

# AN EXAMINATION OF THE INDIANA SUPREME COURT DOCKET, DISPOSITIONS, AND VOTING IN 2012\*

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After years of remarkable stability, the Indiana Supreme Court experienced a sea change in 2012. For the first time in forty-five years, two new justices took to the bench during the same calendar year. Justice Mark Massa was sworn in on April 2, 2012, replacing former Chief Justice Randall Shepard. Justice Loretta Rush was sworn in on November 7, 2012, replacing Justice Frank Sullivan. In addition, Justice Brent Dickson became chief justice on May 15, 2012. This marks the first time that the Indiana Supreme Court gained two new justices *and* a new chief justice within the same year in the forty-one years since a constitutional amendment created the modern office of chief justice.<sup>1</sup> In the nearly 200 years of the court's existence, the court has had two or more new justices take the bench in the same year on only nineteen prior occasions.<sup>2</sup> Combined with Justice Stephen David's appointment in October 2010, both a majority of the court and the chief justice's chair have changed hands in a little more than two years. By contrast, the court that preceded these changes—which was headed by retired Chief Justice Shepard and consisted of Justices Boehm, Sullivan, Rucker and Dickson—sat together for eleven years, the longest of any panel of five justices in the history of the court.

This type of rapid, unprecedented turnover naturally raises questions about the nature and direction of the new court. However, less than a year's worth of data cannot possibly answer all of the questions raised by these changes. The full Dickson court sat together for less than two months in 2012. The limited number

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\* The Tables presented in this Article are patterned after the annual statistics of the U.S. Supreme Court published in the *Harvard Law Review*. An explanation of the origin of these Tables can be found at Louis Henkin, *The Supreme Court, 1967 Term: Foreword: On Drawing Lines*, 82 HARV. L. REV. 63, 301-02 (1968). The *Harvard Law Review* granted permission for the use of these Tables by the *Indiana Law Review* this year; however, permission for any further reproduction of these Tables must be obtained from the *Harvard Law Review*.

We thank Barnes & Thornburg for its gracious willingness to devote the time, energy, and resources of its law firm to allow a project such as this to be accomplished. As is appropriate, credit for the idea for this project goes to former Chief Justice Shepard.

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1. See IND. CONST. art. 7, § 3 (amended 1970).

2. See *Supreme Court Justices*, <https://mycourts.in.gov/JR/Default.aspx> (last visited Sept. 6, 2013).

of cases this newly constituted court handed down makes it premature to draw firm convictions about what the future holds. However, while the temptation to leap to quick conclusions on such a small amount of data should be avoided, some interesting developments in 2012 are at least worth tracking in the coming years.

First, Justice Massa appears to have already made his voice heard on criminal law issues. This development should not come as a surprise, given that Justice Massa came to the court with an extensive background in criminal law. For instance, he was the Executive Director of the Indiana Criminal Justice Institute, as well as a former state and federal prosecutor. It is therefore hardly surprising to find Justice Massa marking his independence through his votes in criminal cases. For instance, he agreed with Justice Sullivan in only 58% of criminal cases in 2012 and agreed with Justice Rucker only 68% of the time. These percentages were the two lowest among any pair of justices in criminal cases for 2012. By contrast, no pair of justices agreed in less than 70% of criminal cases in 2011, 2010, or 2009. The most recent year that two justices agreed rarely in criminal cases was 2008 when Justice Sullivan and now-Chief Justice Dickson agreed in only 67.3% of criminal cases. While these numbers may be driven, in part, by the small sample size, Justice Massa's views in criminal cases are worth watching in the years to come.

Second, Justice Massa was an active dissenter during his first few months on the court. Justice Massa drafted five dissents in 2012, nearly matching the seven majority opinions he wrote. In fact, although he was not on the court for the first quarter of the year, Justice Massa wrote the third most dissenting opinions of the seven different justices that sat on the court in 2012. Not surprisingly, all but one of these dissents arose in a criminal case. By comparison, former Chief Justice Shepard—who Justice Massa replaced—wrote five dissents in 2011 and 2012 combined. Conversely, when he was the writing justice, Justice Massa was generally able to build consensus, as only two of his own majority opinions (his first two, in fact) drew even a single dissent from his colleagues.<sup>3</sup> His remaining majority opinions were all 5-0 decisions. Interestingly, Justice Rucker was the dissenting justice in both cases. As for Justice Rush, her time on the bench in 2012 was limited to barely two months, which did not leave enough time for her to author an opinion or a dissent. She did, however, vote in nine different cases, none of which was a 3-2 opinion. As such, 2012 did not provide enough data to draw any conclusions about what the future holds for Justice Rush.

