



Indiana Supreme Court



2011 - 2012 Annual Report



On the cover:
The Indiana Supreme Court
November 2012

(back): Justice Robert D. Rucker,
Chief Justice Brent E. Dickson, Justice Steven R. David
(front): Justice Loretta H. Rush, Justice Mark S. Massa

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*For more information on the Court, its history, and its various
agencies and programs, visit our website,
www.IN.gov/judiciary*

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Introduction

This Annual Report provides information about the work of the Indiana Supreme Court. Included with the statistical data is an overview of the significant events of fiscal year 2012 (July 1, 2011, through June 30, 2012) and a description of the activities of the Court and its affiliated agencies. Section II, Significant Events of Fiscal Year 2012, includes brief highlights from the past fiscal year. Additional details on many of the programs listed in Section II can be found in the sections that follow. For more information about the Court, its history, and its various agencies and programs, visit our web site, www.courts.IN.gov.

Photographs in this year’s annual report were provided by: Jim Barnett, Indianapolis; John Gentry, Indianapolis; John Krauss, Indianapolis; Vince Morretino of the Indiana State Bar Association; Court staff, Lindsey Borschel, Mary DePrez, Kathryn Dolan, Sarah Hachey Kidwell, Elizabeth Osborn, Greta Scodro, Jessica Turner Strange; and other friends of the Court.



Current and former Justices gathered in the Robing Room for this photograph on the occasion of Chief Justice Shepard's departure ceremony. Left to right: former Justice Roger O. DeBruler, Justice Frank Sullivan, Jr., Chief Justice Brent E. Dickson, former Justice Myra Selby, former Chief Justice Randall T. Shepard, Justice Steven R. David, Justice Robert D. Rucker, former Justice Theodore R. Boehm.

Significant Events of Fiscal Year 2012

The Indiana Supreme Court works diligently to decide cases fairly, impartially, and according to law. The Court also strives to improve the quality of and access to justice in Indiana through the many projects and programs it directs. This section summarizes the Court's work for the fiscal year beginning July 1, 2011, and ending June 30, 2012. It begins with the Court's case work and then highlights other significant events and accomplishments.

THE CASE WORK OF THE INDIANA SUPREME COURT

Exclusive Jurisdiction: Death Penalty, Life without Parole & Certified Questions from Federal Courts

The Indiana Supreme Court has mandatory and exclusive appellate jurisdiction over criminal cases in which a defendant has received the death penalty or has been sentenced to life without the possibility of parole ("LWOP"). It decided three such cases this year. In *Ward v. State*, 969 N.E.2d 46 (Ind. 2012), the Court affirmed the denial of Roy Lee Ward's petition for post-conviction relief from his death sentence, which had been imposed following his guilty plea for the rape and murder of a fifteen-year-old girl. In *Turner v. State*, 953 N.E.2d 1039 (Ind. 2011), the Court affirmed Desmond Turner's convictions for seven counts of murder and related crimes and his resulting LWOP sentences. In *Cain v. State*, 955 N.E.2d 714 (Ind. 2011), the Court affirmed Jeffery W. Cain's convictions for murder and robbery and his resulting LWOP sentence.

The Indiana Supreme Court is the only Indiana court authorized to accept certified questions of Indiana state law from federal courts. This year, the Court decided five such cases, the largest number recorded by the Court since it began keeping statistics on its certified question caseload in 1986. One case, *Snyder v. King*, 958 N.E.2d 764 (Ind. 2011), presented a question of state constitutional law certified by the United States District Court for the Southern District of Indiana. The Court determined that a former prisoner's disenfranchisement during incarceration for misdemeanor battery did not violate article 2, section 8, of the Indiana Constitution, which authorizes the legislature to disenfranchise persons convicted of "infamous crimes." Although the Court held that misdemeanor battery is not an infamous crime, it concluded the Indiana General Assembly has authority under its general police power to disenfranchise persons incarcerated upon conviction of a crime, so long as the disenfranchisement lasts only for the duration of incarceration. In three other cases from the Southern District of Indiana, the Court held that a former police officer who had been on disability was ineligible under state law for reappointment to the police department, *Thatcher v. City of Kokomo*, 962 N.E.2d 1224 (Ind. 2012); determined that the Government Modernization Act of 2006 allowed the Town of Fishers to reorganize into a city that has a city council elected at large and a mayor appointed by that council, *Kole v. Faultless*, 963 N.E.2d 493 (Ind. 2012); and examined the scope of Indiana's Blacklisting Statute, *Loparex, LLC v. MPI Release Techs., LLC*, 964 N.E.2d 806 (Ind. 2012). Finally, in *Howard v. United States*, 964 N.E.2d 779 (Ind. 2012), a certified question case from the United States Court of Federal Claims, the Court held that railbanking and interim trail use pursuant to the federal Trails Act are not within the scope of railroad easements and that railbanking and interim trail use do not constitute permissible shifting public uses.

Discretionary Jurisdiction

The bulk of the Court's case work involves reviewing criminal and civil appeals that arise from cases tried in Indiana's approximately 300 trial courts. In most cases, a litigant first appeals a trial court's decision to the Indiana Court of Appeals, and after that court decides the case, either party may file a "petition to transfer" with the Supreme Court. The Supreme Court reviews each petition filed and selects those cases that warrant its attention.

In fiscal year 2012, the Court disposed of 1,096 cases, 892 of which had first been appealed to the Court of Appeals. Of these 892 petitions to transfer, 345 (38.7%) were civil cases and the remaining 547 (61.3%) were criminal cases. The Court accepted jurisdiction and issued opinions in approximately 7.8% of all transfer cases (9.0% in civil cases and 7.1% in criminal cases). In the remaining 92.2%, the Supreme Court denied transfer, rendering the opinion of the Court of Appeals final.

Similar to transfer petitions, the Supreme Court also receives requests, called "petitions for review," to examine decisions of the Indiana Tax Court. In fiscal year 2012, the Court received six petitions for review, accepted jurisdiction in three cases, and issued published opinions in three cases, *Ind. Dep't of Revenue v. United Parcel Serv., Inc.*, 969 N.E.2d 596 (Ind. 2012); *Ind. Dep't of State Revenue v. AOL, LLC*, 963 N.E.2d 498 (Ind. 2012); *Ind. Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012).

The Indiana Supreme Court's appellate work would not be possible without the superb work done by the Indiana Court of Appeals, the Indiana Tax Court, and the Indiana trial courts. The Court recognizes this work with the greatest and sincerest appreciation.

Criminal Transfer Cases

There was a decrease in the number of criminal transfer petitions received this year. The Court received 530 criminal transfer petitions as compared to 546 last year. However, it disposed of more criminal transfer petitions this year, 547 petitions as compared to 539 last year. It also issued opinions on rehearing in two criminal transfer cases. *Hopper v. State*, 957 N.E.2d 613 (Ind. 2011); *Barnes v. State*, 953 N.E.2d 473 (Ind. 2011).

Criminal appeals often involve claims that a defendant's state or federal constitutional rights were violated before or during trial. In two cases, the Court reviewed and rejected defendants' claims that their respective rights to be free from unreasonable search and seizure had been violated. *See State v. Renzulli*, 958 N.E.2d 1143 (Ind. 2011); *Lewis v. State*, 949 N.E.2d 1243 (Ind. 2011). In two other cases, the Court considered defendants' claims that prosecutors had violated the federal Equal Protection Clause by using peremptory challenges in a race-based manner. *See Addison v. State*, 962 N.E.2d 1202 (Ind. 2012); *Cartwright v. State*, 962 N.E.2d 1217 (Ind. 2012). In one case, the Court held that the defendant's retrial, after his first trial had ended in a mistrial, did not violate the Double Jeopardy Clause of the Fifth Amendment. *See Brock v. State*, 955 N.E.2d 195 (Ind. 2011), *cert. denied*, 132 S. Ct. 1801 (2012). In *Jewell v. State*, 957 N.E.2d 625

(Ind. 2011), where the defendant was represented by a lawyer for a particular offense and the police questioned him about a different offense, the Court rejected the defendant's claim that his right to counsel under article 1, section 13, of the Indiana Constitution had been violated. And, in *Hill v. State*, 960 N.E.2d 141 (Ind. 2012), the Court considered the standard by which to judge counsel's performance during a proceeding under Indiana Post-Conviction Rule 2.

The Court also considered several cases involving questions related to various rules of procedure. *See Whiting v. State*, 969 N.E.2d 24 (Ind. 2012); *Cundiff v. State*, 967 N.E.2d 1026 (Ind. 2012); *Harris v. State*, 963 N.E.2d 505 (Ind. 2012); *Hoglund v. State*, 962 N.E.2d 1230 (Ind. 2012). For instance, in *Hoglund*, the Court held that testimony from a witness that a child victim is not prone to exaggerate or fantasize about sexual matters is impermissible vouching testimony.



In one of several "on-the-road" oral arguments this year, the Court traveled to Notre Dame Law School in South Bend. (left to right) Justice Sullivan, Chief Justice Dickson, former Chief Justice Shepard, Justice David, Justice Rucker.

In a number of cases, the Court was called upon to interpret various penal statutes and to determine whether sufficient evidence supported a defendant's conviction. *See Lyles v. State*, 970 N.E.2d 140 (Ind. 2012); *Baker v. State*, 968 N.E.2d 227 (Ind. 2012); *Nicholson v. State*, 963 N.E.2d 1096 (Ind. 2012); *Adams v. State*, 960 N.E.2d 793 (Ind. 2012); *Gray v. State*, 957 N.E.2d 171 (Ind. 2011). Similarly, in *Smith v. State*, 963 N.E.2d 1110 (Ind. 2012), the Court held that the defendant's probation was appropriately revoked for failure to pay child support. And, in *Berry v. State*, 969 N.E.2d 35 (Ind. 2012), the Court held that there was sufficient evidence for the trial court to reject the insanity defense and to conclude that the defendant's behavior was caused by his voluntary abuse of alcohol rather than a mental disease or defect.

In one case involving jury instructions, the Court explained the circumstances under which a defendant is entitled to a jury instruction that proof by circumstantial evidence must be so conclusive and sure as to exclude every reasonable theory of innocence. *See Hampton v. State*, 961 N.E.2d 480 (Ind. 2012). And, in two others, it considered whether defendants had been entitled to jury instructions on

lesser included offenses. *See Webb v. State*, 963 N.E.2d 1103 (Ind. 2012); *Jones v. State*, 966 N.E.2d 1256 (Ind. 2012).

Regarding sentencing, the Court held that Social Security income may be considered in determining a defendant's ability to pay restitution, *see Kays v. State*, 963 N.E.2d 507 (Ind. 2012), and that state law permits separate Class D felony convictions for nonsupport of each dependent child, but that only one of those convictions may be enhanced to a Class C felony where the unpaid support for one or more such children is \$15,000 or more, *see Sanjari v. State*, 961 N.E.2d 1005 (Ind. 2012). In one case, the Court reversed a habitual-offender enhancement due to insufficient evidence, *see Dexter v. State*, 959 N.E.2d 235 (Ind. 2012), but it affirmed in another, *see White v. State*, 963 N.E.2d 511 (Ind. 2012). Sentencing relief was provided in *Walker v. State*, 968 N.E.2d 1292 (Ind. 2012), *Abbott v. State*, 961 N.E.2d 1016 (Ind. 2012), *Hamilton v. State*, 955 N.E.2d 723 (Ind. 2011), and *Carpenter v. State*, 950 N.E.2d 719 (Ind. 2011). And though relief was denied in *Sharp v. State*, 970 N.E.2d 647 (Ind. 2012), the Court held that appellate sentence review may take into consideration the defendant's credit-time status.

Civil Transfers

The Court received 301 civil transfer petitions this year as compared to 339 last year, and disposed of 345 petitions as compared to 310 last year.

Two civil transfer cases turned on issues of constitutional law. In *State v. Economic Freedom Fund*, 959 N.E.2d 794 (Ind. 2011), the Court held that the Indiana Autodialer Law did not violate the free-speech protections of either article 1, section 9, of the Indiana Constitution or the First Amendment. And in *Hardy v. Hardy*, 963 N.E.2d 470 (Ind. 2012), the Court held that a federal statute did not preempt the decedent's first ex-wife's state-law claims against the second ex-wife seeking a constructive trust over life-insurance benefits.

In an election-law case, where the Indiana Democratic Party sought to have Republican Secretary of State Charlie White declared ineligible to assume office, the Court held that the Party's post-election challenge was untimely. *See White v. Ind. Democratic Party*, 963 N.E.2d 481 (Ind. 2012).

A number of disputes between State government and private litigants were decided last year. In a contract dispute between the State and IBM, the Court reversed the trial court's order compelling the Governor's deposition. *See State v. Int'l Bus. Machs. Corp.*, 964 N.E.2d 206 (Ind. 2012). In a large class-action suit challenging the State's processing of claims for certain federal entitlement programs, the Court held that the Indiana Family and Social Services Administration ("IFSSA") may deny benefits when the applicant fails to cooperate in the eligibility-determination process, but that the IFSSA's denial notices were deficient under the Due Process Clause. *See Perdue v. Gargano*, 964 N.E.2d 825 (Ind. 2012). In another case involving IFSSA, the Court affirmed the trial court's judgment under which neither party owed money to the other. *See Woodruff v. Ind. Family & Soc. Servs. Admin.*, 964 N.E.2d 784 (Ind. 2012). The Court also decided a large class-action suit that had been percolating in the lower courts for nineteen years involving state employees' claims for



Chief Justice Dickson at oral argument in *Charlie White v. Indiana Democratic Party*.

backpay. *See Richmond State Hosp. v. Brattain*, 961 N.E.2d 1010 (Ind. 2012) (per curiam). And in three cases, the Court examined various aspects of the Indiana Unemployment Compensation Act. *See Chrysler Grp., LLC v. Review Bd. of the Ind. Dep't of Workforce Dev.*, 960 N.E.2d 118 (Ind. 2012); *Recker v. Review Bd. of the Ind. Dep't of Workforce Dev.*, 958 N.E.2d 1136 (Ind. 2011); *Franklin Electric Co. v. Unemployment Ins. Appeals of the Ind. Dep't of Workforce Dev.*, 953 N.E.2d 1066 (Ind. 2011). The Court also issued opinions in two juvenile delinquency cases. *See A.T. v. State*, 960 N.E.2d 117 (Ind. 2012) (per curiam); *D.C. v. State*, 958 N.E.2d 757 (Ind. 2011).

In disputes between local government and private litigants, the Court held that an auditor's efforts to provide notice of a tax sale satisfied due process, *see Marion Cnty. Auditor v. Sawmill Creek, LLC*, 964 N.E.2d 213 (Ind. 2012); held that a sheriff had no duty to warn a motorist about hazardous icy conditions on a county roadway, where the sheriff did not own, maintain, or control the roadway, *see Putnam Cnty. Sheriff v. Price*, 954 N.E.2d 451 (Ind. 2011); reversed a jury verdict in a child-wrongful-death case and remanded for a new trial due to a confusing jury instruction, *see LaPorte Cnty. Sch. Corp. v. Rosales*, 963 N.E.2d 520 (Ind. 2012); and affirmed a trial court's grant of a town's petition for attorneys' fees, *see R.L. Turner Corp. v. Town of Brownsburg*, 963 N.E.2d 453 (Ind. 2012).

In a dispute between local government units, the Court held that the Town of Avon could regulate an attempt by a township and a conservancy district to withdraw water from the White Lick Creek Aquifer. *See Town of Avon v. West Cent. Conservancy Dist.*, 957 N.E.2d 598 (Ind. 2011).

The Court also issued several opinions concerning tort law. In *Spangler v. Bechtel*, 958 N.E.2d 458 (Ind. 2011), the Court examined the contours of the "negligent infliction of emotional distress" doctrine and held that parents whose child had been stillborn were not precluded by the Child Wrongful Death Act from seeking damages for emotional distress. In *Howard Regional Health System v. Gordon*, 952 N.E.2d 182 (Ind. 2011), the Court considered whether plaintiffs' claim against a hospital for spoliation of evidence was governed by the Medical Malpractice Act and whether an independent

cause of action for spoliation exists. In *Ramsey v. Moore*, 959 N.E.2d 246 (Ind. 2012), the Court held that a trial court's denial of a request to dismiss a medical-malpractice complaint pending before the medical review panel was not a final appealable judgment. The Court also examined the Indiana Patient's Compensation Fund's liability for excess damages in a case where the decedent had a better-than-even chance of surviving his injuries absent a physician's medical negligence. See *Ind. Dep't of Ins. v. Everhart*, 960 N.E.2d 129 (Ind. 2012). In *Bennett v. Richmond*, 960 N.E.2d 782 (Ind. 2012), and *Person v. Shipley*, 962 N.E.2d 1192 (Ind. 2012), both personal-injury cases, the Court examined the admissibility of expert testimony. In the construction context, the Court held that a construction manager could not be held liable to a subcontractor's employee who had been injured during the construction of Lucas Oil Stadium, see *Hunt Constr. Grp., Inc. v. Garrett*, 964 N.E.2d 222 (Ind. 2012), and in an asbestos case, it examined the scope of the Construction Statute of Repose, see *Gill v. Evansville Sheet Metal Works, Inc.*, 970 N.E.2d 633 (Ind. 2012).

In cases concerning insurance coverage, the Court held that pollution-exclusion language in a commercial general liability policy was ambiguous and thus unenforceable, see *State Auto. Mut. Ins. Co. v. Flexdar, Inc.*, 964 N.E.2d 845 (Ind. 2012), and that players of a local youth soccer team could not recover under the governing association's business-auto-insurance policy for their injuries because the van in which they were riding when injured was not being used in the "business of" the association, see *Haag v. Castro*, 959 N.E.2d 819 (Ind. 2012). In another insurance case, the Court explained how courts are to determine whether an insured is entitled to underinsured motorist benefits. See *Lakes v. Grange Mut. Cas. Co.*, 964 N.E.2d 796 (Ind. 2012).

In the realm of commercial law, the Court held that summary judgment was improper in a case involving breach-of-contract and fraud claims, see *Klinker v. First Merchs. Bank, N.A.*, 964 N.E.2d 190 (Ind. 2012), and that the general ten-year statute of limitations applied to a medical service provider's claim for services rendered because neither of the two statutes of limitations under Indiana's Worker's Compensation Act applied. See *Ind. Spine Grp., PC v. Pilot Travel Ctrs., LLC*, 959 N.E.2d 789 (Ind. 2011). And, in a foreclosure action, the Court examined the circumstances under which litigants are entitled to a jury trial when the action includes questions of both law and equity. See *Lucas v. U.S. Bank, N.A.*, 953 N.E.2d 457 (Ind. 2011).

For the second year in a row, the Court had a relatively heavy docket of family-law cases. In two companion cases, the Court held that a parent has a due process right to a contested fact-finding hearing in a child-in-need-of-services ("CHINS") proceeding, even though the other parent wishes to admit the child's CHINS status. See *In re T.N.*, 963 N.E.2d 467 (Ind. 2012); *In re K.D. & K.S.*, 962 N.E.2d 1249 (Ind. 2012). In a termination-of-parental-rights case, the Court expressed concerns about errors committed by the Marion County Department of Child Services but nevertheless affirmed the termination of parental rights because the errors did not rise to the level of due process violations. See *In*

re Involuntary Termination of Parent-Child Relationship of C.G. & Z.G., 954 N.E.2d 910 (Ind. 2011). In *Hirsch v. Oliver*, 970 N.E.2d 651 (Ind. 2012), the Court clarified various aspects of the emancipation statute as they relate to a parent's obligations to pay child support and to contribute to the child's post-secondary-education expenses. And, in *Avery v. Avery*, 953 N.E.2d 470 (Ind. 2011), the Court held that the Indiana Trial Rules apply to will-contest actions and that the failure to file an answer or a responsive pleading may result in a default judgment.

In cases involving improper conduct of litigants and attorneys, the Court affirmed a contempt order, see *Witt v. Jay Petroleum, Inc.*, 964 N.E.2d 198 (Ind. 2012), and affirmed the dismissal of plaintiff's case as a sanction for discovery violations, see *Whitaker v. Becker*, 960 N.E.2d 111 (Ind. 2012).

Finally, in two companion cases, the Court considered the applicability of a forfeiture rule in the context of proceedings in small-claims court. See *Branham v. Varble*, 953 N.E.2d 95 (Ind. 2011); *Branham v. Varble*, 952 N.E.2d 744 (Ind. 2011).



The Judicial Nominating Commission recruits and interviews applicants to fill appellate court judicial vacancies, then forwards three names to the Governor who makes the final selection. Governor Daniels selected Mark Massa to fill the vacancy created by former Chief Justice Shepard's departure. In this photo, applicant Massa is being interviewed by the Commission, including its chair, Randall T. Shepard. The interviews were open to the public.

CASES ON CERTIORARI TO THE UNITED STATES SUPREME COURT

Decisions of the Indiana Supreme Court based on federal law may be appealed to the United States Supreme Court. Although the nation's highest court rarely accepts such cases, this past year it reviewed an Indiana decision from fiscal year 2012. The case arose when the City of Indianapolis, in restructuring the financing of sewer improvements, forgave all outstanding assessment balances remaining under the old system but refused to refund assessments already paid. In a 3-2 decision written by Justice Sullivan, the Indiana Supreme

Court rejected a federal Equal Protection Clause challenge brought by a group of homeowners, each of whom had paid their full assessments and had been denied refunds. *See City of Indianapolis v. Armour*, 946 N.E.2d 553 (Ind. 2011). The United States Supreme Court affirmed, reasoning that the City's administrative concerns related to maintaining the outstanding balances under the old program provided a rational basis on which to justify the differing treatment. *See Armour v. City of Indianapolis*, 132 S. Ct. 2073 (2012).

CHIEF JUSTICE RANDALL T. SHEPARD RETIRES

Chief Justice Randall T. Shepard retired from the Court in March 2012. Indiana's longest serving Chief Justice, Shepard spent 25 of his 27 years on the Court as Chief. At the time of his retirement, he was the longest-serving currently-serving Chief Justice in the United States. He was appointed to the Court in 1985 by Governor Robert D. Orr and selected as Chief in 1987.



Justices Sullivan (far left), David and Rucker (far right) applaud at the ceremony honoring former Chief Justice Shepard as Chief Justice Dickson (the master of ceremonies) shares a story. The Court of Appeals Judges on the lower bench are John G. Baker, Ezra H. Friedlander, Margret G. Robb (Chief Judge), Paul D. Mathias, and Patricia A. Riley.

During his years of service, he authored 917 majority opinions and 68 law review articles. Chief Justice Shepard's legacy, however, is far larger than just his writings. He devoted his career to improving the way courts do business by supporting the creation of specialized courts and the Odyssey statewide case management system, increasing diversity within the legal profession through the Indiana Conference for Legal Education Opportunity program, improving public knowledge of the history and operation of the courts with the launching of "Courts in the Classroom" and webcasts of oral arguments, and multiple other innovations too numerous to name.

His service to the judiciary reached beyond the legal community and Indiana. Governor Mitch Daniels asked Chief Justice Shepard to co-chair the Indiana Commission on Local Government Reform, tasked with evaluating and suggesting ways to streamline local government. The American Bar Association and the National Center for State Courts both benefitted from his leadership throughout

his career, and in 2005 Chief Justice Shepard served as the President of the Conference of Chief Justices. In 2006, Chief Justice John Roberts of the United States Supreme Court appointed Shepard to the U.S. Judicial Conference Advisory Committee on Civil Rules, which the U.S. Supreme Court uses to consider changes to the Federal Rules of Civil Procedure. State and national history organizations were another key interest of Chief Justice Shepard. He held leadership positions within organizations such as Indiana Landmarks, the Indiana Historical Society, and the National Trust for Historic Preservation. One of Shepard's final tasks as Chief Justice was the unveiling of a state historic marker dedicated to former Indiana Supreme Court Justice (then called "Judge") Isaac Blackford. The marker stands at the corner of West and Blackford streets on the southern edge of the McKinney School of Law campus in Indianapolis.

Chief Justice Shepard's career was celebrated by various groups around the state, all eager to express their appreciation for his years of service to the people of Indiana. The formal retirement ceremony took place in the Supreme Court Courtroom on March 19, 2012. An oil painting of Chief Justice Shepard, commissioned by his law clerks and chambers staff and donated to the Court, now hangs in the Supreme Court's Conference Room.

