

# Indiana Rules for Original Actions Writs of Mandate and Prohibition

*Updated, Effective January 1, 2021*

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## Rule 1. Scope of Rules

Effective January 1, 2021

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### (A) Jurisdiction of Supreme Court Over Original Actions for Writs of Mandamus or Prohibition.

The Supreme Court has exclusive, original jurisdiction to supervise the exercise of jurisdiction by other courts of the State of Indiana by virtue of Indiana Constitution, Article 7, Section 4, and Ind. Appellate Rule 4(B)(3).

### (B) Nature of Original Actions Governed by These Rules.

Actions commenced in the Supreme Court pursuant to the authority in section (A) above for writs of mandamus or prohibition against other Indiana state courts and the judge or judges thereof and concerned solely with the question of jurisdiction shall be known as original actions and shall be governed exclusively by these Rules.

### (C) Original Actions Viewed with Disfavor.

Original actions are viewed with disfavor and may not be used as substitutes for appeals.

### (D) Parties to Original Actions.

The party who commences an original action is the Relator. The parties against whom an original action is commenced are the Respondents. The Respondents are always another Indiana state court and the judge or judges thereof. In rare instances, a court clerk may be an additional Respondent.

### (E) Writs Against Administrative Agencies.

Complaints filed pursuant to IC 34-27-3-1 et seq. for writs of mandamus or prohibition against administrative agencies and the members thereof are not original actions governed by these Rules. Those complaints are to be filed in the trial court having jurisdiction over the action.

### (F) Writs in Aid of Appellate Jurisdiction.

Petitions for writs in aid of appellate jurisdiction are not original actions governed by these Rules. Those petitions are to be filed in the court having initial appellate jurisdiction of a pending appeal or of an appeal about to be filed. The authority of the Supreme Court to issue writs in aid of its appellate jurisdiction is Appellate Rule 4(B)(4) and Appellate Rule 8. The authority of the Court of Appeals to issue writs in aid of its appellate jurisdiction is Appellate Rule 8.

### (G) Title.

These Rules shall be known as the Rules of Procedure for Original Actions and shall be cited in accordance with Ind. Appellate Rule 22(B).

### (H) Application Papers.

The term "application papers" includes all petitions, records of the proceedings, briefs, and affidavits of indigency.

## Rule 2. Submission and Service

Effective January 1, 2021

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### (A) Conditions Precedent for Writs.

Except in original actions involving a change of venue from the judge or county, no petition for a writ of mandamus or prohibition will be entertained unless the Relator has raised the jurisdictional question by written motion which the trial court has denied or not ruled upon timely. The motion shall allege the absence of jurisdiction of the respondent court or the failure of the respondent court to act when it was under a duty to act.

### (B) Submission.

Application papers may be submitted conventionally or electronically.

#### (1) Conventional Submission.

Except for petitions for emergency writs, all petitions for writs of mandamus or prohibition, along with the filing fee, shall be submitted in person or by mail to Supreme Court Services, Attention: Original Actions, 315 State House, Indianapolis, Indiana 46204, telephone (317) 232-2540. Relator shall serve Respondents and all interested parties on the same day the Relator's writ application is submitted in person or by mail to the Supreme Court. Delivering a copy of the papers to an interested party's office is personal service on that party within the meaning of these Rules. If emergency relief is requested, Relator must submit the application papers to Supreme Court Services in person after personal service on Respondents and all interested parties. Otherwise, service on the Respondents and interested parties shall be accomplished in the same fashion as service on Supreme Court Services, except that personal service shall always be acceptable.

The Relator shall submit the original and one copy of application papers, including the record. All application papers shall be typewritten or printed on 8 ½ x 11 inch white, opaque, unglazed paper of a weight normally used in legal typing and printing, and shall be reproduced by a copying or duplicating process that produces a clear, black image.

#### (2) Electronic Submission.

Petitions may be submitted through the Indiana Electronic Filing System (IEFS). Relators who submit electronically must also provide advance or immediate notice to Supreme Court Services by calling (317) 232-2540 and by email, with all application papers attached to [ori-](#)

[ginal.actions@courts.in.gov](mailto:ginal.actions@courts.in.gov). When an emergency writ is sought, the Relator must serve a copy of each application paper as set out in Rule 2(D)(2) via IEFS, email, or personal service.

### (C) Filing of Application Papers.

The Clerk shall not file any application papers until they are reviewed by Supreme Court Services. Any documents submitted after 4:30 p.m. or on a weekend or holiday will not be reviewed until the next business day.