Third, the court in 2012 continued a trend in the reversal rate for criminal cases, which has slowly declined over the past several years. For many years, it was a truism that the court would almost certainly reverse a case if it accepted transfer. That belief held regardless of whether the matter was civil or criminal in nature. For civil cases, the truism was born out in 2012, as the court reversed in 66% of its civil transfer cases. In other words, the court reversed in about two thirds of its civil cases, up slightly from the 64.5% in 2011. But the reversal rate

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3. *Ind. Dep't of Revenue v. Miller Brewing Co.*, 975 N.E.2d 800, 804 (Ind. 2012) (Rucker, J., dissenting); *Lock v. State*, 971 N.E.2d 71, 78 (Ind. 2012) (Rucker, J., dissenting).

for criminal cases continues to drop. In 2012, the court reversed in only 56% of its criminal cases that came before the court on transfer. That number was consistent with the 54% in 2011 and down from the 61% in 2010, 71% in 2009, 81.6% in 2008, and 74.2% in 2007. The teaching here continues to be that the grant of transfer in a criminal case is no longer a bellwether that the court intends to reverse.

Fourth, the court's treatment of petitions to transfer in 2012 mirrored its approach in previous years, despite the changes on the court. The court ruled on 733 transfer petitions in 2012. By comparison, the court ruled on 823 petitions in 2011, 536 in 2010 and 728 in 2009. The court was therefore able to maintain its prior pace in ruling on transfer petitions, despite the fact that two new justices were simultaneously getting up to speed with the work of the court. The results of the transfer dispositions also mirrored recent years. The court denied 90% of all petitions to transfer, which is consistent with 2011 (89.5%), 2012 (88.9%) and 2009 (91.6%). As with most prior years, the court granted a higher percentage of petitions in civil cases than petitions in criminal cases. The court granted 18.3% of the petitions it received in civil cases and only 6.6% of petitions in criminal cases. In 2011, the court accepted 16.7% of petitions in civil cases but only 7.7% in criminal cases. Similarly, in 2010, civil cases were taken 18.7% of the time, as compared to 8% for criminal cases. One possible explanation for this consistency in the treatment of transfer petitions could be the steadying hand of Chief Justice Dickson, a court veteran of over twenty-five years. The transfer statistics would suggest that Chief Justice Dickson does not appear to have led the court to a radical change in how it views the types of cases worthy of transfer or the volume of cases the court will accept on transfer.

Finally, in a year of such great transition, one would expect the court's overall workload to be impacted. That proved not to be the case. The court handed down 103 opinions in 2012. That number is actually more than 2011, when the court handed down only eighty-six opinions. In 2010, the court handed down 108 opinions and in 2009 it handed down ninety-seven. The turnover on the court, therefore, did not decrease the court's output of opinions. While this might be accounted for in part by the efforts of Chief Justice Shepard and Justice Sullivan to complete their work before leaving the bench, it is at least some indication that the court's workload will remain steady in the coming years.

**Table A.** The court issued a total of 103 opinions in 2012, up from the eighty-six opinions handed down in 2011. The court again handed down more civil cases than criminal cases, as 58% of the opinions came in civil cases. The opinions were fairly evenly distributed among the justices, with now-Chief Justice Dickson writing the most opinions with twenty.

**Table B-1.** Justice David was a critical swing vote to obtain in civil cases. In 2012, Justice David agreed with Chief Justice Shepard in 97% of the civil cases the two justices heard together, the highest of any two justices for the year (not counting newly-appointed Justice Rush, who was in alignment with the other justices in all nine of the civil cases she heard). Justice David agreed with Justice Dickson in 90% of all cases, the second most of any two justices. Another

consistent alignment is between Justice Dickson and Justice Rucker, who were aligned 85% of the time and have often had a high alignment in prior years.