MARK MASSA, FORMER SHEPARD LAW CLERK, CHOSEN AS JUSTICE 107

Filling the vacancy created by Chief Justice Shepard's retirement, Mark Massa joined the Indiana Supreme Court as the Court's 107th justice on April 2, 2012, in a private ceremony. A formal public robing ceremony was held on May 7, 2012, in the Court's historic courtroom with remarks by Indiana Governor Mitch Daniels, former gubernatorial advisor Mark Lubbers, and former Marion County Prosecutor Scott Newman.



On May 7, 2012, the Indiana Supreme Court welcomed its newest member, Justice Mark Massa. (left to right) Justice Rucker, Justice Sullivan, Chief Justice Dickson, Justice Massa, Justice David.

Originally from Milwaukee, Justice Massa moved to Indiana to attend Indiana University and never left. Before joining the Court, Justice Massa served as a law clerk to Chief

Justice Shepard, General Counsel to Governor Daniels, an Assistant U.S. Attorney in the Southern District of Indiana, Chief Counsel to the Marion County Prosecutor's Office, an associate in private practice, speechwriter and deputy press secretary of Governor Robert Orr, and as a reporter for The Evansville Press.

JUSTICE FRANK SULLIVAN, JR., TO JOIN THE MCKINNEY SCHOOL OF LAW AS A FULL-TIME FACULTY MEMBER

In April 2012, Justice Frank Sullivan, Jr., announced he would be retiring from the Court at the end of July 2012 to pursue full-time teaching duties as a professor of law at the Indiana University Robert H. McKinney School of Law. Justice Sullivan elected not to have a formal retirement ceremony. Supreme Court staff held a farewell reception for him before his departure.

JUSTICE BRENT DICKSON CHOSEN AS THE COURT'S NEW CHIEF

On May 15, 2012, Justice Brent Dickson, the Court's 100th justice, was sworn in as the Court's Chief Justice in a private ceremony. Justice Dickson was unanimously selected by the Judicial Nomination Commission to fill the vacancy left by the retirement of Chief Justice Shepard.



Justice Rucker (center) administered the oath of office to the new Chief Justice of Indiana, Brent E. Dickson (right), as his wife, Jan Aikman Dickson (left) holds a Bible.

STATE OF THE JUDICIARY

Chief Justice Shepard delivered his twenty-fifth and final State of the Judiciary speech to a joint session of the General Assembly on January 11, 2012. His address, "On the Way to Something Better," focused on building a more unified and purposeful court system, noting that "over time Indiana's courts have become less like a collection of Lone Rangers and more like a group of colleagues with a common purpose." Citing fields like family law and criminal justice, Chief Justice Shepard explained why courts should not operate as a series of silos, but instead should continue to move towards a connected and collaborative system that can resolve disputes

more fairly and effectively. In the speech, he highlighted changes focusing on women, children and families. Today, for example, Indiana's courts assign advocates to speak for the best interests of the children in often contentious civil proceedings. To protect victims of domestic abuse, Supreme Court technology staff developed a web-based application to allow local victim advocates to have direct access to the Protective Order Registry, and victims to receive text or email notices when the protective order is served on their abuser. Chief Justice emphasized these innovations "literally save lives."

The Chief Justice's State of the Judiciary address was webcast live and recorded by Indiana Public Broadcasting Stations ("IPBS"). Eight different public television and radio stations around the state aired the audio and video provided by IPBS.

JUDICIAL TECHNOLOGY AND AUTOMATION COMMITTEE

The Court's Judicial Technology and Automation Committee ("JTAC") continued its work to upgrade computer systems and tools statewide. By June 2012, 127 different courts in 42 counties had been integrated into the Odyssey case management system. This represents nearly 40% of the state's total caseload.

Odyssey provides a uniform method of reporting information about court cases statewide. The Court covers the installation, training, licensing and maintenance costs through proceeds generated from a trial court case filing fee imposed by the General Assembly.

Additional computer applications have been installed in all Indiana counties, allowing connections between the courts and law enforcement and state agencies. These applications enhance public safety by linking law enforcement and the Bureau of Motor Vehicles.

NEW PARENTING TIME GUIDELINES ON THE WAY

In February 2012, the Court's Domestic Relations and Alternative Dispute Resolution Committees began accepting proposals for rule changes to Indiana's Parenting Time Guidelines. The comment period ended March 26, 2012, and at the end of the fiscal year the committee was in the process of forwarding its recommendations to the Court for its review.

Parenting Time Guidelines help judicial officers make decisions about the time each parent spends with their child when parents are not able to agree. The proposed changes include revisions about holidays, weekends and overnights, and recognize technological advances in society such as the ability of parents and children to communicate via video streaming on the Internet or through smart phones. The proposed new Guidelines will also specify the qualifications and duties of Parenting Coordinators and provide Parallel Parenting Guidelines for high-conflict cases.

ON-LINE ATTORNEY REGISTRATION

As part of its ongoing efforts to improve access to the courts, in August 2011 the Indiana Supreme Court unveiled the Clerk of the Courts Portal, a web-based application that allows many of the interactions that attorneys regularly have with the Clerk of the Supreme Court and certain Supreme Court agencies to be moved from paper to the Internet, most notably the annual attorney registration and certification process. Through the Portal, attorneys can quickly update their information throughout the year. Additional information managed by the system includes Interest on Lawyer Trust Account certifications, requests for changes in attorney status, and designation of or changes to an attorney surrogate. The transfer of the annual attorney registration process from a paper-based system to a web-based application has saved thousands of dollars in postage, bulk mailing services, paper and administrative effort, and has led to much more accurate and thorough information on the Indiana Supreme Court Roll of Attorneys.



The Court heard oral argument at Martin University in May 2012, soon after Justice Massa's arrival. (left to right) Justice Rucker, Justice Sullivan, Chief Justice Dickson, Justice Massa, Justice David.

THE SUPREME COURT ON THE ROAD

Occasionally, the Indiana Supreme Court chooses to hold arguments at universities, law schools, and civic venues to give students and the public a chance to see the Court at work and to ask the justices questions. The Court heard oral arguments "on the road" in five cases during the fiscal year. In November 2011, the court travelled to South Bend for two arguments: *Andrew Conley v. State* was heard at Indiana University South Bend and, later that day, the justices heard *Jerrme Damar Cartwright v. State* at the University of Notre Dame Law School. In February 2012, the justices traveled north once again, this time to Valparaiso University Law School to hear arguments in *State v. Steven Hollin*. Turning south, the justices travelled to the Grand Theatre in New Albany in March 2012 to hear arguments in *Dalmas Anyango v. Rolls-Royce Corp.* And finally, Martin University provided

the venue for the last traveling argument: *Michael J. Lock v. State of Indiana*, argued in April 2012.

SPEECHES AND HONORS

Even during his last year on the Court, Chief Justice Randall T. Shepard maintained his typical rigorous schedule. In July 2011, Shepard returned to NYU Law School as a faculty member for the prestigious New Appellate Judges Seminar. Back home, his schedule was filled with speeches to lawyers, students, and an array of community organizations. He and Congressman Lee Hamilton continued to speak about civic education with the September 2011 release of Indiana Civic Health Index assessment. He was invited to speak at several international events, including ABA meetings in Toronto and Dublin. Shepard joined other Indiana judges and public television stations in creating a series of Public Service Announcements titled "Jury Service: It's Your Duty," which reminds Hoosiers of the importance of jury service. In December 2011, Shepard spoke at Indiana University's winter commencement. Several similar invitations followed. Among the many recognitions he received during his final months on the bench included an Excellence in Continuing Legal Education award presented by the Indiana Continuing Legal Education Forum, the Julia Carson Legacy of Love Foundation Award, and a Sagamore of the Wabash from Governor Mitch Daniels.

Associate Justice Brent E. Dickson was sworn in as Chief Justice of Indiana at a private ceremony on May 15, 2012, but this was only one of his many busy days this fiscal year. While an Associate Justice, he officiated at ceremonies for the Indiana Bar Foundation and Indiana State Police. In November 2011, he judged the moot court competition at Indiana University Robert H. McKinney School of Law and participated in the Indiana State Bar Association's ("ISBA's") Law School for Legislators. Throughout the year, Dickson shared his expertise with the judicial community, including a session on Indiana Constitutional Law at the Annual Judicial Conference, participating in a panel discussion on "Work Life Balance, is it Possible?" at the Appellate Judges



In May, the Judicial Nominating Commission selected Brent E. Dickson as the new Chief Justice of Indiana. Here, he answers media questions immediately after the announcement.

Education Institute, and addressing the ISBA Leadership Development Academy inaugural class on the importance of lawyers serving in the legislature. In April, he welcomed more than 100 teachers to a civic education workshop hosted by the Supreme Court.

Justice Frank Sullivan, Jr., continued to dedicate a considerable amount of his time and energy to the Odyssey statewide case management project. In addition, Sullivan continued teaching at Martin University and was a part of a delegation from the Indiana University Robert H. McKinney School of Law that participated in an exchange program in China in June 2012.

In October 2011, Justice Robert D. Rucker met with a group of students from his alma mater, Valparaiso University School of Law, talking to them about Criminal Procedure. Recognizing the high standards set by the Indiana Supreme Court, Rucker was invited by Marion County prosecutors and public defenders to speak on the topic of “civility” at their November Applied Professionalism Course. Rucker taught an “Introduction to American Torts” class during the spring 2012 semester at Indiana University’s Robert H. McKinney School of Law. This class, a part of the school’s LLM program, was filled with international students licensed to practice law outside of the United States.

Justice Steven H. David spoke to more than 30 legal, student, community and civic organizations this year. Of particular note were his visits on September 12, 2011, to Lawrence North High School and East Elementary school as a part of the Supreme Court’s “Courts in the Classroom” Constitution Day initiative, and to Plainfield High School in December to address students participating in the “We the People” state finals. In a first for a justice, David presented at a CLE session while “spinning” on a stationary bike as part of the ISBA’s “Fit to Practice” initiative. In addition to numerous presentations at law-related symposiums and judging moot court sessions at Indiana University Robert H. McKinney School of Law and University of Cincinnati College of Law, David was a founding member of the ISBA’s Leadership Development Academy. In June 2012, he was also part of a delegation from the Indiana University Robert H. McKinney School of Law on an exchange program in China.



Governor Mitch Daniels (left) administered the oath of office to Justice Mark Massa on May 7, 2012.

Justice Mark Massa was sworn in as the 107th Justice of the Supreme Court on May 7, 2012. In his brief period on the bench during this fiscal year, he spoke at an Indiana Graduate Program for Judges luncheon, the Indianapolis Bar Association Roundtable Series, and provided closing remarks at the “We the People” showcase for elementary school students.

The Indiana Supreme Court

BRIEF HISTORY

During territorial days, a general court of three judges served and they, with the Governor, enacted the laws of the Indiana territory. When Indiana became a state in 1816, the Indiana Supreme Court was officially established. The Court first sat at Corydon on May 5, 1817, and consisted of three judges appointed by the Governor to seven-year terms.

The Constitutional Convention in 1850, although organized to address controversy over the State’s bonded debt, also produced a reorganization of the Supreme Court. Under the new Constitution, adopted in 1851, judges would be elected by the people and their number would be “not less than three, nor more than five judges.” Their terms were to be “for six years, if they so long behave well.” The General Assembly acted to prescribe that four judges, representing four geographic districts but elected by statewide ballot, would serve on the Supreme Court. The first group of four judges began their terms on January 3, 1853. The Court’s caseload grew to such an extent that the General Assembly acted in 1872 to increase the number of judges to five.

The current Supreme Court has as its foundation a constitutional amendment ratified by Hoosiers in 1970. The Amendment took effect January 1, 1972 and represented an almost complete rewriting of the 1851 Constitution’s Judicial Article. It removed members of the Supreme Court from partisan elections and established a process for voter confirmation before retention in office. Justices, as they are now called, are appointed by the Governor from a list of three names provided by a seven-member Judicial Nominating Commission and serve for two years. They then are subject to statewide yes-or-no votes on the question of their retention in office. With approval by the electorate, they serve ten-year terms, and are subject to identical retention votes at ten-year intervals thereafter. Under current law, retirement is required at age 75.

To be eligible to serve on the Supreme Court, a person must have practiced law in Indiana at least ten years or have served at least five years as a trial court judge. Candidates for appointment presented by the Judicial Nominating Commission must be the “most highly qualified candidates,” per Public Law 427 of 1971. Considerations include the candidate’s legal education, legal writings, reputation in the practice of law, physical condition, financial interests, and activities in public service. The Judicial Nominating Commission also selects the Chief Justice from among the five, who serves for a five-year term.



The Indiana Supreme Court in June, 2012. (left to right) Justice Robert D. Rucker, Justice Frank Sullivan, Jr., Chief Justice Brent E. Dickson, Justice Mark Massa, and Justice Steven H. David.

Even though the Supreme Court has held court in the same location longer than any other court of last resort in America, it has actually had several homes during its nearly 200 years. During most of Indiana’s territorial days, the Court sat in “Territorial Hall” in Vincennes, Indiana, a simple framed building that was later moved to the original estate of William Henry Harrison. When the capitol moved to Corydon in 1813, the Court moved with the rest of Indiana’s fledgling government into a two-story limestone and log structure originally intended to serve as the courthouse for Harrison County. When the state capitol relocated to Indianapolis in December 1825, the General Assembly rented meeting space in the Marion County Courthouse. In 1835, the Court began holding court in the newly completed first Statehouse. Although the Court held hearings there, from 1832-1857 the Court had its offices and meeting room in a large two-story brick building known as the Governor’s Mansion, located on Monument Circle where the Indiana Soldiers and Sailors Monument now stands.

During the 1860s, the Statehouse deteriorated to the extent that the limestone foundation failed, the stucco chipped off, and the ceiling in the Representative Hall collapsed. In 1867, the legislature authorized “the erection of a brick building, on ground owned by the State [in Indianapolis], for the use of the Supreme Court and the officers of the State.” This Judicial Building is where the Court had its offices and held proceedings until the new Statehouse was completed in 1888. Other state officers had offices there as well.

The Court almost gained a new Judicial Building in the 1990s, when the State spent millions of dollars on architectural plans for the erection of a Judicial Building on state-owned land just north of the current Statehouse. The bill authorizing the Judicial Building failed to become law, however.

The Justices and their staffs, and a few court employees, continue to maintain offices in the Statehouse, and the Court continues to hear and decide cases in its historic Statehouse courtroom and conference room as it has for over 120 years. However, most of the Supreme Court’s various agencies are housed in rented downtown Indianapolis office space. For many years, the rented space was located primarily in office buildings on the northeast and southeast corners of the intersection of Washington Street and Capitol Avenue, respectively. In December 2007, however, the agencies housed in these buildings moved to new office space located at 30 South Meridian Street, where they have more room for future expansion and a lower rental cost. Over the life of this new lease, the Supreme Court anticipates the move will save Hoosier taxpayers approximately \$1.4 million.

INDIANA’S “COURT OF LAST RESORT”

As demonstrated in the section of this report titled, “Significant Events of Fiscal Year 2012,” the Court has continued providing active leadership for the judicial branch of government. The principal business of the Court, however, is deciding cases, and because the Court is the highest state court in Indiana, it is the court of final review when the meaning of the state constitution, state law, or state rule is at issue.

One of the main tasks of the Court is deciding petitions requesting transfer of jurisdiction from the Court of Appeals. This process involves reviewing the record of proceedings, the briefs filed before the Court of Appeals, the Court of Appeals’ opinion, and the materials submitted in connection with the request to transfer jurisdiction. Each Justice reviews each case individually and votes on whether to accept transfer. If even one member of the Court requests it, the case will be discussed at a conference involving all five Justices. If

a majority of the Court votes to grant transfer, an opinion will be written, circulated for a vote, and ultimately issued.

During much of this decade, the Court's "transfer caseload" grew considerably, peaking in fiscal year 2008 at 1,027. During the next four years, the overall numbers declined relative to 2008, with minor fluctuations up and down between the years. This fiscal year, the total number of transfer cases transmitted to the Supreme Court from the Clerk's Office was 831, the lowest number since fiscal year 2003, which saw 826 transfer cases transmitted to the Court.

The Court also has an important direct appellate caseload. The Court exercises direct appellate jurisdiction over all appeals in which a sentence of death or life imprisonment without parole has been entered, appeals of final judgments declaring a state or federal statute unconstitutional, appeals involving waiver of parental consent to abortion, and appeals involving mandates of funds. In addition, the Court has direct jurisdiction over cases involving attorney or judicial discipline, original actions requesting the issuance of writs of mandate or prohibition, review of Indiana Tax Court decisions, certified questions from federal courts, and review of certain final decisions of the Board of Law Examiners.

A complete statistical summary of the Court's activities for the past year can be found in the Appendix of this Annual Report.

BIOGRAPHIES OF THE JUSTICES



Randall T. Shepard of Evansville was appointed to the Indiana Supreme Court by Governor Robert D. Orr in 1985 at the age of 38. He became Chief Justice of Indiana in March 1987. A seventh generation Hoosier, Shepard graduated from Princeton University *cum laude* and from the Yale Law School. He earned a Master of Laws degree in the judicial process from the University of Virginia. Shepard was a judge of the Vanderburgh Superior Court from 1980 until his appointment. He earlier served as executive assistant to Mayor Russell Lloyd of Evansville and as special assistant to the Under Secretary of the U.S. Department of Transportation. Chief Justice Shepard has served as chair of the ABA Appellate Judges Conference and of the ABA Section of Legal Education and Admissions to the Bar and as President of the National Conference of Chief Justices. In 2006, Chief Justice John Roberts appointed him to the U.S. Judicial Conference Advisory Committee on Civil Rules. He is a trustee emeritus of the National Trust for Historic Preservation and a former chair of Indiana Landmarks, Inc. He teaches periodically at the law schools of NYU, Yale, and Indiana. In 2010, Chief Justice Shepard received the Dwight D. Opperman Award for Judicial Excellence, an award given annually by the American Judicature Society to honor state trial and appellate jurists for distinguished judicial service. He is married and has one daughter. He retired from the Court on March 23, 2012, and now serves the people of this state and nation in many capacities, including as a senior judge on the Indiana Court of Appeals.



Brent E. Dickson was appointed to the Indiana Supreme Court in January 1986 by Governor Robert D. Orr, after seventeen years as a general practice lawyer in Lafayette, Indiana, where he earned certification as a Civil Trial Advocate by the National Board of Trial Advocacy. He became Chief Justice of Indiana on May 15, 2012. Born in Gary, Indiana, in 1941, he was educated at public schools in Hobart, Indiana; Purdue University (B.S. 1964; D. Litt. (Hon.) 1996); Indiana University School of Law at Indianapolis (J.D. 1968). Justice Dickson's writings, speeches, and activities reflect his longstanding interests in fostering attorney civility, preserving and enhancing our jury trial system, developing and encouraging mediation, and promoting the study and application of state constitutional law. Working to enforce and enhance the high standards of the legal profession, he has long served as the court's liaison to its Disciplinary Commission and Board of Law Examiners. He is co-founder of the Sagamore Chapter of the American Inns of Court in Indianapolis, an elected member of the American Law Institute, a registered mediator, and has been an active participant in a host of local, state, and national judicial and legal organizations. For over ten years, Justice Dickson served as an adjunct professor at Indiana University's Schools of Law, teaching an evening course in Indiana Constitutional Law. During his tenure as a justice, he also has helped the court tackle the challenges of digital technology and the interrelationship between privacy and openness of court records in light of the advent of the Internet by serving as chair of the Supreme Court Records Management Committee, the Judicial Data Processing Oversight Committee, and the Task Force on Access to Court Records. He and his wife, Jan Aikman Dickson, founder of the national Judicial Family Institute, have three adult sons and nine grandchildren.



Soon-to-be Chief Justice Dickson (right) listens as Chief Justice Shepard delivers parting remarks from the bench in March, 2012.



Frank Sullivan, Jr., was appointed to the Indiana Supreme Court effective November 1, 1993, by Governor Evan Bayh. Sullivan came to the state's highest court with a background in government service and private law practice. He served as Indiana State Budget Director from 1989 through 1992. Prior to state service, he practiced law in the Indianapolis office of

Barnes & Thornburg. In addition to his responsibilities with respect to opinions, oral arguments, and other appellate work of the Supreme Court, Sullivan has also been active in its administrative work. For example, he chairs the Court's Judicial Technology and Automation Committee, which is devoted to improving technology in trial courts. And he has been a frequent participant in bench, bar, and legal education activities. Sullivan is a member of the American Law Institute and is an Adviser to two of its current projects: "Restatement Third, Torts: Economic Torts and Related Wrongs" and "Principles of Election Law: Resolution of Election Disputes." Sullivan was Chair of the Appellate Judges Conference of the American Bar Association from 2008-09 and Chair of the Board of Directors of the Appellate Judges Education Institute from 2009-10. He has co-chaired and been active in the ABA's Judicial Clerkship Program that encourages minority law students to seek judicial clerkships. He is the recipient of several awards for advancing opportunities for minority lawyers in the legal profession. Sullivan is a native of South Bend. He is a graduate of Dartmouth College (A.B. *cum laude* in 1972), Indiana University Maurer School of Law (J.D. *magna cum laude* in 1982), and the University of Virginia School of Law (LL.M. in 2001). He is married to Cheryl G. Sullivan; they are the parents of three sons. An avid runner, Sullivan has qualified for and competed in the Boston Marathon several times.



Robert D. Rucker was appointed to the Indiana Supreme Court by Governor Frank O'Bannon in 1999. Born in Canton, Georgia, Justice Rucker grew up in Gary, Indiana, and is a veteran of the Vietnam War. He is a graduate of Indiana University (B.A. 1974) and Valparaiso University School of Law (J.D. 1976). In 1998, he earned a Master of Laws degree

in the judicial process from the University of Virginia Law School. Prior to his appointment to the Indiana Supreme Court, Justice Rucker served as a judge on the Indiana Court of Appeals, having been appointed to that position in 1991 by Governor Evan Bayh. While on the Court of Appeals, Justice Rucker served as vice-chair of the Indiana Commission for Continuing Legal Education. As a lawyer, Justice Rucker served on the board of directors of the Indiana Trial Lawyers Association and on the board of directors of

the Northwest Indiana Legal Services Organization. He also served as a deputy prosecuting attorney for Lake County and as City Attorney for the City of Gary, and engaged in the general practice of law in East Chicago. Justice Rucker is a member of the American Bar Association, the Indiana Judges Association, the Indiana State Bar Association, the Marion County Bar Association, and is a Fellow of the Indianapolis Bar Foundation. Justice Rucker also served as the 2009-10 Chair of the Judicial Council of the National Bar Association. Justice Rucker and his wife, Dr. Denise Rucker, are the proud grandparents of seventeen grandchildren.



Steven H. David has enjoyed a multi-faceted career with private practice and corporate counsel experience, 28 years of military service and fifteen years as a trial court judge in Boone County. While Justice David's military career has taken him all over the world, he has strong ties to Indiana. His ancestors settled in southern Indiana in the late 1700s and early 1800s. He was

born in Allen County, raised in Bartholomew County and has lived in Boone County for 22 years. He graduated *magna cum laude* from Murray State University as a Distinguished Military Graduate on an R.O.T.C. scholarship. He earned his law degree from Indiana University's Robert H. McKinney School of Law. He is also a graduate of the Indiana Judicial College and the Graduate Program for Indiana Judges. Following his graduation from law school in 1982, he served in the United States Army Judge Advocate General's Corps on active duty until 1986 and reserve duty until 2010. His service included two post 9-11 mobilizations in Iraq and Guantanamo Bay, Cuba. He served as trial counsel, defense counsel, Military Judge and Commander. He graduated from the Army's Command and General Staff College, the Military Judges School, and the Judge Advocate General's Basic and Advanced Officer's Course.

Justice David's dedication to the military, pro bono services, and the rule of law earned him a number of military and citizen awards, including the nation's third highest non-combat medal, the Defense Superior Service Award. He also earned multiple Meritorious Service Awards, Army Commendation Medals and the Frederick Douglas Human Rights Award. He retired from the military in November 2010 with the rank of Colonel. Justice David's civilian legal career started in Columbus, Indiana, where he focused on personal injury, family law, and civil litigation. He later became in-house counsel for Mayflower Transit, Inc., before moving to Boone County where he was elected Circuit Court Judge and named Boone County's Citizen of the Year in 1999. As a trial court judge, he presided over civil, criminal, family and juvenile matters. He testified before the Indiana General Assembly on juvenile law and is a recipient of the coveted Robert Kinsey Award as the most outstanding Juvenile Court Judge in Indiana. His efforts to improve the availability of mental health services for children led to his recognition by the

Indiana chapter of the National Alliance for the Mentally Ill.

