Partner, Bose McKinney & Evans LLP. B.S., 1989, United States Military Academy; M.S.B.A., 1994, Boston University; J.D., *cum laude*, 1999, Indiana University Maurer School of Law; Law Clerk to Justice Frank Sullivan, Jr. of the Indiana Supreme Court, 1999-2000.

** Associate, Bose McKinney & Evans LLP. B.A., 2003, Indiana University; J.D., *magna cum laude*, 2010, University of Michigan Law School; Law Clerk to Chief Justice Loretta H. Rush of the Indiana Supreme Court, 2013-2014.

1. The survey period is between October 1, 2013, and September 30, 2014.

2. *See* Order Amending Indiana Rules of Appellate Procedure, No. 94S00-1401-MS-57 (Ind. Sept. 2, 2014), *available at* http://www.in.gov/judiciary/files/order-rules-2014-0902-appellate.pdf, *archived at* http://perma.cc/WK4K-JHJP [hereinafter Order].

3. *See* Order Amending Indiana Administrative Rules, No. 94S00-1401-MS-57 (Ind. Sept. 8, 2014), *available at* http://www.in.gov/judiciary/files/order-rules-2014-0908-admin.pdf, *available at* http://perma.cc/ZQ4V-4M3Q [hereinafter Administrative Rules Order].

4. Order, *supra* note 2, at 1.

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case publicly accessible but shall identify the names of parties and affected persons in a manner reasonably calculated to provide anonymity and privacy."[5] Subsection (F) was added to Rule 23, and it provides that court records are generally accessible, "except as provided in Administrative Rule 9(G)."[6] If records are excluded from public access under Administrative Rule 9(G), then they shall remain excluded on appeal, unless the Court of Appeals "determines the conditions in Administrative Rule 9(G)(7) have been satisfied."[7] And "[a]ny Court Record excluded from Public Access on appeal must be filed in accordance with Administrative Rule 9(G)(5)."[8]

Rule 28(A)(9) was added, and it provides that if "the Court Records are excluded from Public Access pursuant to Administrative Rule 9(G)(1), the Transcript shall be excluded from Public Access."[9] That subsection also provides the procedures for excluding portions of the transcript.[10] Rule 29(C) was added, and it provides that a court reporter must comply with Administrative Rule 9(G)(5)(b), if an exhibit includes a separate written notice that it is to be excluded.[11] Rule 53(H) has been amended to provide that if court records are excluded from public access, then during any oral argument, the parties "shall refer to the case and parties only as identified in the appellate Chronological Case Summary and shall not disclose any matter excluded from Public Access."[12] Rule 65(F) has been added, and it provides that orders, decisions, and opinions should "endeavor to exclude the names of the parties and affected persons, and any other matters excluded from Public Access," "unless the Court on Appeal determines the conditions in Administrative Rule 9(G)(7) are satisfied, or upon further general order of the Court of Appeal."[13]

While most changes to the Rules related to public access to documents, Rule 2(G) was amended to add further case designations for various criminal offenses.[14] Rule 43(E) was amended to provide that "tables, charts, or similar material and text that is blocked and indented" shall be single spaced.[15] Rule 65 was significantly amended to provide that a party has only fifteen days—as opposed to thirty days—from "the entry of the decision" to "move the Court to publish" the memorandum decision.[16] The rule was also amended to reflect that unpublished decisions are now called "memorandum decision[s]," removing the

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5. *Id.* at 2.
6. *Id.* at 4.
7. *Id.*
8. *Id.*
9. *Id.* at 5.
10. *Id.*
11. *Id.* at 6.
12. *Id.* at 7.
13. *Id.* at 8; Administrative Rule 9(G)(7) provides a procedure for making records excluded from public access accessible. Administrative Rules Order, *supra* note 3, at 2.
14. *Id.* at 1.
15. *Id.* at 7.
16. *Id.* at 8.

phrase "not for publication."[17]

Rule 2(O) now defines the term "Court Reporter."[18] And a significant number of rules—Rule 3, Rule 9, Rule 10, Rule 11, Rule 12, Rule 14, Rule 14.1, Rule 24, Rule 28, Rule 30, and Appendix B—were amended to reflect that the term "Court Reporter" is now defined (by capitalizing the term).[19]

The Notice of Appeal and Appearance[20] forms now require attorneys to certify that the information in the Indiana Supreme Court Roll of Attorneys is current and will be used to contact attorneys.[21] The Administrative Rule 9(G)(5) Notice of Exclusion of Court Record from Public Access (Transcript on Appeal) form[22] has been added, and it provides "notice that the following Court Record contained in the transcript on appeals should be filed on green paper and remain excluded from public access."[23]

II. CASE LAW INTERPRETING APPELLATE RULES

The Court of Appeals and Supreme Court issued a number of decisions analyzing the Appellate Rules. Most significantly, the Supreme Court held that failure to timely file a notice of appeal does not deprive Indiana's appellate courts of jurisdiction.

A. Appellate Court Jurisdiction

During the survey period, the Supreme Court held that failure to timely file a Notice of Appeal "is not a jurisdictional defect depriving the appellate courts of the ability to entertain an appeal,"[24] and the court issued two other opinions that were consistent with this holding. This was a dramatic shift because Indiana appellate courts have long held that "timely filing of a notice of appeal is a jurisdictional prerequisite, and failure to conform to the applicable time limits results in forfeiture of an appeal."[25] While dramatic, this change is consistent with the Supreme Court's more recent jurisdiction jurisprudence, which had

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17. *Id.*

18. *Id.* at 1.

19. *Id.* at 1-8.

20. Previously, the form was titled "Appellee's Notice of Appearance." *Id.* at 19. The form's title has been shortened to "Appearance." *Id.*

21. *Id.* at 11, 19.

22. The Order also added the Court Reporter's Administrative Rule 9(G) Notice form. Order, *supra* at note 2, at 15-16. But the court later issued a correction eliminating that form. *See* Order Correcting Amendments to Indiana Rules of Appellate Procedure, No. 94S00-1401-MS-57 (Ind. Sept. 22, 2014), *available at* http://www.in.gov/judiciary/files/order-rules-2014-0922-appellate.pdf, *archived at* http://perma.cc/VS9D-T9V6.

23. *Id.* at 16-17.

