

**State of Indiana
Clay County Circuit Court**

<p>Jeffrey P. Gallant,</p> <p style="text-align: center;"><i>Petitioner,</i></p> <p style="text-align: center;">v.</p> <p>Indiana Election Commission,</p> <p style="text-align: center;"><i>Respondents.</i></p>	<p>Civil Cause No. 11C01-2603-RA-000185</p>
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Opposition to Motion for Change of Judge

Intervenor Alexandra Wilson, (“**Mrs. Wilson**”) has moved for a change of judge pursuant to Trial Rules 76(B) and 76(D). Petitioner, Jeffrey P. Gallant, by counsel, responds as follows:

The filing of the Motion on the eve of the emergency hearing is dilatory.

1. Mrs. Wilson has been contemporaneously served with all filings made in this Court.¹ Now, fully fourteen days after the Petition was filed and two days before the scheduled emergency hearing, she has moved for a change of judge. The Court must ensure that her dilatoriness is not rewarded.

2. Apparently to disguise undue delay, Mrs. Wilson claims that she has “never been served with the Verified Petition pursuant to IC 4-21.5-5-8 and Trial Rule 4.1” *Motion to Intervene* at ¶ 15 and that she “should have been included as a Party in the initial filing of

¹Mrs. Wilson does not explain how her motion is timely. “The rules of procedure governing civil actions in the courts govern pleadings and requests . . . for a change of judge,” IC 4-21.5-5-6. Assuming that the Commission’s substantive response to the Petition (and not its first response, a motion to dismiss) closed the issues on the merits, under Trial Rule 76(C), the motion for change in judge is technically timely if filed no later than March 26. Notwithstanding whether it is timely, as explained *infra*, avoiding delay and resolving an emergency are the more important considerations in handling a motion to change judge.

the . . . Petition.” *Id.* ¶ 3. Both statements are incorrect.

3. The Petition “[i]dentifi[ed] . . . [her as the] person[] who [was] part[y] in any proceedings that led to the agency action,” as is required by IC 4-21.5-5-7, which governs the proceedings here—a review of an agency action. IC 4-21.5-5-7(4) (emphasis added). She was served with every one of Petitioner’s filings. There is nothing in the AOPA or the Trial Rules that says that Mrs. Wilson’s name is required to be listed as a Party in the review of an agency action.

4. On March 2, contemporaneously with its filing, the Petition was served on Mrs. Wilson’s attorney by electronic mail and via the Court’s electronic service. The Petition was also served on Mrs. Wilson’s attorney on March 3 by certified mail. Each filing since has been served by either electronic mail, the Court’s filing system, or both. So, to the extent that fulfilling the AOPA required service under Trial Rule 4.1, the requirements were met. *Contra* Mot. Intervene ¶ 15. Mrs. Wilson does not and cannot claim any prejudice from her name not appearing on the docket; she was served every filing. This fact underscores that she could have intervened at any time but did not do so.

5. Mrs. Wilson’s last-minute interest in participating in the Petition and any concern about the assigned Judge is dilatory and cannot be allowed to threaten the emergency schedule. Under Trial Rule 21A, she had “the right . . . to intervene or . . . [be] name[d] or include[d] in the action” at the filing of the Petition, at the motion to add her as a Party, when Petitioner filed his motion to expedite the hearing, or his emergency motion for a hearing—all of which she had before her; they were contemporaneously served on her attorney.

6. Instead, fourteen days after the Petition was filed, thirteen days after the first motion to expedite was filed, twelve days after Petitioner moved to add her as a party and the IEC moved to dismiss on jurisdictional grounds,² eleven days after the memorandum of law supporting the Petition was filed, ten days after the IEC and Petitioner stipulated to the agency record, *on the day after the second emergency motion for hearing and resolution was filed*, four days before the emergency hearing, Mrs. Wilson moved to intervene, and finally, *two days before the emergency hearing*, she has moved for a change in judge.

As Intervenor, Mrs. Wilson must accept the case as she finds it.

