

PREFACE TO FOURTH EDITION

Civil Procedure is the body of court rules, statutes, case law, and customs by which Indiana courts and attorneys conduct all aspects of a civil action. Indiana has always followed a set of rules to govern the resolution of civil disputes. Important markers are 1852, when the State adopted a Code of Civil Procedure. This Code was readopted in 1881, making few significant changes to the 1852 Code. In 1940, the Supreme Court implemented new rules of procedure for trial courts, and the Code adopted in that year remained the governing law for the next three decades. All of this changed in 1970.

In 1967 the Indiana General Assembly established an Indiana Civil Code Study Commission (“Commission”) and charged it with the responsibility of studying, revising, and codifying the civil code. The first organizational meeting was held in June of that year, and the members agreed to return a set of proposed rules by September 1, 1968, which was done.

The Commission consulted with several experts and judges in the field, and under the direction of Judge Addison M. Beavers, as Chairman, and Mr. C. Ben Dutton, of Indianapolis, as Secretary, it produced a draft of the rules, which was then submitted to the legal profession and the State’s judiciary for review and comment.

The proposed rules, based largely on the Federal Rules of Civil Procedure, then were approved by the House of Delegates of the Indiana State Bar Association, recommended by the Indiana Supreme Court’s Commission on Rules of Procedure, enacted by the General Assembly, and signed into law by Governor Whitcomb. That enactment appeared in 1969 as House Enrolled Act No. 1733. Thereafter, the rules were extensively reviewed by the Indiana Supreme Court, with several changes being made, and formally adopted by that court on July 29, 1969, with an effective date of January 1, 1970.

The First Edition of the *Rules of Procedure Annotated* was published in 1970, followed by a Second Edition in 1987, and a Third Edition in 2002. These volumes were authored by William F. Harvey, one of the original members of the Civil Code Study Commission, a key drafter of the Indiana Rules of Trial Procedure in 1970, and a brilliant scholar and professor of Civil Procedure at the Indiana University School of Law in Indianapolis. As

a professor, Harvey instructed and influenced generations of future Indiana attorneys and judges. It is not surprising, therefore, that the *Rules of Procedure Annotated* has been routinely cited in Indiana case law for its insights and commentary since 1970. No other Indiana treatise parallels the scope and value of these eight volumes.

I became associated with Bill Harvey while a second-year student at the Indiana University School of Law. He was the Dean of the school at that time, as well as a full-time faculty member. He introduced me to Chief Justice Richard M. Givan, which eventually led to a two-year Clerkship for Justice Givan and the Indiana Supreme Court. About a decade later, West Publishing contacted me and asked if I would revise Professor Harvey's *Procedural Forms with Commentary*, represented in Volumes 9-11 of the *Indiana Practice Series*. I agreed and began my humble journey to learn and write about the many nuances of the Indiana Rules of Trial Procedure, the tactics used by Indiana's best trial lawyers in civil litigation, and the theory and evolution of civil procedure both in federal and Indiana trial courts. I subsequently authored and published through Thomson Reuters/West a three-volume book on *Indiana Civil Trial Practice*, and two handbooks—the *Trial Handbook for Indiana Lawyers* and the *Indiana Civil Trial Rule Handbook*.

When Professor Harvey made the decision to retire from writing the *Rules of Procedure Annotated*, West Publishing asked me to take on the annual supplementation and authorship of these volumes. Professor Harvey unselfishly shared with me his insights and first-hand knowledge about the intended operation of the Indiana trial and appellate rules, Supreme Court rule changes, and Indiana case law developments generally. For more than a decade now, I have authored the annual updates to the *Rules of Procedure Annotated*.

Recently, Thomson Reuters/West Publishing asked that I write a Fourth Edition of the *Rules of Procedure Annotated*. This was done with the expectation, and frankly my insistence, that the treatise would preserve Harvey's historical contributions contained in his earlier editions of this treatise. Because of the many changes to the Indiana Rules of Trial Procedure since the Third Edition was published in 2002, especially the Indiana Supreme Court's shift to electronic filing and service in civil actions, it became clear that a Fourth Edition was needed. Indeed, the main text of the Third Edition represents over 10,000 pages, and the pocket supplements for these eight volumes, written over the last 21 years, add hundreds of pages of new analysis and

PREFACE TO FOURTH EDITION

materials. This, of course, unnecessarily complicates the ability of an Indiana practitioner to use these volumes efficiently and effectively, especially the online Westlaw version.