**Table B-2.** Continuing the trend shown in civil cases, Justice David and Chief Justice Shepard were the most aligned in criminal cases at 94% (not counting Justice Rush's one criminal case). Justice David was also often aligned with Justice Dickson, voting together in 91% of the criminal cases heard in 2012. Unlike in some prior years, the overall alignment between the justices in criminal cases remained generally high, with the highest level of disagreement between justices being 58% between Justice Massa and Justice Sullivan (although the relatively few number of criminal cases heard by Justice Massa may contribute to this level).

**Table B-3.** Justice David agreed with both Chief Justice Shepard and Justice Dickson in more than 90% of all cases heard in 2012. Justice Rucker and Justice Sullivan agreed in only 68% of the cases heard together, the second-lowest level of agreement in 2012.

**Table C.** The percentage of unanimous opinions continues to hover around 65%. The court was unanimous in 64% percent of cases in 2012, a slight drop from the 64.8% unanimity in 2011. Of the thirty-five separate opinions in 2012, only two were concurrences. The total percentage of cases drawing a dissent continues to run in the mid-30s. In 2012, 34% percent of the cases had at least one dissent. That number is up from 28.6% percent in 2011 and, in fact, is higher than in the past three years. The number of dissents was almost evenly split between criminal cases and civil cases, with sixteen and seventeen dissents, respectively. In prior years, civil cases were far more likely to draw a dissent. For instance, in 2011 there were eleven criminal dissents versus fifteen dissents in civil cases, while in 2010 there were more than two times as many dissents in civil cases.

**Table D.** The percentage of the court's decisions that were split 3-2 rose to 16% from the 14% level in 2011, reaching a three-year high. Not surprisingly given the agreement shown in the earlier tables, Justice Rucker and Chief Justice Dickson were both in the majority in seven of the sixteen split decisions.

**Table E-1.** The court reversed in only 66% of its civil cases. That percentage is fairly consistent with the percentage of reversals in the prior three years. The percentage of reversals in all cases rose slightly in 2012, to 61.5%, but remained below the level of reversals in 2010 and 2011, where the court reversed in 63.5% and 67.4% of all cases, respectively.

**Table E-2.** The number of petitions to transfer in 2012 marked a decrease from 2011's 920 petitions, but it remained higher than the 603 and 795 petitions received in 2010 and 2009. The percentage of petitions that the court granted dropped to 9.9%, the lowest percentage since 2009, when only 8.4% of petitions were granted.

**Table F.** The court's cases continue to cover a broad scope of topics, including twenty-one different areas of law in 2012. After handing down only five opinions on product liability or strict liability in 2011, the court handed down eleven such opinions in 2012. The court also handed down considerably more opinions in the areas of employment, insurance, and contracts than in 2011.

**TABLE A**  
**OPINIONS<sup>a</sup>**

	OPINIONS OF COURT <sup>b</sup>			CONCURRENCES <sup>c</sup>			DISSENTS <sup>d</sup>		
	Criminal	Civil	Total	Criminal	Civil	Total	Criminal	Civil	Total
Shepard, C.J.	6	9	15	0	0	0	0	1	1
Dickson, J.	8	12	20	0	1	1	1	2	3
Sullivan, J.	7	10	17	1	1	2	2	8	10
David, J.	5	13	18	1	0	1	2	1	3
Rucker, J.	10	6	16	0	0	0	4	6	10
Massa, J.	4	3	7	0	0	0	4	1	5
Rush, J.	0	0	0	0	0	0	0	0	0
Per Curiam	3	7	10						
<b>Total</b>	<b>43</b>	<b>60</b>	<b>103</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>13</b>	<b>19</b>	<b>32</b>

<sup>a</sup> These are opinions and votes on opinions by each justice and in per curiam in the 2012 term. The Indiana Supreme Court is unique as the only supreme court to assign each case to a justice by a consensus method. Cases are distributed by a consensus of the justices in the majority on each case either by volunteering or nominating writers. “The chief justice does not have any . . . power to direct or control the assignments other than as a member of the majority.” See Melinda Gann Hall, *Opinion Assignment Procedures and Conference Practices in State Supreme Courts*, 73 JUDICATURE 209, 213 (Dec. 1989/Jan. 1990). The order of discussion and voting is started by the most junior member of the court and follows in reverse seniority. See *id.* at 209 tbl. 1.

<sup>b</sup> This is only a counting of full opinions written by each justice. Plurality opinions that announce the judgment of the court are counted as opinions of the court. It includes opinions on civil, criminal, and original actions.

