

# Procedural Issues

## Change of Judge for Civil and Criminal Cases Trial Rule 76 and 79

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A change of judge in a civil case can arise in two basic scenarios: (1) a motion for change of judge under Ind. Trial Rule 76, and (2) disqualification or recusal under T.R. 79(C).

Regardless of the reason for naming a special judge, the first step under T.R. 79(D) is to give the parties seven (7) days to agree on a special judge. A judge selected under T.R. 79(D) then has seven (7) days from the date the appointment is noted on the Chronological Case Summary to decide whether to accept the case.

If a special judge is not obtained under T.R. 79(D), the next step is selection pursuant to local rule as provided in T.R. 79(H). A special judge selected by local rule may not simply decline to accept the case. The selected judge must accept the case unless the selected judge is disqualified pursuant to the Code of Judicial Conduct, ineligible to serve under this rule, or excused by the Supreme Court.

If a special judge is not obtained pursuant to local rule, or if the circumstances of the case warrant, the case may be certified to the Supreme Court for the appointment of a special judge.

## Change of Judge for Criminal Cases

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A change of judge in a criminal case is controlled by Ind. Administrative Rule 21. In all counties, a special judge is selected the same way used to select the original judge. When this process does not result in obtaining a special judge, a selection is made pursuant to local rule. The local rule required by Admin. R. 1(E)(6) must include an alternative assignment list with 1) judges from contiguous counties; 2) judges from within the county's administrative district as set out in Ind. Administrative Rule 3(A); and 3) senior judges assigned to the court. Admin. R. 21(A).

The judge selected as special judge under a local rule must accept jurisdiction unless disqualified pursuant to the Code of Judicial Conduct, ineligible to serve under this rule, or excused by the Supreme Court.

When a judge is not available for appointment under local rules or the circumstances of the case warrant, a trial judge may request the Supreme Court to appoint a special judge.

### Serving as a Special Judge

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Sometimes, a judge will receive an assignment to preside over a case as a Special Judge. A Special Judge serves as the judge of the court in which the case is pending.

Most often the hearing or trial is conducted in the court facility where the case is pending. However, on some occasions, the Special Judge will conduct the hearing or trial in their own court using their own court reporter. When this occurs, the Special Judge and the reporter are acting on behalf of the court in which the case is pending.

In this latter instance, once the Special Judge has entered the judgment or ruling, **the exhibits and recordings of the proceedings should be stored and maintained in the court in which the case is pending rather than with the Special Judge's court reporter.** This manner of storage ensures that the records of the case are kept in the court in which it pends as opposed to having records in multiple locations.

In situations where the case is heard in the court in which it pends and the ruling is taken under advisement, the Special Judge may want to retain the exhibits admitted into evidence for use in coming to a decision. Unless the exhibits are voluminous, the **best practice** is for the reporter to provide the Special Judge with copies of the exhibits while retaining the originals in their files. If the original exhibits are taken by the Special Judge, a receipt should be given for them. Once the decision has been made, the exhibits should **be promptly returned** to the court reporter who will provide a receipt to the Special Judge.

In the event of an appeal, the appellate rules place the responsibility for preparation of the transcript of evidence on the court reporter of the court from which the appeal is taken. The appellate rules also provide for transcript preparation and certification by persons who did not record the hearing or trial.