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## Some Phases of Procedure in the Supreme and Appellate Courts of Indiana

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## SOME PHASES OF PROCEDURE IN THE SUPREME AND APPELLATE COURTS OF INDIANA

It is practically impossible to treat appellate procedure without combining it with the trial court procedure. In fact, the appeal is little else than a continuation in another forum. Below, the case is tried by personal contact with the court, every witness and the facts. Above, it is tried on the record. In the higher court the assignment of errors is your complaint, and the transcript are the facts involved in the controversy between the parties in which the higher court pronounces its judgment. The briefs is your argument with court and jury. The errors assigned must be manifest on the face of the record. If the allegations in your complaint below are not upheld by the testimony, you lose. If the assignment of errors on your appeal is not upheld by the facts in your record, you lose. Thus you see the two courts are combined one with the other. The transcript should contain a complete copy of all the proceedings below,—the complaint, evidence, motions, rulings of the court and the court's instruction. The appeal bond, notice to opposite attorneys, assignment of errors, etc., are properly certified with marginal notes, and bound together as provided under Rule 3 of the Supreme Court.

### TERM APPEALS

The statute provides two kinds of appeals. Term and vacation appeal.

In a term appeal four things must be closely followed:

1st. The appeal must be prayed during the term the judgment was rendered and must be granted during that term.

2nd. The penalty of the bond must be fixed and surety named, the bond filed and approved during the term or the court must during the term fix a time within which the bond must be filed and approved.

3rd. The transcript must be filed in the Supreme Court within sixty days after filing of the bond.

4th. Notice is not essential as all the parties are in court.

### VACATION APPEAL

A vacation appeal differs from a term appeal in this. A term appeal required a bond but not notice while a vacation appeal requires notice but not a bond. When there is no effective ap-

peal in term there must *always* be notice. Notice in vacation may be served below or by filing the record with the clerk of the Supreme Court with a praecipe for the clerk to give the notice above. These notices must be served on the adverse party and the clerk below. The appeal must be perfected within the time prescribed by the statute and everything must be done that the law requires within the time designated. The court cannot enlarge the time, but may have discretionary power to do so in cases of fraud or accident. The right to appeal commences to run from the time the judgment is completed and recorded. In order to stay execution below a supersedeas bond must be filed with the clerk of the Supreme Court on order of the Supreme Court.

If an appeal is taken in term time and the transcript cannot be filed within the time limit, the appeal must be considered as a vacation appeal and notice must be served on the opposite parties.

#### SUBMISSION

All civil cases are submitted thirty days after filing. Briefs may be filed by the appellant within sixty days after submission. By the appellee within ninety days and reply within one hundred five days after submission. Should an extension of time be given to file briefs then the date set by the court becomes the ruling date. To file briefs after these dates, an order of court must be obtained.

Criminal cases are submitted the date of filing and briefs must be filed by appellant within sixty days, appellee in 120 days and reply within fifteen days later (Rule 21).

Petitions for oral argument must be filed separately and the request must be filed within the allotted time for filing briefs. The court may grant oral arguments, or refuse, or order oral arguments on their own motion. Be sure this motion is filed separately. Postponement of oral arguments usually are postponed on a petition and consent of both parties.

Applications for rehearing of a cause must be made by petition and must be separate and apart from any briefs filed with the petition. Brief must be filed in support of the application. The granting of the application does not set aside the submission but sets the case back as for hearing as a submitted cause. When a petition for rehearing is filed, the court desires that the winning party file a brief in support of the court's decision.

The assignment of errors must contain the full name of all the parties to the judgment below.

When not otherwise provided by law or the rules of the Supreme Court ten days notice is deemed to be required.

For the appearance of any attorney in any cause should be in writing filed with the clerk. It is necessary to have your appearance entered on the docket in order that we may give the proper service to the attorney as to notices, briefs, etc.

All communications should be addressed to the clerk of whatever character. All petitions for time, etc., are presented to the court daily. We give this special attention that we may give you the very best service possible to give and notify both sides of the action of the court by same day's mail.

Be careful in double spacing your briefs and have them neatly bound in book form, 7 x 9 inches. File all petitions, extensions of time, etc., separately from the briefs, even if the petition is in the brief; also file a petition separately. Neatness in all your papers pays a hundred fold, when it goes to the court for their attention.

