



# INDIANA SUPREME COURT

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Office of Judicial Administration

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The Indiana Supreme Court is constitutionally responsible for the operation of the Judicial Branch of Indiana, including ensuring the administration of justice by the courts of the state and overseeing the practice of law. The Office of Judicial Administration serves as the administrative staff agency for the Supreme Court and follows the direction of the Chief Justice and Supreme Court in implementing policies and initiatives.

Below is a report on Judicial Branch operations through the duration of the COVID-19 pandemic thus far. The full picture of the Judicial Branch's extensive COVID-19 responses and resources are available on [the Supreme Court's website](#).

## **I. Summary of Judicial Branch Operations**

The Supreme Court has been actively monitoring guidance from the Indiana State Department of Health since the outset of the COVID-19 pandemic and began directing the judicial branch to adapt operations in early March. Despite the pandemic and those operational changes, however, Indiana's courts remained—and still remain—open for business.

- a. **Local Court Operations.** [Indiana Administrative Rule 17](#) allows courts, with Supreme Court approval, to suspend rules and procedures related to time limits in criminal, civil, mental health, and juvenile matters, including those time limits related to speedy trial considerations, as well as take other emergency steps necessary to ensure the orderly and fair administration of justice.

On [March 4](#), trial courts were encouraged to begin coordinating with local emergency management agencies on their continuity of operations and emergency plans. On March 16, [the Supreme Court ordered](#) trial courts to begin implementing those COOP plans and file petitions for relief pursuant to Administrative Rule 17.

Between mid-March and early April, over 100 petitions were filed by county, city, and town courts. Each was individually reviewed by OJA staff, revised as necessary in consultation with the trial court judges, and

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ultimately approved by the Supreme Court. Those individual petitions and orders are consolidated on [the Supreme Court's website](#). To create uniformity on petition end dates, relief granted through those orders was extended by the Supreme Court [through May 4](#), and then extended again [through mid-May](#).

On May 13, the Supreme Court issued an [order directing trial courts to submit transition plans](#) for safely expanding court operations—in effect, to gradually reverse their Administrative Rule 17 plans. A task force of judges, staff, practitioners, and other stakeholders provided ISDH-approved [guidance and templates](#) for these transition plans. These plans were again individually reviewed for legal and public health measures. The [approved list](#) is available online.

On May 29, the Supreme Court issued [a final order](#) extending some statewide emergency trial court actions—including a prohibition on serving civil writs and the timelines for speedy trial calculations—through August 14.

- b. Supreme Court Operations.** The Supreme Court has maintained its appellate function and constitutional responsibilities throughout the pandemic. It continues to review cases and hold conferences remotely through Microsoft Teams and its online Judicial Dashboard. It held its [first remote oral arguments](#) by Zoom on May 14, and has continued holding remote oral arguments through September.

The Supreme Court also swore in nearly 100 new lawyers through a [remote, live-streamed Bar Admission Ceremony](#) on May 5, and will host multiple remote ceremonies on September 21 for the nearly 400 lawyers who passed the July Bar Exam. And Justices followed statutory and constitutional obligations to chair and oversee the selection of nominees to fill judicial vacancies through a mix of remote and socially distanced nominating commission sessions, including to fill vacancies on [the Court of Appeals](#), in [Marion County](#), and in [Allen County](#)—[twice](#). Still to come in 2020: vacancies in [St. Joseph County](#) and [Lake County](#).

But while the Supreme Court was able to continue with its appellate and administrative functions remotely, the closure of the Statehouse to the public pursuant to [Executive Order 20-09](#) meant that in-person appellate filing was unavailable for pro se litigants before the Supreme Court, Indiana Court of Appeals, and Indiana Tax Court.

The Supreme Court, jointly with the Court of Appeals, therefore issued emergency orders pursuant to Administrative Rule 17 providing alternative filing options to pro se litigants who lacked access to electronic filing. In light of the impact of the pandemic on appellate practitioners generally, the orders also tolled appellate deadlines.

The first joint order was issued on [March 23](#). A joint order on [March 25](#) further clarified the impact of tolling on appellate deadlines. Additional orders on [April 7](#), [April 30](#), [May 19](#), [June 19](#), and [July 2](#) continued the suspension of in-person appellate filing as the Statehouse remained closed to the public. The Tax Court, with a mix of appellate and trial proceedings under separate court rules, filed [an independent petition](#) under Administrative Rule 17 to address specific matters not covered in the joint orders.

