

JAN/FEB 2024

INDIANA STATE BAR ASSOCIATION

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MEMBER JOURNAL



FEATURING
**2024 STATE OF
THE JUDICIARY**

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12 2024 STATE OF THE JUDICIARY

2024 State of the Judiciary: Indiana Courts' Return on Investment
By Hon. Loretta H. Rush

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President's Perspective

A HOOSIER'S REFLECTION ON WASHINGTON, D.C.

By Tom Felts

PRESIDENT'S PERSPECTIVE

I love Washington, D.C.—it's my favorite city in the world, and I have been there many times and for many different reasons. My first visit with my family, when I was in sixth grade and a huge government and history nerd (full disclosure, I am still a huge government and history nerd), made a lifelong impact on me. I was full of respect, awe, honor, pride, and gratitude to those who had worked so hard to establish and develop this great country of ours.

My most recent trip to Washington was in late November as part of a group of 12 Indiana attorneys admitted to the bar of the U.S. Supreme Court through a trip organized by ISBA staff members Carissa Long and Julie Gott. As I rode into the city, passing memorials and landmarks, many built with Indiana limestone, I was reminded of past Washington trips: the Korean War Memorial, which I visited with my dad (who served in the Army during the Korean War) on an Honor Flight a few months before he died; the National Museum of African American History and Culture, which I visited twice with judge friends and which stunned me both times with its celebrations and stories; the Wharf, where I twice finished 200-mile relay races from Gettysburg to Washington with seven of my closest friends; the Holocaust Museum, which to this day leaves a lump in my throat; and



the National Archives, where I stood in awe of the Declaration of Independence and U.S. Constitution. I could go on and on.

This trip began with a private tour of the U.S. Capitol conducted for my wife and me by Nicholas Bennett, an intern in Senator Mike Braun's office. This was Nicholas' second year as a D.C. intern, so he really knew his way around as he took us down hallways not generally open to those on public tours. Once again, I was overwhelmed with the majestic nature of the building, its immenseness, and the fact that, no matter where you turned, a statue or painting commemorated someone special.

A Capitol trivia fact I learned: Each state can dedicate two statues of prominent citizens at any point in time. If a state wants to honor an additional citizen, it must remove one of the existing statues. Who are Indiana's two currently recognized citizens? Wendell Wilkie—lawyer, business executive, and 1940 presidential candidate; and Lewis Wallace—soldier, politician, and best known as the author of *Ben-Hur*.

A personal highlight was sitting in the Senate Gallery and observing the day's activities following the tour. We arrived in the middle of voting for a federal court judicial appointment, and I was struck by the contrast with the

"My most recent trip to Washington was in late November as part of a group of 12 Indiana attorneys admitted to the bar of the U.S. Supreme Court through a trip organized by ISBA staff members Carissa Long and Julie Gott."

voting procedure I have witnessed in our Indiana General Assembly. Nicholas explained that voting in the Senate is often relaxed and informal. Members are given specific time periods in which to make a personal visit to the Senate floor and indicate their vote. Senators walked onto the floor, caught the eye of the Senate clerks tallying the votes, and gestured either a "thumbs up" or a "thumbs down." This was often done

silently and quickly, with members stopping to talk with each other only on occasion. For me, it was like being a movie fan at the red carpet of the Academy Awards. "Look, there's Senator Kennedy!" "Is that Amy Klobuchar?" "Ted Cruz looks taller than he does on TV!" We waited until we saw both Indiana senators cast their votes: Senator Young looking cool with his shades flipped up and Senator Braun the only male

Senator not wearing a tie. I could have stuck around all day. Yes. Still a government nerd.

The highlight of the trip, of course, was the swearing-in at the U.S. Supreme Court. George Patton, an Indiana attorney now working in the Washington office of Bose McKinney, was our group sponsor and leader, most ably assisted by ISBA Associate Executive Director Carissa Long. We met outside the Supreme Court Building at 7:30 a.m. and shivered in place until the security folks opened the doors promptly at 7:45. We learned quickly that the security staff is efficient, direct, and very serious, while still friendly and helpful.

After a thorough scanning process, breakfast, a group photo, and



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another even more thorough security scanning, we lined up in alphabetical order and proceeded into the courtroom.

Once again, I was overwhelmed. The long bench with nine chairs and nine microphones. The four doors behind them through which innumerable staffers came and went. The counsel tables placed close to each other. The many chairs in the gallery, sitting so close we could have reached out and touched the attorneys. Everything was timed to the minute. The attorneys came out at a designated time, the clerk gave his welcome and directions, and the justices took the bench promptly at 10:00.

I couldn't believe I was there, so close to these men and women I had seen on television and read and heard about for so many years. Chief Justice Roberts warmly welcomed everyone and immediately began the ceremony. We were the last group presented, preceded by some individual attorneys and a larger group of JAG officers. George went to the podium, began with the magic words "Mr. Chief Justice and may it please the court," and formally moved for the admission of 12 Indiana attorneys. As I stood when George called my name, I confess my knees shook and my eyes blurred with a few tears at the gravitas and honor I had the privilege of experiencing. The clerk of the court then administered the oath to all the admission candidates. Thankfully Chief Justice Roberts quickly granted the motion, ordered that we were admitted to the Supreme Court bar, and let us take our seats.

The Chief Justice then immediately introduced the case scheduled for oral argument—an appeal by an individual charged with and found guilty by the SEC of trading activities



of a fraudulent nature. The facts themselves aren't noteworthy, but the legal argument was particularly interesting. In a nutshell: What types of administrative law cases should be filed, heard, and determined by an agency itself (with more limited due process, including no trial by jury) as opposed to being filed, heard, and determined by a federal court? Each counsel gave opening arguments, which lasted a few minutes before the questioning began. The dynamics at work were interesting. The justices would interrupt the attorneys with questions, sometimes also interrupting each other but always proceeding with the utmost respect for everyone involved. There was occasional humor (mostly provided by Justice Kagan), some harsh questioning (primarily from Justice Gorsuch), and curious alliances (Justice Barrett asked one of the attorneys to please directly answer

Justice Kagan's "fine" question). Although scheduled for one hour, the case presentation lasted nearly three hours and went by in a flash. Again, I could have stayed all day.

So many feelings occurred at the same time during this trip: awe and respect for the physical memorials themselves, how impressive they are in their structure but more for how they remind me of all our historical figures and heroes accomplished; gratitude for my profession as a lawyer and judge, for the sacrifices many made on my behalf that allowed me to be present; appreciation for the rule of law and how, even when being challenged and at times seemingly diminishing, it remains the bedrock of our country; and above all, pride in being a lawyer, a Hoosier, and an American.

I can't wait to go back. ☺

By Res Gestae Editor



Some of your Indiana State Bar Association staff at the 2023 ISBA Annual Summit. Pictured left to right: Carissa Long, Joe Skeel, Christine Cordial, Paje Felts, Peggy Gotsis, Abigail Hopf, Ashley Higgins, Kristin Owens, Kelsey Singh.

STAFF UPDATES AND A NEW FOCUS

Welcome to 2024, *Res Gestae* readers! We have some staff updates to share with you and exciting news about the ISBA Board of Governors' focus for 2024.

STAFF UPDATES

The ISBA welcomed two new staff members in 2023–24: Peggy Gotsis and Sierra Downey.

Peggy Gotsis works with Director of Meetings & Events, Ashley Higgins, to ensure your event goes off without a hitch. Peggy has over 30 years of hospitality management experience—including 12 years with Four Seasons Hotels, 10 years as an independent events planner, and more.

Sierra Downey is ISBA's newly welcomed Program Coordinator. She will take your CLE from cradle to grave, working with sections and committees to manage speakers, get CLE credit, and help plan a quality educational program.

2023 also saw the return of Catheryne Pully, Director of Outreach & Career Enrichment. Catheryne returned from two years of active duty with the U.S. Navy in October and will be working in outreach across the profession, focusing specifically on mentorship, professional development, and access to justice.

And finally, Christine Cordial, previously Assistant CLE Director, has transitioned into a new role as Director of Justice Initiatives. Her work will principally involve facilitating research in access to justice initiatives.

A NEW FOCUS FOR 2024

As announced at the 2023 Annual Summit, this year the ISBA will be focusing efforts on one broad-reaching topic. "Our meeting is the only convening of Indiana practitioners. We think it's critically important that we continue to come together in order to address issues in our profession," 2022–23 Chair Angka Hinshaw announced. "Therefore, the format of next year's Annual Summit will be different. Rather than addressing whatever business may come before us, we will be proactive in choosing a topic or two that needs your input... ISBA leadership, staff, and volunteers will be working over the next year to determine the topics we bring before you."

The ISBA Board of Governors compiled a list of topics and voted to spend 2024 and beyond addressing access to justice. ISBA staff has been working diligently to research these issues, mapping out the initiatives and programs already in place and further refining the best areas for ISBA to act.

And according to staff, that area is the shortage of legal providers. As the largest legal organization in the state, the ISBA is uniquely positioned to lead in these efforts. And as the courts and other entities seek solutions, it is critical that ISBA add to those conversations and help shape the future of how legal services may be delivered.

To that end, staff recommends three potential areas of focus:


- Developing alternative forms of licensure and/or practice models.
- Providing broader pathways to admission and legal education.
- Incentivizing practice in legal deserts—specifically rural Indiana.

NEXT STEPS

A team of staff members will work hand-in-hand with ISBA board members and other volunteers to research and consider potential solutions under each of these recommended areas of focus. In meeting with experts and various stakeholders, each taskforce will also identify key questions and

challenges to bring forth at the 2024 Annual Summit.