Justice David serves as co-chair for the state's Juvenile Delinquency Alternatives to Incarceration initiative and also co-chairs the Program Committee for the Indiana State Bar Association's inaugural Leadership Development Academy. He is a frequent speaker and writer on various legal topics and an adjunct professor at the University of Indianapolis and Indiana University's Robert H. McKinney School of Law. Justice David is a member of many legal and civic organizations, including the Indiana Judges Association, the state and national Council of Juvenile and Family Court Judges, the American Inns of Court and the American Bar Foundation. He is a member of the American, Indiana, Indianapolis, and Boone County Bar Associations as well as the Military Officers Association of America, the Zionsville American Legion, the Lebanon Elks Club, and the Lebanon Kiwanis Club. He currently serves as President of the Community Foundation of Boone County and has previously served on both the Zionsville and Lebanon Boys and Girls Clubs' Board of Directors. He enjoys participating in marathons and triathlons, reading, and golf. He has hiked the Grand Canyon three times. One hike included the Boone County Bar Association and another was a family hike. The production crew of the television program 48 Hours followed the David Family and reported on their endeavor to the bottom of the canyon.



Mark S. Massa was appointed to the Indiana Supreme Court by Governor Mitch Daniels in March 2012. Born in Milwaukee, Wisconsin, in 1961, Justice Massa moved to Indiana to pursue his education. He is a graduate of Indiana University (B.A. 1983) and Indiana University Robert H. McKinney School of Law (J.D. 1989). Justice Massa worked as

a reporter for The Evansville Press after graduating from Indiana University. While attending law school, he worked as a speechwriter and deputy press secretary for Governor Robert Orr. Prior to his appointment to the Indiana Supreme Court, Justice Massa served as the Executive Director of the Indiana Criminal Justice Institute. Among his other notable accomplishments include his tenure as General Counsel to Governor Mitch Daniels from 2006 to 2010 and his role as Assistant U.S. Attorney in the Southern District of Indiana. He also served as Chief Counsel to the Marion County Prosecutor's Office from 1995 to 1998 and again from 1999 to 2002. At the start of his law career, Justice Massa worked as a Deputy Prosecuting Attorney in Marion County, as a law clerk for then Indiana Chief Justice Randall Shepard and as an associate in private practice. Justice Massa is a member of the American Bar Association, the Indiana State Bar Association, the Indianapolis Bar Association, and the Sagamore American Inn of Court.



Looking south through the Courtroom toward the atrium.



Court staff gathered in the Courtroom for a farewell party honoring former Chief Justice Shepard.

Budgetary Matters

The Supreme Court and its agencies operate under annual budgets submitted biennially to the General Assembly for approval. The following reflects the budgetary amounts under which the Court and its agencies operated this fiscal year, as well as those approved for the upcoming fiscal year:

Court Agencies	FY 2012	FY 2013
State Court Administration	\$122,200,743	\$122,131,590
Trial Judges and Prosecutors Salaries/Benefits	\$84,109,554	\$84,109,554
JTAC	\$6,068,653	\$5,999,500
Transfers to Counties/Trial Courts, and Other Programs	\$28,022,536	\$28,022,536
Title IV-D(1)	\$4,000,000	\$4,000,000
Supreme Court Administration	\$9,566,234	\$9,566,234
Judicial Training & Development	\$3,143,182	\$3,143,182
Other	\$2,237,074	\$2,237,074
TOTAL	\$137,147,233	\$137,078,080

Approximately 82.8% of the Court's appropriations for fiscal year 2012 came from the State's General Fund (including \$12,850,000 for disbursement to counties through the Public Defender Commission per Indiana Code section 33-40-6-5). The remaining 17.2% derived from dedicated funds (such as attorney annual licensing fees and special assessments associated with trial court filing fees), federal grants, and Title IV-D reimbursements. As a matter of perspective, the total amount budgeted for the Supreme Court, its agencies, and the salaries of Indiana's 400+ trial-level judicial officers and 200+ prosecutors, deputy prosecutors, and prison deputies in fiscal year 2012 accounted for only 0.50% of Indiana's overall budget and only 0.81% of the state's General Fund budget. The Court expresses its continued appreciation and gratitude to the people of the State of Indiana for providing these funds to it during these trying fiscal times.

(1) Title IV-D federal reimbursements are shared equally with the Indiana Prosecuting Attorneys Council ("IPAC"). During fiscal year 2012, after deducting transfers to IPAC and expenses accrued in collecting and preparing claims, the Supreme Court received \$2,705,884 of the stated amount.

Activities of the Affiliated Agencies and Divisions of the Court

DIVISION OF SUPREME COURT ADMINISTRATION

Kevin S. Smith, Clerk/Administrator



View of the high bench in the Supreme Court Courtroom.

The Division of Supreme Court Administration serves the Indiana Supreme Court in the orderly management of the Court, working generally at the direction of the Chief Justice. Indiana Code section 33-24-6-6 provides that the Division of Supreme Court Administration “shall perform legal and administrative duties for the justices as are determined by the justices.” The complex legal and administrative tasks that come before the Indiana Supreme Court keep the attorneys and support staff of the Division extremely busy.

Organizationally, the Division is comprised of two main offices: the Office of Supreme Court Administration, and the Office of the Clerk of the Supreme Court, Court of Appeals, and Tax Court. For decades, the Division had been comprised only of the Office of Supreme Court Administration. The Division’s two-office organizational structure resulted from a series of events that began with the passage of legislation in 2004 that transformed the Office of the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court from a free-standing elected office that served for a term of years to an office appointed by and serving indefinitely at the pleasure of the Chief Justice. At that point, the two offices remained separate. However, when the presiding Clerk, whose term was to end on December 31, 2006, resigned effective February 10, 2006, the Chief Justice appointed Supreme Court Administrator Kevin S. Smith to assume, in addition to his responsibilities as Administrator, the title and responsibilities of Clerk, so as to capitalize on economies of scale, eliminate redundancies, increase the efficiencies of both offices, and steward the State’s limited financial resources in a fiscally responsible manner. This appointment resulted in the reorganization of the Division of Supreme Court Administration into two separate offices, both of which are overseen by the Supreme Court Clerk/Administrator.

THE OFFICE OF SUPREME COURT ADMINISTRATION

The Office of Supreme Court Administration (“Administration Office”) serves two principle functions. First, its attorneys serve as the Supreme Court’s central legal counsel. Second, its staff handles day-to-day fiscal and business administration needs of the Court.

The Court’s Central Legal Counsel

The Supreme Court Clerk/Administrator, the Deputy Administrator, and the Division’s four staff attorneys serve as central legal counsel to the Court. In this role, they perform a myriad of functions. However, most of their duties pertain to providing the Court with legal research, analysis, and advice through legal memoranda; assisting the Court in drafting orders and opinions; responding to inquiries from practitioners and the public concerning Supreme Court practice and procedure; and reviewing and assisting the Chief Justice with original actions. Each matter transmitted to the Court for consideration and adjudication, from the time it arrives from the Clerk’s Office until it is either assigned to a justice or disposed of by court order, is overseen by a court attorney.

During this fiscal year, the Division’s attorneys drafted 332 legal memoranda on a myriad of topics to assist the Supreme Court, 21.6% more than the year before. They also superintended 1,040 case-related matters, and scores of non-case-related administrative matters, transmitted to the Court for its consideration. Further, the Division assisted the Court in drafting and issuing approximately 2,408 orders and opinions, 9% more than fiscal year 2011. With regard to the specific duties of the Supreme Court Administrator prescribed by the Indiana Rules of Procedure concerning original actions (proceedings that challenge a trial court’s jurisdiction and originate in the Indiana Supreme Court rather than originating first in a trial court), the Administration Office’s attorneys reviewed dozens of writ applications and submitted those that could be filed, at least 43, to the Chief Justice or Acting Chief Justice for consideration.

The Administration Office also is responsible for drafting and responding to correspondence for the Court. In fiscal year 2012, the Administration Office drafted approximately 335 separate items of correspondence on the Court’s behalf.

This fiscal year, the Administration Office’s attorneys continued to be very active in legal education and service to the profession. Most continued their memberships in the American Bar Association’s Council of Appellate Staff Attorneys (“CASA”), with staff attorney Geoff Davis serving on CASA’s Executive Committee. All continued membership in the Indiana State Bar Association’s (“ISBA’s”) Appellate Practice Section. Several interviewed prospective bar candidates as members of the State Board of Law Examiners Committee on Character and Fitness. Staff attorney Paula Cardoza-Jones served as secretary of the ISBA’s Professional Legal Education, Admission, and Development Section; participated on the ISBA’s Mentor Match Committee; and presented a continuing legal education seminar on “State Law Cases Affecting the Consumer Debtor.” Deputy

Administrator Greta Scodro was a panel member at the “Law School for Journalists” in July 2011, informing journalists about the Court’s procedures in death penalty cases and how journalists can obtain information about those cases. The attorneys continued publishing their regular column, “Appellate Practice from Inside the Division of Supreme Court Administration,” in the ISBA Appellate Practice Section’s newsletter, *The Appellate Advocate*. Clerk/Administrator Kevin Smith also served as a non-voting member of the ISBA Appellate Practice Section’s Executive Council.

The Court’s Case Processor and Fiscal Administrator

The Administration Office also is responsible for the day-to-day fiscal administration of the Court, including procuring supplies, negotiating and overseeing contracts, processing of payroll, paying bills, preparing expense vouchers, processing personnel-related matters, drafting of internal policies and procedures, and administering employee benefits. During fiscal year 2012, the Administration Office processed approximately 377 expense and travel reimbursement requests and 1,269 invoices (16.2% and 14.5%, respectively, more than the previous fiscal year). The Office also assists the Chief Justice in preparing the Court’s biennial budget.

Further, the Administration Office accumulates Court statistics, prepares regular reports for the Court concerning the Court’s workload, sets and maintains the Court’s weekly conference agenda, and schedules the Court’s oral arguments. Its staff members often serve as the Court’s liaison to its various agencies, the practicing bar, and to the general public. Much of the physical handling of cases reviewed by the Court is managed by the Office, and the Office’s staff answers numerous daily inquiries from attorneys and the public about the Indiana Supreme Court.

This fiscal year the Administration Office was kept busy helping conduct a retirement ceremony for Chief Justice Shepard, an investiture ceremony for Chief Justice Dickson, and a robing ceremony for Justice Massa, and assisting Justice Massa with typical logistical matters attendant to a new justice’s transition to the Supreme Court.

THE OFFICE OF THE CLERK OF THE SUPREME COURT, COURT OF APPEALS, AND TAX COURT

Overview of the Clerk’s Office

The Office of the Clerk of the Supreme Court, Court of Appeals, and Tax Court (“Clerk’s Office”) serves as the gateway to Indiana’s appellate courts and Tax Court. Its primary responsibilities are: (1) processing documents filed in matters before the Supreme Court, Court of Appeals, and Tax Court; (2) collecting all associated filing fees, which are deposited in the State’s General Fund; and (3) issuing orders and opinions of the Supreme Court, Court of Appeals, and Tax Court. It is also the statutory duty of the Clerk to maintain and preserve on microfilm the records of cases that come before the Indiana Supreme Court, Court of Appeals, and Tax



Hard copies of case records are stored in the government center before being microfilmed under the direction of the Clerk of Courts.

Court. In addition, the Clerk maintains the roll of Indiana’s approximately 21,000 active and inactive attorneys and responds to public inquiries regarding attorneys’ professional status. The Clerk collects attorney annual licensing fees and distributes those fees to the Supreme Court Disciplinary Commission, Commission for Continuing Legal Education, and the Judges and Lawyers Assistance Program. The Clerk is also responsible for administering oaths and often is called upon to do so by various state agencies. In conjunction with the State Board of Law Examiners, the Clerk processes and administers the oath of attorneys twice per year to newly admitted attorneys. The Clerk conducts annual elections for the attorney members of the Judicial Nominating Commission and administers the selection process for the chairpersons of medical malpractice review panels. A staff of sixteen assists the Clerk in meeting the requirements of his office.

Significant Events of Fiscal Year 2012

For decades, attorneys and judges annually received paper annual fees registration statements, which they filled out and returned to the Clerk’s Office with an enclosed paper check. This process cost the Office considerable amounts of money in printing and mailing registration statements to all of the active and inactive Indiana attorneys, and considerable amounts of time in processing the paper checks and edited registration statements that were returned.

Last year and this year, the Clerk’s Office staff, the Appellate IT Director, and other court staff worked tirelessly to bring about much-needed modernization to this process. In August 2011, the Office launched the “Clerk of Courts Portal,” a new web-based platform that allows attorneys and judges to manage their Roll of Attorneys contact information, make their annual fee payments and annual trust account certifications, and designate or change attorney surrogates. This new on-line system eliminates the need to mass mail annual fee statements, eliminates data-entry errors caused by illegible handwritten edits to annual registration statements, and allows the Clerk to send multiple “courtesy” reminders electronically to attorneys before the expiration of their annual registration and certification deadlines, when such paper reminders were cost-prohibitive before. It also

provides attorneys with the ability to update their contact information quickly to ensure the most accurate and current attorney information will display when the public searches for attorney information using the Clerk's Office's On-line Roll of Attorneys database.

After the Portal rollout in August 2011, Clerk's Office and IT staff worked on improvements to the Portal, including enhanced functionality and a more user-friendly interface, which was rolled out shortly after the close of fiscal year 2012 as part of the 2012 annual attorney registration cycle. The responses received about the improvements have been overwhelmingly positive.

Other website changes that the Clerk's Office worked on this fiscal year included improvements to the Roll of Attorneys on-line searchable database, which will make the search feature more user-friendly and easier to navigate, provide more tailored search results, and display information in an easier-to-read format; and improvements to the Clerk's On-line Docket, which will enable users to search for appellate cases by multiple criteria (such as party name, court on appeal, trial court, appellate cause number, lower cause number, case type, litigant name, attorney name, trial court judge, date restrictions, etc.), and then further narrow and/or sort the results by similar criteria. Both of these projects are expected to be completed during fiscal year 2013.

Finally, this fiscal year, like the previous fiscal year, the Clerk/Administrator served on the Executive Committee of the National Conference of Appellate Court Clerks ("NCACC") and will finish his term in August 2012. At the close of the fiscal year, Deputy Clerk Heather Smith was slated by the NCACC's Executive Committee to succeed him at that post.



Justice Rucker (left) with two of his former colleagues on the Indiana Court of Appeals, Betty Barteau and John T. Sharpnack.

DIVISION OF STATE COURT ADMINISTRATION

Lilia G. Judson, Executive Director

During fiscal year 2012, the Indiana Supreme Court's Division of State Court Administration ("the Division") sought new ways to support the work of Indiana's trial courts by building on the myriad programs and projects under its supervision and by continually looking for innovative ways to deliver services to the trial courts and the people of Indiana.

The mission of the Division is to assist the Indiana Supreme Court in its leadership role as the administrator and manager of Indiana's judicial system, its trial courts, officers, and related projects and programs. In particular, the Division examines and recommends improvements in the methods, procedures, and administrative systems used by the trial courts, by other offices related to and serving the courts, and by the clerks of the courts. It also serves as the "paymaster" to Indiana's trial judges, magistrates and prosecutors.

During the past fiscal year, the Division stood ready to provide support to its many constituents. It did this through outreach efforts like the bi-monthly Indiana Court Times and email updates about new court rules, interpretations of new statutes. The Division's successful Court Reform Grant project distributed an additional \$280,000 in grants to courts seeking funding for innovative ways to deliver court services. In addition to distributing grants, the Division received grants. In the fall of 2010, the Division was awarded a \$50,000 grant to train Indiana judges on how to preside better over domestic violence cases, and throughout 2011 the Division, in coordination with the Indiana Judicial Center, organized a series of trainings for 2012. In 2010, the Division also received a \$1 million grant from the U.S. Department of Justice to be used by Indiana drug courts. With the help and cooperation of the Indiana Judicial Center, the Division has distributed the entire \$1 million to drug courts in six counties. The Division, along with the Indiana Judicial Center, also provided staff support to the Indiana Judicial Conference strategic planning process, known as A New Way Forward.

To combat the mortgage foreclosure crisis, in 2011 the Division coordinated a statewide effort to implement a new requirement in 2010 legislation that required a face-to-face settlement conference between a borrower and lender before a mortgage foreclosure case could be finalized. The effort has produced positive results and plans were made to continue its expansion statewide.

The Division also began examining how technology could better aid local court reporters and speed up the production of the trial transcript needed for an appeal. A significant amount of research yielded promising results, and six courts volunteered to participate in a pilot project.

As part of its effort to support trial courts, the Division also provided Continuity of Operations Plan ("COOP") support and sent a staff member trained in that area to a number of trial courts to help develop COOPs. In addition, Division staff provided COOP support in Tippecanoe and Jackson counties due to interior water damage. And, to test its own COOP, the Division moved its entire fiscal staff off-site during the latter part of Super Bowl Week in February 2012 to test its processes and determine if one of its essential functions, paying the salaries of the Indiana's judicial officers and prosecutors, could be conducted off-site.

Trial court technology continued to be a large focus of the Division, and the new statewide case management system, known as Odyssey, spread to even more courts during the fiscal year. A host of new counties joined the Odyssey fold. A detailed description of that massive effort is included later in this report.



In conjunction with the Indiana Judicial Center, the Division also supported on-going efforts to enhance the training provided to trial court staff. It did this by providing faculty to the large audience of trial court staff at an Indianapolis conference and also by on-site training at a number of Indiana courthouses. The Division also participated in the annual City and Town Court Conference in the fall of 2011. In addition, Division staff served as faculty for the meeting of the 2011 Indiana Judicial Conference.

In addition to training, the Division also continued its tradition of outreach to the trial courts by hosting quarterly conference calls with Indiana's local court administrators. At the request of the Indiana Supreme Court, staff from the Division supported an effort brought to the Court by a broad-based group of advocates for civil legal aid for the indigent, who would like Indiana to consider creation of an Access to Justice Commission. Similar commissions in other states have successfully increased the resources available for people who cannot afford civil legal help.

TRIAL COURT SERVICES

The Division's Trial Court Services Section has a number of diverse responsibilities, but among the most important ones are payroll/benefits administration, budgeting, and accounts management. The Division maintains and administers 27 accounts, totaling approximately \$122 million. This fiscal responsibility includes the administration of payroll and benefit programs for all state trial court judges, prosecuting attorneys, and other judicial officials paid with state funds. The annual payroll accounts for these purposes total

approximately \$84 million, and cover approximately 700 individuals.

Civil Legal Aid Fund

In 2011, the Division distributed \$1.5 million to eleven organizations providing civil legal aid services to Indiana's poor. These eleven organizations provided services to more than 23,000 clients. Since 1997, the Division has distributed \$17.5 million through this program.

Senior Judge Program

Since 1989, Indiana has been able to tap into an experienced pool of former judges to help alleviate the pressure of increasing caseloads. Enabling legislation provides that a former judge may apply to the Indiana Judicial Nominating Commission for certification as a senior judge under rules adopted by the Indiana Supreme Court. The legislation further provides that any trial court and the Indiana Court of Appeals may ask the Indiana Supreme Court to appoint a senior judge to assist that court. The Indiana Supreme Court allocates senior judge time to courts with the heaviest caseloads while still allowing all courts to have sufficient senior judge help (a minimum of 10 days per year) to relieve trial judges during necessary absences from the bench.

Small at first, the Indiana senior judge program has grown into an invaluable resource of seasoned judicial officers who serve at minimal cost to the state and no cost to the counties. In 2011, Indiana had 105 certified senior judges. Trial court senior judges served 4,232.4 days, which is the equivalent of approximately 23.62 full time judicial officers.

Special Judges and Disciplinary Commission Grievances

The Division's legal staff serves as counsel to the Indiana Supreme Court in matters involving requests for the appointment of special judges, special masters, and senior judges. The Division staff also conducts preliminary investigations of disciplinary grievances filed against members and staff of the Indiana Supreme Court Disciplinary Commission and attorneys who are serving as hearing officers in disciplinary cases. In 2011, two preliminary investigations were closed. One case was referred for further review and investigation, and one was recommended for appointment of a hearing officer to consider the merits of the complaint. Six cases were opened and were under investigation at the close of the fiscal year.

Certified Court Interpreter Program

The Indiana Court Interpreter Certification Program, administered by the Division, certifies foreign language interpreters for use in the Indiana courts. The Program consists of a five-part process for foreign language interpreter certification. The first phase involves a two-day orientation where candidates receive instruction on judicial procedure, protocol, courtroom decorum, the role of an interpreter, ethics, the modes of interpreting, and terminology. The second phase, an objective, multiple-choice exam, tests candidates on general English vocabulary, court-related terms and usage, common English idioms, and court interpreter ethics and professional conduct. For candidates testing for certification in Spanish, the written exam also requires the translation of several sentences from English into Spanish. The third phase is an intensive, two-day skills-building workshop where candidates spend concentrated time on individual skill enhancement and group work. Once candidates complete the workshop, they are eligible to take the oral foreign language proficiency examination, the fourth stage of the certification process. The oral exam tests the candidate's skill in sight, consecutive, and simultaneous interpretation. The candidate must receive a score of 70 percent or higher in all three modes to receive a passing score on the exam. The fifth and final stage is a criminal background check.

During calendar year 2011, 62 candidates participated in the certification program, and the pool of certified interpreters is now at 93. Indiana continues to be a leader in the area of interpreter certification, with a cumulative passage rate of 33 percent overall since the start of the program in 2003. The national average is 25 percent.

Also in 2011, the Indiana Supreme Court awarded over \$250,000 in foreign language interpreter grants to 35 county court systems to encourage trial courts to use certified interpreters and to help defray the costs of interpretation. The Indiana Supreme Court continues to provide, at no charge, the use of Language Line to every county court system. The Language Line provides interpretation services by telephone in more than 140 languages. Indiana courts have accessed the service for languages including Burmese, Karen, Hmong, Hindi, Vietnamese, Bosnian and Macedonian, to name a few.



The Indiana Supreme Court hosted its third Law School for Journalists at the Indiana University Robert H. McKinney School of Law. Sessions included tutorials on problem-solving courts, court structure and funding, juvenile courts, and sentencing. Former Los Angeles Superior Court Media Liaison and the author of "Anatomy of a Trial: Public Loss, Lessons Learned from *The People vs. O.J. Simpson*," Jerrienne Hayslett, was a keynote speaker.

TRIAL COURT MANAGEMENT

The Trial Court Management Section deals with the administrative procedures and recordkeeping practices used by trial courts and clerks. It is also responsible for the data collection system and publication of statistical reports, including the Indiana Judicial Service Report and the Indiana Probation Report.

Electronic Filing

The Indiana Supreme Court adopted Indiana Administrative Rule 16 to encourage trial courts to initiate electronic filing pilot projects, and the Division has the responsibility to define the necessary elements of the plan. In 2011, to facilitate the process of undertaking an e-filing project, the Division's staff developed a model e-filing plan, a model local rule for e-filing and accompanying exhibits. These documents are posted on the Indiana Court's website at www.courts.IN.gov. The model e-filing plan and model local rule provide templates for courts to follow in seeking approval for their plans. The accompanying exhibits on the webpage provide guidance for courts once the plan and local rule are formalized.

Deployment of Trial Court Information on the Internet and Public Access Issues

Rapid advancements in technology and the efficiency they afford have prompted some of Indiana's courts to seek ways to post docket information on the Internet. Indiana Trial Rule 77(K) provides that before any court or clerk deploys any court information on the Internet, it must first seek and receive authorization from the Division.

During calendar year 2011, Division staff reviewed and approved many Internet-related requests. Of the 92 counties in Indiana, over half have been approved to post their docket information on the Internet, along with four city courts and

two town courts. Most post chronological case summaries and party and calendar information. The list of approved counties can be viewed at www.courts.IN.gov.