<sup>c</sup> This category includes both written concurrences, joining in written concurrence, and votes to concur in result only.

<sup>d</sup> This category includes both written dissents and votes to dissent without opinion. Opinions concurring in part and dissenting in part, or opinions concurring in part only and differing on another issue, are counted as dissents.

**TABLE B-1**  
**VOTING ALIGNMENTS FOR CIVIL CASES<sup>e</sup>**

	Shepard	Dickson	Sullivan	David	Rucker	Massa	Rush
Shepard, C.J.	O	26	24	29	25		
	S	0	1	1	0		
	D	---	26	25	30	25	---
	N		32	30	31	32	
	P		81%	83%	97%	78%	
Dickson, J.	O	26		28	53	49	23
	S	0		0	0	2	1
	D	26	---	28	53	51	24
	N	32		44	59	60	28
	P	81%		64%	90%	85%	86%
Sullivan, J.	O	24	28		33	24	8
	S	1	0		1	1	3
	D	25	28	---	34	25	11
	N	30	44		43	44	14
	P	83%	64%		79%	57%	79%
David, J.	O	29	53	33		51	24
	S	1	0	1		0	0
	D	30	53	34	---	51	24
	N	31	59	43		59	28
	P	97%	90%	79%		86%	86%
Rucker, J.	O	25	49	24	51		21
	S	0	2	1	0		0
	D	25	51	25	51	---	21
	N	32	60	44	59		28
	P	78%	85%	57%	86%		75%

<sup>e</sup> This Table records the number of times that one justice voted with another in full-opinion decisions, including per curiam, for only civil cases. For example, in the top set of numbers for former Chief Justice Shepard, 12 is the number of times former Chief Justice Shepard and now-Chief Justice Dickson agreed in a full majority opinion in a civil case. Two justices are considered to have agreed whenever they joined the same opinion, as indicated by either the reporter or the explicit statement of a justice in the body of his or her own opinion. The Table does not treat two justices as having agreed if they did not join the same opinion, even if they agreed only in the result of the case or wrote separate opinions revealing little philosophical disagreement.

“O” represents the number of decisions in which the two justices agreed in opinions of the court or opinions announcing the judgment of the court.

“S” represents the number of decisions in which the two justices agreed in separate opinions, including agreements in both concurrences and dissents.

“D” represents the number of decisions in which the two justices agreed in either a majority, dissenting, or concurring opinion.

“N” represents the number of decisions in which both justices participated and thus the number of opportunities for agreement.

“P” represents the percentage of decisions in which one justice agreed with another justice, calculated by dividing “D” by “N.”

**TABLE B-1**  
**VOTING ALIGNMENTS FOR CIVIL CASES**  
**(cont'd)**

	Shepard	Dickson	Sullivan	David	Rucker	Massa	Rush
Massa, J.	O	23	8	24	21		9
	S	1	3	0	0		0
	D	---	24	11	24	---	9
	N		28	14	28		9
	P		86%	79%	86%	75%	100%
Rush, J.	O		9	9	9	9	
	S		0		0	0	
	D	---	9	---	9	9	---
	N		9		9	9	
	P		100%		100%	100%	100%



**TABLE B-2**  
**VOTING ALIGNMENTS FOR CRIMINAL CASES<sup>f</sup>**

	Shepard	Dickson	Sullivan	David	Rucker	Massa	Rush
Shepard, C.J.	O	16	14	16	16		
	S	0	0	1	0		
	D	---	16	14	17	16	---
	N		18	18	18	18	
	P		89%	78%	94%	89%	
Dickson, J.	O	16	30	38	37	19	1
	S	0	0	1	0	0	0
	D	16	---	30	39	37	19
	N	18		37	43	43	25
	P	89%		81%	91%	86%	76%
Sullivan, J.	O	14	30	27	29	11	
	S	0	0	0	1	0	
	D	14	30	---	27	30	11
	N	18	37		37	37	19
	P	78%	81%		73%	81%	58%
David, J.	O	16	38	27	35	20	1
	S	1	1	0	0	1	0
	D	17	39	27	---	35	21
	N	18	43	37		43	25
	P	94%	91%	73%		81%	84%
Rucker, J.	O	16	37	29	35	17	1
	S	0	0	1	0	0	0
	D	16	37	30	35	---	17
	N	18	43	37	43		25
	P	89%	86%	81%	81%		68%