Attendees and delegates will be asked to provide input on these key topics. Once this input has been distilled and each taskforce has undergone strategic planning, the ISBA will then form an overarching

plan focused on Indiana’s shortage of legal service providers and, to a larger degree, access to justice. The specifics of what this plan might look like are not yet clear, but the steps and initiatives will be based on member input and likely rely on grant funding. 

Pursuant to Indiana Court Rule 1.15, an audited financial statement of the Indiana Bar Foundation’s IOLTA program for the prior year is published in this issue of *Res Gestae*.

Indiana Bar Foundation, Inc.

Schedules of IOLTA Activities

Year Ended June 30, 2023

	Year End
	June 30, 2023
REVENUE	
IOLTA revenue	\$ 2,586,683
Total revenue	<u>2,586,683</u>
EXPENSE	
Administrative expense:	
Co-employment/payroll, taxes, and employee benefits	117,894
Office supplies and leased equipment	18,682
Professional fees	11,968
Meetings	205
Membership dues	11,484
Telephone	2,743
Unreimbursed IOLTA expenses	<u>(30,976)</u>
Total IOLTA administrative expense	132,000
Net IOLTA income	<u>\$ 2,454,683</u>





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2024 STATE OF THE JUDICIARY INDIANA COURTS' RETURN ON INVESTMENT



FEATURE

By Hon. Loretta H. Rush

Photography for this article, including cover art, was provided by the Indiana Supreme Court.

Governor Holcomb, Lieutenant Governor Crouch, members of the General Assembly, Chief Judge Altice, colleagues, and fellow Hoosiers—welcome to the 2024 State of the Judiciary! I will get right to the point, your judiciary stands among the strongest, if not *the* strongest, in the nation!

I appreciate this tenth opportunity as your Chief Justice to give this report here in the same chamber where so many of you conduct your work. So, this year, my colleagues—Justice Mark Massa, Justice Geoffrey Slaughter, Justice Christopher Goff, and Justice Derek Molter—and I would like to invite you to our “chambers.” We will be holding our first Night Court for Legislators on February 19, and we invite all of you and your staff to join us. It will be held in our historic courtroom, located just 92 short steps down this third-floor hallway—I counted!

Your leadership, Speaker Huston and President Pro Tem Bray, will serve as our honorary bailiffs. Attending this oral argument will give each of you a front row seat to see how our court considers cases interpreting the very laws enacted in these chambers. So come on down!

RETURN ON INVESTMENT

Our courts are busy—very busy—serving Hoosiers in each of your communities. Over 500 judges—along with their court reporters, bailiffs, clerks, and others—are the hearts and hands of your judicial branch. Together they are working on the 2.5 million pending cases in our courts. You saw the pictures on the big screen as you were seated, pictures of judges out in their communities exemplifying a court system that is not only fair but also deeply connected to those we serve.

Judges, we thank you for your dedication to handling such a high volume of work without ever losing your compassion to serve your communities one case, one person at a time.

In last year’s address, I described how Indiana courts are engines of economic development, fairness, and public safety. This year, we are eager to show you the return

"Your funding has allowed us to expand problem-solving and commercial courts, address rural needs, leverage technology through innovation, and build public trust through outreach."

on your investment—the proverbial “bang for the buck”—your funding has produced. We are incredibly grateful for your trusted financial commitment to the judiciary.

Your investment has paid huge dividends, enhancing operational efficiencies in the courts and improving the lives of the Hoosiers we all serve. Your funding has allowed us to expand problem-solving and commercial courts,

address rural needs, leverage technology through innovation, and build public trust through outreach. And you know what, we’re just getting started!

To illustrate how your investment has transformed lives, I want to take you on a guided tour around the state to shine a light on just a few of the programs and initiatives our judges are working on.

BETTER SERVING BEHAVIORAL HEALTH NEEDS

Like you, we are dedicated to better addressing behavioral health needs. For our first stop across Indiana, let’s drop in on Floyd County.

Judge Carrie Stiller and her county leaders are using your investment to strengthen their community. They are fulfilling the constitutional imperative that justice be tempered

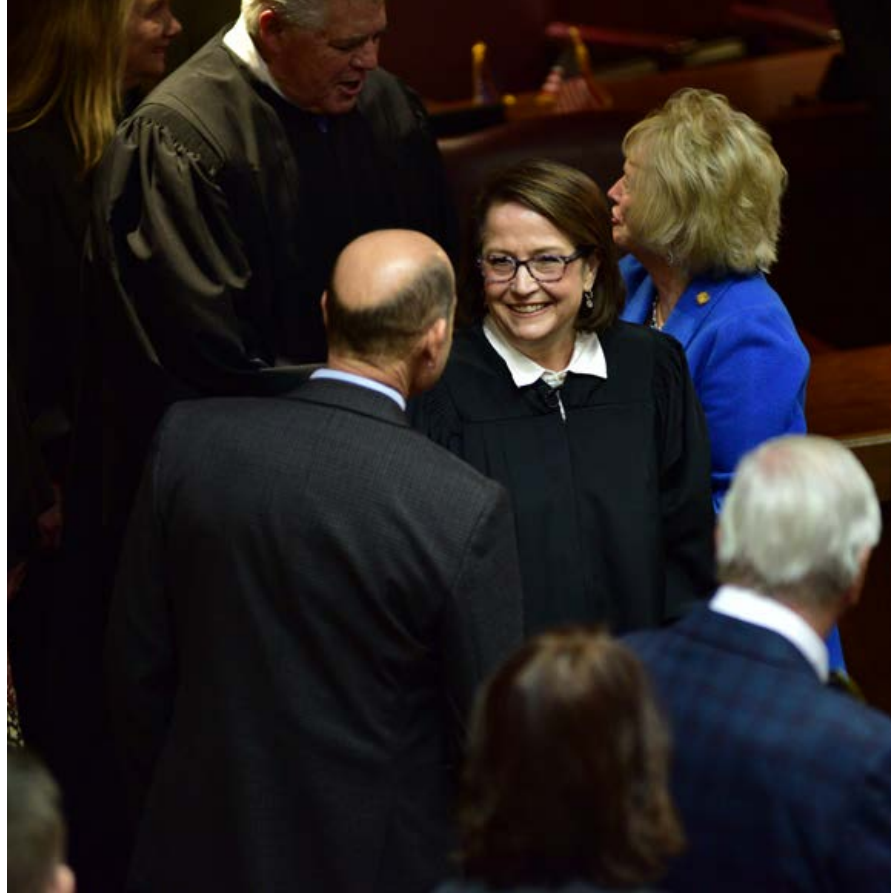


with mercy and based on principles of reformation.

Their local Justice Reinvestment Advisory Council efforts were enhanced after the statewide 2022 Mental Health Summit, where Judge Stiller brought a team of twelve. She says they “left the summit inspired and committed to maintaining the momentum from that day’s conversations.” One concern weighing heavily on her was something she saw firsthand. Every day, she watched from the courthouse as inmates being released from jail stood on the street corner looking for a ride. She could see the desperation in their faces and the likelihood of stepping right back into the cycle of drugs, arrest, and jail. If a released inmate—even one who needed and wanted treatment—had nowhere to go, who would they call to pick them up? You know who she thought—who she worried—it would be? Their dealer.

So, Judge Stiller convened her local leaders and a new pattern emerged in Floyd County. The sheriff, prosecutor, public defender, judge, probation officers, and treatment providers began to meet regularly. They organized their own mental health summit, invited community members and service providers, opened dialogue with local leadership, and developed a plan. Thank you, Lieutenant Governor Crouch, for participating in Floyd County’s summit and for all of your work on behavioral health across the state.

The momentum in Floyd County has become unstoppable. The county council and commissioners generously agreed to leverage their opioid settlement money to get matching state grants from the Division of Mental Health and Addiction—smart. And they hired a



full-time jail transition coordinator to assist released inmates to get to treatment, not stand on the street corner waiting for a ride. Judge Stiller says it best, “We are changing lives by reducing the barriers to a better life, a sober life.”

Judge Stiller, your team’s collaboration is a model of courage, efficiency, coordination, and wise investment in your community. Thanks to you and your team, including Sheriff Steve Bush, Prosecutor Chris Lane, and Public Defender Matthew Lorch as well as all lawmakers who represent the area.

FAMILY RECOVERY COURTS

For another look at a return on your investment, let’s leave Floyd County and travel northwest to Vigo County. Judge Sarah Mullican is running one of Indiana’s 21 family recovery courts. According to Judge Mullican, “Family recovery courts take a holistic approach to end the cycle

of generational DCS involvement by giving people the tools to do the work themselves.” Recovery courts, like all problem-solving courts, require intense judicial and community supervision. But what better investment can we make than one that creates a pathway for children to be safely reunited with their parents?

Judge Mullican had a parent in her recovery court named Josh. By his own account, Josh was a “functioning addict,” which he rationalized because he worked, paid bills, and loved his kids. But when an argument led to an arrest, a failed drug screen, and his kids being taken away, Josh says that the “smack of reality” hit him. He was homeless, without a high school diploma, and he lost the one thing that mattered most to him—his children.

When Josh stood before Judge Mullican, she recognized, “Without that high school diploma or driver’s

"Our problem-solving court data shows thousands of graduates and hundreds of thousands of negative drug screens."

license his options were closed off. How was he going to provide for his family?" Along with Narcotics Anonymous and anger management meetings, one of Josh's family court requirements was to obtain his GED. Every Thursday night, a volunteer teacher came in and worked with Josh, studied with him, and prepared him for the test. God love our teachers.

When the big day came, Josh not only passed, but it was recommended that he attend college. His confidence skyrocketed and he successfully graduated from Judge Mullican's family recovery court. Today, he has his driver's license, he's married to a supportive wife, and he's reunited with his children. Josh's transformation was possible thanks to the funding you provided for problem-solving courts—what a return on investment! On behalf of all those like Josh who grabbed a second chance, we thank the judges, teachers, and care providers who help these individuals turn their lives around.