Indiana Administrative Rule 9 addresses public access to court records and confidentiality of certain court records. The rule governs all case and administrative court records maintained and generated by every court and court agency in the state court system. Court records are generally accessible to the public except as specifically provided in the rule. One significant provision in Rule 9 requires the Division to review all requests for bulk distribution or compilations of court information. The Division can approve requests for non-confidential bulk data from a single court, but only the Indiana Supreme Court may approve requests for bulk data from multiple courts for bulk distribution of confidential information. In 2011, the Division approved one bulk distribution request and the Supreme Court approved four.



Justice Sullivan (left) with Frank Shorter, the American long-distance runner who won the gold medal in the marathon at the 1972 summer Olympics. Mr. Shorter delivered an inspirational speech to Indiana's probation officers.

Court Improvement Grants

The Indiana Supreme Court's Court Improvement Program ("CIP"), which began in 1994, continued in 2011 under the leadership of its CIP Executive Committee. The CIP distributes federal grants earmarked to improve the process and timelines of cases involving abused and neglected children in foster care. The funds are used for basic improvement of court processes, training, and data collection and analysis. The Division serves as the fiscal administrator of the CIP grant funds, while the Indiana Judicial Center provides substantive program administration.

In 2011, a detailed pilot study of court performance measures in child abuse and neglect cases continued in Allen County, with plans to expand to other counties in coming years. Extensive examination of cases, the collection of reliable data resulting in commentary, as well as recommendations to address issues discovered during the process culminated in a major report and presentation in 2012. Results of this study will enable Indiana's courts to collect the necessary data for accurate performance measurement of child-in-need-of-

services ("CHINS") cases. The Allen County study involved the Quest case management system. Also this fiscal year, work began in the Odyssey case management system for the collection of federally mandated court performance measures data.

During 2011, the Indiana Task Force on Dual Jurisdiction Youth continued to gather and assess available data, while determining what additional data may be available or required. Additional accomplishments of the Court Improvement Program can be found in the portion of the Indiana Supreme Court Annual Report detailing the work of the Judicial Conference of Indiana and Indiana Judicial Center.

Continuity of Operations Planning for the Trial Courts

The Division provides a continuity of operations ("COOP") website to serve as a central resource for COOP development. In 2011, the Indiana Supreme Court participated in a full-scale Continuity of Operations and Continuity of Government exercise conducted by the Indiana Department of Homeland Security ("IDHS") that tested the ability of numerous state agencies to coordinate and implement the executive branch line of succession.

Also this fiscal year, the Division led the preparations by the Indiana Supreme Court and its agencies for the two weeks of Super Bowl activities in downtown Indianapolis by establishing contacts within the Super Bowl Host Committee, attending meetings for the local business and government community and monitoring media outlets for information on parking availability and street closings. Information regarding what to expect in the weeks leading up to the game and options for minimizing impact to court functions and employees was distributed to all court agencies well in advance of the event, allowing them time to plan and potentially exercise measures that would be used in response to future disruptions. As part of its long-term COOP planning, the Division also used the advent of the Super Bowl to test two of its core functions, fiscal operations and operation of the JTAC Help Desk, by having staff operate at a remote location to test its ability to perform these functions if a disaster forced the Division out of its offices.

TRIAL COURT TECHNOLOGY AND AUTOMATION

The Odyssey CMS Project

During this fiscal year, the fourth full year of deployment of Indiana's uniform statewide case management system ("CMS") called "Odyssey," 41 courts in 11 counties were added to the network. This brought the total number of courts using Odyssey at fiscal year end to 127 in 42 counties, managing nearly 40 percent of the state's caseload. All Odyssey cases are stored in a central database and their dockets made available at no charge over the Internet to all who wish to see them.

In 1999, the Indiana Supreme Court created its Judicial Technology and Automation Committee ("JTAC") to improve trial court technology in our state. Because implementation

of a uniform statewide CMS and sharing of court information are principal among its goals, having nearly two-fifths of the state's caseload managed by the Odyssey CMS is a major milestone in what has been - and what continues to be - a challenging and critically necessary endeavor for justice and public safety in Indiana.

INcite Links Courts and Users of Court Data

Key interfaces now exist between courts and clerks, law enforcement, and state agencies. These interfaces reside on a secure "extranet" called "INcite" (Indiana Court Information Technology Extranet), a website managed by the Court's JTAC staff that is used to exchange important information between courts and non-court user groups like law enforcement and many state agencies.

INcite is being used to transmit and receive critical information electronically, replacing the need for slow, costly transmission of paper by U.S. mail or facsimile. Through INcite, court data can be shared easily with the Bureau of Motor Vehicles and electronic traffic tickets can be processed more quickly. The INcite application also allows the immediate transmission, now required by federal law, of certain mental health adjudications to a federal database that attempts to prevent the mentally ill from obtaining firearms and it allows the immediate posting of protection orders to a statewide Protection Order Registry. Other INcite applications enable court data to be shared with the Department of Child Services, to assist with jury management tasks, and to help Circuit Clerks process marriage license applications. In recent years, INcite applications have been developed to help probation officers manage their caseloads and conduct risk assessments of probationers. These are just a few of the growing list of applications made possible by INcite that enable court data to be managed, and shared in ways that increase efficiency and reduce costs.



Justice Sullivan (left) demonstrates the INcite interface in Greene County.

APPELLATE COURT TECHNOLOGY

During this fiscal year, Division's Appellate Information Technology Section rolled out a new Roll of Attorneys application for the Clerk of the Supreme Court, Court of

Appeals, and Tax Court, that allowed Indiana attorneys to fulfill their annual registration and certification responsibilities over the Internet instead of through paper and mail. This saved the Clerk's office thousands of dollars in printing and mailing costs and administration time in logging information from the returned forms.

The Appellate Information Technology Section implemented several changes regarding the Courts' efforts in Continuity of Operations and Disaster Recovery. A new email system was implemented with multiple layers of redundancy, reducing the likelihood of an interruption in service.

In December 2011, the Appellate Courts and related agencies, with support from Appellate Information Technology and JTAC, launched a new web site for the Indiana judiciary. The new site, www.courts.IN.gov, presents an updated, modern interface designed to offer the public easier access to court information.

PUBLIC INFORMATION SERVICES

Due to the high level of interest from the public and the press in the work of the judicial branch, the Indiana Supreme Court employs a full-time Public Information Officer ("PIO") who serves as a liaison between the Supreme Court and the press. The PIO's services are available to each justice and all trial court judges as well as the Indiana Supreme Court agencies.

The level of public interest in the work of the judiciary is evident in the number of inquiries received by the PIO. The PIO answered approximately 575 media inquiries from local, state and national press and nearly 200 questions from members of the public during 2011.

The most significant Indiana Supreme Court media story of this fiscal year came in December when Chief Justice Randall Shepard announced that he would retire in March 2012. In a single day, the PIO answered approximately 75 questions from the media concerning the Chief Justice's announcement. Print, television, radio and Internet bloggers from across the state covered the retirement announcement in great detail, highlighting Chief Justice Shepard's 27 years on the bench, including his successful efforts to increase transparency in the courts.

GAL/CASA PROGRAM, CHILD WELFARE, AND FAMILY COURT PROJECT

GAL/CASA Office

The state GAL/CASA Office, which was first established to manage the state matching grant program, has significantly increased the services it provides to the county programs since the Indiana General Assembly mandated the appointment of a Guardian Ad Litem/Court Appointed Special Advocate in each abuse and neglect case and increased state funding for such programs.

In child abuse and neglect cases, the needs of the child-victims are often overlooked while the attorneys and the court focus on addressing the parents' problems. Guardian Ad Litem and Court Appointed Special Advocates serve as

representatives of abused and neglected children in Child in Need of Services, or “CHINS,” cases so that their interests are protected and their voices are heard. In 1989, the Indiana General Assembly established a program for Guardian Ad Litem and Court Appointed Special Advocate (“GAL/CASA”) services, to be administered by the Division. In 2005, the legislation requiring the appointment of a GAL/CASA for every child in every CHINS case was passed; in 2007, new legislation increased funding to support the program in its efforts to serve every child.



Leslie Dunn (right), the State Director of the Court’s Guardian Ad Litem/Court Appointed Special Advocates program, listens as Justice David addresses the volunteers at their annual luncheon in October 2011.

Counties that operate a certified GAL/CASA volunteer-based program receive matching state grants that are administered and disbursed by the Division based on a statutory formula. To be certified, programs must comply with the Indiana Supreme Court’s GAL/CASA Program Standards and Code of Ethics, and provide annual statistics, a budget, and a financial statement. The Division’s GAL/CASA Office, through its State Director and Program Coordinator, oversee the certification process and ensure compliance with program standards. The Division’s GAL/CASA Office also holds an annual conference and provides training and support services for local GAL/CASA programs.

Of Indiana’s 92 counties, 72 were certified and received state GAL/CASA matching funds in 2011. These programs were staffed by the equivalent of 180 paid full-time personnel. The remaining 20 counties appointed either attorney GALs or utilized other paid GALs. Of the 72 counties with volunteer-based programs, 38 counties had court-based programs, 22 counties had programs that were separate non-profit entities, and 12 counties had programs that were operated under the

umbrella of another non-profit entity. The Division’s GAL/CASA Office also developed a new volunteer-based CASA program in Martin County; this program became a multi-county program with Daviess County and was certified and received funding in 2011.

There were at least 3,300 active GAL/CASA volunteers in 2011, including 918 newly trained volunteers. GAL/CASA volunteers advocated for 18,372 children in CHINS and termination of parental rights cases and made 127,018 contacts with the children for whom they spoke. GAL/CASA volunteers donated an estimated 414,262 hours of their time to advocate for Indiana’s children. If the contribution of GAL/CASA volunteers is calculated using the estimated average rate paid to non-volunteer appointed GALs (\$50 hourly), the volunteers contributed an estimated \$21 million dollars to Indiana.

The Division’s GAL/CASA Office offered many training opportunities to local GAL/CASA programs in 2011. On October 14, the GAL/CASA Office held its annual meeting for GAL/CASA directors and staff, and on October 15 held one of the largest GAL/CASA conferences in its history, hosting 625 GAL/CASA volunteers, local program staff and directors, and other child-welfare stakeholders from all over the state. In 2011, the GAL/CASA Office also began a partnership with the Indiana Youth Institute (“IYI”). IYI provides support to youth-serving agencies in Indiana. IYI featured the GAL/CASA initiative in its newsletter and did several “Kids Count Minutes” public service announcements featuring GAL/CASA. IYI’s Executive Director also wrote a letter to the editor urging the public to volunteer, which was featured in several papers around the state. As a result of this partnership, the number of volunteer inquiries that the GAL/CASA Office received more than doubled. In 2011, the GAL/CASA Office received 599 inquiries, and the average number of monthly inquiries increased to 50 per month.

The GAL/CASA Office was chosen by the National CASA Association to pilot a project called “Fostering Futures”, aimed at improving outcomes of youth aging out of the foster care system. These youth often drop out of school, become unemployed, homeless or incarcerated. In Indiana, 435 children in foster care turned eighteen and faced aging out of the system without a permanent family in 2009. The GAL/CASA Office was awarded a \$75,000 grant to implement the Fostering Futures project. The GAL/CASA Office provided eight different Fostering Futures events across Indiana and trained 103 volunteers from 31 different programs. These volunteers are working with more than 120 older youth in Indiana to help them achieve their goals by purposeful planning and positive decision making. At the conclusion of the pilot in 2011, the GAL/CASA Office evaluated the curriculum and provided valuable feedback that was used to revise the curriculum, which was made available across the nation in 2012.

The GAL/CASA office also continued its partnership with the Indiana Retired Teachers Association (“IRTA”). A Delaware County CASA volunteer received the IRTA’s Volunteer of the Year Award from Chief Justice Randall Shepard at a ceremony at the Statehouse. The GAL/CASA

Office also kicked off a new partnership with the Fraternal Order of the Eagles in the summer of 2010 that continued through the fall of 2011. The Eagles sponsored various events across the state in 2010 and 2011 to promote awareness of the need for CASA volunteers and to raise funds for CASA programs in Indiana. In the fall of 2011, the Eagles presented the GAL/CASA Office with over \$83,000 to help support CASA programs.

Due to an increase in their funding in 2007, CASA programs have made significant strides in increasing the number of CASA volunteers. The first year the programs received the additional funds, the number of volunteers increased by 50 percent. The total number of volunteers in the state has gone from 2,161 in 2007 to 3,300 in 2011. At the end of 2011, there were 2,350 children waiting for a GAL/CASA volunteer; however, the waiting list has been reduced almost in half since 2008. The GAL/CASA Office and local programs continue to work toward providing a volunteer and a voice for every foster child.

Family Court Project

The Family Court Project was initiated in 1999 as a cooperative effort between the Indiana General Assembly and the Indiana Supreme Court to develop common-sense models for improving service to the children and families who appear in our courts. During calendar year 2011, 22 counties participated in the Family Court Project, serving 6,565 families and a total of 5,977 children. Programming types included service referral, direct service case management, truancy programming, assistance for self represented litigants, mental health related services, and high risk screening. These projects receive assistance from the Family Court Project manager under the direction of the Division.



Justice David spoke to high school students from the Youth Challenge Academy.

Alternative Dispute Resolution Plans

In 2003, the Indiana General Assembly passed legislation authorizing the creation of alternative dispute resolution (“ADR”) programs in domestic relations cases in each of Indiana’s 92 counties. The legislation permits a county to collect a \$20 fee from a party filing for a legal separation,

paternity or dissolution case. This fee is paid into a separate fund and may be used for mediation, reconciliation, nonbinding arbitration, and parental counseling. Money in the fund must primarily benefit litigants with the least ability to pay. Litigants with current criminal charges or convictions of certain crimes relating to domestic violence are excluded.

A county wishing to participate in an ADR program must develop an ADR plan consistent with the statute and approved by a majority of the county’s judges with jurisdiction over domestic relations and paternity cases. The Executive Director of the Division must approve the plan, in accordance with Indiana ADR Rule 1.11. The counties are required to file an annual report summarizing their ADR programs each year. Currently, there are 33 counties with approved ADR plans. The counties participating in the program during calendar year 2011 provided alternative dispute resolution services in 2,617 cases, which affected 4,107 children.

SPECIAL PROJECTS AND PROGRAMS

Court Reform Grant Program

2011 marked the fourth year in which the Indiana Supreme Court awarded funds to trial courts under its Court Reform Grant program, which the Division administers. This program is funded from federal reimbursements for previously uncollected expenses associated with Title IV-D child support enforcement actions. Since 2008, the Indiana Supreme Court has disbursed more than \$1.25 million in grants for the study and implementation of various plans, as well as the installation of modern equipment, to create more efficient court systems throughout the state.

Court Reform Grants are intended to assist courts in conducting organizational assessments and implementing recommended improvements. The Division identified six project categories that would receive priority consideration: development of a multijurisdictional drug court or other problem-solving court; measuring core performance through the use of CourTools, a set of 10 trial court performance measures developed by the National Center for State Courts; studies on consolidating judicial responsibility over court records; unified court administration; modern jury management systems; and innovative court technology.

The Division awarded more than \$280,000 to courts in nine counties in calendar year 2011. Efficiency and consolidation studies will have long-reaching effects, not only in the recipient courts, but in other courts able to apply the study results. By eliminating duplicate work in the automation of common processes, courts make themselves better able to utilize resources wisely in good economic times as well as bad.

Mortgage Foreclosure Trial Court Assistance Project

In 2011, the Indiana Supreme Court’s Mortgage Foreclosure Trial Court Assistance project marked its second year, expanding from 14 to 20 counties, including the top 10 “hardest hit” counties, and covering approximately two-thirds of all mortgage foreclosure cases filed across Indiana. A project manager at the Division oversees local logistical

coordinators and facilitators, who coordinate with pro bono attorneys, housing counselors, homeowners, and lenders to schedule and conduct settlement conferences. Facilitators and logistical coordinators work as contract employees of the Division and are funded through a portion of the \$50 filing fee on mortgage foreclosure cases.

The two essential elements of this program are outreach to the homeowner by the courts, and the presence of a court-appointed facilitator at the settlement conference. In pilot counties, once a mortgage foreclosure case is filed, the court employee or attorney facilitator makes an effort to contact the homeowner directly. This extra effort helps ensure that homeowners truly understand that they have a right to a settlement conference, and make informed decisions whether or not to request a conference.

Once a homeowner requests a settlement conference, the facilitator arranges to conduct a pre-settlement conference telephone call between the lender and homeowner. During this call, the facilitator determines what documents are needed by each party for negotiations to take place, and schedules a settlement conference.

Of the 2,463 settlement conferences that took place in 2011, 942 resulted in a “stay-at-home” workout, 140 resulted in an “other” workout (generally short sale), and 1,000 resulted in foreclosure. Another 381 conferences required additional work and were followed up by facilitators.

Also in 2011, the Court created the Mortgage Foreclosure Task Force, a group of trial judges, representatives of the Indiana Attorney General, creditor advocates, consumer advocates, academics, and mortgage foreclosure facilitators. This task force drafted the “Mortgage Foreclosure Best Practices,” a list of guidelines to help assist trial courts in handling the many requirements of the mortgage foreclosure settlement conference process.

The statute governing mortgage foreclosure settlement conferences was amended effective July 1, 2011, and incorporated a number of the Best Practices. These Best Practices continue to be updated by the Task Force to integrate changing procedures and programs in the foreclosure industry.

Access to Justice

On July 29, 2011, Chief Justice Shepard issued a letter directing stakeholders to hold an education and discussion workshop that would discuss the viability of an Access to Justice Commission in Indiana. The letter was a response to requests that such a commission be formed, and to a rule that had been proposed by a working group in 2010 that would create such a commission. The comments the proposed rule generated indicated that more discussion was necessary before such a commission could be formed.

The letter concluded that further dialogue was needed regarding ways to improve delivery of legal services to the poor and the development of a long-term plan for doing so, as well as the aims, structure, and viability of a possible Access to Justice Commission in Indiana. It directed the working group to hold an education and discussion workshop on these issues, bringing in outside speakers to educate stakeholders

on Access to Justice Commissions in other states, and to conduct discussion on the possibility of establishing one in Indiana. It further recommended that this workshop be followed up with a smaller task force to establish a detailed plan and implementation strategy.

Division staff reached out to the various members of the working group who put together the initial proposal, as well as those who commented on the proposal, to work on the planning of this event. This planning group consists of approximately 20 legal services providers, private members of the bar, judges, representatives from the Indiana Pro Bono Commission, and other stakeholders. The planning group held two meetings in 2011, as well as several subcommittee meetings.

The planning group consulted with the Access to Justice Project Consultant for the American Bar Association for advice on speakers and organization of the workshop, who provided the group with information about access to justice workshops in states similar to Indiana, and about which outside speakers would be most useful to our efforts. The planning group secured three other outside speakers—Justice Nathan Hecht, the Texas Supreme Court’s liaison to the Texas Access to Justice Commission; former Hoosier Judge Sarah Singleton of the New Mexico Access to Justice Commission; and Karen Lash, project consultant for access to justice at the U.S. Department of Justice. Justice Hecht is a frequent speaker at access to justice workshops around the country, and the Texas commission is one of the most dynamic and successful. Judge Singleton, who is from Indiana, has helped with establishing a successful commission in a state that shares similarities with Indiana. The group hosted a successful workshop on March 22 and 23, 2012, attended by a diverse group from government, the community, legal services organizations, the judiciary, and the private bar.



Those attending the oral argument held at Notre Dame Law School included (left to right) Dean Nell Jessup Newton; State Senator John Broden, Maggie Kernan, former Governor Joe Kernan, Richard Nussbaum II, and St. Joseph Circuit Court Judge Michael Gotsch.

SUPPORT TO COMMISSIONS, COMMITTEES, AND PROGRAMS

The Division provides staff support for many of the Supreme Court’s various commissions, committees, and

programs. The fiscal year 2012 achievements and efforts of some are highlighted below.

Public Defender Commission

The United States and Indiana constitutions mandate public defense services to indigent persons. In 1989, the Indiana General Assembly created a public defense fund to reimburse counties for the costs associated with indigent defense legal representation in capital cases, and in 1995 for non-capital cases. The Indiana Public Defender Commission, consisting of 11 members, was formed to distribute money from the fund to the counties, and to create standards that encourage counties to provide quality defense in criminal cases. The Division provides staff support to the Indiana Public Defender Commission.

State law authorizes counties to receive reimbursements of 50 percent of expenditures for indigent defense services in capital cases and up to 40 percent in non-capital cases from this state fund. There are two sources of money for the public defense fund: the Indiana State Auditor distributes approximately \$7.4 million yearly to the fund from court fees under Indiana Code section 33-37-7-9(c)(2), and the Indiana General Assembly appropriates money for a public defense budget from the state general fund. In 2011, the public defense fund received \$20.25 million from the two services.

All 92 counties are eligible for reimbursements of indigent defense costs in capital cases, provided they comply with Rule 24 of the Indiana Rules of Criminal Procedure. The Commission is required by Indiana Code section 33-40-6-6 to give priority to requests for reimbursement of expenses in capital cases. In 2011, \$384,680 was distributed to the counties for death penalty defense. From 1990 to date, over \$10.5 million has gone to Indiana counties from the public defense fund to assist in defense costs of capital cases.

Currently, 52 counties qualify for reimbursement from the public defense fund for non-capital public defense expenses. These counties comprise over 68 percent of Indiana's population. In 2011, counties participating in the reimbursement program of the public defense fund handled 87,319 indigent defense cases – a five percent decrease from the 92,163 cases assigned in 2010.

Commission on Race and Gender Fairness

In 1999, the Indiana Supreme Court created the Commission on Race and Gender Fairness to study race and fairness in the Indiana judicial system, including legal service provider and public organizations. After study and analysis, the Commission makes recommendations to the Court on improvements of the courts. Since its creation, the Commission has been under the direction of former Indiana Supreme Court Justice Myra Selby and is comprised of members of the judiciary, bar, state and local governments, academia, law enforcement and public organizations. It advises the Indiana Supreme Court on issues of race and gender fairness for the improvement of Indiana's courts. The Division provides legal and administrative support to the Commission. The Commission is currently working on the release of an instructional judicial bench card on the use of court interpreters.



The Court heard oral argument at “The Grand” a former movie theatre in New Albany, Indiana, renovated as a 12,000 square foot reception venue.

Supreme Court Records Management Committee

One of the earliest committees convened by the Indiana Supreme Court is the Records Management Committee. The committee is comprised of judicial officers, clerks, bar members, a representative for prosecutors, the state public defender, and other stakeholders. The Division's Executive Director and staff assist the Committee. The Committee has been and continues to be the genesis of the rules that set standards for the maintenance, management, and retention of court records, as well as privacy and access to court records.

In 2011, the Committee examined several issues affecting court records and procedures. These issues included overlapping, inconsistent and unclear rules and statutes regarding the recordation of judgments in a judgment docket; the development of a standard, electronic abstract of judgment format for criminal convictions; a proposed rule for reconstructing court records during trial; retention schedules for problem solving courts; a study of the status of permanency standards for records retention; how petitions to restrict access to criminal history information should be handled; revisions to Indiana Administrative Rule 7 on records retention; a juvenile case type for informal adjustments; access to probation records by federal immigration agents; and access to confidential records of the Department of Workforce Development when involved in litigation.

Judgment Docket Task Force

After receiving numerous questions about the applicability of various statutes, rules and practices effecting the creation and public recordation of judgments, the Indiana Supreme Court's Records Management Committee determined that the state of the existing laws regarding judgment dockets was confusing and that a review and recommendations for improvement were in order.

The judgment docket is a public listing of all judgments for the recovery of money or costs, indexed in alphabetical order. It is intended to provide official notice to interested parties of the existence of a judgment. It is maintained by the clerk of the trial court in which the judgment was entered. Strictly speaking, the judgment docket is not a judicial

record, but much of the information required to be included in the judgment docket is the result of judicial action. All final judgments for the recovery of money or costs constitute liens upon real estate and the real estate is subject to execution in the county where the judgment has been entered and indexed in the judgment docket.

At the end of 2010, the Committee convened a special task force to compile and review all of the statutes, rules, and procedures governing the county judgment dockets and recommend to the Committee proposals about what should be included in the judgment docket and how it should be done in order to assure accuracy and consistency. Judges of courts, including those with limited and special jurisdiction, clerks, recorders, prosecutors, public defenders, attorneys representing creditors and debtors, the Attorney General of Indiana, legislators, attorneys for the Indiana Civil Liberties Union, staff from the federal bankruptcy courts, staff of the Judicial Center, and the Division of State Court Administration and others comprise the membership of the Judgment Docket Task Force.