<sup>f</sup> This Table records the number of times that one justice voted with another in full-opinion decisions, including per curiam, for only criminal cases. For example, in the top set of numbers for former-Chief Justice Shepard, 16 is the number of times former Chief Justice Shepard and now-Chief Justice Dickson agreed in a full majority opinion in a criminal case. Two justices are considered to have agreed whenever they joined the same opinion, as indicated by either the reporter or the explicit statement of a justice in the body of his or her own opinion. The Table does not treat two justices as having agreed if they did not join the same opinion, even if they agreed only in the result of the case or wrote separate opinions revealing little philosophical disagreement.

“O” represents the number of decisions in which the two justices agreed in opinions of the court or opinions announcing the judgment of the court.

“S” represents the number of decisions in which the two justices agreed in separate opinions, including agreements in both concurrences and dissents.

“D” represents the number of decisions in which the two justices agreed in either a majority, dissenting, or concurring opinion.

“N” represents the number of decisions in which both justices participated and thus the number of opportunities for agreement.

“P” represents the percentage of decisions in which one justice agreed with another justice, calculated by dividing “D” by “N.”

**TABLE B-2**  
**VOTING ALIGNMENTS FOR CRIMINAL CASES**  
**(cont'd)**

	Shepard	Dickson	Sullivan	David	Rucker	Massa	Rush
O		19	11	20	17		1
S		0	0	1	0		0
Massa, D	---	19	11	21	17	---	1
J. N		25	19	25	25		1
P		76%	58%	84%	68%		100%
O		1		1	1	1	
S		0		0	0	0	
Rush, D	---	1	---	1	1	1	---
J. N		1		1	1	1	
P		100%		100%	100%	100%	

**TABLE B-3**  
**VOTING ALIGNMENTS FOR ALL CASES<sup>8</sup>**

	Shepard	Dickson	Sullivan	David	Rucker	Massa	Rush
Shepard, C.J.	O	42	38	45	41		
	S	0	1	2	0		
	D	---	42	39	47	41	---
	N		50	48	49	50	
	P		84%	81%	96%	82%	
Dickson, J.	O	42		58	91	86	42
	S	0		0	1	2	1
	D	42	---	58	92	88	43
	N	50		81	102	103	53
	P	84%		72%	90%	85%	81%
Sullivan, J.	O	38	58		60	53	19
	S	1	0		1	2	3
	D	39	58	---	61	55	22
	N	48	81		80	81	33
	P	81%	72%		76%	68%	67%
David, J.	O	45	91	60		86	44
	S	2	1	1		0	1
	D	47	92	61	---	86	45
	N	49	102	80		102	53
	P	96%	90%	76%		84%	85%
Rucker, J.	O	41	86	53	86		38
	S	0	2	2	0		0
	D	41	88	55	86	---	38
	N	50	103	81	102		53
	P	82%	85%	68%	84%		72%

<sup>8</sup> This Table records the number of times that one justice voted with another in full-opinion decisions, including per curiam, for all cases. For example, in the top set of numbers for former Chief Justice Shepard, 42 is the total number of times former Chief Justice Shepard and now-Chief Justice Dickson agreed in all full majority opinions written by the court in 2012. Two justices are considered to have agreed whenever they joined the same opinion, as indicated by either the reporter or the explicit statement of a justice in the body of his or her own opinion. The Table does not treat two justices as having agreed if they did not join the same opinion, even if they agreed only in the result of the case or wrote separate opinions revealing little philosophical disagreement.

“O” represents the number of decisions in which the two justices agreed in opinions of the court or opinions announcing the judgment of the court.

“S” represents the number of decisions in which the two justices agreed in separate opinions, including agreements in both concurrences and dissents.

“D” represents the number of decisions in which the two justices agreed in either a majority, dissenting, or concurring opinion.

“N” represents the number of decisions in which both justices participated and thus the number of opportunities for agreement.

“P” represents the percentage of decisions in which one justice agreed with another justice, calculated by dividing “D” by “N.”