VETERANS COURTS

For another powerful return on investment, we don't have to travel far. Right here in Marion County, Judge Dave Certo runs the Indianapolis Veterans Court, one of Indiana's 151 problem-solving



"Such innovation means examining broader pathways to legal education and bar admission, alternative forms of law licensure, and ways to encourage rural and public-sector practices. Finding solutions will take all of us working together."

courts. Judge Certo's program, which has graduated 116 men and women, is not easy. As Judge Certo explains, "They were trained to be honorable, strong, and yes dangerous to the enemy. Upon return to civilian life, we have a role in retraining them when they falter." That means weekly meetings, frequent drug screens, and an intense accounting of behavior that forces change.

For Aaron Shaw, he fell apart after a brave Army career with service in Iraq. Once risking his life for his country, he now risked losing his life on the streets due to heroin use. Aaron says, "I was a menace to society, I was chaos to this city." But Judge Certo saw someone different—a person with the potential to be a good employee, parent, and neighbor. Aaron worked hard in the program for over three years before graduating and getting his charges dismissed. He now serves as a mentor and runs a sobriety support group. He's also joined the board of directors of a national treatment association, and he has reconnected with his son, who is in college. Way to go Aaron!

Though the state has limited resources, it is unquestionably wise to use them to help our veterans get stable housing, job training, and catch up on child support. Our problem-solving court data shows thousands of graduates and hundreds of thousands of negative drug screens. But the real return on investment isn't a number, and

it's not quantifiable with a metric. It's the reclaimed lives, like Aaron's. Thank you to Aaron, Judge Certo, and all our problem-solving court judges and staff.

RURAL JUSTICE SUMMIT AND ATTORNEY SHORTAGE

Just north of the state's largest metropolitan area, we head to rural Indiana—Wabash County. It's the hometown of my colleague Chris Goff

and includes local leaders who are trying to figure out how to best serve their rural community. How many of you represent a rural community? So, you understand the unique needs and challenges. We do too.

Courts are a primary referral source to get people to treatment. But there are huge barriers when a county has no service providers, no problem-solving courts, or not enough attorneys. And no one sees



a return on investment when we have “justice by geography,” where a person can get help in one county, but can get locked up in another, because the same resources are not present.

To address these concerns, over 200 rural justice stakeholders met last October with public health professionals for a first-of-its-kind summit. The purpose was to develop solutions for accessing treatment and promoting rehabilitation in under-resourced areas. One of those resources is lawyers. And we are facing a shortage. Several counties are struggling to fill the constitutionally required positions of judge, prosecutor, and public defender. And legal service providers can’t fill the gaps for all

civil matters, such as child support, guardianships, wills, and adoptions. We’re calling on some who attended the summit to help us find solutions. Such innovation means examining broader pathways to legal education and bar admission, alternative forms of law licensure, and ways to encourage rural and public-sector practices. Finding solutions will take all of us working together.

One highlight of that same summit was the realization that—thanks to landmark legislation you passed last year—we are cutting red tape in accessing funding and providing technical assistance to transform behavioral health. I have to thank all of you, especially Representatives McNamara and Steuerwald, along with Senator Crider and of course

our beloved former Senator Jack Sandlin for all the hard work on behavioral health last session.

All those who attended the Rural Justice Summit and are working toward solutions on these issues, including Justice Goff, Lieutenant Governor Crouch, Representatives Goss-Reaves and Sweet, and Senator Zay, deserve our appreciation.

COURT TECHNOLOGY

Your largest recent investment in the judiciary was directed to improving court technology. For this part of the tour, we are everywhere. We are aligning the legal systems in all 92 counties with the demands of the digital age.

When our framers crafted the “courts shall be open” provision of




the Indiana Constitution over 200 years ago, they never could have imagined the remarkable ways we could leverage technology today. And you—as the modern-day framers of our laws—your investment in court technology has allowed us to be pioneers in our own right.

Indiana is recognized as a national leader in court technology, allowing 24/7 access to our courts. Visit our website to see searchable databases, a child support calculator, court calendars, ticket payment and marriage license processing, and court hearings—both live and archived—to name just a few. Just last year, 11 million people accessed the MyCase system and viewed over 63 million pages. We provided free electronic filing for the more than 8 million legal documents filed last year. We also send text message reminders of court hearings by the millions. These efforts not only produce incredible cost savings, but they also empower Hoosiers to be on top of their case and get it resolved. Isn't this what good government is all about?

It's no surprise that court customers would want to get a text message reminder about a hearing or to pay a traffic ticket online—but do Hoosiers want to attend court online? We weren't sure. So, we welcomed Indiana University researchers to take an impartial look. Like many, they were skeptical that people would be satisfied with having their day in court remotely. And we were particularly interested in the experiences of vulnerable Hoosiers.

Their research revealed “loudly and resoundingly: online civil courts enhance access to justice for unrepresented litigants.” For a person who has to find a ride to



"Their research revealed 'loudly and resoundingly: online civil courts enhance access to justice for unrepresented litigants.'"

court, miss work, or get childcare, remote access is not just about flexibility—it is the lynchpin to getting their case resolved, getting justice. Simply logging on to a remote proceeding—at times—is far more practical than jumping the hurdles that can accompany attending court in person. Thank you, Professor Victor Quintanilla and team, for your research. It provides guidance on how we can use technology to meet the “promise of a people-centered justice system.”

COMMERCIAL COURTS

Just as people want their cases resolved quickly—so do businesses. Our tour of Indiana wouldn't be complete without stops in Allen, Elkhart, Floyd, Hamilton, Lake, Madison, Marion, St. Joseph, Vigo, and Vanderburgh counties to highlight the ten commercial courts that are open for businesses across the state.

We crafted our commercial courts to deliver predictability and efficiency. We now have a free searchable database of commercial court decisions, so businesses can research how similar disputes were resolved. And we have a free *Indiana Commercial Court Treatise* that lawyers can look to when advising their clients and preparing for court.

Nearly 2,000 cases have been filed in these courts, and our data shows that the parties are getting decisions in these complicated business

disputes more quickly. We are even hearing from lawyers throughout Indiana that they now routinely include provisions in contracts that require disputes be litigated exclusively in the commercial courts of Indiana. Think about that for a moment. When Hoosier businesses are negotiating valuable deal points in their contracts—things like price, quantity, quality, and delivery times—they now see value in agreeing that any disputes must be resolved in Indiana's commercial courts. Outstanding!

One superstar judge in this arena, Marion County's Heather Welch, is retiring this year. Attorneys and business leaders across the state will tell you that she handles cases with respect and wisdom. Judge Welch, you are appreciated.

We could not have delivered that value to your constituents without your investment of not only funding, but time. That includes Senator Koch's leadership and the entire commercial court committee, past and present, including former Justices Frank Sullivan Jr. and Steven David, and current Justice Molter.

OUTREACH

I began my remarks with an invitation to come see an appellate case in-person. That's because trust and confidence in the courts are bolstered when people are able to see firsthand the precision with which the laws you've crafted are considered.



Our Court of Appeals knows this—they do incredible work to make sure cases are open and accessible to the public. But this isn’t just my humble opinion. They have in fact been declared the best in the country, honored last summer with the prestigious national Sandra Day O’Connor Award for the Advancement of Civics Education. Through their one-of-a-kind “Appeals on Wheels” program, the 15 judges regularly traverse the state, bringing appellate proceedings to over 600 communities in all 92 counties! Thank you, Chief Judge Altice and all the Court of Appeals judges.

CONCLUSION

To you, the legislature, thank you for the increased funding you’ve provided us. Your increased investment in courts is an investment that bolsters the bedrock

of democracy. It allows us to better serve Hoosiers with behavioral health needs, strengthen individual communities, meaningfully innovate by leveraging technology, and increase public trust through outreach and access.

And to Governor Holcomb, thank you for your steady hand and tremendous leadership these past eight years.

I want to specifically highlight one thing that you have done, or better stated: 100 things you have done to ensure Indiana’s judiciary remains the envy of so many other states. You have now appointed 100 judges to the bench!

You hold a remarkable place in history, not only due to the **number** of your appointments, but also due to the **quality** of your appointments. Will all the judges, or the “Holcomb

100,” in this chamber who have been appointed by Governor Holcomb please stand?

Governor, they are not all here—we need some people back in the counties hearing cases! One of your legacies, among many, is that of a strong judiciary. And there is no question that Indiana’s judiciary is both strong today and well-equipped to ensure that future generations see the same, excellent return on investment.

Thank you and may God continue to bless our great State. ☩

This is a transcript of the 2024 State of the Judiciary address, held before the Indiana General Assembly and the governor on Wednesday, January 10. To watch a recording of the address, visit <https://on.in.gov/sotj24>.

Risk Management for Legal Professionals

Law firms collect and store sensitive data related to their clients and casework, making them a valuable target for cyber criminals. Personally-identifying information (PII) can be used to commit financial fraud and ruin the good standing of crime victims and the firms representing them. With cyber crime threatening the financial and reputational stability of legal professionals, comprehensive risk management solutions are a critical aspect of the modern legal landscape.

Liability Threats in the Legal Profession

Lawyers have a professional and ethical obligation to handle client information with a high degree of care and confidentiality. Given the sensitive nature of the information they collect and store, there are specific liabilities associated with the mishandling of data. These liabilities can arise from various legal frameworks, including professional conduct codes, privacy laws, and data protection regulations.

Here are some key professional liabilities for lawyers in regard to data collection and storage:

Breach of Confidentiality: Lawyers are bound by attorney-client privilege and the duty of confidentiality. Unauthorized disclosure of client data can lead to professional misconduct charges.