### (D) Service of Application Papers.

(1) *Certificate of Service*. Every document submitted or filed under these Rules must include or be accompanied by a certificate of service, which shall:

- a) certify that service has been made or will be made contemporaneously with the submission;
- b) specifically list the person(s) served by name with applicable email or physical address; and
- c) specify the date and means of service. Acceptable means of service are subject to any requirement in Rule 2(B) for a particular method of service and otherwise include IEFS, electronic mail to parties not available for service through IEFS, United States mail with postage prepaid, third party commercial carrier with cost prepaid, or personal delivery.

(2) The Relator shall serve a copy of each application paper upon the Respondents, all parties opposing the Relator in the responding court, and, where applicable under Rule 2(D)(3), the Attorney General.

(3) *Service on Attorney General*. In all original actions arising out of criminal cases and in all other original actions in which the State of Indiana has or may have an interest, each party shall serve the Attorney General with a copy of each paper submitted to Supreme Court Services or filed with the Clerk.

### (E) Supreme Court Services shall submit all original action petitions to the Chief Justice or Acting Chief Justice after filing.

If the petition is incomplete or in improper form or seeks an unquestionably inappropriate remedy, the Chief Justice or Acting Chief Justice shall enter an order dismissing the petition without the intervention of the full Court. In all other cases, the Chief Justice or Acting Chief

Justice shall determine whether the case should be set for hearing or referred to the full Court.

The Court may decide to grant or deny the petition without a hearing. If a petition is set for hearing, the Supreme Court Clerk shall serve notice to Relator, Respondents, and all interested parties, including the Attorney General

## Rule 3. Application Papers

Effective January 1, 2021

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### (A) Petition.

All petitions for writs of mandamus or prohibition shall be verified or affirmed and shall state facts showing clearly that:

- (1) the Supreme Court has jurisdiction over the matter as an original action;
- (2) the petition is made expeditiously after the jurisdiction of the respondent court became an issue;
- (3) the respondent court has exceeded its jurisdiction or the respondent court has failed to act when it was under a duty to act;
- (4) the absence of jurisdiction of the respondent court or the failure of the respondent court to act when it was under a duty to act has been raised in the respondent court by a written motion filed therein and brought to the attention of the respondent judge, and the written motion has been denied or not ruled on timely - except in cases involving a change of venue from the judge or county where these requirements do not apply;
- (5) the denial of the petition will result in extreme hardship; and
- (6) the remedy available by appeal will be wholly inadequate.

The petition shall also include a concise, verbatim statement of the precise relief sought.

Original action petitions that do not include the six enumerated items and a statement of precise relief shall be rejected by the Chief Justice or Acting Chief Justice.

## (B) Brief.

The Relator shall submit a separate supporting brief with Relator's petition. The Relator shall set forth verbatim in the brief, indented and single-spaced, the relevant parts of all cases, statutes, and other authorities relied upon, but need not conform the brief otherwise to the rules applicable to appellate briefs. The brief need not be bound. Neither a petition nor a brief shall exceed ten (10) pages or 4,200 words, as confirmed by a word count certificate.

## (C) Record of Proceedings—Certification.

At the time the Relator submits the original action petition, the Relator shall submit a record of the respondent court proceedings.

(1) The record shall contain copies of all relevant pleadings, motions, orders, entries, and other papers filed, tendered for filing, or entered in the respondent court. The record also shall include a current copy of the chronological case summary. In the event a relevant transcript of any evidence in the record exists, it shall be submitted and shall have been certified by the appropriate court reporter.

(2) The last page of the original action record shall be a verification of accuracy by the attorney or unrepresented party submitting the record of proceedings. The following is an acceptable verification: "I verify under penalties of perjury that the documents included in this record of proceedings are accurate copies of documents filed, tendered for filing, or entered in the respondent court."

(3) The original action record need not be bound like an appellate appendix, but it shall contain a table of contents at the beginning and shall be paginated to allow citation to the record.

(4) No single volume of an electronically submitted record of proceedings may exceed two hundred fifty (250) pages or fifty megabytes (50 MB).

## (D) Filing Fee.

Relator shall tender the filing fee of two hundred and fifty dollars (\$250) when the Relator submits the original action petition. No fee is required in an original action prosecuted as a pauper cause or on behalf of a governmental unit. If Relator seeks pauper status, Relator shall submit with the original action papers an affidavit of indigency detailing Relator's assets and financial condition and seeking waiver of the filing fee.