**TABLE B-3**  
**VOTING ALIGNMENTS FOR ALL CASES**  
**(cont'd)**

	Shepard	Dickson	Sullivan	David	Rucker	Massa	Rush
O		42	19	44	38		10
Massa, S		1	3	1	0		0
D	---	43	22	45	38	---	10
J. N		53	33	53	53		10
P		81%	67%	85%	72%		100%
O		10		10	10	10	
Rush, S		0		0	0	0	
D	---	10	---	10	10	10	---
J. N		10		10	10	10	
P		100%		100%	100%	100%	

**TABLE C**  
**UNANIMITY**  
**NOT INCLUDING JUDICIAL OR ATTORNEY DISCIPLINE CASES<sup>h</sup>**

Unanimous <sup>i</sup>			Unanimous with Concurrence <sup>i</sup>			Opinions with Dissent			Total
Criminal	Civil	Total	Criminal	Civil	Total	Criminal	Civil	Total	
27	36	63 (64%)	0	2	2 (2%)	16	17	33 (34%)	98

<sup>h</sup> This Table tracks the number and percent of unanimous opinions among all opinions written. If, for example, only four justices participated and all concurred, it is still considered unanimous. It also tracks the percentage of overall opinions with concurrence and overall opinions with dissent.

<sup>i</sup> A decision is considered unanimous only when all justices participating in the case voted to concur in the court's opinion, as well as its judgment. When one or more justices concurred in the result, but not in the opinion, the case is not considered unanimous.

<sup>j</sup> A decision is listed in this column if one or more justices concurred in the result, but not in the opinion of the court or wrote a concurrence, and there were no dissents.

**TABLE D**  
**SPLIT DECISIONS<sup>k</sup>**

<b>Justices Constituting the Majority</b>	<b>Number of Opinions<sup>l</sup></b>
1. Rucker, J., Dickson, J., David, J.	4
2. Shepard, C.J., Dickson, J., David, J.	3
3. Shepard, C.J., Sullivan, J., David, J.	1
4. Sullivan, J., David, J., Rucker, J.	1
5. Sullivan, J., David, J., Massa, J.	1
6. Dickson, J., David, J., Massa, J.	2
7. Dickson, J., Rucker, J., Sullivan, J.	3
8. Shepard, C.J., Sullivan, J., Rucker, J.	1
<b>Total<sup>m</sup></b>	<b>16</b>

<sup>k</sup> This Table concerns only decisions rendered by full opinion. An opinion is counted as a split decision if two or more justices voted to decide the case in a manner different from that of the majority of the court.

<sup>l</sup> This column lists the number of times each group of justices constituted the majority in a split decision.

<sup>m</sup> The 2012 term's split decisions were:

1. Rucker, J., Dickson, J., David, J.: *Presbytery of Ohio Valley, Inc. v. OPC, Inc.*, 973 N.E.2d 1099 (Ind. 2012) (Dickson, C.J.); *In re Williams*, 971 N.E.2d 92 (Ind. 2012) (per curiam); *Clark v. Clark*, 971 N.E.2d 58 (Ind. 2012) (Dickson, C.J.); *State Auto. Mut. Ins. Co. v. Flexdar, Inc.*, 964 N.E.2d 845 (Ind. 2012) (Rucker, J.).

2. Shepard, C.J., Dickson, J., David, J.: *Witt v. Jay Petroleum, Inc.*, 964 N.E.2d 198 (Ind. 2012) (Dickson, J.); *Hill v. State*, 960 N.E.2d 141 (Ind. 2012) (David, J.); *Whitaker v. Becker*, 960 N.E.2d 111 (Ind. 2012) (Shepard, C.J.).

3. Shepard, C.J., Sullivan, J., David, J.: *R.L. Turner Corp. v. Town of Brownsburg*, 963 N.E.2d 453 (Ind. 2012) (Shepard, C.J.).

4. Sullivan, J., David, J., Rucker, J.: *Shepherd Props. Co. v. Int'l Union of Painters & Allied Trades*, 972 N.E.2d 845 (Ind. 2012) (David, J.).

5. Sullivan, J., David, J., Massa, J.: *Purcell v. Old Nat'l Bank*, 972 N.E.2d 835 (Ind. 2012) (David, J.).

6. Dickson, J., David, J., Massa, J.: *Conley v. State*, 972 N.E.2d 864 (Ind. 2012) (David, J.); *Hirsch v. Oliver*, 970 N.E.2d 651 (Ind. 2012) (David, J.).