Negligence in Data Security: Inadequate cybersecurity measures that lead to data breaches can result in negligence claims, which have significant costs associated with defenses.

Inadequate Record Keeping: Lawyers are required to maintain accurate and complete records. Failure to do so can compromise client cases and lead to legal repercussions and regulatory penalties.

Infringement of Intellectual Property Rights: Unauthorized use of proprietary data can lead to claims of intellectual property infringement. Mishandling data that contains trade secrets or confidential information can expose lawyers to liability for economic damages to a client.

Regulatory Sanctions: Bar associations and legal oversight committees often have the power to fine, suspend, or disbar attorneys for violations involving data mismanagement.

Managing Professional Liability Risks: A Comprehensive Approach

To effectively manage the risks associated with data collection and storage, law firms should employ a comprehensive risk management strategy that encompasses both legal compliance and best practices in data security. Here are steps that law firms should consider implementing:

Establish a Comprehensive Data Protection Policy:

- Develop and enforce policies that address data privacy, protection, and ethical handling in accordance with applicable laws and regulations.
- Regularly review and update policies to adapt to new legal requirements and technological changes.

Conduct Regular Risk Assessments:

- Perform periodic assessments to identify potential vulnerabilities in data storage and processing.
- Assess the potential impact of data breaches and establish protocols for preventing and responding to such incident.

Implement Strong Cybersecurity Measures:

- Use encryption for data at rest and in transit to ensure confidentiality and integrity.
- Employ firewalls, anti-malware software, and intrusion detection systems to protect against unauthorized access.
- Ensure secure configuration of all systems and applications that handle client data.

Provide Training and Awareness Programs:

- Train all employees on data protection laws, firm policies, and cybersecurity best practices.
- Foster a culture of security awareness within the firm to reduce the risk of data breaches caused by human error.

Maintain Proper Record Keeping and Retention Policies:

- Clearly define and adhere to record retention schedules that comply with legal and ethical obligations.
- Implement secure data disposal practices to ensure that client information is irretrievably destroyed when no longer needed.

By taking these steps and by taking advantage of professional liability insurance coverages, law firms can significantly reduce the risk of data breaches, unauthorized access, and other issues related to client data management, thereby lessening their professional liability exposure.

USING ONLINE REVIEWS TO AMPLIFY THE CUSTOMER SERVICE EDGE OF SOLO AND SMALL FIRM ATTORNEYS

By Kelsey Singh



Solos and small firm attorneys do an excellent job providing positive client experiences through their direct communication, flexibility, individualized attention, and cost-effective services. In fact, Clio reports that these attorneys are “24% more likely to report having positive relationships with clients, which speaks to the type of hands-on, personal nature of the services that many solos pride themselves on.”¹ Amplifying that positive experience through online reviews can help attorneys get more “bang for their buck” by demonstrating the type of relationship prospects could also receive. Not only can online reviews translate into *more* clients, but also into more *qualified* clients.

Though consumers consider many factors when selecting legal representation, a major concern is what real customers say about that representation online. Referrals continue to be the top source of clients, but online searches—particularly online reviews—are now a crucial role in credentialing those referrals.

“[Consumers] ask for advice and use it as a jumping-off point to surf the web,” said Carol Schiro Greenwald in an American Bar Association Law Practice Magazine article.²

Consumers, advised by platforms like Legal Zoom, extensively rely on online reviews

from various sources such as Google, Facebook, Better Business Reviews, and Yelp.³ More than three-quarters of consumers visit multiple websites before engaging with an attorney,⁴ and 81% of consumers in the financial and legal sectors (up from 66% in 2022) said that online reviews are “important” or “very important” in their decision making process.⁵

BENEFITS OF ONLINE REVIEWS

Online reviews benefit solo and small firm attorneys in several ways, including:

- **Generating credibility and trust:** Positive reviews serve as social proof of a lawyer’s competence and reliability. Consumers trust online business reviews as much as they trust a personal recommendation from friends or family.⁶
- **Increasing visibility and online presence:** Online reviews contribute to a lawyer’s online presence. Positive reviews can improve search engine rankings and feed into firm websites, making it easier for potential clients to find them.
- **Getting attention from out-of-state prospects:** Among solos, 50% now prefer to meet clients virtually instead of in-person.⁷ This opens up new market opportunities, and online reviews can credential an out-of-state lawyer who may not have as big of a referral network in that market.
- **Helping credential potential clients:** The more specific your reviews are, the more likely clients will be able to determine if you align with their needs and personal preferences.

"Consumers, advised by platforms like Legal Zoom, extensively rely on online reviews from various sources such as Google, Facebook, Better Business Reviews, and Yelp."

ETHICAL CONCERNS OF ASKING FOR REVIEWS

Though asking a client for an online review isn’t a breach of Indiana’s Rules of Professional Conduct, some argue it’s still an unethical practice.

Claude Ducloux, an attorney at LawPay argued in 2017:

Let’s start with this inescapable premise—you have a duty of complete confidentiality concerning everything, even the fact you represented the person (unless the disclosure is governed by an exception, such as intent to commit crime or injury). So, just by asking for a review, you’re asking the client to break that seal of confidentiality.⁸

When asked if he has changed his mind in the five years since he published the blog, Ducloux maintained that even though asking for a review doesn’t break Indiana’s Rules of Professional Conduct, in his opinion, it still can be unethical unless the lawyer advises the client appropriately that it constitutes a waiver of the client’s right to confidentiality:

Modern communication has forced a crack into the relationship—lawyers love getting reviews online. Social media is, after all, the lifeblood of American gossip and advice, and now good public relations, too.

So, ethics committees are (in my opinion, grudgingly) allowing lawyers to ask clients, “Uh...if you want to, would you mind posting a review for me on [name your platform]?”

I still caution lawyers: Make sure you advise the client that doing so *must* be the client’s own decision. You may use the phrasing, “I owe you complete confidentiality, so consider that I am not going to ask you to post anything unless it is your decision.”

But I am resigned that, especially for young lawyers, to encourage them NOT to ask for reviews nowadays is a fool’s errand, so, at least I urge them to be ethical about it.

It should be noted that Indiana Rule of Professional Conduct 7.2(b) does specifically prohibit lawyers from compensating anyone for a review or recommendation.⁹

WHAT DO ISBA MEMBERS THINK?

Unsurprisingly, ISBA members have mixed feelings about asking clients for reviews.

Patrick Olmstead of Patrick Olmstead Law LLC draws a hard line: “I think it’s tacky and unethical—since lawyers are only going to ask for positive reviews.”

"Ducloux maintained that even though asking for a review doesn't break Indiana's Rules of Professional Conduct, in his opinion, it still can be unethical unless the lawyer advises the client appropriately that it constitutes a waiver of the client's right to confidentiality."



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Beth Cox of Cox & Koons, LLP doesn't ask for reviews, primarily because of her discomfort with making the request: "I don't, but [my business partner] really wants me to. I know that people look at online ratings so I *should* ask for them, but the way I was raised it feels gross asking people to compliment you. At present, when [my business partner] asks, he usually includes it as part of the end of a wrap up call or an email with a link."

Sundeep Singh with RileyCate, LLC has seen positive results from his review invitations: "I frequently ask my clients for reviews. I ask for reviews only after my representation of the client is concluded. So, if I am ready to close out the file for the client, I send a letter letting them know my representation has been concluded and thanking them for placing their trust in me and my firm. Then at the very end I ask the client if they have been satisfied with my representation to leave a Google review expressing their satisfaction, and I provide them with the Google review link. If I get the chance I ask in-person, and they are always receptive and willing to leave a review. Some clients go above and beyond and write a testimonial and some simply leave five stars and do not write a comment. Either way, it helps drive traffic to our firm's website and ultimately leads to increased business."

MAKING THE ASK

If you determine that asking for a review is an appropriate tool in your business development toolbox, consider the following guidelines:

- At the conclusion of a matter, contact the client and politely and concisely invite them to share their feedback about their experience with you via an online review.

- Consider including links to your online profiles where clients can post reviews. See the “Where to Share the Reviews” section of this article for options.
- Remember Ducloux’s suggested language: “I owe you complete confidentiality, so consider that I am not going to ask you to post anything unless it is your decision.”
- Add asking for a review to your checklist for closing out a matter. Make it part of your routine.¹⁰
- If making the invitation via email, send it from your personal account rather than a generic firm email.¹¹
- Not every person you ask will write you a review, but you will be surprised at how many will.¹²

WHAT TO AVOID

- Making specific suggestions about things to mention in their review, or even suggesting leaving a “good” or “positive” review.
- Asking friends, family, and employees to leave reviews.
- Asking clients who you haven’t worked with or spoken to in a while.
- Asking clients whose matters were related to sensitive or embarrassing issues.
- Suggesting a specific date to have the review completed by.
- Offering an incentive, reward, money, or gift in exchange for a review.

WHERE TO SHARE THE REVIEWS

Below are some of the most popular websites for clients to post reviews. With the exception of Facebook, a



profile for your business likely has been automatically created on each website. Visit each website and “claim” your page to ensure the information listed is correct and to monitor when a person posts a review.

- **Your Google Business Profile.** (If you don’t know how to log into and manage your Google Business Profile, a quick Google search can assist you.)
- **Yelp.**
- **Better Business Bureau.**
- **Law firm client review websites** such as Avvo, FindLaw.com, and Martindale-Hubbel.
- **Facebook.** Create a profile for your business, which will allow clients to post reviews.

Additionally, with a client’s permission, you can add the review to your **website**, either by linking to where the review was posted online, or by adding the text of the review directly to your website.