The Task Force identified some of the problems with the current judgment docket system that should be addressed, such as:

- Rather than containing information exclusively about court judgments, the judgment docket contains entries for “judgments” that were not the result of a court decision but rather created by statute;
- The judgment docket is meant to be usable by the public; however, the public has no way of knowing where a particular judgment is recorded;
- There is no consistency between counties on how judgment dockets are kept;
- Party identification issues exist because the present judgment docket systems have no process for checking or verifying the identity of the parties; and
- Issues regarding improper access to judgments arising out of confidential juvenile proceedings.

Indiana Conference on Legal Education Opportunity

The Indiana Conference for Legal Education Opportunity (“ICLEO”) continued to make strides to increase diversity in the Indiana legal community this fiscal year. In 2011, 21 ICLEO Fellows graduated from one of the four Indiana law schools. To date, nine of those Fellows have been successful on the Indiana Bar Exam.

The Summer 2011 ICLEO Institute was hosted at the Notre Dame Law School and attended by 31 ICLEO fellows. That class, rich in diversity, included one Afghan male, nine African-American females, five African-American males, one African-American/Hispanic female, three Asian/Pacific Islander females, two Caucasian females, two Caucasian males, two Hispanic females, four Mexican American



Justice Sullivan spoke to the crowd of some 150 lawyers who attended the continuing legal education program he arranged covering selected Indiana Supreme Court cases.

females, one Mexican-American male, and one Puerto Rican female.

The impact of CLEO Fellows on their law school communities is felt almost immediately after their arrival on campus. Charles Bush and Yolanda Ruiz, both students at Valparaiso University Law School, were selected as Presidents of their school chapters of the Black Law Student Association and Latino Law Student Association, respectively. Alex Figueroa and Arie Lipinski served on the Executive Board of the Moot Court Society at Valparaiso.

The impact of CLEO Fellows also has been felt after graduation, as CLEO Fellows pursue their careers in law. In October 2011, Alger Boswell, a 2005 ICLEO Fellow and 2008 graduate of the Valparaiso University Law School, was appointed City Attorney for the City of Gary, Indiana. In June 2012, the Honorable Rudolph Pyle, III, a 1997 ICLEO Fellow and 2000 graduate of the Indiana University Maurer School of Law in Bloomington, was one of the three names submitted to the Governor to fill the vacancy on the Court of Appeals of Indiana created by the retirement of Judge Carr Darden.

Protection Order Committee

The Indiana General Assembly has assigned the Division the responsibility for designing and updating the forms used in protection order proceedings. To fulfill this duty, the Division’s staff works closely with the members of the Protection Order Committee of the Indiana Judicial Conference to explore ways to improve the protection order process.

Trial court judicial officers and clerks of the circuit courts comprise the membership of the committee, and the Indiana Judicial Center and Division provide staff support for the committee. A comprehensive set of forms that fall into four main categories (protection orders, no-contact orders, child protection orders, and workplace violence restraining orders) has been created by the committee. All the forms are located on the Protection Order Forms web site at www.courts.IN.gov.

This fiscal year, the committee continued assisting the Judicial Technology and Automation Committee with the on-line Protection Order Registry project. The goal of the project continues to be automating the process of creating, disseminating, and registering protection orders. Automation permits protection orders to be registered automatically with IDACS and NCIC as soon as they are issued. All the data contained in the order is stored electronically so modifications can be made without a duplication of effort. The committee continued to work on making the official forms sufficiently flexible to respond to the divergent demands of courts in all sections of Indiana while ensuring the resulting orders meet legal standards. By statute, use of the Protection Order Registry is now mandatory, and it is operational in all Indiana counties.

The committee also continued assisting the Division in preparing and promulgating official forms related to protective orders, no-contact orders, workplace violence restraining orders, and child protection orders. Notable additions in 2011, in response to new legislation, suggestions from judicial officers, and legal opinions of the appellate courts of Indiana, were forms in Spanish and a revised Confidential Form.



Justice Rucker asks an attorney a question at oral argument.

JUDICIAL CONFERENCE OF INDIANA

Jane A. Seigel, Executive Director

Overview

The Judicial Conference of Indiana (“the Conference”), through its agency the Indiana Judicial Center (“the Judicial Center”), provides continuing judicial education for Indiana’s judicial officers, trains probation officers, administers the interstate transfer compact for probationers, administers the court alcohol and drug services program, oversees Indiana’s problem-solving courts (i.e. drug courts, reentry courts, etc.), and maintains a roster of juvenile residential placement facilities. Conference committees formulate policy on judicial administration, juvenile justice, probation, and other topics; draft benchbooks, guidelines, and other materials; and publish civil and criminal pattern jury instructions in cooperation with the Indiana Judges Association.

Judicial Education Activities

In fiscal year 2012, the Judicial Education Department of the Judicial Center presented 19 days and over 167 hours of continuing judicial education instruction. Total attendance at these programs was 1,478. These programs are discussed in detail below.

The French Lick Springs Hotel in French Lick, Indiana served as the site for the **2011 Annual Meeting of the Judicial Conference of Indiana** on September 21-23. Just over 45 hours of continuing judicial education programming was provided to a record number of 550 judicial officers at this mandatory conference. Thirty-two different sessions were made available to attendees. This conference offered an opportunity to attend annual updates in such areas as criminal law and family law, recent legislative changes, new court rules, mortgage foreclosure, and Odyssey management. Other topics of interest included a session on ethics across the nation, best practices in court personnel management, search and seizure, effective judicial threat management, and a two-part course for becoming a judicial educator.

City and Town court judges received 12 hours of continuing judicial education on October 13-14, 2011, at the **Annual Meeting of City and Town Court Judges**. The conference, which was held in Indianapolis at the Hilton North Hotel, was attended by 65 of the 75 city and town court judges. The education programming included sessions on courtroom demeanor and control, ethical issues for City and Town court judges, updates from the State Board of Accounts and the BMV, commercial motor vehicle laws, interpreters, defendants’ rights, and legal information versus legal advice.

The final seminar in 2011, the **Winter Conference**, previewed the upcoming session of the United States Supreme Court. On Friday, December 9, 2011, 233 judicial officers attended the event at the Indianapolis Marriott North Hotel and received 4.5 hours of instruction. An early-bird session on the appropriate use of mandate was also offered.

A **City and Town Court Judge Orientation Program** was held on January 24-25, 2012 at 30 South Meridian Street, Indianapolis. Fifteen participants attended and 11.5 hours of continuing education programming were offered. Topics such as record retention and release, statistics and court technology, BMV 101, and ethical issues were included.

On March 27, an evidence workshop was held at 30 South Meridian Street in Indianapolis, attended by 45 participants. This six-hour program took an in-depth look at the applying the rules of evidence.

In its thirteenth year, the **Spring Judicial College** was held on April 11-13, 2012, at the Hyatt Regency Hotel in Indianapolis. Seventeen courses were offered to 393 attendees and 59 hours of education programming were developed for the three-day program. Some of the courses offered were: e-discovery, human trafficking, domestic and family violence, mental health issues in the criminal justice system, adult and juvenile risk assessment training, and challenges of forensic science in court.

The **Indiana Graduate Program for Judges** held year two of the 2011-12 class from June 4-8, 2012, in Brown County, Indiana. Thirty participants were there and 21 hours

of education was offered on topics such as international law; judges and the social sciences; civil liberties, national security and separation of powers; and Scotland's place in the legal firmament.

The **Juvenile Judges Annual Meeting** was held on June 21-22, 2012, at the Renaissance North Hotel in Carmel, Indiana. One hundred forty-five judicial officers attended and 8.3 hours of continuing education was available. The program agenda included sessions on a child safety guide for judges and attorneys from the ABA, Title IV-E and court orders, and updates on recent case law and legislation.

General Court Staff Education

The Judicial Center offered a state-wide conference for trial court staff on July 19, 2011, attended by 370 trial court staff members. Trial court personnel had the option of attending a program on issues for court reporters or a program on jury management and court administration. Five hours of continuing education was provided.

On September 23, 2011, a four-hour Court Security Officer Training program was held in Indianapolis for 109 court security officers.

The Judicial Center and the Division of State Court Administration also held Administrators' Roundtable Meetings on November 4, 2011 and June 7, 2012. Fourteen administrators attended the November round-table and thirteen attended the one in June. Topics covered during these Court Administrators' Roundtable included general administrative duties, grant writing process, INCite Abstract application process and petitions to restrict access.

In 2009, in partnership with the National Center for State Courts, the Judicial Center started a multi-year project to develop an online orientation program for court staff. The Indiana Court Employee Online Orientation Tool provides education in a format allowing each participant to access the material at any time over the Internet. Staff members taking the online orientation have six weeks to complete the course work and are given assessment quizzes covering such topics

like the purpose of courts, why courts are different from other branches of government, how courts operate, serving self-represented litigants, and Indiana court processes. Four classes were offered this fiscal year. As of the close of the fiscal year, 141 court and clerk employees have completed the online orientation.

Probation Activities

The Judicial Center, pursuant to Indiana statutory law, administers the Interstate Compact for the transfer of adult and juvenile probationers in and out of Indiana, and also serves as the intermediary for the return of juvenile runaways, absconders, and escapees. The total number of adult compact cases supervised as of June 30, 2012, was 2,398 incoming and 2,083 outgoing. For juvenile compact cases, the total numbers as of June 30, 2012, were 193 incoming and 253 outgoing. The Judicial Center also processed 143 runaway cases.

The Judicial Center also staffs the State Council of the Interstate Compact for Adult Offender Supervision ("State Council") and pays for the expenses of the Council through appropriations made by the General Assembly and through a portion of the fees paid by persons transferring under the compact. The State Council met during the fiscal year to discuss Compact rules and their effect on probation and parole.

In fiscal year 2012, the Judicial Center administered the probation officers' certification examination to 97 applicants, and provided 41 days of instruction to a total of 1,440 probation officers.

The Judicial Center and the Department of Correction continued to evaluate and implement the public domain risk and needs assessment instruments for both adults and juveniles. The Judicial Center secured a Byrne/JAG Grant from the Indiana Criminal Justice Institute to assist with funding this project. The Indiana Risk Assessment Task Force ("Task Force") continued its oversight of this project, addressing implementation questions and making policy recommendations to the Judicial Conference committees, the Judicial Conference Board of Directors, and the Department of Correction. The Task Force authorized amendments to the adult risk and needs assessments based on the recommendations from research.

The Judicial Center and Department of Correction coordinated training efforts for staff in probation, community corrections, Court Alcohol & Drug Programs, Problem-Solving Courts, parole, and DOC facilities. Between March 2012 and June 2012, thirteen adult trainers and ten juvenile trainers accomplished recertification and can continue assisting with training opportunities offered by the Center and Department of Correction.

The Task Force has also been involved with Supreme Court technology staff in updating and maintaining INCite applications that assist all departments with completing the assessment tools. The technology component of this project is key to improving communication between criminal justice agencies and the continued evaluation of these assessment tools.



Justice Massa (center) is congratulated by Marion Superior Court Judge Robert Altice and others at the informal reception following his robing ceremony.

Also during the fiscal year, the Judicial Center collected information concerning the implementation of home detention in Indiana and presented a report to the Indiana General Assembly on January 13, 2012.

Research Activities

During fiscal year 2012, the Judicial Center continued its mission of providing legal research services to trial court judges. As part of this effort, it distributed 46 issues of Case Clips by e-mail (two more than last year), which are now maintained on a searchable blog located at <http://indianacourts.us/blogs/caseclips/>. Additionally, the Judicial Center distributed a 2011 benchbook CD-ROM containing thirteen benchbooks, handbooks, and deskbooks.

Legislative Activities

From January to April 2012, the Judicial Center continued its practice of reviewing and providing weekly “Legislative Updates” to Indiana judges concerning Indiana General Assembly session activities relevant to the judiciary. For the sixth year, the Legislative Update was posted by a blog located at <http://indianacourts.us/blogs/legislative/>.



Former Chief Justice Shepard (seated, left) in an interview with WRTV Channel 6 photographer Tom Sisler and reporter Rafael Sanchez. The Court’s Public Information Officer Kathryn Dolan (standing, left) coordinated the arrangements.

Juvenile Services

The Judicial Center continued its maintenance of a roster of in-state facilities providing residential services to children-in-need-of-services (“CHINS”) and delinquent children. The roster is updated regularly to provide current information on costs, types of services provided, specialized treatment programs available, and targeted population.

The Judicial Center also continued its administration of the Court Improvement Program (“CIP”), a federally funded program made possible by grants awarded to the Indiana Supreme Court from the United States Department of Health and Human Services. The purpose of the CIP is to improve the judicial system for children and families involved in the child welfare system. The grant funds are earmarked for basic court improvements, data collection and analysis, and training.

During this fiscal year, the CIP awarded over \$412,000 to thirteen sub-grant recipients to support projects designed to improve the safety, well-being and permanency of children and families involved in the child welfare system. Funded projects include CHINS drug court programs, a CHINS mental health court program, mediation and facilitation programs, training and educational programs, publication and distribution of child welfare resource materials, and supporting Supreme Court technology staff efforts affecting child welfare case processing.

On November 1, 2011, the CIP, the Judicial Center, and the Indiana Department of Child Services sponsored a statewide summit on “Child Welfare and Juvenile Justice-Working Together to Improve Outcomes for Children.” Held at the Indiana Convention Center, the Summit was attended by over 550 juvenile probation officers, chief probation officers, and Department of Child Services family case managers, supervisors, local office directors, regional managers, and probation service consultants. The Summit’s purpose was to inspire collaboration and cooperation between probation officers and Department of Child Services staff who work with children involved, or at the risk of becoming involved, in both the child welfare and juvenile justice systems. The Summit provided an opportunity for probation officers and staff from the Department of Child Services to learn about each other’s roles in working with children and families.

Also during this fiscal year, the CIP sponsored the Annual Meeting of Juvenile Court Judicial Officers and provided seven professional development scholarships to judicial officer with juvenile court jurisdiction to help defray the cost of attending child welfare related programs and the cost of membership in child welfare related professional development organizations.

Court Services Activities

The Judicial Center’s Court Services Department provides research, education, support, and certification to 108 court alcohol and drug programs and problem-solving courts. Three court services staff members are dedicated to providing certification services, each serving as a primary point of contact for up to 38 local programs.

In the Court Alcohol and Drug Program, there are currently 55 certified programs established in accordance with Indiana Code chapter 12-23-14. During this fiscal year, the Judicial Center certified 15 court alcohol and drug programs. The Court Alcohol and Drug Program Advisory Committee drafted revisions to the Rules for Court Administered Alcohol and Drug Programs, which were adopted by the Board on November 18, 2011.

The Judicial Center administers the Court Substance Abuse Management Specialist (“CSAMS”) credentialing process in accordance with Section 30 of the Rules for Court Administered Alcohol and Drug Programs. The Judicial Center administered the written test for the CSAMS credential to 26 individuals and awarded the credential to 23 in fiscal year 2012.

The Court Alcohol and Drug Program provided education and training opportunities consisting of the Court Alcohol

and Drug Program annual meeting, two director orientations, two staff orientations, two substance abuse characteristics training, one assessment and interviewing training, and one criminal justice training.

With approval from the Judicial Conference Board of Directors, the Court Alcohol and Drug Program Advisory Committee worked with the 2012 General Assembly to amend Indiana Code section 12-23-14-16 to authorize programs to charge reasonable fees for providing education or treatment and rehabilitation services to clients in addition to the program services fee.

The Judicial Center awarded eleven education scholarships in the amount of \$9,044, and seven grant applications for program technology or education curriculum improvements in the amount of \$15,728.

In the Problem-Solving Court Program, as of June 30, 2012, there were 53 problem-solving courts in Indiana certified pursuant to Indiana Code chapter 33-23-16, with an additional eight problem-solving courts in the planning stages. Pursuant to Indiana Code section 33-23-16-11, the 53 certified problem-solving courts are categorized as follows: 35 drug courts, two mental health courts, three family dependency drug courts, one community court, eight reentry courts, three veterans' courts, and one juvenile problem-solving court.



Attorney General Greg Zoeller, former Chief Justice Shepard, and Justice David.

In fiscal year 2012, the Judicial Center certified 22 problem-solving courts, including 13 drug courts, one juvenile problem-solving court, one reentry court, three family dependency treatment courts, one mental health court, one community court, and two veterans' treatment courts.

The Problem-Solving Courts Committee developed final rules for problem-solving courts, which were adopted by the Judicial Conference Board of Directors effective July 1, 2011. The Problem-Solving Courts Committee also proposed amendments to the Problem-Solving Court Rules that were adopted by the Board of Directors on November 18, 2011. With approval from the Judicial Conference Board of Directors, the Committee worked with the 2012 General Assembly to amend and update the relevant statutes. The

General Assembly enacted HEA 1049, effective July 1, 2012. HEA 1049 expands eligibility, authorizes the collection of the problem-solving court user fee, and makes various other minor changes.

In accordance with Indiana Code section 33-38-9-10, the Indiana Judicial Center submitted a report to the Commission on Courts with information regarding the status of problem-solving courts in Indiana.

In fiscal year 2012, the Judicial Center assisted the Supreme Court and the Division of State Court Administration in administering a Problem-Solving Court Grant Program, which provided a total of \$151,000 to 31 certified problem-solving courts.

Other Activities and Projects

A team of attorneys, including the Judicial Center's Mike McMahon, comprehensively reviewed the Indiana Criminal Code to make criminal law reform recommendations to the General Assembly's Criminal Code Evaluation Commission. After meeting 43 times between March 2011 and July 2012, the team provided a 347-page report to the Evaluation Commission recommending numerous criminal law changes, most notably a conversion from the current five felony levels to a seven felony level sentencing system.

Mike McMahon was also a member of a group tasked with investigating reports of failures by the Department of Toxicology to follow appropriate drug-testing protocols. The group also included Court of Appeals Judges Nancy Vaidik, and Michael Barnes, Grant Circuit Judge Mark Spitzer, and State Public Defender Steve Owens. The Supreme Court relied on the group's report to issue a statement about the toxicology situation.

The Judicial Center continued its partnership with the Supreme Court, the Division of State Court Administration, and Ivy Tech Community College to provide WorkPlace Spanish® Training for the Indiana Judicial System. The course consists of 24 hours of classroom instruction and the textbook includes a CD-Rom to help staff maintain the skills learned during the course. The course is being offered to court staff at no cost to the counties or participants. Since the fall of 2006, 743 people have participated in or submitted enrollment forms for this course.

Committee Activities

The committees of the Judicial Conference of Indiana were active in the following ways this fiscal year:

- The **Alternative Dispute Resolution Committee** continued working with members of the Domestic Relations Committee on a parenting coordinator subcommittee to develop rules governing parenting coordination practices. The Committee also explored developing a judicial survey on alternative dispute resolution ("ADR") practices in collaboration with Indiana University, initiated discussions with the State Bar Association ADR Committee on rule amendments, and continued to look for other ways to encourage the use of ADR practices in Indiana courts.

- The **Civil Benchbook Committee** continued working on updates for the Second Edition of the Civil Benchbook.
- The **Civil Instructions Committee** completed its plain language “translation” of the civil model jury instructions.
- The **Community Relations Committee** worked to educate the public on the role of courts, and awarded the 2012 Indiana Judges Association award for Excellence in Public Information and Education to Marisa Kwiatkowski of The Times of Northwest Indiana.
- The **Court Alcohol and Drug Program Advisory Committee** provided oversight of the Court Substance Abuse Management Specialist credential and program training activities, and assisted with obtaining amendments to the statutes governing the certification of court alcohol and drug programs, drafting amendments to the rules for the certification of court alcohol and drug programs, drafting and implementing data collection standards.
- The **Court Personnel Committee**, which is comprised of judges, clerks, court staff, and Supreme Court agency staff members, addressed a variety of issues surrounding trial court employees, including education, communication, and best practices.
- The **Court Security Committee**, formerly the Court Management Committee, continued working on improving court security through education and improved incident reporting.
- The **Criminal Benchbook Committee** worked on revisions and updates to the Criminal Benchbook, with particular attention to a general review and update of all sections which have not been revised in the last several years.
- The **Criminal Instructions Committee** planned for work on an annual Pattern Jury Instructions (Criminal) supplement, which will be published early in 2013. Instructions required by new legislation, re-examination of the presumption of innocence instruction, and re-assessment of the capital case instructions are all under consideration.
- The **Criminal Law Policy Committee** continued its role as a liaison with state and private agencies discussing criminal law matters and reviewing legislation and policies concerning criminal law and sentencing. The Committee followed closely the criminal code re-evaluation in the General Assembly and will soon review a recent criminal code reform report to the General Assembly’s Criminal Code Evaluation Commission.
- The **Domestic Relations Committee** reviewed Indiana’s Parenting Time Guidelines and worked on recommendations for changes thereto.



Former Chief Justice Shepard (center front) with the 2011 graduates of the Indiana Judicial College. The extensive course work includes 120 hours of specialized judicial education.

- The **Ethics and Professionalism Committee** conducted a statewide survey to ascertain the ethics needs of judicial officers in an effort to promote judicial education in this area and is planning several activities based on survey responses. Additionally, the Committee, on behalf of the Indiana Supreme Court, is considering a pilot project for appellate judicial performance evaluation in conjunction with several national partners.
- The **International Law Committee** explored new ways the Indiana judiciary can be more involved internationally, including by becoming involved in a legal clinic in Eldoret, Kenya, and ways that Indiana courts can deal with international issues within Indiana courtrooms, such as by creating benchcards on handling courtroom language interpreters.
- The **Judicial Administration Committee** continued work on a comprehensive review of all of Indiana’s case types in a new review of the Judicial Weighted Caseload System.
- The **Jury Committee** continued its work with the Supreme Court’s Division of State Court Administration, on a central repository for jury pool sources for trial courts to use in creating jury pools that comply with the intent of Jury Rule 2. The seventh master list was released in fall 2011, and the project team continues to investigate ways to improve the master list. The committee completed the Jury Management Benchbook to assist courts with jury trial management.
- The **Juvenile Benchbook Committee** met with Supreme Court technology staff to explore creating more user-friendly forms for the delinquency orders in the Juvenile Benchbook. Work was started, and will continue, exploring other ways of delivering the Juvenile Benchbook. The committee also is developing new forms for the benchbook on third-party modification and guardianships in the context of a CHINS.

- The **Juvenile Justice Improvement Committee** continued its role as a liaison with state and private agencies working with juveniles, reviewing recent legislation, and developing policies concerning juvenile justice and the courts. The committee also continued work with Indiana's Department of Child Services on the implementation of state payment of juvenile services under House Enrolled Act 1001; Public Law 146-2008.
- The **Probate Committee** continued to review recent legislation for updates to the Probate Deskbook and continued to support efforts to improve guardianship case processes. In addition, the Committee, in conjunction with the Indiana Guardianship Task Force, researched ways to improve guardianship processes in Indiana, including the establishment of a guardianship registry. During the fiscal year, several grant applications were submitted to help build this registry. Once funding is secured, the Probate Committee, members of the Indiana Guardianship Task Force, Supreme Court technology staff, and key stakeholders will be involved in planning the registry contents and developing the technology.
- The **Probation Committee** continued to review issues of relevance to the administration of probation, including legislation concerning probation supervision.
- The **Problem-Solving Courts Committee** assisted with obtaining amendments to statutes governing the certification of problem-solving courts, drafted amendments to the rules for the certification of problem-solving courts, adopted performance measures for all problem-solving courts, and provided oversight of problem-solving court training activities.
- The **Protection Order Committee** completed work on selected chapters of the Protection Order Deskbook, which may be found at <http://www.in.gov/judiciary/2699.htm>. The Protection Order Committee continued working with Supreme Court technology staff and the Protection Order Registry on new and amended protection, no-contact, and workplace violence restraining order forms and procedures.
- The **Special Courts Committee** is completing revisions to the Traffic, Misdemeanor, and Small Claims Benchbook and the Small Claims Manual, and has also been preparing revisions to the City and Town Court Judges Manual.
- The **Strategic Planning Committee** continues to research strategic planning goals to assist the judiciary plan for the future and made regular progress reports to the Board of Directors. The Committee also continued to assist the Board of Directors with the development of rules regarding district governance and other key initiatives.