Although the public has been able to re-enter the Statehouse since August 17, construction on the east steps continues to block access to the appellate filing drop-box. In-person appellate filing therefore remains suspended.

- c. **OJA Operations.** OJA includes over 200 employees and contractors working to provide fiscal management; human resources; legal services; communications; court technology; services for the trial courts; and support for court regulatory boards, commissions, and committees. OJA, at the Supreme Court's direction, began adapting its staffing and operations in early March. Because of previously established, dedicated efforts to invest in technology and training for employees, the transition from in-person to remote work was swift, decisive, and effective.

On [March 11](#), OJA shifted all meetings with external stakeholders from in person to remote, cancelled all out-of-state work travel for staff, tightly narrowed in-state travel for staff, cancelled all major large events planned for that spring, and implemented a telework policy allowing employees impacted by COVID-19 to begin working from home.

On [March 16](#), the majority of OJA staff was directed to begin teleworking. Only a small cadre of leadership, IT, security, and rotating administrative support staff worked out of the office until May 26. On that date, staff began to return in staggered phases to maintain a footprint that would not exceed social distancing considerations or resources necessary to maintain safe working environments, and in compliance with an extensive return to work plan. Between sixty and seventy percent of the staff are currently rotating into the office on weekly shifts; the remainder qualify for continued teleworking due to higher health risks or childcare issues.

## II. Supreme Court Emergency Actions

As the pandemic evolved, the Supreme Court and OJA worked with the bench and bar to address a host of issues that arose within the justice system, legal profession, and practice of law. These collaborative efforts ensured that Indiana's court system and legal profession continue to function and serve the needs of Hoosiers.

Where necessary, the Supreme Court issued emergency orders to adapt processes or procedures to pandemic conditions:

- a. **Remote Wills.** In March, members of the Bar who practice in the probate arena reached out to the Office of the Governor, which in turn reached out to OJA, about challenges with executing wills and other estate documents during the pandemic. The statutory provisions for those documents require individuals to be together in person while the documents are signed. This was unworkable for individuals quarantined in medical facilities and dangerous for everyone else. So on March 31, [the Supreme Court issued an order](#) providing parameters by which certain remote executions of those documents would be deemed to substantially comply with the statutory in-person requirements. This order [was later extended](#) through December 31, 2020.
- b. **Remote Oaths.** In March, OJA staff were alerted by court reporters to a concern that under several of the Supreme Court's rules, the act of administering an oath to a witness could only be done by a notary, court reporter, or other qualified person in the actual physical presence of the witness. This was again impractical and dangerous during a pandemic. So on March 31, [the Supreme Court issued an order](#) providing parameters by which those oaths could be administered remotely. This order [was also then extended](#) through December 31, 2020.
- c. **CLE/CJE Limits.** Under the Supreme Court's Admission and Discipline Rules, both [attorneys](#) and [judicial officers](#) are required to complete a certain number of legal and judicial education training hours measured each year and over the course of each three-year period. Of those hours, only a small percentage was permitted to be obtained by distance education. As in-person gatherings were prohibited, however, this limitation was an obstacle to ensuring that lawyers and judges received necessary professional development. In consultation with the Bar and the Judicial Conference of Indiana's Education Committee, [the Supreme Court therefore issued an order](#) on March 31 waiving the distance education cap

for some judges and lawyers and increasing it for others. This regulatory requirement is still under review as the pandemic continues.

- d. **Graduate Legal Intern Extension.** Indiana's [Admission and Discipline Rules](#) permit graduates of law schools to practice, in a limited fashion with supervision, as Graduate Legal Interns. Eligibility for this status under the rule expires when the graduate is eligible to sit for the Indiana Bar Exam—typically held in late July. As the pandemic injected uncertainty into when (or if) the Bar Exam would be able to be held, and caused disruption in the ability of graduates to study for or take the exam at all, [the Supreme Court issued an order](#) on April 8 to extend graduates' eligibility for Legal Intern status. Under the order, graduates—including December 2019 graduates—would still qualify up until the February 2021 Bar Exam results were received, assuming the graduate did not sit for any prior exams.
- e. **Indiana Bar Exam Administration.** To practice law in Indiana, attorneys must take and pass the Indiana Bar Exam (or be qualified for admission based on practice in another state). The exam is held twice a year: in February and July. It is a two-day, in-person event. The first day consists of a research and writing exercise and a series of essay questions on Indiana law. The second day is a national multiple-choice exam on various general legal topics. Roughly 250 applicants take the February exam; about 500 usually take it in July.