IN “REVIEW”

Soliciting online reviews can be a fine line to tread—it could be considered suggesting a client should waive their attorney client privilege. Attorneys should always

be sensitive about the clients and cases that they invite reviews from. But, when properly coordinated, asking for client reviews is an invaluable tool for both prospects and attorneys. ☒

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FINANCIALLY PLANNING FOR RETIREMENT

By Kevin Alerding



According to a study conducted by the Exit Planning Institute,¹ an astounding number of former business owners suffer from sellers' remorse. In fact, while there is no direct correlation between a business' sales price and the seller's level of satisfaction, there is compelling evidence suggesting many former business owners regret the sale within two years. When analyzing the research further, another interesting correlation was discovered: Sellers who failed to plan their post-retirement lives suffered the greatest levels of remorse.

I have seen a parallel with retired lawyers. In society, lawyers are viewed with a certain prestige. A more senior lawyer once confessed to me he often preferred being at the firm where his colleagues viewed him as witty, smart, gentlemanly, gracious, and, most importantly, brilliant! However, at home, he was ordinary and, perhaps worse, equal to everyone else. He was expected to help with the dishes, fold the laundry, and, to his horror, clean the bathroom. For him, like many former lawyers and business owners who were once seen as the *Big Man on Campus* (as my father would say), the transition to being just an average guy was a tough pill to swallow as his former life, career, and colleagues moved on without him. This is why it is particularly important to ensure you have a post-retirement plan. You can only play so many rounds of golf and watch Peppa Pig with your grandchildren so many times before you find yourself longing for the days when everyone saw you as that witty, smart, and gracious head honcho!

At my former firm, I made a habit of sitting next to someone I did not know well at the annual Christmas party and asking what they intended to do in retirement. Some had adventurous ideas, like sailing the Great Loop, climbing mountains, metal working, substitute teaching, etc. It was obvious these ideas were more than ideas: They were passions which had long percolated, well before retirement. By contrast, others were pitifully boring. One told me he wanted to continue practicing law pro bono. Another swore he would die at his desk.

"For him, like many former lawyers and business owners who were once seen as the *Big Man on Campus* (as my father would say), the transition to being just an average guy was a tough pill to swallow as his former life, career, and colleagues moved on without him."

It was not difficult to predict which of these individuals would regret retirement and which ones would thrive.

Beyond this practical aspect of how to spend your time in retirement, there is an essential question everyone must ask themselves: *Do I have enough money to retire?* I implore you to IGNORE the gurus on social media and ask yourself seven honest questions:

1. How old am I?
2. How much do I have?
3. How many people do I support?
4. Where do I intend to live?
5. How much do I spend?
6. How will my spending change after retirement?
7. How much risk am I willing to take with my investments?

The last three of these questions are the most difficult to answer. Most people are unaware of how much they spend, much less what they spend it on. However, there's a cheat code to figure this out. Look at how much you made in each of the last several years (this can be derived from your income tax returns), subtract the amount you added to your retirement plan, savings, and investment accounts, and the difference is the amount you spent. While this formula is merely a rough

estimate and does not supply clarity on what the money was spent on, it is enough to get you started and help your financial advisor project your future cash flow and how long your money should theoretically last. If the analysis reflects a shortage of cash flow earlier than expected, it is important to consider altering your plans, whether it be delaying retirement, curbing spending, considering part-time work, etc.

For a more precise calculation, there are a multitude of software programs available to supply greater clarity. Consider asking your advisor to run your retirement projections through two or three different programs to see how closely the results align. At least one of those programs should be a Monte Carlo analysis, which runs 1,000 or 10,000 scenarios involving market crashes, rampant inflation, bull and bear

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"If you are a young lawyer, do yourself a favor and stuff as much as you can into your 401(k) or other qualified retirement plan account every year."

markets, and everything in between. If your financial needs are met in 90% or more of those assessments, you can retire with high confidence in your personal finances. Following retirement, you should rerun these calculations annually to determine whether any adjustments in your spending are necessary.

If you are a young lawyer, do yourself a favor and stuff as much as you can into your 401(k) or other qualified retirement plan account every year. Even new lawyers tend

to earn more than the average Hoosier, so there should be room in your budget to save for your future and still enjoy a better-than-average lifestyle today. It may be a struggle to set money aside in the early years, as you also try to buy a house and start a family. But doing so has two great benefits. First, through the magic of tax-deferred compounding, a little money can turn into a lot of money after four decades of growth. Second, setting money aside is habit forming. If you do it from the start, it will become a way of life.

Finally, it is important to address an anxiety-producing concern for many. Long-term care can be extraordinarily expensive, especially for those with illnesses and/or disabilities requiring skilled care, especially when the care is provided in a personal residence. Fortunately, long-term care exists on a spectrum, with the not-so-great but affordable Medicaid facilities on the far left, and the comfortable but extremely expensive at-home skilled care on the far right, with many practical options in between. My best advice to those considering long-term care is not to overthink the matter, as there are solutions which can fit any budget. However, the earlier you start looking for the right solution for you and your family, the easier it will be to make the decision when the time comes, even if your research begins a decade early! ☺

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AI'S IMPACT ON THE LEGAL PROFESSION

By Abigail Hopf



Artificial intelligence (“AI”) is no longer just a buzzword or topic of the month; it’s a budding reality that could transform the legal landscape. Its potential to address some of the profession’s biggest pain points and increase productivity is undeniable (some have even called it the biggest efficiency boost since the Industrial Revolution¹). The risks it brings are even more notorious.

But AI is coming. And as it continues to evolve and gain a foothold in legal practice, it is increasingly important for legal professionals to stay informed and be prepared for conversations about its implementation.

WHAT DO WE MEAN WHEN WE TALK ABOUT AI?

At its core, “artificial intelligence” refers to any technology that can emulate human capabilities like learning, reasoning, planning, and decision-making. These tools have been around for decades—since scientists and mathematicians first began grappling with the concept of AI in the 1950s.² In the modern world, AI encompasses everything from virtual assistants like Siri to the algorithms populating your “For You” page on social media platforms. And, most recently, it’s expanded to include *generative* AI tools—programs capable of generating new content.

Take ChatGPT for example—a generative AI program that creates, translates, and refines text. ChatGPT-1 first launched in



June 2018, but it rocketed into fame with the release of GPT-3.5 in November 2022.³ In just five days from the launch of ChatGPT-3.5, the platform had already crossed 1 million users (a feat that took Twitter two years, Facebook 10 months, and Instagram—the second fastest platform to reach 1 million users—70 days).⁴ By August 2023, ChatGPT had 180.5 million users.⁵

ChatGPT put generative AI capabilities in the hands of the public for the first time. This sparked a boon of generative AI tools, as major tech companies, start-ups, and others began designing programs to generate text, create images, record music, edit videos, transcribe meetings, analyze data, and more.⁶

It is these generative AI tools that transform our daily practices. And

that potential will only grow as these tools become more advanced and specialized; already companies like LexisNexis⁷ and Thomson Reuters⁸ have designed generative AI tools for legal research, and some firms are considering launching their own proprietary versions.⁹

HOW WILL AI IMPACT THE LEGAL PROFESSION?

We are still in the dial-up days of AI implementation. The tools are clunky and we're working out the bugs, *but today's AI is the worst version we will ever have*. Already, AI tools can:

- Draft and review contracts, briefs, and memos
- Draft and edit client communications
- Research legal topics

- Analyze data
- Automate billing, calendaring, and other administrative tasks
- And more

Imagine where AI will be two, five, ten years down the road—transforming legal practice as we know it (and potentially even in ways we can't yet fathom). But, by creating proper guidelines and expectations around AI usage *now*, we can harness AI's capabilities and overcome the profession's largest pain points in the future. To do that, we must be fully aware of what those potential implications are.

ETHICS

Integrating AI in legal practice carries substantial ethical risks. No conversation or implementation of AI can begin without first considering:

- **Confidentiality.** Due to data privacy and security concerns, lawyers must be cautious of what client information they share. (Although, the rise in proprietary tools or contracts with clearly outlined data privacy measures may reduce some of this risk.)
- **Competency.** Generative AI tools can be prone to “hallucinations” and create case references that never existed.
- **Communication and transparency.** Lawyers must be upfront with their clients about when, where, and how AI is being used in their casework. In some situations, clients might need to grant permission for the use of AI.
- **Bias.** Tools like ChatGPT can carry inherent biases in their generated responses. If lawyers directly use the responses provided by these tools, they may be held accountable for that bias.
- **Supervision.** Under Indiana Rules of Professional Conduct 5.1 and 5.3, lawyers take responsibility for their legal staff, which means they are also responsible for how their staff use AI.
- **Fees.** Lawyers can only charge for the time spent doing a task, not the time it would have taken without the use of AI. Lawyers must adjust their billing practices accordingly.

Most of these risks can be mitigated through the creation of firm-wide AI policies and by thoroughly reviewing any content AI creates. Though the question remains as to who, ultimately, will be responsible for creating guidelines around the ethical use of artificial intelligence: the individual, firm management, or the courts?¹⁰

LAW PRACTICE MANAGEMENT

Will AI take your job? The answer is no—someone will always have to look over the work AI does, after all—but the extent to which job responsibilities and skillsets might shift with the implementation of AI is still unclear. According to a 2023 Thomson Reuters survey,¹¹ 51% of professionals predict there will be a decrease in expected entry-level roles over the next five years, though that would be matched by an overall increase in the number of professionals in practice. The survey also predicts a rise in new career paths, like legal tech consultants, and additional demand placed on skills like technology literacy.¹²

Other considerations with the implementation of AI include:

- **Billing and financials.** The use of AI can increase productivity and decrease the time it takes to draft briefs, do research, etc., which could change the total billable hours required for a case. This could ultimately lead to a reconsideration of common billing models or new revenue sources.
- **Client expectations.** Some clients may not be comfortable with their attorneys using AI or might be skeptical of time allotments when they receive their bills. Market demands may also force the use of AI, as clients get used to reduced legal fees and start requiring them from their representation.
- **Quality assessments.** As more legal vendors develop products



based on generative AI, the need for quality assessments of those tools grows.