Applicants for a judicial vacancy on the Court must complete a written application and submit it to the Judicial Nominating Commission. Here, several members of the public are reviewing the applications in the Supreme Court Library, including Joel Schuum (center), a former Supreme Court law clerk.

BOARD OF LAW EXAMINERS

Bradley W. Skolnik, Executive Director

Overview

The Board of Law Examiners is responsible for ensuring that individuals seeking admission to practice law in Indiana meet all of the admission requirements specified in the Admission and Discipline Rules of the Indiana Supreme Court. Admission is achieved through either exam, provisional foreign license, or business counsel license, all of which are supervised by the Board. In addition, the Board certifies legal interns and approves the formation, for the purposes of practicing law, of professional corporations, limited liability companies, and limited liability partnerships. Nine Board meetings were held this fiscal year in the execution of these duties.

The Indiana Supreme Court appoints the members of the Board of Law Examiners. The terms of members are governed by Admission and Discipline Rule 9. As of close

of the fiscal year, the Board's officers were: Jon B. Laramore of Indianapolis, President; Gilbert King, Jr. of Gary, Vice-President; Michael M. Yoder of Kendallville, Treasurer; and the Honorable Barbara Brugnaux of Terre Haute, Secretary. Their terms as officers are for one year and end on December 1, 2012. The remaining members of the Board were Jeffrey A. Lind of Terre Haute, Gary K. Kemper of Madison, Charlotte Westerhaus-Renfrow of Indianapolis, Cathleen Shrader of Fort Wayne, Kathryn H. Burroughs of Carmel, and Professor J. Eric Smithburn of South Bend.



As part of the State Bar Association's "Fit to Practice" initiative, Justice Steven David presented a continuing legal education session while "spinning" on a stationary bicycle at the National Institute of Fitness and Sport facility in Indianapolis.

Character and Fitness

Before any applicant can be admitted to the bar, the Board must make a determination, and certify to the Supreme Court, that the applicant possesses the requisite good moral character and fitness to practice law. Factors considered include, but are not limited to, candor, honesty, fairness, trustworthiness, and observance of the law. "Good moral character" and "fitness" are more specifically defined in Admission and Discipline Rule 12, section 2, and guide the Board's certification determinations.

For bar exam applicants, certification of character and fitness involves not only the Board, but also the 232 members of the Supreme Court Character and Fitness committee. The Supreme Court appoints licensed attorneys from each county in the state to this committee. Each bar exam applicant must have a personal interview with a committee member, at which the committee member questions the applicant regarding his/her knowledge of and willingness to be bound by the Rules of Professional Conduct, as well as any disclosures on the application that create questions about the applicant's ability to meet the requirements of Rule 12, section 2. At the conclusion of the interview, the Committee members submit a written recommendation to the Board that either recommends approving certification of character and fitness, recommends denying certification, or does neither and instead defers the issue to the Board.

The certification of character and fitness for provisional foreign license or business counsel license applicants includes a review of each application by members of the Board's Foreign License and Business Counsel Committee. After reviewing an application, the committee members vote to approve the application, deny it, or require the applicant to appear before the full Board. Applicants must also have a personal interview with one of the members of the Foreign License and Business Counsel Committee before they are eligible for certification.

In making its decision regarding character and fitness, the Board conducts whatever investigation it deems appropriate. This may include obtaining evaluations or assessments by the Judges and Lawyers Assistance Program ("JLAP") of applicants who may have mental health or addiction issues. As a result of the individual interviews, JLAP assessments, and review by Board staff, 62 applicants were required in fiscal year 2012 to appear before the full Board to resolve matters of character and fitness. Fifty-five were applicants for admission upon examination and seven were applicants for admission by provisional foreign license or business counsel license. In addition to personal appearances of applicants, the Board reviewed the files of, or obtained additional information concerning, 65 applicants.

The Bar Exam

The bar exam consists of three parts: the Indiana Essay Examination, the Multistate Performance Test ("MPT"), and the Multistate Bar Examination ("MBE"). Board members write, edit, and grade the Indiana Essay Examination. Both Multistate portions of the exam are written by the National Conference of Bar Examiners ("NCBE"). The MBE consists of 200 multiple-choice questions and answers and is graded by the NCBE. The MPT answers are written essays and are graded by Board members. In preparation for their grading duties, two Board members participated in grading workshops for the MPT.

The Board received 927 applications to take the exam. The Board administered the exam over a total of eight days in July 2011 and February 2012 to a total of 830 applicants, 615 of whom successfully passed. The standard exam is administered for a two-day period. However, some applicants require non-standard testing accommodations. The accommodations can include providing additional time, separate test areas, individual monitors, use of computers, and large-print materials. Of the 830 individuals who took the exam, 30 received accommodations.

Laptop Testing Pilot Project

As part of a pilot project, the Board of Law Examiners allowed applicants, for the first time, to use their personal laptop computer to complete their answers to the Indiana Essay Examination and MPT portions of the February 2012 bar exam. Applicants participating in the project used a special software technology that blocked access to non-test-related files, programs, and the Internet during the exam. A total of 64 applicants participated. The Board anticipates

continued expansion and participation in the laptop testing program at future administrations of the bar exam.

Review of Test Results

Pursuant to Admission and Discipline Rule 14, section 1, applicants unsuccessful on the exam who receive a score within nine points of passing may request that their exams be reviewed. Members of the Board comprise the Appeals Reviewers. In July 2011, 35 unsuccessful examinees requested that their results be reviewed; eight passed on review. In February 2012, 30 unsuccessful applicants requested that their results be reviewed; one passed on review.

Admissions

The Indiana Supreme Court holds two main Admission Ceremonies each year in October and May, respectively. The October 2011 ceremony was held in Sagamore Ballroom at the Convention Center in Indianapolis, and the May 2012 ceremony was held at the Indiana Roof Ballroom.

A total of 656 attorneys were admitted to practice in the State of Indiana during the fiscal year: 605 on examination, 38 on Provisional Foreign License, and 13 on Business Counsel License.

Conditional Admissions

When an individual has satisfied the general qualifications for admission but, because of drug, alcohol, psychological or behavioral problems, the Board has concerns about the individual's character and fitness, the Board may offer the applicant conditional admission under Admission and Discipline Rule 12, section 6(c). Conditional Admissions, when permitted, are subject to conditions set out in consent agreements. Conditional Admissions are confidential and take many forms, all of which require monitoring by the Board. At the close of the fiscal year, the Board's staff was solely responsible for monitoring 36 individuals given Conditional Admission. Fifteen others were being monitored jointly by both the Board's staff and JLAP. Thirteen applicants completed their Conditional Admission requirements this fiscal year.



Former Justice Roger O. DeBruler (center) and his daughter are greeted in the Conference Room by Chief Justice Dickson.

Provisional Admission on Foreign License

Attorneys licensed in other states may be granted a provisional license to practice law in Indiana upon a finding by the Board that the individual has met the requirements set out in Admission and Discipline Rule 6, section 1. During the fiscal year, a total of 38 attorneys from other states or U.S. territories were granted provisional admission on foreign license.

The provisional license must be renewed annually or it expires. Upon the fifth consecutive renewal of the provisional license, the admission no longer needs to be renewed and becomes permanent. At the close of the fiscal year, 164 attorneys were provisionally admitted to practice law in Indiana under a foreign license.

Admission On Business Counsel License

The Indiana Business Counsel License allows an attorney licensed in another state, whose sole employer is a person or entity engaged in business in Indiana other than the practice of law, to be admitted to practice without examination. The Board granted Business Counsel Licenses to thirteen applicants this fiscal year.

The Business Counsel License is valid for one year so long as the employment continues. The license may be renewed for a like term of one year upon submission of verification of employment. Failure to maintain the employment requirements set forth in Admission and Discipline Rule 6, failure to qualify for renewal for some other reason, or failure to renew the business counsel license causes the license to expire. At the close of the fiscal year, 40 attorneys were admitted to practice law in Indiana under a Business Counsel License.

Certified Legal Interns

Under Admission and Discipline Rule 2.1, the Board is responsible for certifying law school students or graduates to serve as legal interns allowed to perform certain legal tasks under the supervision of an attorney. Certified legal interns gain practical legal experience in an approved program under the supervision of qualified attorneys prior to their being admitted to practice. This fiscal year, the Board certified 503 students and 47 graduates to serve as legal interns.

Formation of Associations for the Legal Profession

Lawyers seeking to organize or practice by means of professional corporations, limited liability companies, or limited liability partnerships must apply to the Board for approval prior to engaging in practice under the entity. Upon approval of the application, the Board issues a certificate of registration. Additionally, upon receipt of a written renewal application, the Board renews those certificates of registration upon a finding that the professional corporation, limited liability company, or limited liability partnership has complied with the applicable statutes and rules. There were 785 active professional corporations, 261 limited liability companies, and 192 limited liability partnerships registered

during this fiscal year. Of those numbers, 25 professional corporations, 31 limited liability companies, and ten limited liability partnerships were newly registered through the Board of Law Examiners.

COMMISSION FOR CONTINUING LEGAL EDUCATION

Julia L. Orzeske, Executive Director

The Commission for Continuing Legal Education was created in 1986. The Commission's basic duties are to regulate the mandatory minimum continuing legal education requirements of each attorney admitted in Indiana, regulate the mandatory continuing judicial education requirements of Indiana's judges, regulate education programs of mediators who serve Indiana courts under the Indiana ADR Rules, and regulate the Independent Certifying Organizations that certify attorney specialists under Indiana Admission and Discipline Rule 30. The Commission employs a part-time Executive Director, a full-time mediation services coordinator/office manager, and three full-time administrative assistants.

The following individuals served on the Indiana Commission for Continuing Legal Education during fiscal year 2012: the Honorable Charles K. Todd, Jr., of Richmond, Chair; John D. Ulmer of Goshen, Vice-Chair; the Honorable John T. Sharpnack of Indianapolis, Treasurer; Angela L. Freel of Evansville, Secretary; Joseph H. Yeager of Indianapolis, Immediate Past-Chair; Kellye M. Gordon of Indianapolis; the Honorable Nancy Eshcoff Boyer of Fort Wayne; Michael E. Tolbert of Merrillville; Gerald M. Bishop of Merrillville; Howard Mzumara, Ph.D. of Indianapolis; Steven A. Spence of Indianapolis; Shontrai D. Irving of Crown Point; Christina J. Miller of Merrillville; Steven M. Badger of Indianapolis; and Anika M. Calloway of Indianapolis. The Honorable Keith Mark Loyd of Franklin served as a liaison to the CLE Commission by virtue of his position as Chair of the Alternative Dispute Resolution Committee of the Judicial Conference of Indiana. Mr. Bishop, Mr. Tolbert and Mr. Yeager all retired effective December 31, 2011, and were succeeded by Ms. Miller, Mr. Irving, and Mr. Badger, respectively. Ms. Gordon resigned in February and was succeeded by Ms. Calloway.

Accreditation of CLE Courses and Hours

In fiscal year 2012, the Commission reviewed a total of 12,355 courses (an increase of roughly 5,400 courses, almost 78%, in the last three years) of all types, including traditional continuing legal education ("CLE") courses, non-legal subject courses, applied professionalism programs, distance education courses, and in-house courses. Of these, 3,288 were traditional courses (not in-house, non-legal subject, or distance education) for which an application for CLE accreditation was made, and 4,047 were traditional courses given by approved sponsors (where no application is required). The Commission denied accreditation to 36 traditional CLE applications and 21 traditional CLE approved-sponsor courses. Non-traditional courses are covered below.



The Court's educational outreach program, Courts in the Classroom ("CITC"), teaches the public about the history and operation of the court system. These students, guided by staff attorney Brian Eisenman, are taking part in a re-enactment of the events surrounding the 1954 U.S. Supreme Court decision, *Brown v. Board of Education*, which said segregation in public school was unconstitutional.

A total of 17,073 attorneys reported CLE credits to the Commission, amounting to 226,137 hours (33,641 of which were ethics credits).

Attorneys are allowed to take a limited number of credits in non-legal subject ("NLS") areas to enhance their proficiency in the practice of law. During the fiscal year; 398 NLS courses were reviewed. The Commission approved 396 NLS courses and denied accreditation to two. Attorneys reported a total of 5,472 NLS credits during this period, a 34% increase over fiscal year 2011.

Indiana attorneys are also permitted to take a limited number of CLE hours through interactive distance education or in-house courses. These courses must meet strict guidelines to be approved. The Commission approved 3,586 distance education courses and denied 170. The number of approved distance education courses in fiscal year 2012 represents more than a 7% increase over fiscal year 2011. A total of 1,898 attorneys reported 10,818 hours of distance education.

The Commission approved 140 in-house programs, and denied accreditation to four. One hundred eighty-one attorneys reported a total of 671 hours of in-house CLE.

Newly-admitted attorneys must complete programs designated by the Commission as appropriate for new lawyers, including a six-hour Applied Professionalism Course for Newly-Admitted Attorneys or participating in an ICCLE-approved mentoring program. The Commission makes grants available to providers to allow them to give the course to newly-admitted attorneys for little or no cost. During this fiscal year, 20 applied professionalism courses were approved and 573 newly-admitted attorneys attended these courses.

Mediator Registry

This fiscal year the Commission also continued administering and regulating a registry of court-approved mediators in Indiana. The first mediator registry was distributed in June 1997. The initial registry contained 235 listings for civil mediators and 110 listings for domestic relations mediators. As of June 30, 2012, those listings stood at 648 civil mediators and 677 domestic relations mediators. For the first time since the beginning of the registry, domestic relations mediators exceed the number of civil mediators. To remain on the registry, a mediator must pay an annual fee and report at least six hours per three-year education period of Continuing Mediation Education (“CME”) approved by the Commission. In fiscal year 2012, 167 people were trained in basic civil mediation and 169 were trained in basic domestic relations mediation. Over 1,180 mediators reported a total of 6,989 CME hours.

In 2009, the Commission established a registry of mediators who have been trained in mortgage foreclosure matters. There are currently 69 mediators listed on this registry.

Attorney Specialty Certification

In the area of attorney specialization, the Commission has accredited four Independent Certifying Organizations (“ICOs”) in eight practice areas. A panel of experts assists the Commission in its review of ICO specialty applications by reviewing the testing procedures used by the applicants for ICO accreditation. This fiscal year, this panel, made up of law professors, judges, and practitioners, was comprised by the Honorable Wayne S. Trockman of Evansville, Chair; the Honorable Melissa S. May of Indianapolis; Dr. Howard Mzumara (psychometrician) of Indianapolis; Professor David Vandercoy of Valparaiso; Professor Nicholas Georgakopoulos of Indianapolis; Lonnie Collins of Madison; and Dennis Frick of Indianapolis. Dr. Mzumara additionally serves as a Commissioner.

As of June 30, 2012, there were 281 listings for Indiana attorneys who are specialists in particular areas of law. This represents nearly a 100% increase over the number of such listings six years ago. These attorneys are certified in the practice areas of Family Law (73 specialists, certified by the Family Law Certification Board of the Indiana State Bar Association); Consumer Bankruptcy (12 specialists, certified by the American Board of Certification); Business Bankruptcy (27 specialists, certified by the American Board of Certification); Creditors Rights (five specialists, certified by the American Board of Certification); Civil Trial Advocacy

(38 specialists, certified by the National Board of Legal Specialty Certification/National Board of Trial Advocacy); Criminal Trial Advocacy (four specialists, certified by the National Board of Legal Specialty Certification/National Board of Trial Advocacy); Elder Law (18 specialists, certified by the National Elder Law Foundation); and Trust and Estate Planning (104 specialists, certified by the Indiana State Bar Association).

Growth of the Office and Its Responsibilities

The Commission’s responsibilities have continued to grow rapidly since its inception in 1986. In 1987, the first year for which statistics are available, the Commission reviewed 687 courses. This fiscal year, the Commission reviewed nearly eighteen times that number. In 1986, there were approximately 10,500 active Indiana attorneys. Now, there are over 18,000. Originally, the Commission’s regulatory duties were enumerated in only one Admission and Discipline Rule. Now, the Commission operates under four. Within the last 15 years, the Commission has taken on the added responsibilities of mediation registration and education; new attorney education regulation; attorney specialization; judicial education regulation; mortgage foreclosure prevention mediator and attorney education; and ethics course accreditation. Within the last several years, the Commission has added the new accreditation areas, non-legal subject matter courses, mentoring programs, and distance education courses. The Commission has added no staff, other than a contract attorney for specialization, since 1999. Judging from the increase in course load, the Commission’s work load has doubled between fiscal year 2009 and fiscal year 2012.



Justice Sullivan (center) with former Marion County Prosecutor Scott Newman (left) and Marion Superior Court Judge David Certo (right) at the 10th anniversary celebration of “Community Court,” a “problem solving court” in downtown Indianapolis.

The Commission continues to consider a variety of avenues for managing the explosion of work, including on-line applications and attendance reporting, application and

late-processing fees for courses and attendance reports, and other rule changes, as mentioned in last year's annual report. Under the current Rules, there is no penalty for submitting late applications or attendance reports. Additionally, it appears applicants are seeking approval of courses in Indiana (for which there is no charge) and submitting those approvals to states where accreditation is more expensive and difficult, so as to obtain reciprocal approvals in those states. The Commission has proposed rules to the Indiana Supreme Court to shore up this apparent loophole and help the Commission manage its voluminous paperwork.

Outreach to Attorneys and Law Students

In July 2010, Directors of several Supreme Court Agencies began discussing a program for Indiana attorneys and law students that would address compliance with our Admission and Discipline Rules and the Rules of Professional Conduct beyond the minimum. With the Indiana Supreme Court's support and encouragement, the Board of Law Examiners, the Judges and Lawyers Assistance Program, the Commission for Continuing Legal Education, and the Disciplinary Commission developed such a program, called "Life in the Law." In fiscal year 2011, Judge Earl Penrod facilitated six "Life in the Law" presentations, attended by over 400 Indiana attorneys and law students.

CLE Staff Accomplishments

The Commission has been active on the state and national level. Anne Davidson, Office Manager and Mediation Services Coordinator, served on the Membership Committee of the national association of CLE regulators (CLEreg, formerly O.R.A.C.L.E.), and Executive Director Julia Orzeske served on its Bylaws Committee. In addition, Ms. Orzeske recently completed a three-year term on the ABA Standing Committee on Specialization and is an active member of the Indiana State Bar Association's ("ISBA's") PLEADS and ADR sections. She has served on the ISBA's Women in the Law and Long Range Planning Committees and now serves on the ISBA's Board of Governors and its Leadership Forum Committee. She is a frequent speaker to newly admitted attorneys and law students on matters regarding continuing legal education and the mediator registry. Ms. Davidson and Lana James, an ICCLE Administrative Assistant, also serve on the Supreme Court Public Access Committee. Mark Bryson has recently been engaged by CLEreg to serve as the group's second Executive Director. He is housed in the ICCLE offices at 30 South Meridian Street in Indianapolis and receives administrative support from the ICCLE staff.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION

G. Michael Witte, Executive Secretary

The Indiana Supreme Court Disciplinary Commission ("the Commission") is responsible for investigating and prosecuting attorney discipline proceedings. The Commission is not tax supported; rather it is funded primarily through the annual registration fee required of all lawyers who wish to

keep their Indiana law licenses in good standing.

The Disciplinary Commission added the position of Deputy Executive Secretary in 2012. Staff attorney Charles Kidd was appointed to that position to serve as the primary case administrator for the Commission. Also, the administration of Commission cases has been enhanced with the implementation of an electronic case management system. The system will greatly assist in case tracking, time management, and the preparation of periodic statistical reports.

Members who served on the Disciplinary Commission during the fiscal year were: R. Anthony Prather of Indianapolis, Chairperson; Maureen Grinsfelder of Fort Wayne, Vice-Chairperson; Catherine A. Nestruck of Evansville, Secretary; Corinne R. Finnerty of North Vernon; William A. Walker of Gary; Fred Austerman of Richmond; Andrielle Metzler of Indianapolis; Trent McCain of Dyer; and Nancy Cross of Carmel.

Case Filings and Dispositions

During fiscal year 2012, 1,730 grievances were filed with the Commission. The Commission initiated 73 of those grievances in its own name based upon information from several reporting sources, including lawyers and judges. Third-party complainants filled the balance of the grievances.

During the reporting period, the Commission filed 34 Verified Complaints for Disciplinary Action with the Supreme Court, 29 less than the preceding year. These Verified Complaints, together with amendments to pending Verified Complaints, represented findings of probable cause by the Commission in 82 separate counts of misconduct, 20 less than the preceding year.

The Court issued 66 final orders disposing of lawyer discipline cases, seven more than the preceding year, representing the completion of 95 separate matters, 23 more than in the preceding year. By disposition type, those cases were resolved as follows:

Private Reprimands.....	6
Public Reprimands.....	14
Suspensions with Automatic Reinstatement.....	6
Suspensions with Conditional Reinstatement.....	9
Suspensions without Automatic Reinstatement....	13
<i>(Including orders of indefinite suspension for failure to cooperate with Commission, orders of reciprocal discipline, and orders revoking probation.)</i>	
Resignations Accepted.....	8
Disbarments.....	2
Judgments for Respondent.....	1
Dismissals for Other Reasons.....	1
Findings of Contempt.....	5
Disability Determination.....	1
Total.....	66

The Commission resolved five cases administratively through the issuance of private administrative admonitions. In addition to these concluded matters, the Court issued

orders of interim suspension in four cases upon the request of the Commission. The Court also ordered the suspension of the law licenses of 216 active and inactive lawyers for failing to pay their annual registration fees.

Reinstatements

During the reporting period, nine previously disciplined lawyers filed petitions to have their law licenses reinstated. The Court issued five final orders in lawyer reinstatement proceedings and dismissed two reinstatement petitions. Of the five final orders, two granted reinstatement and three denied reinstatement to the petitioning attorneys.

Trust Account Overdrafts

The Commission was notified by financial institutions of 100 overdrafts on attorney trust accounts this fiscal year. The following are the results of overdraft inquiries during the reporting year:

Carried Over from Prior Year..... 41
 Overdraft Reports Received..... 100
 Inquiries Closed.....112
 Inquiries Carried Over Into Following Year..... 29

Reason for Inquiries Closed:

Bank Error..... 12
 Deposit of Trust Funds to Wrong Trust Account... 2
 Disbursement from Trust Before
 Deposited Funds Collected..... 18
 Referral for Disciplinary Investigation..... 22
 Disbursement from Trust before
 Trust Funds Deposited.....14
 Overdraft Due to Bank Charges
 Assessed Against Account..... 7
 Inadvertent Deposit of Trust Funds
 to Non-Trust Account..... 1
 Overdraft Due to Refused Deposit
 for Bad Endorsement..... 4
 Law Office Math or Record-Keeping Error..... 18
 Death, Disbarment or Resignation of Lawyer..... 2
 Inadvertent Disbursement of Operating
 Obligation From Trust.....10
 Non-Trust Account Inadvertently
 Misidentified as Trust Account..... 1
 Fraudulent Office Staff Conduct..... 1

Case Highlights

The Court decided six cases through the issuance of per curiam opinions. Two of the reported cases resulted in disbarment, which is reserved for the most serious misconduct.

In *Matter of Mendenhall*, 959 N.E.2d 254 (Ind. 2012), Respondent was disbarred after being found guilty but mentally ill of five crimes, including attempted murder. He received a forty-year prison sentence. The Court noted that illness might be a mitigating factor in determining a discipline sanction, but Respondent did not make that assertion in his discipline case. His mental health was only raised as a defense in the criminal case.



Justices Steven David and Robert Rucker are among the 150 people who attended a continuing legal education program about selected Indiana Supreme Court cases. The program was coordinated by Justice Sullivan.

The second disbarment occurred in *Matter of Patterson*, 969 N.E.2d 593 (Ind. 2012). Respondent was convicted of three counts of class D felony theft of client funds. Respondent was charged with stealing over \$17,000 from 24 clients. Respondent had a prior discipline history for stealing from his law firm’s trust account and practicing law during a prior period of suspension.

Two per curiam opinions resulted in prosecuting attorneys receiving public reprimands. In *Matter of Brizzi*, 962 N.E.2d 1240 (Ind. 2012), the Court ruled that Respondent’s statements to the media at the time of charging violated Professional Conduct Rules 3.6(a) and 3.8(f). The Court recognized that the Professional Conduct Rules establish “safe harbors” regarding extrajudicial statements. See *Id.* at 1246. However, the Court ruled that Respondent’s media statements strayed beyond the safe harbors.