As pandemic conditions accelerated in the spring, the Supreme Court began to proactively look at options for alternate testing conditions or times. And on May 7, [it issued an order](#) adjusting the July exam to a remote, one-day test consisting of the Indiana essay questions and a series of short answer questions on the general multiple choice topics. Technical difficulties with the exam vendor led to modifications throughout the process, and [a one-week delay](#) in administering the test. The overall passage rate—subject to change as some applicants have an opportunity to appeal scores—was 74%.

- f. **CARES Funds Protection.** In mid-April a group of legal aid entities filed a petition with the Supreme Court seeking to protect the federal stimulus payments received by individuals under the CARES act from attachment or garnishment by creditors. After allowing responsive briefing, the Supreme Court [issued an order granting the petition in part and denying it in part](#). The order prohibited courts from placing new holds, attachments, or garnishment on debtor accounts if the funds in that account could be attributable to stimulus payments, except for the

continued collection of child support. It also authorized debtors, with respect to pre-existing orders, to seek a hearing to show which funds would now be attributable to a stimulus payment. The protective function of this order [extends through December 31, 2020](#).

- g. Remote Proceedings.** [Indiana Administrative Rule 14](#) provides the pre-COVID framework by which trial courts may use “telephone or audiovisual communication” in the conduct of certain court proceedings. Its provisions, however, reflect a paradigm where in-person proceedings are the norm and remote proceedings a narrow (and rare) exception. And [beginning on March 16](#), the Supreme Court had encouraged the use of remote proceedings as a way to safely maintain essential judicial branch functions— while still [requiring courts to provide some form of access to the public](#). As courts adjusted, it was clear that Administrative Rule 14 was still perceived as a bar to expanded remote proceedings. On May 13, the Supreme Court therefore [issued an order expressly modifying the rule](#) to be more permissive. This order’s framework [remains in effect through December 31, 2020](#).

In other instances, no specific emergency order from the Supreme Court was required:

- a. Tax Intercepts.** Pursuant to Indiana Code chapter 6-8.1-9.5 and in partnership with the Indiana Department of Revenue and the State Board of Accounts, OJA operates a [tax intercept program](#) that intercepts unpaid traffic fines from state tax refunds when the fines originate from traffic tickets filed in certain counties. Recognizing the fiscal challenges that would face many Hoosiers as a result of the pandemic, the Supreme Court approved OJA suspending this program on March 19. It will remain suspended through December 31, 2020.
- b. Eviction Facilitations.** As state moratoriums on evictions and foreclosures lifted in mid-August, the Supreme Court and OJA launched [a program to provide facilitated settlement conferences](#) to landlords and tenants in an effort to alleviate eviction case backlogs. The program— which is modeled on the existing [Mortgage Foreclosure Trial Court Assistance Project](#)—is available either before an eviction is filed or during an existing proceeding and offers a chance for the parties to achieve a mutually beneficial outcome with the assistance of a neutral third party through a remote meeting, at no cost to either party. Attorneys and senior judges from around the State signed up to serve as facilitators. Funding for the program was provided by the Supreme Court, the Indiana Bar Foundation, and the Office of the Governor.

- c. **Joint Work on Pandemic Issues.** Members of the Supreme Court and OJA staff worked with partners in government and the legal profession on an array of challenges. These included [encouraging counties to responsibly address jail populations](#); [providing guidance on family law cases](#); [developing best practices for eviction and foreclosure cases](#); and working with criminal justice system partners to identify and proactively address issues such as speedy trials and jail overcrowding.

### III. Preparations to Address Future Emergencies

The most significant investment the Supreme Court and OJA have made as a direct result of the pandemic—and the one most likely to carry on as a “new normal” that also creates flexibility for future emergencies—has been an aggressive approach to providing technology that enables courts to operate remotely.