## (E) Writs.

The Relator shall request a Permanent Writ and may, if appropriate, request an Alternative Writ, or Emergency Writ. Rule 3(A) requires a precise request.

### (1) Emergency Writ.

An Emergency Writ is an order that may be granted prior to a hearing. It must be accompanied by a petition for emergency writ demonstrating that a writ must be issued to maintain the status quo and prevent irreparable injury until the petition can be heard. The Emergency Writ operates as a temporary stay of the respondent court proceedings until the Supreme Court hears and rules upon the original action application. All original action petitions that include a request for emergency writ will be submitted to the Chief Justice, if available, or to the Acting Chief Justice for a determination as to whether or not a sufficient emergency exists to require a stay. If the Chief Justice or Acting Chief Justice grants the emergency writ, the writ shall be filed immediately and the original action may be set for hearing. The filing of a petition for emergency writ shall not obviate the need to file the other application papers required by these rules including the petition for writ of mandamus or prohibition.

### (2) Alternative Writ.

An Alternative Writ is an order that requires Respondents to take action (mandamus), to cease action (prohibition), or both. If an Alternative Writ is issued, the Respondents shall file a return with the Court no later than twenty (20) days after the filing of the writ. A "return" is a pleading submitted by the respondent court showing compliance with the writ or stating reasons why the writ should not be made permanent.

### (3) Permanent Writ.

A Permanent Writ is an order, issued after the application is made, which is immediately permanent. It dispenses with the general practice of allowing the Respondents to file a return.

## (F) Brief Opposing Petition.

The Respondents, or any party opposing Relator in the respondent court, or the Attorney General, if service on the Attorney General is required by Rule 2(D)(2) may file a brief opposing the petition at any time before the deadline established by Supreme Court order. The brief opposing petition shall not exceed ten (10) pages or 4,200 words, as confirmed by a word count certificate. A copy of the brief opposing the petition, as well as any other document submitted for filing by the Respondents or other interested parties, shall be served upon the Relator in the same manner described in Rule 2(D)(1).

## (G) Documents and Information Excluded from Public Access and Confidential Pursuant to the Rules on Access to Court Records.

Documents and information excluded from public access pursuant to the Rules on Access to Court Records shall be submitted in accordance with the Rules on Access to Court Records.

## Rule 4. Hearing on Petitions

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### (A) Scheduling of Hearing.

The Supreme Court may set a petition or emergency writ petition for hearing.

### (B) Nature of Hearing.

The hearing on the application is only upon the record of the proceedings in the respondent court. No testimonial or documentary evidence shall be offered or received at the hearing.

### (C) Procedure for Hearings.

A party is not obligated to use all of the allowed time, and the court may terminate the arguments whenever in its judgment further argument is unnecessary. Appearance by the respondent judge or the judge's counsel is not necessary; the party opposing the Relator in the trial court may oppose the original action application. In the event the respondent judge or the judge's counsel appear, the respondent judge or the judge's counsel shall be given an opportunity to speak regardless of whether others opposing the original action have used the time allotted to that side.

### (D) Order and Content of Argument.

The Relator shall open and may conclude the argument by reserving part of the Relator's time for rebuttal before beginning the argument. The parties will not be permitted to read at length from the record of the proceedings, briefs, or authorities during oral argument.

# Rule 5. Disposition of Petitions

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## (A) Petition Granted—Issuance of Writ—Filing With Clerk—Disposition.

If the application for writ of mandamus or prohibition is granted, either an alternative or permanent writ will be issued. If the alternative writ is issued, the respondent court shall be given 20 days to file a return. See Rule 3(E)(2). The return shall show compliance with the writ or state reasons why the writ should not be made permanent.

If the return shows compliance with the alternative writ, the Supreme Court will enter an order dismissing the original action as moot.

If the return contests the alternative writ, the Relator shall have five (5) days after service of the return to file a brief in opposition to the return. Any parties opposing the alternative writ other than the respondents also may file a further brief no later than five (5) days after service of the return.

The Supreme Court thereafter will dispose of the original action by written order or opinion without further hearing or the filing of any further papers, unless requested by the Court.

The Supreme Court may alter, by order, any time limit established by this Rule.

## (B) Petition Denied.

If the petition is denied, an order of denial shall be entered expeditiously. The denial of the petition will end the proceedings, regardless of whether the Court has conducted a hearing.

## (C) Petitions for Rehearing.

No petitions for rehearing or motions to reconsider shall be filed after final disposition of the original action.