Respondent presented evidence that supported a finding that the criminal defendants did not suffer actual prejudice at trial. However, the Court emphasized in its ruling that the misconduct occurred when the statements were made by the Respondent. The passage of time, protective measures taken by the trial court, and a lack of actual prejudicial impact on the trial did not extinguish the misconduct that occurred when the statements were made.

The Brizzi decision also determined that the public record safe harbor refers “only to public government records . . .” *Id.* at 1247. The safe harbor does not extend to any information contained in any publicly accessible media outlet.

The second case of prosecutor discipline, *Matter of Flatt-Moore*, 959 N.E.2d 241 (Ind. 2012), involved a crime victim’s role in plea negotiations. Respondent, a deputy prosecutor, allowed the crime victim to leverage the criminal prosecution to a favorable advantage in the victim’s civil dispute with the criminal defendant. The Court acknowledged the wide discretion prosecutors have in resolving cases, and that crime victims are permitted to participate in plea agreements. However, the Respondent completely surrendered her prosecutorial discretion by allowing the victim to have

unfettered veto power over the plea negotiations.

The final two per curiam opinion cases involved unreasonable fees. Additionally, both opinions cited as sanction aggravators the respondents' lack of remorse and lack of insight to their respective misconduct.

In *Matter of Powell*, 953 N.E.2d 1060 (Ind. 2011), the Respondent was hired by a client with a history of drug and alcohol abuse to dissolve the client's special needs trust. A prior attorney had recently established the trust for the protection of the same client. Respondent charged a contingency fee of one-third of the trust value, which resulted in a fee of \$14,815.55. He performed approximately 15 hours of work over the course of four days. The Court noted that the Respondent "knew the case did not involve any complex issues, prolonged time commitment, risk of no recovery, or even any opposition." *Id.* at 1064. These factors impacted the reasonableness of the fee.

Respondent argued that a high fee was justified because he was warned by the client's prior counsel that the client might have a breach of trust cause of action against Respondent. The Court firmly rejected "any suggestion that an attorney's concern that he may be committing legal malpractice in representing a client justifies charging the client a higher fee." *Id.*

Among several other sanction aggravators, the Court also found that Respondent took advantage of a vulnerable client. Respondent received a 120 day suspension without automatic reinstatement.

In *Matter of Newman*, 958 N.E.2d 792 (Ind. 2011), the client and her sister inherited a closely held corporation. Disagreements arose involving both the corporation and the estate. The client hired Respondent to represent her in these matters. The fee agreement called for an hourly rate plus 25% of the client's estate distribution. In less than four weeks, the client fired Respondent and asked for a statement of work performed and return of her file. Respondent waited nearly seven weeks before filing his withdrawal, but only after he first filed a "Notice of Intent to Hold Attorney's Lien" on the client's distribution. After nearly three years, Respondent finally returned the file and provided his fee summary.

Respondent was found to have violated Professional Conduct Rule 1.4(a)(4) by failing to comply with client's request for information, Rule 1.5(a) by charging an unreasonable fee, Rule 1.16(a)(3) by failing to withdraw representation, and Rule 1.16(d) by failing to return the case file.

Regarding the unreasonable fee, the Court ruled that it is not a per se unethical fee to charge a contingent fee where there is no risk of total non-recovery by the client. However, the Court found the fee in this case to be unreasonable because events subsequent to the initial fee agreement changed the impact of the fee. When Respondent was discharged, he had not completed the scope of the representation; therefore, he could not assert a lien for 25% of the estate distribution. His fee could only be based on quantum meruit.

Regarding the failure to return client property, the Court found the attorney's lien to have been unnecessary because the client always acknowledged that some fee was owed

to Respondent. The low risk of not getting paid negated justification to retain the client's file. The Court found as a sanction aggravator that the Respondent "engaged in an unrelenting pattern of clearly unjustified misconduct to gain unfair leverage in his fee dispute" with his client. *Id.* at 800.

The totality of Respondent's misconduct actions and his behavior during the discipline proceedings led the Court to determine that Respondent lacked remorse or insight into his misconduct and that similar misconduct could be repeated in the future. Respondent received an eighteen-month suspension without automatic reinstatement.

The Commission brought a number of actions this year to enforce disciplinary Orders of the Court. Five attorneys were cited for contempt for practicing law during their period of license sanction. Three were fined for their misconduct, one was fined and also received a 30-day conditional jail sentence (but avoided incarceration by meeting the conditions), and one, a disbarred attorney who continued to practice law during his disbarment, served a seven-day jail sentence at the Indiana Department of Correction.

In *Matter of Drook*, 952 N.E.2d 751 (Ind. 2011), Respondent received a 30-day suspension for misconduct with automatic reinstatement. The Commission objected to the automatic reinstatement when it was discovered that Respondent filed an appellate brief on the first day of his suspension. Respondent asserted a mistaken belief that his suspension began on the following day. The Court extended Respondent's suspension by an additional ten days.

In *Matter of Strup*, 968 N.E.2d 1292 (Ind. 2012), Respondent originally received a 90-day suspension because of his second impaired driving conviction. The sanction was stayed subject to his completion of at least two years of probation with monitoring by the Judges and Lawyers Assistance Program. The Respondent violated the monitoring agreement's requirement to refrain from alcohol consumption. The stayed suspension was revoked without automatic reinstatement.

Lawyers who fail to cooperate with the discipline investigation process are subject to an administrative license suspension. The license is usually reinstated upon



Guests in the Courtroom await the start of Justice Massa's formal robing ceremony on May 7, 2012.

the lawyer’s belated cooperation. In *Matter of Atanga*, 969 N.E.2d 20 (Ind. 2012), Respondent had failed to cooperate in three separate discipline investigations. Additionally, the Court noted that Respondent had failed to cooperate in four other discipline investigations since 2010, but got reinstated after filing belated responses. In the current case, the Court stated that it “has rarely encountered a disciplinary history that displays such disregard for the disciplinary process as Respondent’s,” and it found Respondent’s inactivity to be egregious. *Id.* at 21. The Court took the extraordinary measure of converting Respondent’s administrative suspension to an indefinite suspension. Respondent must petition the Court, and meet the burden of proof, for reinstatement.

INDIANA JUDGES AND LAWYERS ASSISTANCE PROGRAM

Terry L. Harrell, Executive Director

The Indiana Judges and Lawyers Assistance Program (“JLAP”) provides assistance to judges, lawyers, and law students who may experience physical or mental impairments that result from disease, chemical dependency, mental health problems, or age that could impair their ability to practice in a competent and professional manner. The purpose of JLAP is to assist the impaired in recovery; to educate the bench and bar about mental, physical, and chemical impairment issues and the assistance JLAP has to offer; and to reduce the potential harm caused by impairment to the individual, the public, the profession, and the legal system. All interactions and communications with JLAP are confidential -- with exception for homicidal or suicidal ideation, no information is ever released without the signed consent of the party involved.

The Supreme Court appoints the Indiana Judges and Lawyers Assistance Program Committee (“JLAP Committee”), composed of five judges, seven lawyers, one law student representative, and two members that can be from any of the three categories, to oversee JLAP. The 2012 Committee included: Kimberly A. Jackson of Brazil, Chair; the Honorable Marianne L. Vorhees of Muncie, Vice Chair; the Honorable Donald L. Daniel of Lafayette, Treasurer; Daniel G. McNamara of Fort Wayne, Secretary; the Honorable Elaine B. Brown of Indianapolis; the Honorable Stephen R. Heimann of Columbus; the Honorable David T. Ready of Mishawaka; the Honorable David A. Shaheed of Indianapolis; Dr. Joseph T. Baruffi of Valparaiso; Tonya J. Bond of Indianapolis; Michele S. Bryant of Evansville; Edmond W. Foley of South Bend; Ellen F. Hurley of Indianapolis; Shelice R. Tolbert of Crown Point; and John R. Vissing of Jeffersonville.

The JLAP staff consists of an Executive Director, two part-time Clinical Case Managers, a part-time Northern Indiana Liaison, and an Office Manager. JLAP’s Northern Indiana Liaison, J. Frank Kimbrough, assists individual members of the legal community and works to raise awareness of JLAP’s services in the northern third of the state.

Volunteer Training

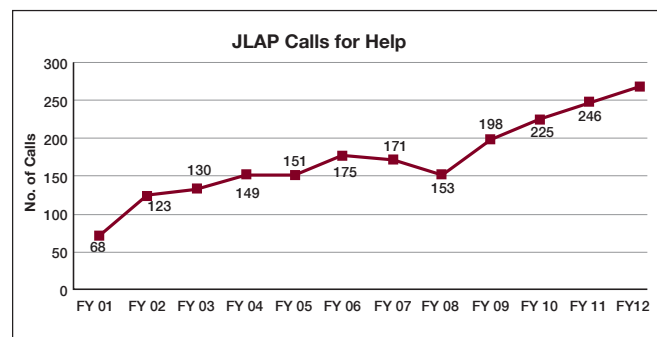
This small core of JLAP committee members and staff could not offer a helping hand to members of the legal profession all around the state without the efforts of almost 300 JLAP volunteers. These volunteers spend countless hours meeting with distressed lawyers, judges, and law students in their communities. They serve as a link between the person and whatever helping resources the person needs. They may serve as mentors, monitors, sources for information and resources, or simply as confidential sounding boards. They are the backbone of JLAP, and the JLAP Committee members and staff are grateful for their services.

During this fiscal year, JLAP trained 193 volunteers through training sessions conducted in Evansville, French Lick, Indianapolis, Jeffersonville, La Porte, and Merrillville. The training sessions included basic knowledge of how JLAP works, skills for listening and motivating others, suicide prevention, and information on resources.

In addition, JLAP sent three staff members and two JLAP Committee members to QPR training. QPR stands for “Question, Persuade and Refer” and is a very specific type of suicide prevention training. JLAP has always trained volunteers in suicide prevention and the JLAP staff has many hours of suicide prevention training. However, QPR is designed for people who are not mental health professionals in the same way CPR training is designed for non-medical people. In addition, the training equipped the participants to teach the QPR course to others. With this training, JLAP will be able to standardize how our volunteers are trained in the area of suicide prevention. Training lawyers and judges in QPR will benefit not only other lawyers, but the public as well. Lawyers and judges frequently work with people in stressful situations and are in a position to observe warning signs indicating that someone, whether it is a client, a co worker, or opposing counsel, is in crisis and might be contemplating suicide.

Utilization

This fiscal year, JLAP logged 256 new calls for help, ranging from simple requests for information or referral, to requests for JLAP to coordinate a group intervention. Calls for help have increased significantly since JLAP began keeping records in 2001, as shown in the following chart:



JLAP had 87 calls for help with substance abuse issues, 96 calls for help related to mental health issues, 20 calls for assistance with physical impairment issues, eight calls for help related to career change or retirement issues, and 45 calls with an unidentified impairment at the time of the initial call. This shows an increase in calls for assistance with mental health and physical issues and a slight decrease in calls for assistance with substance abuse issues. (Although many cases contain multiple issues (e.g., depression and alcohol dependence), for statistical purposes JLAP uses the primary issue identified in the initial call for help.) Of the calls for help received, 61% were from or about attorneys, 20% were from or about law students or bar applicants, 6% were from or about judges, 1% were from members of the legal community calling for resources for a family member, non-lawyer colleague or friend, and 12% were unidentified in terms of occupation.

A “call for help” becomes a “case” only when JLAP staff meet personally with a client and/or determine there will be ongoing contact with the client or a third party (such as in the case of an intervention). A simple call for a referral or a one-time consultation will not result in a case being opened.

As of June 30, 2012, JLAP had 356 active cases: 193 with substance abuse issues, 202 with mental health issues, 32 with career change or retirement issues, and 33 with physical issues, nine with practice management issues, 25 with situational stressors, and 10 where no issue was identified. (Many JLAP clients face multiple issues.) This represents a 17% increase over the number of active cases reported at the close of fiscal year 2011.

Monitoring

JLAP offers monitoring as a service to provide accountability and supervision for those trying to develop a successful recovery program for mental health or addiction problems. Participants make a choice to participate in the monitoring program and sign a written release of information giving JLAP permission to report on their progress to others in positions to hold the participants accountable. The monitoring program benefits the participants by helping them adhere to their own recovery plans. When an individual on a monitoring agreement fails to comply with his or her own recovery plan, JLAP reports the failure to the disciplinary or licensing organization, the employer, or the individual that is part of the monitoring agreement. That entity or person can then take appropriate action to hold the individual accountable and protect the public.

JLAP has developed several different kinds of monitoring agreements to further this service. JLAP’s most formalized monitoring agreements exist with the Indiana Supreme Court Disciplinary Commission, the Indiana Commission on Judicial Qualifications, and the State Board of Law Examiners. Participants sign a consent allowing JLAP to monitor their recovery programs and make regular reports to the appropriate disciplinary or licensing body. Participants may also enter into less formal “interim” or “voluntary” monitoring agreements with JLAP in anticipation of disciplinary action, reinstatement, or issues that might surface during the character and fitness component

of the Bar application process. These agreements monitor the individual’s recovery program but make no reports unless and until the participant releases JLAP to do so. JLAP has developed monitoring agreements in which reports are made to employers, local judges, colleagues, or family members rather than to disciplinary or licensing agencies. JLAP has also monitored some individuals on a purely voluntary basis. These individuals find that even though JLAP does not report to a third party, the accountability to JLAP helps them stay on track with their recovery plans. These situations would be more like working with a personal coach or some other form of personal accountability. JLAP views these latter types of agreements as opportunities to intervene in the course of someone’s addiction or mental health issue at an earlier point and limit the damage to that person’s health, family, reputation and career. As of June 30, 2012, JLAP was monitoring 31 formal agreements and 22 interim or voluntary agreements.

Strategic Planning

In fiscal year 2010, JLAP completed a comprehensive strategic planning process. The number of things JLAP “could” do is limitless; therefore, JLAP set six priorities and developed a method that guaranteed its energies were directed toward those priorities. Below is a listing of the six priorities and brief summaries of JLAP’s efforts regarding them during fiscal year 2012:

(1) *Assure JLAP services are available statewide.*

- ✓ JLAP hosted six volunteer training sessions around the state and trained approximately 193 volunteers.
- ✓ JLAP presented 35 educational programs around the state, reaching approximately 2,088 judges, lawyers, and law students.

(2) *Meet the special needs of law students.*

- ✓ JLAP presented at law school orientations, law school classes, and specially scheduled law school events. JLAP staff and volunteers participated in seventeen presentations at the Indiana law schools and presented to approximately 783 law students.
- ✓ Executive Director Terry Harrell presented to pre-law students at DePauw University, educating the students about the need for self-care and stress management in graduate school and the character and fitness component of the bar exam.

(3) *Meet the special needs of judges.*

- ✓ In addition to including judges in local JLAP volunteer trainings, JLAP also conducted a special training for judges at the Annual Judicial Conference in September 2011. JLAP trained approximately 50 judicial officers as JLAP volunteers.

(4) *Provide training for attorneys in the areas of suicide prevention, coping with economic challenges, and retirement planning.*

- ✓ Three JLAP staff members and two JLAP Committee members obtained certification as QPR Trainers to enable JLAP to train lawyers around the state in a uniform method of suicide prevention.
- ✓ JLAP continued to make presentations on resiliency to lawyers and for the first time, provided two presentations on resiliency to law students.

(5) *Maximize the efficiency of JLAP Committee members, staff, and volunteers.*

- ✓ JLAP completed six volunteer trainings designed to allow better utilization of volunteers in accomplishing JLAP's goals. JLAP originally planned to do three during fiscal year 2012 but had requests for three additional sessions. As a result of these volunteer training sessions, the volunteer roster is now approaching 300.

(6) *Secure sufficient funding to meet these priorities.*

- ✓ With assistance from the Indiana Continuing Legal Education Commission and the Indiana Bar Foundation, JLAP solicited donations for the "Friends of JLAP Fund." This fund assists JLAP in expanding programming and offering additional services to the Indiana legal community. In response to this solicitation, the Indiana legal community contributed approximately \$2,600 to assist JLAP.

JLAP Support Groups

JLAP offers five support groups each month to judges, lawyers, and law students. There are monthly mental health and substance abuse support groups in Indianapolis and Merrillville. JLAP also offers a monthly general support group in Jeffersonville.

JLAP Activity at the State and National Level

JLAP continued to collaborate with local bar associations, the Indiana State Bar Association ("ISBA") and the American Bar Association ("ABA"). Executive Director Terry L. Harrell also served as Chair of the ISBA's Professional Legal Education, Admission and Development Section, Vice-Chair of the ISBA Wellness Committee, and served on the planning committee for the ISBA's Solo Small Firm Conference.

During this fiscal year, Ms. Harrell also served on the ABA's Commission on Lawyer Assistance Programs ("CoLAP"). David F. Hurley, a JLAP volunteer and former JLAP Committee member, served on the CoLAP Advisory Committee. CoLAP coordinates and supports the national network of Lawyer Assistance Programs. In September 2011, Ms. Harrell chaired the CoLAP National Conference in Tampa, Florida. Ms. Harrell also served on the CoLAP

Judicial Assistance Initiative and as Chair of the CoLAP Senior Lawyers Committee. She also served as the liaison to the ABA's Commission on Disability Rights.



The Court's preference is that oral arguments start on time, and the justice who enters the courtroom first typically keeps an eye on the clock. Former Justice Ted Boehm donated a watch with a built-in receiver to keep it synchronized with an atomic clock, which Justice Rucker used from 2010 until 2012, during the years he was "first in." Here, Justice Rucker turns over possession of the "atomic watch" to Justice David, who became the justice first in when Justice Massa arrived.

INDIANA JUDICIAL NOMINATING COMMISSION/INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

Adrienne Meiring, Counsel

The Indiana Judicial Nominating Commission ("Nominating Commission") and the Indiana Commission on Judicial Qualifications ("Qualifications Commission") are established by article 7, section 9, of the Indiana Constitution. The Chief Justice of Indiana or his designee is the ex officio Chairman of both Commissions. The other six members, who serve three-year terms, are three lawyers elected by other lawyers in their districts and three non-lawyers appointed by the Governor.

In addition to the Chief Justice (or his designee), the elected and appointed Commission members as of June 30, 2012 were Molly Kitchell of Zionsville; Fred McCashland of Indianapolis; James O. McDonald, Esq., of Terre Haute; Jean Northenor of Warsaw; John D. Ulmer, Esq., of Goshen; and William E. Winingham, Jr., Esq., of Indianapolis. John O. Feighner, Esq., of Fort Wayne and Mike Gavin of Warsaw also served during the fiscal year. The Nominating Commission met on eleven occasions, and the Qualifications Commission met seven times during the fiscal year. The two commissions met for a combined total of 35 times over fiscal years 2011 and 2012, nearly equal to the 36 times the two commissions met over the proceeding four fiscal years. This dramatic increase in meetings is attributable to the large number of retirements that have occurred on the Supreme

Court, Court of Appeals, and Tax Courts in 2011 and 2012.

Although comprised of the same members, the two Commissions perform distinct functions. The Nominating Commission appoints the Chief Justice of Indiana from among the five Supreme Court Justices. The Nominating Commission also solicits and interviews candidates to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court. It selects three nominees for each vacancy, and the Governor appoints one of the nominees to fill the vacancy.

On December 6, 2011, Chief Justice Randall T. Shepard announced that he would retire from the Indiana Supreme Court in March 2012. After publicizing the vacancy, the Nominating Commission conducted interviews of fifteen candidates. The Commission completed its evaluation of the candidates in February 2012 and sent three names to the Governor for his selection of Justice Shepard's replacement: Judge Cale J. Bradford of the Indiana Court of Appeals; attorney Mark S. Massa of Indianapolis; and attorney Jane A. Seigel of Indianapolis. On March 24, 2012, Governor Daniels appointed Mark S. Massa as the 107th justice of the Indiana Supreme Court.

The Nominating Commission also had public meetings on May 15, 2012 with the justices to hear their thoughts on the most important qualities and attributes for a chief justice to possess. After hearing from the current justices, the Commission selected Justice Brent E. Dickson as the next Chief Justice of Indiana.

On April 5, 2012, Judge Carr L. Darden officially announced that he would retire from the Court of Appeals of Indiana in July 2012. After publicizing the vacancy, the Nominating Commission conducted interviews of fourteen candidates. The Commission completed its evaluation of the candidates in June 2012 and sent three names to the Governor for his selection of Judge Darden's replacement: Marion Superior Court Judge Robert R. Altice, Jr.; Indianapolis attorney Patricia Caress McMath; and Madison Circuit Court Judge Rudolph R. Pyle, III.

On April 2, 2012, Justice Frank Sullivan, Jr., announced that he would be retiring from the Indiana Supreme Court. Before the close of the fiscal year, the Nominating Commission set an application deadline and interview schedule to evaluate candidates for the vacancy.

The Nominating Commission also certifies former judges as senior judges to help qualifying courts with their caseloads. During this fiscal year, the Nominating Commission certified two new senior judges and recertified 98 senior judges.

The Qualifications Commission investigates allegations of ethical misconduct brought against Indiana judges, judicial officers, and candidates for judicial office. Periodically, the Commission privately cautions judges who have committed relatively minor or inadvertent violations of the Code of Judicial Conduct. In the most serious cases, the Qualifications Commission prosecutes formal disciplinary charges in public proceedings before the Supreme Court. Additionally, the Qualifications Commission and its staff provide judges and judicial candidates with advice about their ethical obligations, and Commission counsel responded to several hundred informal requests for advice during the fiscal year.

The Qualifications Commission considered 389 complaints alleging judicial misconduct this fiscal year. It dismissed 174 complaints summarily because they did not raise valid issues of judicial misconduct and, instead, were complaints about the outcomes of cases or were otherwise outside the Commission's jurisdiction. Another 181 were dismissed on the same grounds after Commission staff examined court documents or conducted informal interviews.

Of the remaining 34 cases on the Qualifications Commission's docket, the Commission requested the judges' responses to the allegations and conducted inquiries or investigations. Of those, four complaints were dismissed after the Qualifications Commission concluded the judges had not violated the Code of Judicial Conduct, one complaint was dismissed without prejudice, two complaints were dismissed when the judges took remedial actions, and one investigation was closed for administrative reasons. The Qualifications Commission sent advisory letters or privately cautioned seventeen other judges for deviations from their ethical obligations. The Qualifications Commission's decision to caution a judge rather than proceed to formal, public charges depends upon the seriousness of the violation, the judge's acknowledgement of the violation, whether the conduct was intentional or inadvertent, whether the judge has a history of meritorious complaints, and other mitigating or aggravating circumstances.

The Qualifications Commission concluded one case against a judge this fiscal year by issuing a public admonition in lieu of filing charges. The Commission found probable cause to file disciplinary charges against Judge Rebekah F. Pierson-Treacy for making inappropriate statements in a campaign fundraising invitation that gave the appearance that specific campaign contributions could result in particular rulings. Judge Pierson-Treacy agreed to accept a public admonition in lieu of charges; the Commission publicly admonished her and charges were not filed.

During the fiscal year, the Supreme Court resolved one disciplinary case filed by the Commission. After accepting a conditional agreement submitted by the Commission and the judge, the Indiana Supreme Court suspended Judge Jeffrey



Chief Justice Dickson and Justice Rucker in the Robing Room.

A. Harkin for 60 days without pay in *Matter of Harkin*, 958 N.E.2d 788 (Ind. 2011). The parties agreed that Judge Harkin abused his judicial authority and committed conduct prejudicial to the administration of justice by referring litigants to a de facto traffic school deferral program that had not been authorized by state statute and then dismissing the litigants' tickets without any dismissal request from the prosecutor. The parties also agreed that Judge Harkin failed to promote public confidence in the independence, integrity, and impartiality of the judiciary when he made statements during one case attempting to dissuade a litigant from disputing a traffic ticket.

Seven inquiries or investigations were pending at the end of the fiscal year.

The Nominating Commission and Qualifications Commission are staffed by the Division of State Court Administration with a full-time attorney, a part-time staff attorney, and an administrative assistant. A more detailed report about the Commission and its members and activities may be found at www.IN.gov/judiciary/jud-qual/.