24. In re Adoption of O.R., 16 N.E.3d 965, 971 (Ind. 2014).

25. Bohlander v. Bohlander, 875 N.E.2d 299, 301 (Ind. Ct. App. 2007), *trans. denied*, 891 N.E.2d 39 (Ind. 2008); *see*, *e.g.*, Davis v. State, 771 N.E.2d 647, 649 (Ind. 2002), *abrogated by* In re O.R., 16 N.E.3d at 971; Rasaki v. State, 3 N.E.3d 1058, 1062 (Ind. Ct. App. 2014).

sought to correct misapprehensions regarding the concept of jurisdiction.[26] As Chief Justice Shepard noted in 2006, "[a]ttorneys and judges alike frequently characterize a claim of procedural error as one of jurisdictional dimension":

> while we might casually say, "Judge Flywheel assumed jurisdiction," or "the court had jurisdiction to impose a ten-year sentence," such statements do not have anything to do with the law of jurisdiction, either personal or subject matter. *Real* jurisdictional problems would be, say, a juvenile delinquency adjudication entered in a small claims court, or a judgment rendered without any service of process. Thus, characterizing other sorts of procedural defects as "jurisdictional" misapprehends the concepts.[27]

In *In re O.R.*, the Supreme Court analyzed whether failure to timely file a notice of appeal was a *real* jurisdictional problem, depriving the Court of Appeals of jurisdiction, or whether it was a procedural defect.[28] Appellate Rule 9 provides that a party must file a notice of appeal within thirty days of the entry of final judgment, and "[u]nless the Notice of Appeal is timely filed, the right to appeal shall *be forfeited* except as provided in by P.C.R. 2."[29] "[*F*]*orfeiture* of an appeal is the price one pays for untimely filing of the necessary papers to effect an appeal."[30] "[T]he bench and bar alike" have frequently mischaracterized "the timely filing of a Notice of Appeal" as a jurisdictional defect.[31] This is a mischaracterization because "Rule 9(A) does not mention jurisdiction at all"; rather, it mentions "forfeiture," and "[f]orfeiture and jurisdiction are not the same."[32] "'Forfeiture' is . . . '[t]he loss of a right, privilege, or property because of a . . . breach of obligation, or neglect of duty.'"[33] In contrast, jurisdiction "delineat[es] the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction)" that a court has authority over.[34]

A "party's forfeiture" of the right to appeal does not "mean the appellate courts somehow lose their authority to hear and determine the general class of cases to which a party's case belongs or over the party attempting to assert its right of appeal."[35] "Timely filing relates neither to the merits of the controversy nor to the competence of the courts on appeal to resolve the controversy."[36] Therefore, the Supreme Court held that failure to timely file the notice of appeal

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26. K.S. v. State, 849 N.E.2d 538, 541-42 (Ind. 2006).
27. *Id.*
28. *In re O.R.*, 16 N.E.3d at 970.
29. IND. R. APP. P. 9(A)(1), (5) (emphasis added).
30. *In re O.R.*, 16 N.E.3d at 969 (emphasis added).
31. *Id.* at 970.
32. *Id.*
33. *Id.* (quoting BLACK'S LAW DICTIONARY 765 (10th ed. 2014)).
34. *Id.* at 970-71 (internal quotation omitted).
35. *Id.*
36. *Id.*

did not deprive Indiana's appellate courts of jurisdiction over the case.[37]

The Supreme Court then analyzed the concept of forfeiture.[38] In *In re O.R.*, a father appealed a trial court's order allowing his child to be adopted without his consent.[39] But he filed his notice of appeal twenty-three days late.[40] The Court of Appeals concluded that "it lacked subject matter jurisdiction because Father did not timely file a Notice of Appeal."[41] The Supreme Court concluded that "extraordinary compelling reasons" favored a conclusion that father's "forfeited right should be restored."[42] The court noted that under Appellate Rule 1[43] it had the authority to deviate from the Appellate Rules.[44] "Thus, despite the 'shall be forfeited' language of Rule 9(A), the Rules themselves provide a mechanism allowing this Court to resurrect an otherwise forfeited appeal."[45] The court found the father's efforts to secure appellate counsel before he missed the deadline important.[46] But more importantly, "the Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children."[47] The court concluded that father's "otherwise forfeited appeal deserves a determination on the merits."[48]

In an opinion issued before *In re O.R.*, the Supreme Court reached a similar result without directly holding that procedural errors do not deprive appellate courts of jurisdiction.[49] In *T.L.*, a trial court granted a petition to adopt a father's children without his consent.[50] The father—proceeding pro se—sent the trial court a "Response to Petition for Adoption," within the thirty day time frame required by Appellate Rule 9(A)(1).[51] The trial court treated the father's submission as a notice of appeal.[52] The father's subsequently appointed appellate counsel amended the notice of appeal and timely filed his appellant's brief.[53] The Court of Appeals dismissed the appeal as untimely.[54] The Supreme Court granted transfer and addressed the merits of his appeal "because it involves his

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37. *Id.* at 971.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. IND. R. APP. P. 1 (providing that the "Court may, upon the motion of a party or the Court's own motion, permit deviation from these Rules").

44. *In re O.R.*, 16 N.E.3d at 972.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *In re* Adoption of T.L., 4 N.E.3d 658, 660 (Ind. 2014).

50. *Id.* at 661.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

constitutional right to parent his children."[55]

The court noted that procedural rules "exist to facilitate the orderly presentation and disposition of appeals."[56] And "our procedural rules 'are merely means for achieving the ultimate end or orderly and speedy justice.'"[57] The court found that "[w]hen such substantial rights at are issue before the Court, we have often preferred to decide cases on their merits rather than dismissing them on procedural grounds."[58] The court concluded that "[b]ecause of the importance surrounding an individual's right to parent his children, we deny [mother's] Motion to Dismiss and proceed to the merits of Father's claim."[59]

Similarly, in *McKnight v. State*—another case decided before *In re O.R.*—the Court of Appeals dismissed McKnight's appeal because it concluded that McKnight's untimely filing of a motion to correct error deprived it of jurisdiction over his appeal.[60] The Supreme Court vacated the Court of Appeals' decision and ordered that its jurisdiction had been invoked.[61] Upon remand, the Court of Appeals presumed that the Supreme Court must have extended the "prison mailbox rule" to McKnight's filing, or else it believed that it would not have had jurisdiction to hear McKnight's appeal.[62] In light of *In re O.R.*, the Supreme Court may not have extended the prison mailbox rule; rather, it may have concluded that failure to timely file a motion to correct error did not deprive the Court of Appeals of jurisdiction.[63]