There has been some criticism of the slowness in getting appealed cases decided in the Supreme Court. One of the reasons for this is the enormous increase of criminal appeals taken to the higher court.

Let us show you something of the growth of crime in Indiana as shown by the records of the Supreme Court. The following number of criminal cases were appealed and filed in the office of the clerk.

Prior to 1918, the war period, there were about 30 new criminal cases appealed yearly. In 1916, the close of the war, there were 24 filed.

1918 -----	24	1922 -----	61
1919 -----	42	1923 -----	141
1920 -----	58	1924 -----	191
1921 -----	67	1925 -----	145

Note this increase of over 700 per cent of criminal cases appealed in seven years. There are nearly 300 criminal cases now on the docket. Civil cases both in the Supreme and Appellate Courts have not materially changed, either more or fewer in in that period. The average for that period of new civil cases filed was

In the Supreme Court -----	125
In the Appellate Court -----	250

## TO THE JUDGES OF THE SUPREME AND APPELLATE COURT

In order to show you the increase in the volume of business as shown by the printed calendars for the last three years I have made a count and have found the following facts:

			SUPREME COURT		Total	New Cases Filed
May Calendar	1923-	(Civil	176		270	258
		(Criminal	94			
Nov. Calendar	1923	(Civil	243		357	152
		(Criminal	114			
May Calendar	1924-	(Civil	211		384	124
		(Criminal	176			
Nov. Calendar	1924	(Civil	216		443	214
		(Criminal	218			
May Calendar	1925	(Civil	127		372	124
		(Criminal	245			
Nov. Calendar	1925	(Civil	146		397	111
		(Criminal	251			

The above does not include about 75 cases on petition to transfer.

			APPELLATE COURT		
May Calendar	1923-	(Civil	265	282	131
		(Ind. Bd.	17		
Nov. Calendar	1923	(Civil	254	275	141
		(Ind. Bd.	21		
May Calendar	1924	(Civil	287	312	144
		(Ind. Bd.	25		
Nov. Calendar	1924	(Civil	331	363	162
		(Ind. Bd.	32		
May Calendar	1925	(Civil	379	412	230
		(Ind. Bd.	33		
Nov. Calendar	1925	(Civil	419	457	148
		(Ind. Bd.	38		

## Total cases in each term calendar:

May term, 1923	552	Nov. term, 1924	797
Nov. term, 1923	632	May term, 1925	784
May term, 1924	699	Nov. term, 1925	854

During the fiscal year 1925 the Supreme Court handed down  
 Written opinions .....177  
 Transferred cases from the Appellate Court on petition..... 49  
 Denied petition to transfer..... 5

Total cases finally disposed of.....231  
 New cases filed.....235  
 Number Per Curiam decisions..... 25  
 Opinions credited to individual judges.....177

During the same period the Appellate Court handed down

Written opinions .....	266
Per Curiam decisions.....	34
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Total .....	300
New cases filed .....	378

During the same period there were 78 cases transferred from the Supreme Court to the Appellate Court under the acts of the last legislature.

1923 Supreme Court handed down 158 decisions; Appellate Court.....	288
1924 Supreme Court handed down 194 decisions; Appellate Court.....	255
1925 Supreme Court handed down 231 decisions; Appellate Court.....	300

The November Docket of 1925 showed that there were 251 Criminal appeals appending and 17 more filed in December, of total of 268. The May docket of 1918 showed only 37 criminal cases. There were 140 civil cases in the Supreme Court January 1st, 1926. Marion County leads the list with 48 criminal cases, Delaware with 38, Vanderburgh 13.

Brown, Lagrange, Ohio, Scott and Switzerland counties have no cases either in the Supreme or Appellate courts.

Adams, Boone, Jefferson, Morgan, Noble, Park, Pike, Sullivan, Vermillion and Whitley counties have no cases in the Supreme Court, but have cases in the appellate court. Marion County has the most cases in the Supreme and Appellate Court—138 cases, followed by Delaware with 50 and Lake with 40 cases.

ZACK T. DUNGAN,

Clerk of Supreme and Appellate Courts of Indiana.