- a. **Zoom Licenses and Public Access.** Since April, OJA has procured over 800 Zoom licenses, at a cost of over \$180,000, and made them available to trial court judges, senior judges, OJA staff, and eviction settlement facilitators. Those licenses have been used for—through August—roughly 20,000 meetings, webinars, and court proceedings, with nearly 150,000 participants. Additionally, OJA developed a platform to allow trial courts to securely live-stream remote proceedings to the public. The platform, [available through the Court’s website](#), has been used by almost 200 judges to stream nearly 6,000 court proceedings since it launched.
- b. **Rule Framework.** For many reasons beyond public health—including greater access for litigants and convenience for lawyers and judges—remote proceedings will remain a component of Indiana’s court system and legal profession well after the pandemic subsides. Committees and staff within OJA and the Judicial Conference are therefore working to revise Administrative Rule 14 in light of the Supreme Court’s [May 13 emergency order](#), to create a more permissive and modern framework that protects the constitutional rights of parties and allows for public access while providing greater flexibility in how courts manage cases.

### IV. Recommendations on Enabling Legislation.

Below are a few suggestions for legislation that would better enable the Supreme Court, OJA, and Indiana’s legal system to operate through the remainder of this pandemic and better position us for future emergencies. OJA staff can provide more specific input on these suggestions at your request.

- a. **Electronic Voting in JNC/JQC Elections.** Under the provisions of Indiana Code chapter 33-27-2, attorney members of the Judicial Nominating and

Judicial Qualification Commissions are elected using paper ballots mailed by the Office of the Clerk of the Appellate Courts and then returned by mail in a separate envelope for counting. And in advance of that process, additional notices informing electors of the nomination process must be mailed out.

OJA suggests small revisions to allow this process to be conducted electronically. This would mitigate the health risks of mailing documents throughout the state and returning them back into the Statehouse and allow the process to be managed remotely and securely. It would also have a significant fiscal benefit. In 2019 for example, for the voting district that included Marion County, the Clerk's Office budgeted \$30,000 for mailings in accordance with the existing requirements.

- b. Facilitated Settlement Programs.** The existing Mortgage Foreclosure Trial Court Assistance Program is governed by the provisions of Indiana Code chapter 32-30-10.5. It was originally funded by a filing fee placed on every foreclosure action; those fees were provided to the Indiana Housing and Community Development Authority and then used to fund facilitators in the settlement conferences. That filing fee was allowed to sunset in 2018, however, and funding from IHCDA ran out on December 31, 2018. The provisions providing a statutory entitlement to the facilitated settlement conference remained, however, effectively leaving trial courts with an unfunded mandate.

In late 2019, the Indiana Bar Foundation stepped in and provided funding for facilitations. Prior to the state moratoriums on mortgage foreclosures as a result of the COVID-19 pandemic, there had been 340 such conferences in 2020. OJA expects those requests to increase as the moratorium has lifted.

The eviction settlement program discussed above is a Supreme Court and OJA program and not reliant upon or codified in statute. Given the importance of housing stability in both a rental and ownership context to the individual and the community, however, giving the program a permanent structure might be prudent.

Moreover, the funding provided by the Supreme Court, Bar Foundation, and Office of the Governor can be applied to both case types, but that will only be short-term funding that might quickly be used up as the moratoriums fully lift. For the programs to be viable in the long-term, dedicated state funding is necessary.



- c. **Remote Wills.** As discussed above, the requirements for proper attestation of wills and other trust documents is governed by various provisions throughout Indiana Code chapters 29-1-5 and 29-1-21. As written, those statutes permit only in-person, simultaneous witnessing and signing of those documents. The Supreme Court's emergency order permitting otherwise is a temporary, emergency solution that will expire at the end of the year. To the extent there is support from the legal profession for allowing this alternative process to continue, only the General Assembly can effectuate this solution.
- d. **COVID-19 Expense Reimbursement.** OJA and the Supreme Court have incurred significant expenses responding to the pandemic's impact on the state's judicial branch, including the cost of Zoom licenses, development of the public streaming platform, and providing internal funding for the eviction and mortgage foreclosure settlement programs. In addition to this, as an agency there have been expenses for PPE and necessary workplace modifications to maintain social distancing. And while the Office of the Governor has also committed CARES funding to the eviction program, CARES funding is not itself directly available to OJA or the Supreme Court as a state-level agency and appellate court. Programs like [ICJI's Coronavirus Emergency Supplemental Funding Program](#) and the [Indiana Finance Authority's Coronavirus Relief Fund Program](#) are available only to counties, cities, and towns.

If you have any questions about anything covered in this report, please do not hesitate to contact me.

Respectfully,



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