FURTHER REACHING IMPLICATIONS

AI's impact doesn't stop at the individual lawyer's practice. It carries important implications across the legal profession.

- **Access to justice.** AI could help close the access to justice gap by automating routine tasks, making legal services more affordable, providing accessible and accurate legal information to litigants, and simplifying court forms and processes. Some entities have already tried using AI to simplify dispute resolution.¹³ If proper guardrails are not put into place, however, AI could just as easily increase inequality. There are concerns that only large firms and corporations can access the most reliable (and

expensive) generative AI tools, while smaller firms and legal aid organizations will be shut out.¹⁴ Pro se litigants—armed with unreliable and untrustworthy AI tools—could also flood already overwhelmed courts.

- **Legal deserts.** AI can increase the availability of remote legal assistance and enable lawyers in rural areas to handle large case volumes more effectively. Barriers to adoption, like access to reliable Internet and upfront investment costs, must also be considered, though.
- **Practice changes.** AI can introduce new dynamics, like virtual courtrooms and AI-assisted dispute resolution. It can also increase the risk of AI-manipulated content like deep fakes, which would call for new methods for authenticating evidence.

- **Skills erosion.** Down the road, overreliance on AI could erode critical research, legal analysis, and problem-solving skills.
- **Reduced personalization.** AI in client communication could increase standardization, reducing the level of personalization integral to an attorney-client relationship.
- **Loss of legal heritage.** AI's ability to generate legal content could potentially overshadow traditional legal scholarship and identity.

NEXT STEPS FORWARD

AI could transform the legal field—in both positive and negative ways. However, through intentional discussion, continual education, and collective reflection, we can mitigate the potential risks and shape the future we want.



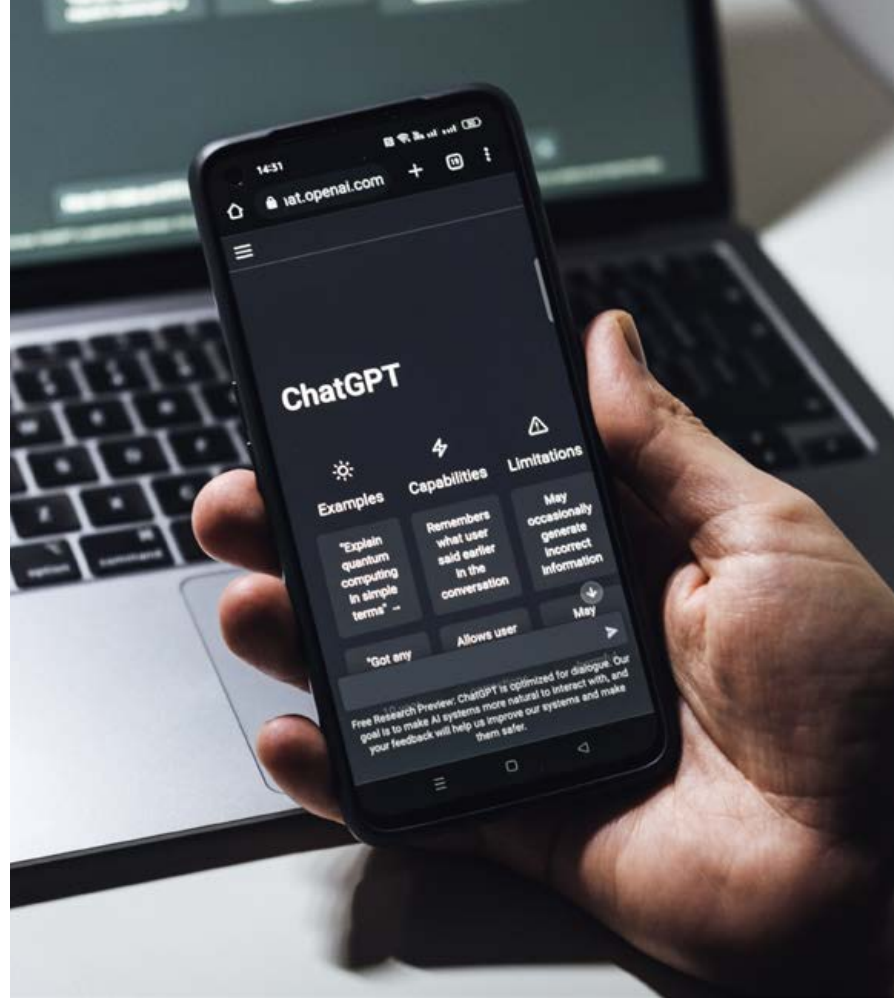
Here's how to get started.

- **Familiarize yourself with AI.** Start small and use tools like ChatGPT for non-legal tasks (e.g., summarizing meeting notes, drafting emails, or brainstorming gifts for a family member), before trying more involved prompts like data analysis.
- **Keep learning.** Stay updated on the latest AI developments through CLE, webinars, and publications. Check out “Artificial Intelligence in the Legal Industry: An ISBA Series Presented by LexisNexis” at www.inbar.org/ai-series-lexis-nexis to get started.
- **Create a policy.** Develop a firm-wide policy for all staff members. Train staff on how to use AI safely and effectively.
- **Manage client expectations.** Educate clients about the benefits and limitations of AI in legal services and be upfront about how AI will be used in their cases.
- **Stay flexible.** This is still a developing field, and it's likely that changes will be made. Keep an open mind, stay optimistic, and pivot when needed.

It's not a question of if you'll use AI, but when. But by embracing the challenge now, we can set ourselves up for a more successful (and productive!) future. ☺

ENDNOTES

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*By Ruth Johnson and
Jack Kenney*



COURTS ADDRESS HOSPITAL SENTENCING HEARING, POLICE UNIFORM STATUTE, AND OTHER ISSUES

In October and November, the Indiana Supreme Court ordered a new sentencing hearing for a defendant whose right to a public trial was violated when his sentencing hearing was erroneously conducted in a hospital room. The court granted rehearing in another case to clarify that despite an appellate waiver in a guilty plea, some specific claims can be raised on direct appeal such as an illegal sentence or restitution. The Court of Appeals decided that defendants in criminal contempt proceedings may file an insanity defense, be evaluated by mental health experts, and have them testify at the contempt hearings. The court also issued an opinion addressing the statutory requirement that law enforcement officers wear a uniform and badge when making an arrest.

INDIANA SUPREME COURT

HOSPITAL SENTENCING VIOLATED DEFENDANT'S RIGHTS

Jamone Williams' sentencing hearing was held at a hospital, which the Indiana Supreme Court found improper because Williams did not personally waive his right to be physically present at the hearing. A defendant can waive their right to be present at sentencing if they knowingly and voluntarily do so. However, here, Williams' health deteriorated after he was convicted of child molesting, rendering him unable to be transported to the courthouse for sentencing. Before the rescheduled sentencing date, Williams had to undergo a leg amputation. On the day of the hearing, the trial court, court reporter, prosecutor, and defense counsel traveled to the hospital where Williams was awaiting surgery. Williams expressed that he would have preferred to have the sentencing somewhere else, which indicates that he wanted to participate in the proceeding but for his hospitalization. However, the court found that Williams' purported waiver was not unambiguously knowing and intelligent.

The law requires the defendant to be present at the time of sentencing, but there was no justifiable reason for holding the hearing in a hospital. Doing so could potentially infringe upon a defendant's right to a public hearing and impede the rights of the press and the public. Appellate courts cannot overlook errors apparent on the face of the record, which go against the principles of criminal justice. Therefore, in a per curiam opinion, the court vacated the Court of Appeals' memorandum opinion and ordered a new

sentencing. *Williams v. State*, 219 N.E.3d 729 (Ind. 2023).

SOME ISSUES FALL OUTSIDE THE SCOPE OF GUILTY PLEA APPELLATE WAIVERS

In *Davis v. State*, 217 N.E.3d 1229 (Ind. 2023), decided May 3, 2023, the court stated that even if the defendant was not given correct advice about the appellate waiver provision in their plea agreement, they cannot bring up the issue in a direct appeal. Instead, they must pursue post-conviction relief. In the court's rehearing decision, issued October 3, 2023, a 3–2 majority noted that there are certain circumstances under which defendants can still appeal a sentencing issue directly, even with an appeal waiver in place. In a footnote, the majority provided examples of issues that may fall outside the scope of the waiver, such as cases where the imposed sentence is unlawful and the defendant did not agree to it, making it nonwaivable. Other issues like restitution may also be nonwaivable.

COURT OF APPEALS

LAW ENFORCEMENT MUST WEAR A DISTINCTIVE UNIFORM AND BADGE OF AUTHORITY WHEN INITIATING TRAFFIC STOPS

An officer working as a member of the community relations unit initiated a traffic stop after James Cassity failed to signal while turning. During the stop, the officer was dressed in jeans, a sweatshirt, and a vest with the word "POLICE" written on it along with a badge on its shoulder area. The officer also carried his firearm, a taser, a bodycam, radio, notepad, and a pen. The officer discovered evidence that led to Cassity's conviction of Level 6 felony possession of methamphetamine and Class A misdemeanor possession of paraphernalia.