7. Dickson, J., Rucker, J., Sullivan, J.: *Castillo v. State*, 974 N.E.2d 458 (Ind. 2012) (Dickson, C.J.); *State ex rel. Logan v. Elkhart Super. Ct. No. 3*, 969 N.E.2d 590 (Ind. 2012) (mem.) (Dickson, C.J., concurring); *Webb v. State*, 963 N.E.2d 1103 (Ind. 2012) (Rucker, J.).

8. Shepard, C.J., Sullivan, J., Rucker, J.: *Abbott v. State*, 961 N.E.2d 1016 (Ind. 2012) (Rucker, J.).

**TABLE E-1**  
**DISPOSITION OF CASES REVIEWED BY TRANSFER**  
**AND DIRECT APPEALS<sup>n</sup>**

	Reversed or Vacated <sup>o</sup>	Affirmed	Total
Civil Appeals Accepted for Transfer	20 (66%)	14 (34%)	42
Direct Civil Appeals	4 (57%)	3 (43%)	7
Criminal Appeals Accepted for Transfer	23 (56%)	18 (44%)	41
Direct Criminal Appeals	1 (100%)	0 (0%)	1
Total	56 (61.5%)	35 (38.5%)	91 <sup>p</sup>

<sup>n</sup> Direct criminal appeals are cases in which the trial court imposed a death sentence. *See* IND. CONST. art. VII, § 4. Thus, direct criminal appeals are those directly from the trial court. A civil appeal may also be direct from the trial court. *See* IND. APP. R. 56, R. 63 (pursuant to Rules of Procedure for Original Actions). All other Indiana Supreme Court opinions are accepted for transfer from the Indiana Court of Appeals. *See* IND. APP. R. 57.

<sup>o</sup> Generally, the Indiana Supreme Court uses the term “vacate” when it is reviewing a court of appeals opinion, and the term “reverse” when the court overrules a trial court decision. A point to consider in reviewing this Table is that the court technically “vacates” every court of appeals opinion that is accepted for transfer, but may only disagree with a small portion of the reasoning and still agree with the result. *See* IND. APP. R. 58(A). As a practical matter, “reverse” or “vacate” simply represents any action by the court that does not affirm the trial court or court of appeals’s opinion.

<sup>p</sup> This does not include 6 attorney discipline opinions, 3 judicial discipline opinions, and 8 original actions. These opinions did not reverse, vacate, or affirm any other court’s decision.

**TABLE E-2**  
**DISPOSITION OF PETITIONS TO TRANSFER**  
**TO SUPREME COURT IN 2012<sup>q</sup>**

	Denied or Dismissed	Granted	Total
Petitions to Transfer			
Civil <sup>r</sup>	201 (88.7%)	45 (18.3%)	246
Criminal <sup>s</sup>	496 (93.4%)	35 (6.6%)	531
Juvenile	36 (97.2%)	1 (2.8%)	37
Total	733 (90.1%)	81 (9.9%)	814

<sup>q</sup> This Table analyzes the disposition of petitions to transfer by the court. *See* IND. APP. R. 58(A).

<sup>r</sup> This also includes petitions to transfer in tax cases and workers' compensation cases.

<sup>s</sup> This also includes petitions to transfer in post-conviction relief cases.