The Fourth Edition will retain the format Professor Harvey adopted for this treatise. Many Indiana attorneys have asked that I retain this format, so I have. Each Rule of Trial Procedure is discussed in these volumes. First the rule itself is set out, followed by comments from the Civil Code Study Commission and, where applicable, the Indiana Supreme Court Committee on Rules of Practice and Procedure. Next, each rule contains Author Commentary which discusses the historical development of the rule, important case law treatment, the intended operation of the rule, and where applicable a discussion about trial tactics. I have made an effort to retain relevant commentary from Professor Harvey's first three editions, especially where Harvey provides firsthand insights derived from his work as a member of the Civil Code Study Commission and his later service on the Indiana Supreme Court Committee on Rules of Practice and Procedure. Examples of this include Sections 50.5-50.11 under Trial Rule 50. In other places where Harvey's materials are used, I note it in the applicable section. Author Commentary is followed by Law Review and Other Commentaries, Federal Advisory Committee Comments about relevant federal rules, and a summary of key State and Federal decisions. In short, an exhaustive research/analysis of all relevant materials is presented for each trial rule.

I must take a moment to address the passing of William Harvey. A seismic shift in the Indiana civil trial practice and procedure paradigm occurred in 2016, with the loss of my good friend, Bill Harvey. Bill faithfully served as an instructor and mentor to many of the judges and attorneys who currently practice law in our State's legal system and, who with time have become mentors themselves to a new generation of attorneys. One of Bill's greatest contributions to these generations of attorneys and judges is the multi-volume *Indiana Rules of Procedure Annotated*. The Indiana Bar owes Bill Harvey a tremendous debt of gratitude for his many years of commitment to the discussion and development of the Indiana trial and appellate rules. As a friend, I will miss Bill. As a colleague and mentor, he cannot be replaced. As one of the chief architects of Indiana's modern civil trial practice and procedure, I suspect his legacy will live on in the work of Indiana attorneys and judges for generations to come. A bountiful legacy gifted to all of us from a truly outstanding man.

I want to thank my wife, Michele, and my children Ashley, Benjamin, Jacob, and Keaton, for their support and encouragement, and sacrifice, as I have spent countless hours away from

them writing the annual pocket supplements and a Fourth Edition of the *Rules of Procedure Annotated*. I similarly want to thank Jennifer Waterworth, my Thomson/West editor, for her valuable assistance and unwavering support. Finally, it is important for me to recognize and thank three important mentors in my professional development—Chief Justice Richard M. Givan, C. Ben Dutton and William Evans. Each man epitomized the ideal of a “gentleman attorney,” and I was privileged to work with them while still a young and eager-to-learn attorney. Ben Dutton and Bill Evans were members of the 1968-1970 Civil Code Study Commission that, along with Bill Harvey and other distinguished attorneys from that time, drafted the modern Indiana rules of trial procedure. Despite their stature and heavy workloads, a common observation about Ben Dutton, Bill Evans, Bill Harvey and Justice Givan was their unwavering loyalty and commitment to the Indiana Bar, and their unselfish willingness to make time to train young attorneys and share their view on the proper role of an attorney in civil litigation. I was blessed to work with and have my perspective shaped by each of these fine attorneys.

In conclusion, I will repeat the words of Bill Harvey, taken from the Preface to his Second Edition, as they accurately represent my thinking on the matter. “It is hoped that this treatise will be a valuable aid not only to the Indiana and Federal appellate courts in their interpretations of the Civil Trial Rules, but to the Indiana lawyers who daily practice before the trial courts. In writing this edition, I have attempted to keep the practicing attorney particularly in mind, and to address this person’s many concerns and problems. This splendid individual—the Indiana trial lawyer—is the hinge to the entire judicial system. He and she make it function, constantly, and with little recognition and with less appreciation. As far as I am concerned, they are the centerpiece of a healthy system of Law and of the Civil Trial Rules. I take this opportunity to acknowledge debt which all of us owe to them. It is really very simple: without them, Rights would not be recognized or enforced, regardless of the high purpose, the noble words and the lofty ideals of which we speak and to which we aspire.”

STEPHEN E. ARTHUR