However, the Court of Appeals found the traffic stop did not satisfy the requirements of Indiana Code 9-30-2-2(a) because the officer was not wearing a distinctive uniform and badge. The Police Uniform





Statute aims to protect drivers from police impersonators and to protect officers from resistance if they are not recognized as officers. According to the statute, the risks inherent with an investigatory stop are the same as those inherent in an arrest, and the statute applies when an officer initiates a stop of a car. Therefore, because the statute was

violated in this case, the trial court abused its discretion in admitting the evidence obtained as a result of an invalid traffic stop and the Court of Appeals reversed Cassity's convictions. *Cassity v. State*, 23A-CR-209, 2023 WL 7119808, (Ind. Ct. App. Oct. 30, 2023)

IN CRIMINAL CONTEMPT PROCEEDINGS, DEFENDANTS HAVE THE SAME PROTECTIONS AFFORDED TO OTHER CRIMINAL DEFENDANTS

Russell Finnegan was charged with indirect criminal contempt for sending disrespectful correspondence to the court. During the hearing, his counsel informed the court of a possible mental health issue and that Finnegan was undergoing an evaluation in a separate criminal case. Finnegan

then filed a notice of intent to plead not guilty by reason of mental disease or defect and asked for the appointment of mental health experts to evaluate and testify at the hearing. He also requested a continuance to allow more time for the evaluation results.

However, the trial court did not rule on the notice of insanity and denied Finnegan's request for a continuance. The court found him guilty of indirect contempt and imposed a penalty of 170 days in the Department of Correction.

The Court of Appeals concluded that defendants facing criminal contempt have the right to the same statutory protections as other criminal defendants. This includes the right to file a notice of insanity defense and obtain the appointment of appropriate mental health experts. The trial court abused its discretion by failing to act on the notice of insanity, thus denying Finnegan the mental health evaluations required by Indiana Code 35-36-2-2. The court reversed and remanded for further proceedings. *Finnegan v. State*, 23A-MI-442, 2023 WL 6834443 (Ind. Ct. App. October 17, 2023).

MINUSCULE AMOUNT OF METHAMPHETAMINE INSUFFICIENT TO SUPPORT DEALING CONVICTION

During a traffic stop, police discovered digital scales that had traces of methamphetamine. Richard Pigott was charged and convicted of dealing methamphetamine (possession with intent to deliver) as a Level 5 felony. However, on appeal, the Court of Appeals overturned the dealing conviction and instructed the trial court to enter a judgment of conviction for Level 6 felony possession of meth. The court

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found insufficient evidence to prove that Pigott intended to sell, or had attempted to sell the methamphetamine residue, or that there was a market for the sale of methamphetamine residue. Judge Foley dissented, noting that because Indiana Code § 35-48-4-1.1(a) (2) does not specify a minimum amount of methamphetamine, the plain language of the statute required the state only to prove that Pigott possessed some quantity of methamphetamine with the intent to deliver, which they did in this case. *Pigott v. State*, 219 N.E.3d 808 (Ind. Ct. App. 2023).

BIFURCATION NOT REQUIRED FOR OFFENSES ELEVATED DUE TO PRIOR INFRACTIONS RATHER THAN CRIMINAL OFFENSES

Kimberly Brook was convicted of multiple charges, including resisting law enforcement, driving while suspended (DWS), unlawful possession or use of a legend drug, and obstruction of justice. During her trial, Brook argued that bifurcation was necessary under Indiana Code § 35-38-1-2, even though her DWS enhancement was based on a civil infraction rather than a prior criminal offense. However, the majority of the Court of Appeals panel disagreed, stating that the bifurcation statute only applies to crimes and not infractions. Therefore, the trial court did not err in refusing to bifurcate.

Judge Vaidik partially concurred but dissented from the majority's holding on the bifurcation issue. *Brook v. State*, 22A-CR-2110, 2023 WL 6933851 (Ind. Ct. App. Oct. 20, 2023)

DELAY CAUSED BY TRIAL COURT'S REQUEST FOR COMPETENCY EVALUATION DID NOT RESET CR 4(B) 70-DAY CLOCK

Stevie Bradley, proceeding pro se, requested a speedy trial. Eight days before his trial date, the trial court sua sponte ordered Bradley to undergo a competency evaluation. Bradley was deemed competent 107 days later. Bradley objected to the trial court setting a new trial date outside the 70-day speedy trial window. The trial court mistakenly

believed the trial court's request for a competency evaluation had reset the 70-day speedy trial clock instead of tolling the time. Because there was no evidence of court congestion or emergency, Bradley's conviction was vacated because the C.R. 4(B) period had expired. *Bradley v. State*, 22A-CR-2317, 2023 WL 8043100, (Ind. Ct. App. Nov. 21, 2023). ☞

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THE TECHNOLOGICAL TIGHTROPE: THE INTERSECTION OF ARTIFICIAL INTELLIGENCE AND ETHICAL RESPONSIBILITY

THE NEXUS OF COMPETENCE AND TECHNOLOGY

The symbiotic relationship between attorneys and technology has become increasingly intertwined as emerging technologies allow attorneys to amalgamate information with (relative) ease and even prepare initial drafts of work product at the push of a button. The risks and benefits of technology are both expanding as artificial intelligence (“AI”) technology is applied to the practice of law. On one side, AI can enable quick, efficient, and practical results. Most litigators know that using AI to locate relevant documents can save time and money. On the other hand, as several lawyers across the country have already discovered, using AI without caution can have disastrous results. Just Google “lawyer uses ChatGPT” and you’ll find multiple examples of lawyers facing sanctions and/or fines for filing briefs written by AI that contain entirely fabricated legal citations.

"The Rules of Professional Conduct require attorneys to balance professional competence with efficient use of technology."

The Rules of Professional Conduct require attorneys to balance professional competence with efficient use of technology. Indiana Rule of Professional Conduct 1.1 requires that lawyers “shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Comment 6 to Rule 1.1 suggests that the “knowledge” and “skill” needed to competently represent someone changes over time:

[T]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with the technology relevant to the lawyer’s practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

While the Indiana Supreme Court has not issued any opinions analyzing Comment 6, there is no doubt that the failure to adopt technology (in a responsible manner) can have serious consequences.

MUNSTER V. GROCE—A FAILURE TO “JUST GOOGLE IT”

In the digital age, the phrase “just Google it” is a ubiquitous instruction, underscoring the ease with which information is accessible. Lawyers are often warned against relying on Google or unknown internet sources to craft and support legal arguments. However, in *Munster v. Groce*, the Indiana Court of Appeals highlighted the importance of using available technology as a matter of basic diligence. There, a defendant was not properly served and the Court of Appeals determined that the trial court lacked personal jurisdiction over the defendant, leading to the dismissal of the lawsuit. *Munster v. Groce*, 829 N.E.2d 52, 61 (Ind. Ct. App. 2005).

In a footnote, the Court of Appeals’ opinion noted the absence of evidence proving even a basic public

records or internet search for the defendant. The court conducted its own online search, entering “Joe Groce Indiana” into the Google search engine. The results revealed an address for the defendant different from those used in the case, along with an apparent obituary for the defendant’s mother listing surviving relatives who might have known his whereabouts. *Id.* at n. 3.

BOPP LAW FIRM, PC V. SCHOCK FOR CONG.—THE COST OF TECHNOLOGICAL IGNORANCE

More recently, and after Comment 6 added a reference to technological competence to Indiana’s ethical standards, the Indiana Court of Appeals delivered a costly reminder of an attorney’s ethical obligations tethered to technological competence. In *Bopp Law Firm, PC v. Schock for Cong.*, 151 N.E.3d 286, 290 (Ind. Ct. App.



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"This integration is not simply about meeting the bare minimum requirements but about embracing technology as a tool for enhancing the quality of legal services."



2020), the plaintiff-law firm, in addition to other fees and claims, sought over \$90,000 from the defendant-client for document review in response to a subpoena request. In addition to the hefty bill, it took the plaintiff-law firm months to respond to the subpoena. The defendant's electronic document production expert testified at trial and revealed a stark contrast in cost efficiency.

The defendant's expert contended that the plaintiff-law firm's lack of familiarity with technology significantly inflated the cost of the document review and production of the privilege log. The defendant's expert testified that his company could have responded to the subpoenas within two weeks for less than \$30,000. The trial court concluded that \$30,000, and not \$90,000, was a reasonable fee for the document review and subpoena response performed by the plaintiff-law firm, and the Court of Appeals agreed.

ARTIFICIAL INTELLIGENCE—AN ETHICAL IMPERATIVE

Comment 6 to Rule 1.1 serves as a guidepost for attorneys navigating this terrain, urging them to continually integrate technological advancements into their practice. This integration is not simply about meeting the bare minimum requirements but about embracing technology as a tool for enhancing the quality of legal services. As illustrated by *Munster*, lawyers are expected to use technology as a matter of diligence. And as illustrated by *Bopp Law Firm*, lawyers are expected to use technology to manage costs and promote efficiency. What then of AI?

Many readers may be shaking their heads and rolling their eyes at the idea that any lawyer would be careless enough to use AI to draft court filings or letters to clients. But it's dubious that those same lawyers made it through their morning coffee without using AI. Most lawyers are familiar with predictive AI—the technology that search engines and other programs use to guess which content you are most interested in finding. Predictive AI is also the technology that helps lawyers narrow the field of documents that they must manually review in a document intensive case. Lawyers are more wary of generative AI, and rightly so.

Generative AI creates work product based on the user's prompts. Explained at a very basic level, generative AI technology makes its predictions by learning from similar pre-existing content. So, if I ask an AI program to write an article about the intersection of lawyer ethics and technology, the program might spit out a document alarmingly similar to the article you are reading. But unless a lawyer is confident in the assertions, statements, arguments, and sources in a document generated by AI, the lawyer should not sign their name. This is, of course, no different than any draft document. Lawyers should always carefully review any draft prepared by a staff member, law clerk, junior attorney, client, or co-counsel before adopting it as their own. *See, e.g., Matter of Wilkins*, 782 N.E.2d 985 (Ind. 2003) (lawyer reprimanded for statements in a brief which were written by co-counsel, but which he had not removed before signing his name and filing). If a prudent lawyer uses generative AI to prepare form pleadings such as motions for extension of time, or cover letters transmitting documents—and properly reviews those documents—the risk is low and the efficiency will benefit the lawyer's clients.