B. Appeals of Orders Under Indiana Trial Rule 60(B)

In *Front Row Motors, LLC v. Jones*, the Supreme Court addressed the proper procedure for appealing a trial court's order on an Indiana Trial Rule 60(B) motion.[64] There, Front Row Motors moved to have a default judgment set aside under Trial Rule 60(B).[65] The trial court denied Front Row Motors' motion, and it appealed.[66] On appeal, Jones moved to dismiss, arguing that the trial court's order was not a final judgment or an appealable interlocutory judgment.[67] The Court of Appeals dismissed the appeal, and the Supreme Court granted transfer.[68]

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55. *Id.*

56. *Id.* at 661 n.2 (quoting Miller v. Dobbs, 991 N.E.2d 562, 565 (Ind. 2013)).

57. *Id.* (quoting State v. Monserrate, 442 N.E.2d 1095, 1097 (Ind. 1982) (internal quotation and citation omitted)).

58. *Id.*

59. *Id.*

60. McKnight v. State, 1 N.E.3d 193, 198, 198 n.2 (Ind. Ct. App. 2013).

61. *Id.*

62. *Id.* at 198 n.2.

63. *Cf. In re* Adoption of O.R., 16 N.E.3d 965, 972 (Ind. 2014).

64. Front Row Motors, LLC v. Jones, 5 N.E.3d 753, 758 (Ind. 2014).

65. *Id.* at 755-56.

66. *Id.* at 756.

67. *Id.*

68. *Id.*

The Supreme Court first noted that it did appear the trial court's order was not a final order because it did not dispose of all claims and parties, and the trial court did not determine in writing that there was no just reason for delay, under Trial Rule 54(B).[69] The court then noted that Trial Rule 54(B) was "not the only way an order becomes final and appealable. Indiana Appellate Rule 2(H) provides five different ways in which that might happen, including 'it is deemed final under Trial Rule 60(C).'"[70] Trial Rule 60(C) provides that a trial court order granting or denying relief under Trial Rule 60(B) "*shall be deemed a final judgment*, and an appeal may be taken therefrom as in the case of a judgment."[71] Therefore, because Front Row Motors had sought relief under Trial Rule 60(B), and because "the trial court's order—although not expressly citing Rule 60(B)—granted in part the relief Appellant's sought under the Rule," the trial court's order was "deemed final by operation of Trial Rule 60(C)"—"even though the trial court's order was not a final judgment within the meaning of Trial Rule 54."[72] The court then addressed the merits of Front Row Motors' claims.[73]

C. Restitution

In *Alexander v. State*, the Supreme Court analyzed whether a trial court's failure to enter a restitution order means that a defendant's appeal should be dismissed as premature.[74] A jury found Alexander guilty of two counts of aggravated battery.[75] The trial court sentenced him to prison for a term of years, and the State also sought restitution.[76] The trial court took the restitution issue under advisement and stated that it wanted to resolve the issue "'fairly quickly.'"[77] But the trial court also told Alexander that he needed to appeal within thirty days.[78] Alexander appealed before the trial court determined the amount of restitution, and because the Court of Appeals gained jurisdiction over the matter, the trial court held the restitution issue in abeyance.[79] After Alexander filed his appellant's brief, the State moved to dismiss, arguing that Alexander could not appeal until the trial court resolved the restitution issue.[80] The Court of Appeals dismissed the appeal as premature.[81] The Supreme Court

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69. *Id.*; IND. R. TRIAL P. 54(B).
70. *Id.* (quoting IND. R. APP. P. 2(H)) (internal citation omitted).
71. *Id.* (quoting IND. R. TRIAL P. 60(C)).
72. *Id.* at 758.
73. *Id.*
74. Alexander v. State, 4 N.E.3d 1169, 1170 (Ind. 2014) (per curiam).
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.*
81. Alexander v. State, 987 N.E.2d 182 (Ind. Ct. App. 2013), *trans. granted*.

granted transfer.[82]

The Supreme Court first noted that "[a]s matters stand now, close to two years after having been convicted and placed in DOC custody, Alexander's appeal has not been considered on the merits, and no order on whether he will be required to pay restitution has been entered."[83] The State, relying on *Haste v. State*,[84] argued that the Court of Appeals properly dismissed Alexander's appeal.[85] The Supreme Court noted that in *Haste* "the trial court's order had specifically stated restitution was under advisement."[86] In contrast, in *Alexander*, "the trial court advised Alexander that any Notice of Appeal had to be filed within thirty days," and this advisement "sufficiently put matters in a state of confusion about Alexander's appeal deadline . . . that he is entitled to have his appeal decided on the merits."[87] The Supreme Court then remanded the matter to the Court of Appeals to address the merits of Alexander's appeal.[88]

D. Trial Court's Lack of Personal Jurisdiction

In *Pittman v. State*, the Court of Appeals analyzed whether the trial court's lack of personal jurisdiction over a party deprived it of jurisdiction.[89] In *Pittman*, the state argued that a trial court lacked jurisdiction over it because Pittman failed to serve the state and this meant that the Court of Appeals lacked jurisdiction over Pittman's appeal.[90] The Court of Appeals noted that even if "the trial court lacked personal jurisdiction over the State, this does not mean that *this court* is without jurisdiction to hear Pittman's appeal."[91] The court held that "the trial court's alleged lack of personal jurisdiction does not deprive the court on appeal jurisdiction."[92]

E. Appeal from Magistrate's Order

In *In re Paternity of J.M.*, the Court of Appeals analyzed whether the Appellate Rules gave the Court of Appeals jurisdiction to decide an appeal of a magistrate judge's order.[93] The majority noted that "[w]hile the magistrate may not have had the authority to enter the order" the parties did not raise the issue, so it was waived.[94] Judge Robb concurred, but she noted that under Appellate

