

In the Indiana Supreme Court

Cause No. 24S-MS-1



Order Amending Rules of Criminal Procedure and Rules of Post-Conviction Remedies

The Supreme Court's Committee on Rules of Practice and Procedure has reviewed the Rules of Criminal Procedure and the Rules of Post-Conviction Remedies and proposed the following amendments:

- Criminal Rule 1.4(A)(5): clarify when discovery procedures apply in the investigative process;
- Criminal Rule 2.4(B): correct a drafting error;
- Criminal Rule 2.7(A): clarify that a defendant must file a separate legal memorandum with a motion to dismiss;
- Criminal Rule 4.2: add new paragraph (C) to clarify when the time period tolls if a defendant is charged in one Indiana county prior to being incarcerated in a different county;
- PCR Rule 1: update references to the "old" Rules of Criminal Procedure and clean up language in Section 4.

The Court has considered these proposed amendments. Under this Court's authority to establish procedures and supervise the administration of all courts in the state, the Rules of Appellate Procedure and Rules of Post-Conviction Remedies are amended as set forth in Exhibits A and B to this order (deletions shown by ~~striketrough~~ and new text shown by underlining).

The amendments are effective January 1, 2025.

Done at Indianapolis, Indiana, on 10/18/2024.

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

Exhibit A

Rules of Criminal Procedure

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Rule 1.4. Investigation Process

(A) Precharge Subpoena Duces Tecum.

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(5) After ~~charges are filed~~ ~~an initial hearing~~, the discovery procedures set forth in Rule 2.5 apply.

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Rule 2.4. Change of venue or judge

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(B) Change of Judge.

~~Except as provided for in Rule 3.3(C),~~ ~~I~~the state or defendant may request a change of judge only for bias or prejudice. The motion must be accompanied by an affidavit signed by the defendant or prosecuting attorney. The affidavit must set forth facts and the reasons for the belief that bias or prejudice exists. If the defendant signs the affidavit, the defendant's attorney must file a certification that the attorney believes in good faith the facts recited in the affidavit are true. The court must grant the request if the facts recited in the affidavit support a rational inference of bias or prejudice.

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Rule 2.7. Written Motions and Legal Memoranda

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(A) Motion to Dismiss.

A separate legal memorandum must accompany ~~any~~ ~~defendant's~~ motion to dismiss. Additional requirements are prescribed by Ind. Code § 35-34-1-4.

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Rule 4.2. Commencement of Rule 4 Time Periods for Those Incarcerated Outside of State or in Another County

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(B) If a defendant is charged in one Indiana county ~~prior to or~~ during the time the defendant is incarcerated in a different county, the Rule 4 time periods commence on the earlier of:
(1) the date the court in the non-custodial county orders the defendant's appearance; or (2) the date the defendant provides written notice to the court where the charge is pending of

Exhibit A

the defendant's location and requests initiation of proceedings in the non-custodial county.

(C) If a defendant is charged in one Indiana county prior to the defendant being incarcerated in a different county, the Rule 4 time period tolls from the defendant's failure to appear in the non-custodial county until the earlier of: (1) the date the court in the non-custodial county orders the defendant's appearance; or (2) the date the defendant provides written notice to the court where the charge is pending of the defendant's location and requests initiation of proceedings in the non-custodial county.

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Exhibit B

Rules of Post-Conviction Remedies

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Rule PC 1. Post-Conviction Relief

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Section 4. Pleadings.

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(b) Within ten ~~[10]~~ days of filing a petition for post-conviction relief under this rule, the petitioner may request a change of judge by filing an affidavit that the judge has a personal bias or prejudice against the petitioner. The petitioner's affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be accompanied by a certificate from the attorney of record that the attorney in good faith believes that the historical facts recited in the affidavit are true. A change of judge shall be granted if the historical facts recited in the affidavit support a rational inference of bias or prejudice. For good cause shown, the petitioner may be permitted to file the affidavit after the ten ~~[10]~~ day period. No change of venue from the county shall be granted. In the event a change of judge is granted under this section, the procedure set forth in Ind. Administrative Rule 21 ~~Ind.Criminal Rule 13~~ shall govern the selection of a special judge.

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(d) If the petition is challenging a sentence imposed following a plea of guilty, the court shall make ~~a the transcript~~ part of the record ~~the certified transcript made pursuant to Rule CR-10~~.

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