“COURTS IN THE CLASSROOM”

*Dr. Elizabeth R. Osborn,
Assistant to the Chief Justice
for Court History and Public Education*

Introduction

Fiscal year 2012 marked the eleventh anniversary of the Indiana Supreme Court's education outreach program, “Courts in the Classroom” (“CITC”). CITC's goal is to promote knowledge about the operation and history of the Indiana judiciary to educators, lawyers, and citizens of Indiana through oral argument webcasts, on-line lesson plans, museum-style exhibits, searchable databases, virtual tours of Indiana courthouses, courtroom reenactments, historical lectures, teacher workshops, and outreach programs within and outside of the Indianapolis area. Two keynote programs in fiscal year 2012 were a statewide civic education workshop for K-12 teachers and administrators, and a Constitution Day contest whose top prize was a classroom visit by an Indiana Supreme Court justice.

K-12: Civic Education

Continuing the efforts begun in fiscal year 2011 to promote the iCivics project led by retired U.S. Supreme Court Justice Sandra Day O'Connor, CITC partnered with Judge Gregg Donat and Indiana attorney Mike Brown to develop a one-day conference for educators focusing on the materials available to teachers at iCivics.org. Approximately 100 teachers attended the program, thereby potentially impacting as many as 13,000 Indiana school children.

The identification of prospective attendees began in November 2011 when former Chief Justice Randall T. Shepard sent letters to more than 600 Indiana judges and lawyers asking them to nominate outstanding educators in their communities to attend a workshop at the Indiana Statehouse on Friday, April 13, 2012. A total of 186 nominations were received from around the state.



More than 100 teachers participated in this year's CITC civics workshop. The break-out session shown here was in the Supreme Court Law Library.

In addition to the workshop, over the course of the year CITC staff continued to develop and promote materials for K-12 educators about the judicial branch. In this capacity, CITC represented the Court at a variety of events around the state and nation: the American Association of State and Local Historians annual meeting; Hoosier Heritage Day at the Indiana State Fair; Indiana Statehood Day; and seven social studies teacher in-services sponsored by Ball State University. For a second year, CITC hosted undergraduate students from Indiana University-Purdue University at Indianapolis (“IUPUI”) interested in becoming history teachers and graduate students from the IUPUI History Department's Public History program.

Courtroom Events for Students and Lawyers

Almost 1,500 students signed up to participate in CITC activities during the 2011-12 school year. CITC's five free annual interactive programs are: Constitution Day (September); “My Place is in the Voting Booth”—based on Helen M. Gougar's attempt to vote (November); Bound for Freedom—based on a freedom suit filed on behalf of an Indiana slave (February); *Ex Parte Milligan* Comes to Life (March), and *Brown v. Board of Education* (May).

In a continuing effort to expand CITC's reach outside of the Indianapolis area, this year's Constitution Day program took the form of a statewide contest. Teachers were asked to submit a brief description of why they would like an Indiana

Supreme Court justice to visit their classrooms. The winners were East Elementary School in Pendleton and Lawrence North High School in Indianapolis. Justice Steven David visited the winning classes on September 17, 2011.

As part of the Indiana Supreme Court Legal History Lecture Series, CITC and the Indiana Commission for Continuing Legal Education hosted or helped to organize six different CLE programs this fiscal year. Programs were held in partnership with the Indiana Historical Bureau (“The Northwest Ordinances, Slavery, and Indiana”), Indiana Bar Foundation (“Indiana’s Civic Health Index”), Indiana Attorney General (“The Life and Times of Dred Scott”), and Ivy Tech Community College—Lafayette (“Justices of the Indiana Supreme Court”). CITC presented a program on selected cases from Indiana in the U.S. Supreme Court. CITC also helped coordinate CLE credit for three sessions on preservation law at the O’Brien Preservation Conference.

On the Web

Broadcasting oral arguments and other courtroom events continued to be a popular service provided by the Court through CITC. The Court webcast almost 90 hours of live streaming video in fiscal year 2012, including 81 Supreme Court and 19 Court of Appeals oral arguments, nine student events, and 19 other events. Since October 2001, CITC has webcast all Supreme Court and selected Court of Appeals oral arguments held in the Indiana Supreme Court Courtroom with the help of the Indiana Higher Education Telecommunications System.

INDIANA SUPREME COURT LAW LIBRARY

Terri L. Ross, Librarian

The Supreme Court Law Library (“the Library”) originated with an 1867 act of the Indiana legislature that gave custody of the law books then in the State Library to the Supreme Court. The primary mission of the Library is to support the research needs of the justices, judges, staff, and agencies of the Supreme Court, the Court of Appeals, and the Tax Court. The Library also serves as a research venue for many state agencies, the Office of the Governor, the General Assembly, members of the private bar, and the citizens of Indiana.

The Library contains a comprehensive collection of legal materials that must be kept current. During this fiscal year, the Library staff received and processed approximately 1,098 volumes as additions or replacements for volumes already in the Library’s collection, and approximately 252 volumes were discarded. The Library bar-coded and added to its collection 441 items. The Library continued restoration and preservation efforts of its historical and rare book collection. Several volumes of the Library’s historical statutes from the 1800s were stabilized and rebound for use by the Library’s patrons.

The Library produced 80 interlibrary loans for the Supreme Court, Court of Appeals, Tax Court, state agencies, other state appellate courts, and reciprocal libraries. The Library processed and filled reference requests for patrons and libraries across the United States, and fulfilled loan



At an Indianapolis Indians baseball game in 2012, Justice Sullivan (right) threw out the first pitch to Justice Massa (left).

requests from many institutions. The superseded Indiana statutes collection was also heavily used during the legislative session.

During the fiscal year, over 700 items were circulated and returned using the Library’s automated system. Library patrons also included users from 27 state agencies. The Library’s online catalog, launched to the public in 2004, utilizes the open-source software Koha, and its holdings are also searchable through WorldCat, the world’s largest collection of library holdings. Over 7,800 visits were made to the Indiana Supreme Court Law Library web site home page.

The Supreme Court Library was again used as the setting for multiple photo shoots, interviews, and video tapings by the Supreme Court and other state agencies. Approximately 2,150 patrons visited the Library during this fiscal year. This figure does not include the large number of students that also tour the State Capitol, the Supreme Court, and our Library throughout the year.

Library staff continued their outreach services and professional development during fiscal year 2012. The Librarian, Terri Ross, gave presentations to paralegal degree students from local institutions and discussed her career as a court librarian. Ms. Ross attended local Access to Justice workshops and participated on the taskforce to develop a statewide Access to Justice Commission. She also continued her service as a member of the Indiana Supreme Court Committee on Self-Represented Litigants, which met to discuss issues that Indiana’s courts face arising from the increasing number of self-represented litigants accessing the Indiana judicial system.

Articles, books, and other information about the Supreme Court continued to be added to the Library’s small collection of judicial archive materials. Library staff also assisted throughout the year with several student education programs developed through the Court’s “Courts in the Classroom” initiative.

For the second year, the Supreme Court Library continued its participation in the federal government’s GPO Cataloging Record Distribution Pilot Project, which studies the feasibility of distributing catalog records to the nearly

1,250 federal depository libraries. At present, the Library participates with 75 other libraries as part of this Project to test these distribution processes.

INDIANA STATE PUBLIC DEFENDER'S OFFICE

Stephen T. Owens, Public Defender of Indiana

Indiana led the nation in recognizing the need for a mechanism to challenge convictions or sentences that could not be directly appealed. In 1883, the Indiana Supreme Court decided a guilty plea coerced by mob violence could be challenged by collateral attack (now called Post-Conviction Relief) in one of the first decisions in the United States permitting collateral attack in such a case. In 1945, the General Assembly created the Public Defender of Indiana to provide services to indigent inmates seeking collateral challenge of their convictions. The first Public Defender, Frank L. Greenwald, appointed (as is the case now) by the Indiana Supreme Court pursuant to statute, served from 1945 to 1947. His successor, James Cooper, held office from 1947 to 1956 and hired the first deputies public defender -- one of whom was the Honorable Richard M. Givan, later Chief Justice of the Indiana Supreme Court. Subsequent appointees have been Robert Baker (1957-1966), Mel Thornburg (1966-1970), Harriette Bailey Conn (1970-1981), Susan K. Carpenter (1981- 2011), and the current Public Defender of Indiana, Stephen T. Owens.

In 1969, the Indiana Supreme Court adopted the Rules for Post-Conviction Remedies. Pursuant to Rule One, the Indiana State Public Defender's Office ("the Office") provides factual and legal investigation and representation at hearing and on appeal in all capital cases. In non-capital cases, factual and legal representation occurs after the indigent inmate files a pro se petition for post-conviction relief; representation at hearing and on appeal is provided when the case has arguable merit. The Office also finds competent private counsel to provide representation at trial and on direct appeal, at county expense, upon request by trial courts.

Capital Cases

In fiscal year 2012, deputies were involved with two capital cases. Roy Ward's post-conviction relief appeal was argued before this Supreme Court on November 16, 2011. Daniel Wilkes obtained partial relief in the post-conviction trial court; his death sentence was vacated and he was resentenced to life without parole. The Supreme Court heard oral argument in the appeal of the post-conviction court's ruling on June 19, 2012.

At the end of fiscal year 2012, the Indiana Supreme Court's docket had no capital cases on direct appeal. There are currently five capital cases still pending in Indiana trial courts.

At the close of the fiscal year, the State Public Defender had five deputies currently representing 17 clients serving life without parole sentences under Indiana Code section 35-50-2-9. "Inasmuch as life without parole is the second most

severe penalty permitted by law," *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991), representation in these cases tends to be considerably more time-consuming than in general felony cases.

Non-Capital Cases

Demand for the Office's services correlates with the Department of Correction's population, which reached 28,891 adult and juvenile inmates on December 31, 2011, a slight decrease from the population on April 1, 2011 (28,912), but still 31% more than the population on June 30, 2001 (22,022). The Office received 613 pro se petitions -- the most received in many years. The Office continues to contend with a backlog of cases due to demand exceeding available resources. Given that the Office's services are free and the demand constant, controlling the caseload is difficult. However, the number of post-trial and appeal cases awaiting review by the State Public Defender decreased to an amount lower than June 2011, and the number of cases closed is considerably higher than June 2011:

Fiscal Year	Pro se Petitions Received	Files Closed	Post-Trial and Appeal Records Awaiting Review
2006	546	623	419 (6/06)
2007	553	659	358 (6/07)
2008	564	626	335 (4/08)
2009	596	600	389 (6/09)
2010	598	638	402 (6/10)
2011	566	627	377 (6/11)
2012	613	669	335 (6/12)

In July 1991, the Office received discretion to refuse further representation if full-case investigation (including an evidentiary hearing, if appropriate) established that the case lacked arguable merit. Since then, 6,089 cases have been found to be without arguable merit. In these cases, this Office does not expend further state resources, but inmates have the option of proceeding pro se or hiring private counsel.

Successful cases on appeal this fiscal year included the following: *Edsall v. State*, 966 N.E.2d 216 (Ind. Ct. App. April 11, 2012) (unpub. mem. dec.; belated sentencing appeal granted for defendant serving 30-year sentence); *Hahn v. State*, 953 N.E.2d 1274 (Ind. Ct. App. September 15, 2011) (unpub. mem. dec.; defendant entitled to an additional 582 days of credit for time he was imprisoned awaiting sentencing); *Harley v. State*, 952 N.E.2d 301 (Ind. Ct. App. 2011) (ineffective assistance of counsel for failing to inform the trial court that defendant's only income consisted of Supplemental Security Income; conviction for non-support of a dependent child vacated); *Johnson v.*

State, 960 N.E.2d 844 (Ind. Ct. App. 2012) (protestation of innocence during guilty plea hearing; conviction for class A felony child molesting vacated); *Springer v. State*, 952 N.E.2d 799 (Ind. Ct. App. 2011) (ineffective assistance of counsel for misadvice of penal consequences; guilty plea convictions vacated).

In the trial courts, the more significant successful cases for the State Public Defender included the following: *Beets v. State*, 34D01-0904-PC-366 (sentence reduced from 30 years with five suspended, to 25 years with five suspended); *Crain v. State*, No 29A04-1101-PC-36 (sentence reduced from 90 to 60 years); *Coyle v. State*, No. 36C01-0807-PC-3 (some convictions vacated and sentence reduced by 10 years); *Fulks v. State*, 87D01-1001-PC-8 (sentence reduced from ten to eight years); *King v. State*, 71D02-1006-PC-36 (sentence reduced from five years to six months); *McAdams v. State*, 87D01-0707-PC-169 (resentencing ordered); *Majko v. State*, 06D01-1104-PC-110 (sentence reduced from 50 to 20 years); *Meadows v. State*, 44C01-1112-PC-8 (sentence reduced from 18 years with three years

suspended to twelve years); *Myers v. State*, 79D01-1106-PC-9 (conviction vacated); *Naylor v. State*, 48D03-0809-PC-329 (sentence reduced from 124 to 64 years); *Price v. State*, 10D01-0704-PC-45 (burglary conviction, habitual offender enhancement, and sentence of 40 years vacated; defendant subsequently pled guilty to class C burglary, resulting in an eight-year sentence); *Roberts v. State*, 49G01-0602-PC-27711 (sentence reduced from 40 years to 40 years with five suspended); *Sanders v. State*, 27C01-0905-FA-148 (sentence reduced from 60 years to 40 years with five years suspended); *Shallenberger v. State*, 34D02-1104-PC-69 (sentence reduced from 50 years to 25 years with five suspended); *Stone v. State*, 79D04-1202-PC-1 (sentenced reduced from 15.5 to 12.5 years); *Sweatt v. State*, 49G04-0008-PC-144148 (resentencing ordered). Also, the Office successfully litigated pre-trial jail time credit claims in ten cases, which cumulatively totaled 2,261 days. Finally, the Office's litigation resulted in a grant of permission for a belated appeal from the trial court, pursuant to Ind. Post-Conviction Rule 2, in four cases.



Six stained glass windows grace the north wall of the Courtroom, each with an abstract owl motif, symbolizing wisdom.

Appendix

CASE INVENTORIES AND DISPOSITION SUMMARY Indiana Supreme Court, July 1, 2011 - June 30, 2012

SUMMARY

Majority Opinions:	81
Shepard, C.J.	25
Dickson, C.J.	13
Sullivan, J.	13
Rucker	14
David, J.	16
Massa, J.	0

Non-Majority Opinions:	27
Shepard, C.J.	0
Dickson, C.J.	6
Sullivan, J.	8
Rucker, J.	9
David, J.	3
Massa, J.	1

Per Curiam Opinions:	9
Published Dispositive Orders:	82

CASES DISPOSED:	1,095	
Criminal	549	50.1%
Civil	344	31.4%
Tax	4	0.4%
Certified Questions	5	0.5%
Original Action	41	3.7%
Attorney Discipline	132	12.1%
Board of Law Examiners	0	0.0%
Judicial Discipline	1	0.1%
Rehearings	18	1.6%
Mandate of Funds	0	0.0%
Other*	1	0.1%
TOTAL	1,095	100%

* Unauthorized Practice of Law

MAJORITY OPINIONS

	Direct Appeal Crim.	Direct Appeal Civil	Trans. Crim.	Trans. Civil	Tax Rev.	CQ	Orig. Act'n	Att. Disc.	BLE	Jud. Disc.	Reh'q	MF	Other	Total
Shepard, C.J.	1	0	7	12	2	2	0	0	0	0	1	0	0	25
Dickson, C.J.	0	0	5	7	0	1	0	0	0	0	0	0	0	13
Sullivan, J.	1	0	4	7	0	1	0	0	0	0	0	0	0	13
Rucker, J.	1	1	7	3	1	1	0	0	0	0	0	0	0	14
David, J.	0	0	6	9	0	0	0	0	0	0	1	0	0	16
Massa, J.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
By the Court	0	0	1	1	0	0	0	6	0	1	0	0	0	9
TOTAL	3	1	30	39	3	5	0	6	0	1	2	0	0	90

NON-DISPOSITIVE OPINIONS

	Concurring	Concur/ Dissenting	Recusal Dissent	Opinion	Total
Shepard, C.J.	0	0	0	0	0
Dickson, C.J.	2	4	0	0	6
Sullivan, J.	2	6	0	0	8
Rucker, J.	0	6	3	0	9
David, J.	1	2	0	0	3
Massa, J.	0	1	0	0	1
TOTAL	5	19	3	0	27

CAPITAL CASE OPINIONS

	Direct Appeal	PCR	Interlocutory Appeal	Successive PCR	Reh'q	Total
Shepard, C.J.	1	0	0	0	0	1
Dickson, C.J.	0	0	0	0	0	0
Sullivan, J.	0	1	0	0	0	1
Rucker, J.	1	0	0	0	0	1
David, J.	0	0	0	0	0	0
Massa, J.	0	0	0	0	0	0
By the Court	0	0	0	0	0	0
TOTAL	2	1	0	0	0	3

CERTIFIED QUESTIONS CONSIDERED

	Pending 7/1/11	Received	Accepted	Rejected	Opinions	Pending 6/30/12
Fed. Ct. - Dist.	1	3	3	0	4	0
Fed. Ct. - App.	0	0	0	0	0	0
Fed. Ct. - Oth.	1	0	0	0	1	0
TOTAL	2	3	3	0	5	0

ORAL ARGUMENTS HEARD

Criminal Before Decision On Transfer	1
Criminal After Transfer Granted	28
Civil/Tax B/F Decision On Transfer/Review	2
Civil/Tax After Transfer/Review Granted	42
Criminal Direct Appeals	5
Civil Direct Appeals	0
Certified Question	3
Attorney Discipline	0
TOTAL	81

MISCELLANEOUS ORDERS

Petitions for Extension of Time Processed	45
Special Judge Requests	67
Other Miscellaneous Appellate Orders	1,354
TOTAL	1,466

SUPREME COURT DISPOSITIONS (DETAIL)

Criminal Cases	
Opinions on Direct Appeals	3
Opinions on Petitions to Transfer	30
Opinions on Rehearing	2
Orders on Rehearing	7
Petitions to Transfer Dismissed, Denied, or Appeal Remanded by Order	515
Petitions to Transfer Granted and Remanded by Order	1
Other Opinions/Dispositions	0
TOTAL	558
Civil Cases	
Opinions and Orders on Certified Questions	5
Opinions on Direct Appeals	1
Opinions on Petitions to Transfer	39
Opinions on Rehearing	0
Orders on Rehearing	9
Petitions to Transfer Denied, Dismissed, or Appeal Remanded by Order	304
Other Opinions/Dispositions	0
TOTAL	358
Tax Cases	
Opinions on Tax Court Petitions for Review	3
Dispositive Orders on Tax Court Petitions for Review	1
TOTAL	4
Original Actions	
Opinions Issued	0
Disposed of Without Opinion	41
TOTAL	41
Mandate Of Funds	
Opinions and Published Orders	0
TOTAL	0
Attorney Disciplinary Matters	
Opinions and Published Orders	79
Other Dispositions	53
TOTAL	132
State Board Of Law Examiners Matters	
Petitions for Review	0
TOTAL	0
Judicial Discipline Matters	
Opinions and Published Orders	1
Other Dispositions	0
TOTAL	1
Unauthorized Practice Of Law	
Opinions and Published Orders	0
Other Dispositions	1
TOTAL	1
TOTAL DISPOSITIONS	1,095

ATTORNEY DISCIPLINARY MATTERS (DETAIL)

Disciplinary Matters Pending Before Hearing Officer/Court on July 1, 2011	92
New Disciplinary Matters Received July 1, 2010 - June 30, 2011	
Petitions to Show Cause for Noncooperation	36
Verified Complaints for Disciplinary Action	35
Private Administrative Admonitions Tendered	5
Affidavits of Resignation (tendered before filing Verified Complaint)	6
Petitions for Emergency Interim Suspension	0
Notices of Findings of Guilt (Felony)/Requests for Interim Suspension	6
Notices of Foreign Discipline/Requests for Reciprocal Discipline	0
Petitions for Reinstatement	9
Petitions to Revoke Probation	2
Petitions to Terminate Probation	8
Contempt of Court Proceedings	8
Miscellaneous	1
TOTAL	116
Disciplinary Matters Disposed	
Dismissal on Compliance with Show Cause Order	20
Terminating Noncooperation Suspension on Compliance with Show Cause Order	10
Dismissal of Show Cause Proceeding Due to Other Suspension	7
Converting Noncooperation Suspension to Indefinite Suspension	4
Private Administrative Admonition	5
Rejection of Private Administrative Admonition	0
Private Reprimand	6
Public Reprimand	14
Suspension with Automatic Reinstatement (after Verified Complaint)	6
Suspension without Automatic Reinstatement (after Verified Complaint)	6
Suspension with Conditions/Probation (after Verified Complaint)	10
Disbarment (after Verified Complaint)	2
Accepting Resignation (1 disposed of 3 matters)	8
Emergency Interim Suspension Granted	0
Emergency Interim Suspension Denied	0
Interim Suspension on Finding of Guilt (Felony)	4
Reciprocal Discipline (Suspension)	0
Finding or Judgment for Respondent	1
Granting Reinstatement	2
Withdrawal of Petition for Reinstatement	3
Denying Reinstatement	3
Revoking Probation	2
Terminating Probation	7
Finding Contempt of Court	5
Dismissing or Withdrawing Action	5
Miscellaneous	2
TOTAL	132
Disciplinary Matters Pending June 30, 2012	76

CASE INVENTORY

	Cases Pending as of 7/1/11	Cases Transmitted 7/1/11 - 6/30/12	Cases Disposed of 7/1/11 - 6/30/12	Cases Pending as of 6/30/12
Capital Cases	0	4	1	4
Criminal Direct Non-Capital	2	2	2	2
Criminal Transfers	109	530	546	92
Civil Direct Appeals	0	1	1	1
Civil Transfers	142	301	343	99
Tax Court Petitions for Review	2	6	4	4
Certified Questions	2	3	5	0
Original Actions	0	43	41	2
Attorney Discipline	92	116	132	76
Board of Law Examiners	0	0	0	0
Judicial Discipline	1	0	1	0
Rehearings	5	14	18	1
Mandate of Funds	0	0	0	0
Other*	2	0	1	1
TOTAL	357	1,020	1,095	282

Pending cases as of 7/1/11 adjusted from

FY 2011 Annual Report

* *Unauthorized Practice of Law*



The Indiana Supreme Court in March, 2012.



In December, Chief Justice Randall T. Shepard announced he would be leaving the Court at the end of his current term as Chief Justice in March 2012. He was appointed to the Court in 1985 by Governor Robert D. Orr, and was selected as Chief Justice in 1987. During his 27 years of service he authored 917 majority opinions and 68 law review articles. His judicial career has been devoted to developing practical solutions to improve the way courts do business, including: supporting the creation of specialized courts, development of the Odyssey statewide case management system, increasing diversity within the legal profession through the ICLEO program, improving the public's knowledge about the history and operation of the courts with the launching of "Courts in the Classroom" and webcasts of oral arguments, and multiple other innovations too numerous to name. Chief Justice Shepard's career was celebrated by various groups around the state, all eager to express their appreciation for his years of service to the people of Indiana. The formal retirement ceremony took place in the Supreme Court Courtroom on March 19, 2012. Since then, he was appointed a Senior Judge of the Indiana Court of Appeals. Celebrating his 27 years of service highlighted Chief Justice Shepard's role as one of Indiana's finest public servants and Indiana as a place where justice is fairly administered.



Governor Robert D. Orr (left) congratulates the new Justice in 1985.



Shepard (center) with the other Justices in 1988 on the last day that the landmark restaurant at the Block's department store was open. (left to right) Justice Alfred J. Pivarnik, Justice Brent Dickson, Justice Roger O. DeBruler, and Justice Richard M. Givan.



Governor Frank O'Bannon (right) administering the oath of office for Chief Justice Shepard's 4th term as Chief Justice in 2002. His daughter and niece are holding a Bible while his wife, Amy MacDonell, watches.



Law clerks of former Chief Justice Shepard gathered one evening to celebrate his tenure on the Court. Also with former Chief Justice Shepard (center) are wife Amy MacDonell, daughter Mattie, and staff Elizabeth Osborn, Dave Remondini, Sarah Kidwell, his long-time administrative assistant, Debbie Baumer, and Kathryn Dolan. Justice Massa, a former law clerk, is in the upper right corner.



Arriving at his final State of the Judiciary address to the General Assembly in January 2012.

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