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82. Alexander v. State, 992 N.E.2d 207 (Ind. 2013) (table).
83. *Alexander*, 4 N.E.3d at 1171.
84. 967 N.E.2d 576 (Ind. Ct. App. 2012).
85. *Alexander*, 4 N.E.3d at 1171.
86. *Id.*
87. *Id.*
88. *Id.*
89. Pittman v. State, 9 N.E.3d 179, 182 (Ind. Ct. App. 2014).
90. *Id.* at 181.
91. *Id.*
92. *Id.*
93. *In re* Paternity of J.M., 3 N.E.3d 1073, 1074 (Ind. Ct. App. 2014).
94. *Id.*

Rule 5(A) the Court of Appeals only has jurisdiction in appeals "from Final Judgments of Circuit, Superior, Probate, and County Courts."[95] And because the magistrate's order was not adopted by a judicial officer, it was not a final appealable order.[96] Judge Robb went on to note that "[p]erhaps our caselaw has developed such that parties *can* waive the requirement of a countersignature, but I question whether they should be able to."[97] She noted that the Legislature requires a trial judge's countersignature, and a party cannot grant authority to a magistrate—through waiver—that the Legislature has not granted.[98] But since the majority's resolution of the case "provides the same result as suspending this appeal pending the regular trial judge's review of the magistrate's recommendation," she concurred.[99]

F. Good Cause for Belated Interlocutory Appeal

In *Haggerty v. Anonymous Party 1*, the Court of Appeals analyzed what constituted good cause to file a belated interlocutory appeal.[100] Appellate Rule 14(B)(1)(a) requires a party to seek to have the trial court certify an interlocutory order for appeal within thirty days of the trial court issuing the order.[101] In *Haggerty*, one party timely moved to have the trial court certify an order for interlocutory appeal, but two other parties waited 105 days to do so.[102] The trial court granted the belated motions.[103] The Haggertys argued that this was an abuse of discretion.[104] The Court of Appeals noted that there was a dearth of case law analyzing good cause in the context of certifying interlocutory appeals.[105] The court found that good cause existed in this case because it allowed the Court of Appeals "to resolve, in one appeal, the immunity claims raised by all" three parties.[106]

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95. *Id.* at 1078-79.

96. *Id.* at 1079.

97. *Id.* at 1079-80.

98. *Id.* at 1080.

99. *Id.*

100. Haggerty v. Anonymous Party 1, N.E.2d 286, 288 (Ind. Ct. App. 2013).

101. IND. R. APP. P. 14(B)(1)(A) (providing that a "motion requesting certification of an interlocutory order must be filed in the trial court within thirty (30) days after the date the interlocutory order is noted in the Chronological Case Summary unless the trial court, for good cause, permits a belated motion. If the trial court grants a belated motion and certifies the appeal, the court shall make a finding that the certification is based on a showing of good cause, and shall set forth the basis for that finding.").

102. *Haggerty*, 998 N.E.2d at 292.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

G. Appeal of Temporary Restraining Order

In *Allison v. Pepkowski*, Pepkowski petitioned the trial court for an ex parte protective order against Allison because he was allegedly stalking her.[107] The trial court granted the petition and set the matter for a hearing.[108] During the hearing, Pepkowski testified, but she appeared to have an anxiety attack.[109] The trial court stopped the hearing, but extended the protective order.[110] Allison asserted that he could appeal as of right under Appellate Rule 14(A)(5)[111] because he was appealing the grant of a preliminary injunction.[112] The Court of Appeals, however, noted that the trial court had never granted a preliminary injunction.[113] Instead, the trial court had granted a temporary restraining order, which is not appealable as of right.[114] A temporary restraining order may only be appealed if the trial court certifies its order for interlocutory appeal, but Allison never moved to have the trial court certify its order.[115] Therefore, the Court of Appeals dismissed Allison's appeal because it lacked jurisdiction over it.[116]

H. Appeal of an Order to Disclose a Document

In *Ball State University v. Irons*, the Court of Appeals analyzed whether Ball State University could appeal as of right a trial court's order for the university to turn over a transcript.[117] The trial court had ordered Ball State to provide a transcript to a litigant, despite the student having an outstanding tuition bill.[118] Ball State appealed as of right under Appellate Rule 14(A)(3).[119] The Court of Appeals noted that this rule only applied to an order to surrender a document, not to "every order to produce documents during discovery."[120] Ball State turning over the transcript did not constitute a surrender because doing so "does not remove the official transcript from BSU's control," and "Ball State is in no way

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107. Allison v. Pepkowski, 6 N.E.3d 467, 468 (Ind. Ct. App. 2014).

108. *Id.*

109. *Id.*

110. *Id.* at 469-70.

111. IND. R. APP. P. 14(A)(5) (providing that a party may appeal as of right an order "[g]ranting or refusing to grant, dissolving, or refusing to dissolve a preliminary injunction").

112. *Allison*, 6 N.E.3d at 470.

113. *Id.* at 471.

114. *Id.*

115. *Id.*

116. *Id.*

117. Ball State Univ. v. Irons, 6 N.E.3d 1035, 1036 (Ind. Ct. App. 2014).

118. *Id.* at 1037.

119. IND. R. APP. P. 14(A)(3) (providing that a party may appeal as of right an order "[t]o compel the delivery or assignment of any securities, evidence of debt, documents or things in action"); *Ball State Univ.*, 6 N.E.3d at 1037.

120. *Id.* (quoting State v. Hogan, 582 N.E.2d 824, 825 (Ind. 1991)).

precluded from attempting to recover the unpaid tuition."[121] The court continued that the "transcript simply is not like the irreplaceable documents—securities, receipts, deeds, leases, or promissory notes"—that Appellate Rule 14(A)(3) applies to.[122] Therefore, because this was not an appeal as of right and because Ball State did not ask the trial court to certify its order, the Court of Appeals dismissed Ball State's appeal.[123]

Judge Brown dissented because "the appealed order . . . compels the delivery of a document," and Ball State should have been able to appeal as of right under Appellate Rule 14(A)(3).[124] Moreover, Judge Brown would have also concluded that Ball State could appeal as of right under Appellate Rule 14(A)(8), which provides for an appeal as of right from an order transferring or refusing to transfer a case under Trial Rule 75.[125] Trial Rule 75 provides that a party may file a motion to dismiss because the court where the matter was filed is not the preferred venue.[126] Despite Ball State not citing Appellate Rule 14(A)(8) in its brief, Judge Brown would have found that the court had jurisdiction because under the rule Ball State did not have the burden of proving lack of subject matter jurisdiction, Ball State had raised venue in its appellants brief, and the court prefers "to decide cases on their merits."[127]