7. “[I]t has long been established that an intervenor must accept the case as he finds it at the time of his intervention and is bound by the rulings made prior to the time he is made party.” *Bowen Engineering Corp. v. W.P.M., Inc.*, 557 N.E.2d 1358, 1363 (Ind. Ct. App. 1990). “An intervenor is bound by all stipulations and rulings prior to the time he is made a party and an intervenor takes the case as he finds it.” *Sexton v. Johnson Suburban Utils., Inc.*, 422 N.E.2d 1293, 1297 (Ind. Ct. App. 1981) (trans. denied). “An intervenor may not raise errors of a technical nature after the error has been waived by the other parties.” *In re Investigation*, 544 N.E.2d 181, 185 (Ind. Ct. App. 1989) (citing *Woerner v. City of Indianapolis*, 177 N.E.2d 34, 39 (Ind. 1961)). As intervenor, then, Mrs. Wilson is bound by the Parties’ stipulation of the agency record and the emergency schedule that the Court has ordered, and her dilatory intervention and motion must be considered in resolving that motion.

²The Motion to Dismiss was withdrawn the same day.

**A motion for change of judge must not delay resolution
of the case or reward dilatory tactics.**

8. In determining the propriety of motions under Rule 76, the Rule will not be interpreted in a way “which sanctions dilatory tactics.” *State ex rel. Yockey v. Superior Court of Marion Cty.*, 307 N.E.2d 70, 72 (Ind. 1974). *See id.* (interpreting terms of Trial Rule 76 to “aid[] in discouraging the postponement or avoidance of trial, which has been in historical part the sometime object of TR. 76”). As the Indiana Supreme Court remarked of the substantially same provisions in predecessor Supreme Court Rule 1-12B:

The purpose of [the Rule] is to reduce the unnecessary delays occasioned by the late filing of change of venue petitions which have as their real object the postponement or avoidance of a trial. Its purpose is to expedite trials and not to cause further delay or aid in dilatory practice.

State ex rel. Mays v. Fayette Circuit Court, 235 N.E.2d 706, 708 (Ind. 1968).

9. That is, then, that in addition to Intervenor Wilson accepting the Parties’ agreement to the record and the Order of the Court setting an emergency hearing, her motion for change of judge under Rule 76(B) cannot be applied in a way that disregards the emergency nature of the Petition and the hearing,³ because to do so would introduce an unnecessary delay that Rule 76 is written to avoid. Instead, the Court should resolve the last-minute motion after the emergency hearing and resolution of the Petition..

The Court should hold the hearing and resolve the Petition as scheduled.

10. The Court may “act on emergency matters” after a motion to change judge has been filed. *See Bedree v. DeGroot*e, 799 N.E.2d 1167, 1172 (Ind. Ct. App. 2003). Likewise, Trial Rule

³See Emergency Motion for Hearing and Resolution (March 11, 2026); Order (March 12, 2026) (reviewing parties’ filings in the docket, the relevant Indiana statutes, and recognizing the need to expedite the hearing in light of the upcoming election.).

79, the procedure expressly designated by Trial Rule 76(B) for effecting a change of judge, provides that “[n]othing in this rule shall divest the original court and judge of jurisdiction to hear and determine emergency matters between the time a motion for change of judge is filed and the appointed special judge accepts jurisdiction.” Ind. R. Trial P 79(O).

11. Given the dilatoriness with which Mrs. Wilson has pursued participation in the Petition for Review, her status as an Intervenor, the purpose of the Rule she attempts to use for delay, the emergency nature of the proceedings she threatens to disrupt, and the provisions of Trial Rule 79(O) for emergencies such as this, Petitioner submits that Judge Thomas should hold the hearing as scheduled and resolve the Petition. In the alternative, another judge in the same Court—the Court in which jurisdiction already exists—should immediately accept the case and hold the hearing as scheduled and resolve the Petition.

Dated: March 17, 2026

Respectfully submitted,

/s/ James Bopp, Jr.
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Certificate of Service

I certify that on March 17, 2026, I electronically filed the foregoing documents and all attachments thereto using the Indiana E-filing System. I further certify that on March 17, the foregoing was served upon the following persons via IEFS:

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