Attorneys stand at the crossroads of tradition and transformation, where ethical responsibilities intertwine with technological advancements. Although lawyers should proceed with caution, ethical lawyers can, and should, adopt technology to provide efficient representation to their clients.

TIPS FOR TECHNOLOGICAL COMPETENCE

- Stay informed about changes in the law and emerging technologies relevant to your practice area.
- Utilize comprehensive legal research databases to enhance your legal knowledge.
- Prioritize thorough online searches, using platforms like Google, to establish due diligence.
- Document and retain records of search efforts to demonstrate the extent of investigative measures taken.
- When using predictive AI to cull documents from a document production, advise the court and opposing counsel of your methodology.
- When using generative AI to prepare initial drafts of documents, carefully edit the work product and check all sources before adding your name.
- Implement robust data security measures to protect client information.

- Be mindful of client confidentiality when using electronic communication platforms.
- Seek guidance when faced with challenges beyond your technological expertise. ⁽¹⁾

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COURTS ADDRESS CLASS ACTIONS RELATED TO COVID-19, SILENCE AS ACCEPTANCE, AND MORE

The Indiana Court of Appeals issued 22 published civil opinions in October and November 2023. The Indiana Supreme Court issued three civil opinions during this time.

SUPREME COURT OPINIONS

UNANIMOUS SUPREME COURT HOLDS THAT LEGISLATION PROHIBITING CLASS ACTIONS RELATED TO COVID-19 DOES NOT VIOLATE STATE OR FEDERAL CONSTITUTIONS

After Ball State University switched its classes to online-only during the spring of 2020 due to the COVID-19 pandemic, a student brought a class action lawsuit against the university alleging breach of contract and unjust enrichment. As part of sweeping COVID-19 legislation, the General Assembly enacted I.C. 34-12-5-7 which precluded class action lawsuits against colleges and universities for breach of contract or unjust enrichment claims to recover from losses associated with COVID-19. The trial court thereafter ordered Mellowitz to amend his complaint to remove the class action allegations. A unanimous Supreme Court affirmed the trial court in *Mellowitz v. Ball State University*, 221 N.E.3d 1214 (Ind. 2023) (Molter, J.), concluding there were no state or federal constitutional concerns with the legislation.

The court first held the legislation did not violate separation of powers or usurp the court's ability to regulate class actions via Trial Rule 23. The court reaffirmed that a statute is constitutional when it "predominantly furthers public policy objectives rather than judicial administration objectives, so long as the statutes do

not undermine the truth-seeking function of litigation, and they do not otherwise interfere with the judiciary's ability to fulfill its constitutional obligations."

The court declared that "everything" about the statute "and the context of its enactment conveys the General Assembly was tweaking a procedural rule to predominantly further a public policy objective—which here, both sides agree is to limit the university's litigation exposure for pandemic-related contract claims during a global crisis."

The court also rejected the student's additional claims that the legislation was an unconstitutional taking and impaired his contract rights, finding that the student had no property right to sue on behalf of other class members and that his contract was not impaired because he could still pursue the suit as an individual.

MAJORITY OF SUPREME COURT HOLDS THAT THERE ARE ONLY LIMITED INSTANCES WHERE SILENCE CAN BE USED TO SHOW A PARTY ACCEPTED AND ASSENTED TO AN OFFER

A credit union's account agreement provided that its terms and conditions were subject to change at any time, and any notices regarding changes in those terms and conditions were deemed accepted three days after such notice was sent via mail or email. The credit union thereafter sent its members a proposed modification to its terms to mandate arbitration and prohibit class actions, and the proposal allowed a member to opt out of the arbitration provision so long as written notice was given within thirty days of receiving the proposal. Otherwise, the credit union deemed the silence to be acceptance of the proposed modification.

A four-justice majority of the Supreme Court in *Land v. IU Credit Union*, 218 N.E.3d 1282 (Ind. 2023) (Goff, J.), adopted Section 69 of the Restatement (Second) of Contracts and held that a party's silence or inaction can constitute an acceptance in only three exceptional circumstances: (1) "Where an offeree takes the benefit of offered services with reasonable opportunity to reject them and reason to know that they were offered with the expectation of compensation"; (2) "Where the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction, and the offeree in remaining silent and inactive intends to accept the offer"; (3) "Where because of previous dealings or otherwise, it is reasonable that the offeree should notify the offeror if he does not intend to accept."

Because none of these circumstances applied, the proposed modification was not accepted. Justice Massa dissented, believing "today's decision could upend long-accepted business practices of companies with large customer bases in Indiana."

UNANIMOUS SUPREME COURT HOLDS IT IS THE EFFORTS OF A TAX SALE PURCHASER TO PROVIDE NOTICE TO THE PROPERTY OWNER THAT DETERMINES WHETHER DUE PROCESS AND STATE LAW REQUIREMENTS HAVE BEEN SATISFIED, NOT WHETHER THE PROPERTY OWNER ACTUALLY RECEIVED NOTICE

After multiple failures by the property owners to pay property taxes, their properties were sold to a third party at a tax sale. The purchaser notified the owners of the tax sale and the owners' right to redeem via certified and first-class mailed notice letters and, after inaction from the property owners, the county auditor issued the tax deeds to the purchaser. The owners sought to set this aside, claiming they never received the notices.

A unanimous Supreme Court in *In re 2020 Madison County Tax Sale*, 218 N.E.3d 1274 (Ind. 2023) (Massa, J.), held the minimum requirements under the Fourteenth Amendment's Due Process Clause and Indiana law had been satisfied.

ON THE MOVE

P. Mason Riley has joined the general litigation group at **Ruckelshaus Kautzman Blackwell Bemis Duncan & Merchant, LLP** in Indianapolis.

Mr. Riley is an accomplished trial lawyer with a decade of trial experience as a major felony deputy public defender in Marion County. He will focus his practice in civil and criminal litigation, and in serving the public safety clientele of RKB.

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Noting that this issue “requires a balancing of interests between two private parties,” the court explained that it does “not conduct an inquiry into whether the [property owner] actually received the notice they claim not to have received, but instead inquire whether [the purchaser] acted as one desirous of actually informing the [owners] that their property was sold at the tax sale and the tax deeds had issued.”

Here, although the certified mail receipt was indecipherable in places, neither the certified mail nor the first-class mail were returned as undeliverable. This met the federal constitutional and state statutory thresholds for due process.

COURT OF APPEALS DECISIONS

- *Gardner v. Anonymous Physician*, 2023 WL 7395857 (Ind. App. 2023) (Altice, C.J.) (nurse “was exposed to and contracted scabies from a patient while working as a nurse at the Hospital” and the “exclusive remedy for this workplace injury was through the [Workers’ Compensation Act]” but “to the extent Anonymous Physician directly engaged in a doctor-patient relationship with [nurse] after her exposure and exercised independent medical judgment to treat her, his status then changed to that of a third party, making him subject to liability for any aggravation of her workplace injury resulting from his negligent treatment of her.”).

- *McIntosh v. McIntosh*, 2023 WL 7119799 (Ind. App. 2023) (Kenworthy, J.) (“Roberta and Nilah did not bring a common-law undue influence action. Instead, they alleged a violation of the [Indiana Senior Consumer Protection Act] SCPA ... [which] sets forth the burden of proof applicable to a private action brought under the SCPA—a preponderance of the evidence. By shifting the burden to Jimmy and Cheryl to rebut a presumption of undue influence by clear and convincing evidence, the trial court applied the wrong legal standard and clearly erred.”).
- *City of Carmel v. Barham Investments, LLC*, 2023 WL 7119594 (Ind. App. 2023) (Bradford, J.) (“While Indiana case law appears silent on the issue, other authorities have held that the taking of real property by eminent domain extinguishes any easements burdening the property.... In a similar vein, we have previously held that the exercise of eminent domain extinguished the reversionary interest in a deed, because such a ‘restriction cannot be enforced against the condemning authority as long as that entity’s use is for a public purpose; the only remedy for a violation of that restriction is monetary compensation.’ We conclude that Carmel extinguished Barham’s easement in Threel Road when it acquired Threel Road in its entirety in the County Line Action; therefore, there was no easement to take in the current case.”).
- *Taft v. Piper*, 2023 WL 7509523 (Ind. App. 2023) (Bailey, J.) (“[W]hen the court changed the hearing from one on Piper’s notice of emergency possession to a traditional eviction case—an action that was not requested by Piper—and then immediately ruled in favor of Piper without a hearing, it denied Taft any notice of a nonemergency eviction action, which resulted in Taft not having an opportunity to see any allegations that Piper may have alleged in a nonemergency eviction notice. Further, because Taft did not receive notice of the allegations, she was wholly unable to develop any defenses, let alone present them. In other words, the court denied Taft all of her due process rights.”).
- *Tom James Company v. Zurich American Insurance Company*, 221 N.E.3d 1261 (Ind. App. 2023) (Bailey, J.) (“Zurich did not waive its personal jurisdiction defense in the answer it filed after removal to federal court and before remand to state court. This matter was properly dismissed for lack of personal jurisdiction, as the claims do not arise out of or

relate to Zurich’s minimum contacts with Indiana, and Zurich did not consent to personal jurisdiction by either complying with Indiana law or entering into the Policy with Tom James.”).

- *State v. Laughlin*, 2023 WL 8246853 (Ind. App. 2023) (Tavitas, J.) (“[I]n the inverse condemnation context, before entering an order of appropriation, the trial court must hold a fact-finding hearing or rule on other dispositive motions to determine whether a taking has occurred.”). ☯




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