I. Certified Question from Federal Bankruptcy Court

The Supreme Court held, under Appellate Rule 64,[128] that it could accept certified questions from federal bankruptcy courts, under Appellate Rule 1.[129] In *In re Howell*, the Supreme Court received a certified question from the United States Bankruptcy Court for the Northern District of Indiana.[130] The court first noted that under the plain language of Appellate Rule 64 the court could only accept certified questions from the "United States Supreme Court, any federal circuit court of appeals, or any federal district court."[131] While Appellate Rule 64 did not expressly grant the court the authority to accept a certified question from a bankruptcy court, Appellate Rule 1 provides that the "Court may . . . permit deviation from these Rules."[132] The court invoked Appellate Rule 1's

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121. *Id.* at 1038.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.* at 1039.

126. IND. R. TRIAL P. 75.

127. *Ball State Univ.*, 6 N.E.3d at 1040.

128. IND. R. APP. P. 64 (providing that the "United States Supreme Court, any federal circuit Court of Appeals, or any federal district court may certify a question of Indiana law to the Supreme Court").

129. *In re* Howell, 9 N.E.3d 145, 145 (Ind. 2014) (memorandum decision).

130. *Id.*

131. *Id.*

132. *Id.*

authority "to deviate from the exact strictures of Appellate Rule 64(A) and accept this certified question from a United States Bankruptcy Court."[133]

J. Cross-Appeals

The Supreme Court held that parties may cross-appeal without filing a notice of appeal.[134] The Court of Appeals had indicated that Appellate Rule 9(D) required appellees to denominate as a cross-appeal an argument rejected by the trial court that the appellees contended is an alternative ground for affirming the summary judgment order.[135] Appellate Rule 9(D) provides that an "appellee may cross-appeal without filing a Notice of Appeal by raising cross-appeal issues in the appellee's brief."[136] And Appellate Rule 46(D)(2) provides that the "Appellee's Brief shall contain any contentions the appellee raises on cross-appeal as to why the trial court or Administrative Agency committed reversible error."[137] The Supreme Court relying on those rules held that the "Appellate Rules do not require the filing of a cross-appeal where the appellee does not seek reversal of the order or judgment appealed, but instead raises a ground for affirming that appears in the record and was rejected or not considered by the trial court or agency."[138]

III. REFINING OUR APPELLATE PROCEDURE

During the survey period, the Supreme Court and the Court of Appeals offered helpful advice to practitioners to help them avoid various appellate-rule pitfalls.

A. Parties on Appeal

The Court of Appeals noted that an intervener may appeal an order, even if the named party does not appeal.[139] In *Barnette v. United States Architects*, the issue was whether the Bowens' building complied with Carmel's Zoning Ordinance.[140] Carmel was the named defendant, but the Barnettes intervened.[141] The trial court found for the Bowens.[142] Carmel did not appeal, but the Barnettes did.[143] The Bowens argued that the appeal was moot because the Barnettes could

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133. *Id.*

134. Drake v. Dickey, 12 N.E.3d 875, 875 (Ind. 2014) (per curiam).

135. Drake v. Dickey, 2 N.E.2d 30, 32 n.2 (Ind. Ct. App. 2013), *trans. granted* 12 N.E.3d 875 (Ind. 2014).

136. IND. R. APP. P. 9(D).

137. IND. R. APP. P. 46(D)(2).

138. *Drake*, 12 N.E.3d at 875.

139. Barnette v. U.S. Architects, LLP, 15 N.E.3d 1, 3 (Ind. Ct. App. 2014), *reh'g denied*.

140. *Id.*

141. *Id.*

142. *Id.* at 4.

143. *Id.*

not enforce Carmel's ordinance and Carmel was no longer a party to the suit.[144]

Appellate Rule 17(A) provides that a party of record at the trial court is a party on appeal.[145] And Appellate Rule 66(C) provides that the Court of Appeals may "with respect to some or all of the parties or issues," affirm or reverse the trial court's decision or "grant any other appropriate relief."[146] The Court of Appeals held that an intervening party "may appeal a decision adverse to its interests even if the original party or parties decide to forego the pursuit of an appeal; the case is not moot," and it was irrelevant whether Carmel brought the enforcement action.[147]

B. Transcripts for Parties Proceeding in Forma Pauperis

The Court of Appeals held that a party proceeding in forma pauperis is not entitled to a no-cost transcript; instead, the party must prepare a statement of the evidence under Appellate Rule 31.[148] In *Meisberger v. Bishop*, Meisberger failed to provide a transcript of the trial court's modification hearing in violation of Appellate Rule 9(F)(5), which requires an appellant to provide all portions of a transcript necessary to decide the issues on appeal.[149] Meisberger had previously filed a motion to proceed in forma pauperis, which the Court of Appeals granted.[150] Relying on *Campbell v. Criterion Grp.*,[151] the Court of Appeals held that indigent litigants did not necessarily have a right to have a transcript prepared.[152] Instead, indigent litigants, who could not afford to have a transcript produced, should proceed under Appellate Rule 31.[153] Appellate Rule 31(A) provides that if "no Transcript of all or part of the evidence 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."[154] The court then noted that Meisberger had "not demonstrated that preparing a statement of the evidence pursuant to Ind. Appellate Rule 31 would be inadequate for our purposes to review the issues raised."[155] The court then concluded that Meisberger waived any issue that relied on the missing transcript.[156]

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144. *Id.*

145. IND. R. APP. P. 17(A).

146. IND. R. APP. P. 66(C).

147. Barnette, 15 N.E.3d at 4 (quoting Hoosier Outdoor Adver. Corp. v. RBL Mgmt., Inc., 844 N.E.2d 157, 162 (Ind. Ct. App.), *trans. denied*, 860 N.E.2d 590 (Ind. 2006).

148. Meisberger v. Bishop, 15 N.E.3d 653, 654 (Ind. Ct. App. 2014).

149. *Id.*

150. *Id.*

151. 605 N.E.2d 150, 160 (Ind. 1992).

152. *Meisberger*, 15 N.E.3d at 658.

153. *Id.*

154. IND. R. APP. P. 31(A).

155. *Meisberger*, 15 N.E.3d at 659.

156. *Id.*

C. "Motion for Clarification"

The Court of Appeals noted that a "Motion for Clarification" will be treated like motion to correct error.[157] In *Hedrick v. Gilbert*, the trial court entered a dissolution decree.[158] Gilbert filed a motion to modify the decree, and the trial court granted the motion.[159] Gilbert then filed a "Motion for Clarification," and the trial court issued another order in response.[160] Within thirty days, Hedrick filed a notice of appeal.[161] Gilbert argued that Hedrick needed to file his notice of appeal within thirty days of the order on the motion to modify the decree.[162] Hedrick argued that his appeal was timely because it was filed within thirty days of the order in response to the "Motion for Clarification," which "was tantamount to a motion to correct error."[163]

The Court of Appeals noted that the Trial Rules do not provide for a "motion for clarification," and if the Court of Appeals "were to treat it as something other than a motion to correct error or a motion to reconsider, practitioners would have no guidance on what such a motion should be, its timeliness, or its possible end results."[164] Gilbert countered that her motion was not a motion to correct error because "she merely asked for certain technical clarifications."[165] The court rejected this argument because "nothing in the rules distinguishes a request for a technical clarification from a request for a more substantive change, and nothing in the rules provides for a motion to correct a 'technical error.'"[166] Gilbert next asserted that the trial court, in response to her motion, "did not make any substantive changes," which meant that "her motion should not be treated as a motion to correct error."[167] The court rejected this argument too because "[t]o say that a pleading cannot be appropriately defined and labeled until after the trial court issues its order . . . would inject far too much uncertainty into the practice of law in this State."[168] Therefore, the court concluded that Hedrick timely filed his notice of appeal "within thirty days of the trial court's order issued in response to the motion for clarification."[169]

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157. Hedrick v. Gilbert, 17 N.E.3d 321, 323 (Ind. Ct. App. 2014).
158. *Id.*
159. *Id.*
160. *Id.* at 325.
161. *Id.*
162. *Id.*
163. *Id.* at 326.
164. *Id.*
165. *Id.*
166. *Id.*
167. *Id.*
168. *Id.*
169. *Id.*

D. Citation to Unpublished Decisions

The Court of Appeals reiterated that parties may cite unpublished federal decisions but not unpublished Court of Appeals decisions. In *Wertz v. Asset Acceptance, LLC*, the court noted that while Appellate Rule 65(D) prohibits a party from citing a not-for-publication Court of Appeals memorandum decision, this rule does not prevent a party from citing an unpublished federal decision.[170] The court even suggested that a party has a positive duty to cite on point unpublished federal decision.[171] Similarly, the Court of Appeals, in *Selective Insurance Company of South Carolina v. Erie Insurance Exchange*, reminded counsel that Appellate Rule 65(D) does not prevent a party from citing unpublished federal decisions.[172]

But while the Appellate Rules do not prohibit a party from citing unpublished federal decisions, the Court of Appeals has emphasized that a party may not cite not-for-publication Court of Appeals memorandum decisions: "At oral argument, we admonished counsel that such citation" to not-for-publication decisions "was in clear violation of Indiana Appellate Rule 65(D) as currently written. We emphatically state that this Court will strike from a brief any citations to not-for-publication decisions, unless they fit an exception in Appellate Rule 65(D)."[173] The court continued that Rule 65(D) "is there for a reason" because "[t]here is a distinct difference between for-publication and not-for-publication opinions."[174]

E. Fiscal Impacts of Tax Court Decisions

The Supreme Court reminded parties that they may discuss the fiscal impacts of tax court decisions, but they may not introduce affidavits that were not introduced at the tax court. Appellate Rule 63(J) provides that in an appeal from a tax court decision a party "may discuss the fiscal impact of the Tax Court's decision on taxpayers or government."[175] In *Indiana Department of State Rev. v. Caterpillar, Inc.*, the Department of Revenue argued "that allowing the Tax Court's decision to stand would produce millions of dollars in lost revenue for the State."[176] The Supreme Court noted that this discussion was "entirely appropriate" because Rule 63(J) expressly provides for it.[177] But the Department's petition to transfer also included an "affidavit confirming the precise magnitude of this fiscal impact, and that affidavit was not designated

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170. Wertz v. Asset Acceptance, LLC, 5 N.E.3d 1175, 1183, 1183 n.13 (Ind. Ct. App.), *trans. dismissed*,15 N.E.3d 588 (Ind. 2014).

171. *Id.*

172. Selective Insurance Co. of S.C. v. Erie Insurance Exchange, 14 N.E.3d 105, 113 n.4 (Ind. Ct. App. 2014), *trans. denied*, 24 N.E.3d 958 (Ind. 2015).

173. Gonzalez v. Evans, 15 N.E.3d 628, 639 n.7 (Ind. Ct. App. 2014), *reh'g denied*.

174. *Id.*

175. IND. R. APP. P. 63(J).

176. Indiana Dep't of State Revenue v. Caterpillar, Inc. 15 N.E.3d 579, 582 n.2 (Ind. 2014).

177. *Id.*

before the Tax Court."[178] Caterpillar "moved to strike that affidavit as undesignated evidence," and the Supreme Court granted Caterpillar's motion because it was not designated to the tax court.[179]

F. Procedure for Requesting Oral Argument

The Court of Appeals reminded parties that they must request an oral argument in writing, but they may not do so on the cover of their appellate brief.[180] Appellate Rule 52 provides that the Court of Appeals may set oral argument on its own or on the motion of either party.[181] While the rule does not specify how the motion should be made, in *Riviera Plaza Investments, LLC v. Wells Fargo Bank,* the "Appellants made a request for oral argument on the cover of their Appellants' Brief."[182] The Court of Appeals clarified that this was not the proper procedure, and the appellants should have filed a separate request for oral argument.[183]

G. Appendix Contents

The Court of Appeals and the Supreme Court both addressed the contents of the appendix and whether failure to include the item waived an issue. In *Guilmette v. State*, "Guilmette did not include his Motion to Suppress in his Appellant's Appendix," but the Supreme Court concluded that this failure did not require dismissal because Appellate Rule 49(B) provides that any party's "failure to include any item in an Appendix shall not waive any issue or argument."[184] But the court did take the opportunity to remind appellate counsel of the proper procedure:

> Nevertheless, we remind counsel that the Appendix must include "the Clerk's Record," Ind. Appellate Rule 50(B)(1)(a), which comprises "the Chronological Case Summary (CCS) and all papers, pleadings, documents, orders, judgments, and other materials *filed in the trial court* or Administrative Agency or listed in the CCS." Ind. Appellate Rule 2(E) (emphasis added). What is more, before the final reply brief is filed, counsel has an opportunity to remedy any inadvertent omission by filing a supplemental Appendix without leave of court. Ind. Appellate Rule 49(A). We appreciate counsel's inclusion of the Motion to Suppress as an exhibit to his Response to the State's Petition for Rehearing in the Court of Appeals, but we also encourage all parties to

178. *Id.*

179. *Id.*

180. *Riviera Plaza Investments, LLC v. Wells Fargo Bank, N.A.*, 10 N.E.3d 541, 543 n.1 (Ind. Ct. App. 2014).

181. IND. R. APP. P. 52(A).

182. *Riviera Plaza Investments, LLC*, 10 N.E.3d at 543 n.1.

183. *Id.*

184. Guilmette v. State, 14 N.E.3d 38, 41 n.2 (Ind. 2014).

> comply with our Appellate Rules so as to facilitate our thorough review of the case before us.[185]

In *Lewis Oil, Inc. v. Bourbon Mini-Mar, Inc.*, Lewis Oil included the hearing transcript in the appellant's appendix.[186] The Court of Appeals reminded the appellant that this was not the proper procedure since Appellate Rule 50(F) provides that "the Transcript is transmitted to the Court of Appeals pursuant to Rule 12(B)," and "parties should not reproduce any portion of the Transcript in the Appendix."[187]

In *Haskin v. City of Madison*, Madison filed a summary judgment motion along with designated evidence, and the trial court granted its motion.[188] Haskin appealed, but he did not include the summary judgment motions or designated evidence in the appellant's appendix.[189] Madison argued that this failure meant that Haskin waived all issues on appeal.[190] Haskin countered that Appellate Rule 50(A)(1) provides that an appendix should only contain "those parts of the record on appeal that are necessary for the Court to decide the issues presented," and the documents he omitted were not necessary for the court to decide his appeal.[191]

The court noted that because its review of a grant of summary judgment is "limited to those materials designated to the trial court" and it "may affirm on any grounds supported by the designated evidence, it is important that the record on appeal include the parties' summary judgment materials, including the parties' designations of evidence."[192] While this information is critical to the court's review, Appellate Rule 49(B) provides that a "failure to include any item in an Appendix shall not waive any issue or argument."[193] And Madison included "the missing designations and summary judgment materials" in its appendix.[194] Therefore, because Haskin provided cogent argument in his briefing and the court had "many or most of the designated documents and portions of depositions necessary to resolve the issues on appeal," it did not find that Haskin waived all issues on appeal, and it found that dismissal "is not warranted."[195]

In *Coy v. State*, the trial court refused to give a requested jury instruction.[196] The jury found Coy guilty.[197] Coy appealed and argued, in part, that the trial

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185. *Id.*

186. Lewis Oil, Inc. v. Bourbon Mini-Mar, Inc., 16 N.E.3d 1008, 1012 n.2 (Ind. Ct. App. 2014).

187. *Id.*

188. Haskin v. City of Madison, 999 N.E.2d 1047, 1049 (Ind. Ct. App. 2013).

189. *Id.* at 1050 n.2.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. Coy v. State, 999 N.E.2d 937, 941 (Ind. Ct. App. 2013).

197. *Id.*

court erred by failing to give the requested instruction.[198] Coy did not, however, provide the Court of Appeals "with the instructions he requested to be given either in his brief or in the Appellant's Appendix."[199] This failure violated Appellate Rule 50(B)(1)(c).[200] That rule provides that when a party asserts that an "error is predicated on the giving or refusing of the instruction" that the instruction must be included either in the appellant's brief or appendix.[201] The court, however, concluded that the issue was not waived because Appellate Rule 49(B) provides that a "party's failure to include any item in an Appendix shall not waive any issue or argument."[202]

H. Supplemental Authorities

In *A.C. v. N.J.*, the appellant filed a Notice of Additional Authorities Supporting Appellant's Position.[203] While Appellate Rule 48 allows for supplementation "[w]hen pertinent and significant authorities come to the attention of a party after the party's brief or Petition has been filed, or after oral argument but before decision," the rule only allows the party to provide the citation to the authority "with a parenthetical or a single sentence explaining the authority."[204] In *A.C.*, the appellant "quote[d] long passages from a number of cases and provide arguments in support of her position."[205] The court found this was "more in the nature of an addendum to her Appellant's Brief."[206] Moreover, the appellant raised a "federal constitutional argument for the first time in" her notice.[207] The court concluded that the appellant's Notice of Additional Authorities did not comply with Appellate Rule 48, and the appellant waived the issue that she first raised in the notice.[208]

I. Statement of Facts and Statement of the Case

In *Brill v. Regent Communications, Inc.*, the Court of Appeals reminded counsel that, under Appellate Rule 46(A)(6), "that the statement of facts shall be limited to a narrative description of the relevant facts," and it should not contain argument.[209] Similarly, the court reminded counsel that under Appellate Rue 46(A)(8) "the statement of the case shall be limited to a brief description of the

198. *Id.*
199. *Id.* at 943 n.4.
200. *Id.*
201. *Id.*
202. *Id.*
203. A.C. v. N.J., 1 N.E.3d 685, 688 n.2 (Ind. Ct. App. 2013).
204. IND. R. APP. P. 48.
205. *A.C.*, 1 N.E.3d at 688 n.2.
206. *Id.*
207. *Id.*
208. *Id.*
209. Brill v. Regent Commc'ns,12 N.E.3d 299, 301 n.3 (Ind. Ct. App.), *trans. denied*, 18 N.E.3d 1005 (Ind. 2014)

nature of the case, course of proceedings, relevant issues, and disposition of those issues," and it too should not contain argument.[210] Finally, the court admonished counsel because its briefs were "condescending in tone" and "[i]nvectives are not argument."[211]

IV. INDIANA'S APPELLATE COURTS

A. Case Data From the Supreme Court[212]

During the 2014 fiscal year,[213] the Supreme Court disposed of 970 cases, including 513 criminal cases, 284 civil cases, 3 tax cases, 32 original actions, 135 attorney discipline cases, 1 judicial discipline case, 1 board of law examiners case, and 1 other type of case.[214] The court heard 80 oral arguments during the fiscal year, 20% of which were heard before the court had decided to grant transfer.[215] The court issued 94 majority opinions and 16 non-majority opinions. Chief Justice Dickson issued 18 majority opinions, Justice Rucker issued 13 majority opinions, Justice David issued 19 majority opinions, Justice Massa issued 14 majority opinions, and Justice Rush issued 15 majority opinions.[216] The court issued unanimous decisions 81% of the time.[217]

B. Chief Justice Dickson Steps Down as Chief Justice

In June 2014, Chief Justice Dickson announced that he was stepping down as chief justice after serving as chief justice for over two years.[218] Dickson became chief justice after serving as an associate justice for twenty-six years, taking over after Chief Justice Shepard retired in 2012.[219] Because Justice Dickson is approaching mandatory retirement in 2016, he knew that his "tenure as Chief Justice was limited," and he thought the "time [was] right for this

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210. *Id.*

211. *Id.*

212. This survey generally includes a section describing case data from the Court of Appeals. This year the submission deadline for this article came before the Court of Appeals released its 2014 Annual Report.

213. The Indiana Supreme Court 2014 fiscal year ran from July 1, 2013 to June 30, 2014. *See* INDIANA SUPREME COURT ANNUAL REPORT 2013-14 1 (2014), *available at* http://www.in.gov/judiciary/supreme/files/1314report.pdf., *archived at* http://perma.cc/HY4L-SW6U [hereinafter 2014 ANNUAL REPORT].

214. *Id.* at 8.

215. *Id.* at 11.

216. *Id.* at 13.

217. *Id.* at 15.

218. Press Release, Indiana Supreme Court, Brent E. Dickson Steps Down as Chief Justice of Indiana (Jun. 11, 2014), *available at* http://www.in.gov/activecalendar/EventList.aspx?fromdate=1/1/2014&todate=12/31/2014&display=Year,Month&type=public&eventidn=174972&view=EventDetails&information_id=202317&print=print, *archived at* http://perma.cc/9GKL-PX63.

219. *Id.*

transition."[220] During his tenure as chief justice, "Dickson expanded efforts to bring the Court's trial court technology system to all Indiana courts, revitalized the use of volunteer attorneys to provide civil legal aid to the needy, and initiated the reform of Indiana's pre-trial release system to enhance public safety, reduce taxpayer expense, and provide greater fairness."[221]

C. Chief Justice Rush Selected as Chief Justice

On August 6, 2014, the Indiana Judicial Nominating Commission interviewed justices Rush, Massa, David, and Rucker to determine who would succeed Chief Justice Dickson as Indiana's next chief justice.[222] And after approximately an hour and half of deliberation, the commission selected Justice Rush as Indiana's next chief justice.[223] Chief Justice Rush became Indiana's first female chief justice.[224] Retired Justice Sullivan stated that Chief Justice Rush will embrace the responsibility of chief justice "with skill energy, enthusiasm, and a real sense of mission."[225] Governor Mike Pence stated that with Chief Justice Rush's selection "Indiana's Supreme Court will continue to have outstanding leadership in the years ahead. With her extensive legal experience, proven character and commitment to public service, I am confident that Chief Justice Rush will serve our judiciary and our state with distinction."[226] And on August 18, 2014, Governor Pence administered Chief Justice Rush's oath of office.[227]

D. Judge Vaidik Selected to Lead Court of Appeals

The Court of Appeals' fifteen judges selected Judge Nancy H. Vaidik to be the court's chief judge.[228] Judge Vaidik's three-year term began on January 1,

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220. *Id.*

221. *Id.*

222. Press Release, Indiana Supreme Court, *Loretta Rush Selected as Indiana Chief Justice* (Aug. 6, 2014), *available at* http://www.in.gov/activecalendar/EventList.aspx?fromdate=8/5/2014&todate=8/7/2014&display=Month&type=public&eventidn=177630&view=EventDetails&information_id=204813, *archived at* http://perma.cc/4WAS-ZXR2.

223. *Id.*

224. Dave Stafford, *Rush Named Chief Justice, First Female to Lead Court*, THE INDIANA LAWYER (Aug. 6, 2014), http://www.theindianalawyer.com/rush-named-next-chief-justice-first-female-to-lead-the-court/PARAMS/article/34829, *archived at* http://perma.cc/E4T6-XZYX.

225. *Id.*

226. *Id.*

227. Kevin Rader, *Loretta Rush Sworn in as Indiana's First Female Supreme Court Chief Justice*, WTHR (Aug. 18, 2014), www.theindianalawyer.com/rush-named-next-chief-justice-first-female-to-lead-the-court/PARAMS/article/34829, *archived at* http://perma.cc/K8ET-A7KP.

228. *Court of Appeals Names Nancy Vaidik as Next Chief Judge*, THE INDIANA LAWYER (Oct. 23, 2013), www.theindianalawyer.com/court-of-appeals-names-nancy-vaidik-as-next-chief-judge/PARMS/article/32671, *archived at* http://perma.cc/H5SX-BN52.

2014.[229] She succeeded Judge Margaret G. Robb, who was the court's first female chief judge.[230] Chief Judge Vaidik stated that she is "honored by the court's selection and proud of its work," and she "look[s] forward to serving the entire state our court as chief judge."[231]

CONCLUSION

During the survey period, the Indiana appellate courts analyzed, interpreted, and applied the Appellate Rules. The Appellate Rules were significantly amended to reflect significant changes to the administrative rules. And the Supreme Court issued a landmark decision declaring that the failure to timely file a notice of appeal does not deprive Indiana's appellate courts of jurisdiction. In addition, the Supreme Court has a new chief justice, and the Court of Appeals has a new chief judge.

229. *Id.*
230. *Id.*
231. *Id.*