**TABLE F**  
**SUBJECT AREAS OF SELECTED DISPOSITIONS**  
**WITH FULL OPINIONS<sup>1</sup>**

<b>Original Actions</b>	<b>Number</b>
• Certified Questions	4 <sup>u</sup>
• Writs of Mandamus or Prohibition	1 <sup>v</sup>
• Attorney Discipline	5 <sup>w</sup>
• Judicial Discipline	0
<b>Criminal</b>	
• Death Penalty	0
• Fourth Amendment or Search and Seizure	0
• Writ of Habeas Corpus	0
Emergency Appeals to the Supreme Court	0
Trusts, Estates, or Probate	1 <sup>x</sup>
Real Estate or Real Property	4 <sup>y</sup>
Personal Property	1 <sup>z</sup>
Landlord-Tenant	0
Divorce or Child Support	3 <sup>aa</sup>
Children in Need of Services (CHINS)	2 <sup>bb</sup>
Paternity	0
Product Liability or Strict Liability	0
Negligence or Personal Injury	11 <sup>cc</sup>
Invasion of Privacy	0
Medical Malpractice	5 <sup>dd</sup>
Indiana Tort Claims Act	0
Statute of Limitations or Statute of Repose	1 <sup>ee</sup>
Tax, Department of State Revenue, or State Board of Tax Commissioners	5 <sup>ff</sup>
Contracts	4 <sup>gg</sup>
Corporate Law or the Indiana Business Corporation Law	1 <sup>hh</sup>
Uniform Commercial Code	0
Banking Law	0
Employment Law	7 <sup>ii</sup>
Insurance Law	7 <sup>ii</sup>
Environmental Law	4 <sup>kk</sup>
Consumer Law	0
Worker's Compensation	1 <sup>ll</sup>
Arbitration	0
Administrative Law	2 <sup>mm</sup>
First Amendment, Open Door Law, or Public Records Law	1 <sup>nn</sup>
Full Faith and Credit	0
Eleventh Amendment	0
Civil Rights	0
Indiana Constitution	5 <sup>oo</sup>

<sup>1</sup> This Table is designed to provide a general idea of the specific subject areas upon which the court ruled or discussed and how many times it did so in 2012. It is also a quick-reference guide to court rulings for practitioners in specific areas of the law. The numbers corresponding to the areas of law reflect the number of cases in which the court substantively discussed legal issues about these subject areas. Also, any attorney discipline case resolved by order (as opposed to an opinion) was not considered in preparing this Table.

<sup>u</sup> Loparex, LLC v. MPI Release Techs., LLC, 964 N.E.2d 806 (Ind. 2012); Howard v. United States, 964 N.E.2d 779 (Ind. 2012); Kole v. Faultless, 963 N.E.2d 493 (Ind. 2012); Cher v. City of Kokomo, 962 N.E.2d 1224 (Ind. 2012).

<sup>v</sup> State *ex rel.* Logan v. Elkhart Super. Ct. No. 3, 969 N.E.2d 590 (Ind. 2012) (mem.).

<sup>w</sup> State *ex rel.* Ind. Supreme Ct. Disciplinary Comm'n v. Farmer, 978 N.E.2d 409 (Ind. 2012); *In re* Williams, 971 N.E.2d 92 (Ind. 2012); *In re* Brizzi, 962 N.E.2d 1240 (Ind. 2012); *In re* Mendenhall, 959 N.E.2d 254 (Ind. 2012); *In re* Flatt-Moore, 959 N.E.2d 241 (Ind. 2012).

<sup>x</sup> Presbytery of Ohio Valley, Inc. v. OPC, Inc., 973 N.E.2d 1099 (Ind. 2012).

<sup>y</sup> Citimortgage, Inc. v. Barabas, 975 N.E.2d 805 (Ind. 2012); Gill *ex rel.* Estate of Gill v. Evansville Sheet Metal Works, Inc., 970 N.E.2d 633 (Ind. 2012); Lyles v. State, 970 N.E.2d 140 (Ind. 2012); Marion Cnty. Auditor v. Sawmill Creek, LLC, 964 N.E.2d 213 (Ind. 2012).

<sup>z</sup> Ind. Dep't of State Revenue v. AOL, LLC, 963 N.E.2d 498 (Ind. 2012).

<sup>aa</sup> Ryan v. Ryan, 972 N.E.2d 359 (Ind. 2012); Hirsch v. Oliver, 970 N.E.2d 651 (Ind. 2012); Smith v. State, 963 N.E.2d 1110 (Ind. 2012).

<sup>bb</sup> *In re* T.N. v. Ind. Dep't of Child Servs., 963 N.E.2d 467 (Ind. 2012); *In re* K.D. v. Ind. Dep't of Child Servs., 962 N.E.2d 1249 (Ind. 2012).

<sup>cc</sup> Robertson v. B.O., 977 N.E.2d 341 (Ind. 2012); Clark v. Clark, 971 N.E.2d 58 (Ind. 2012); Gill *ex rel.* Estate of Gill v. Evansville Sheet Metal Works, Inc., 970 N.E.2d 633 (Ind. 2012); Lakes v. Grange Mut. Cas. Co., 964 N.E.2d 796 (Ind. 2012); Hunt Constr. Grp., Inc. v. Garrett, 964 N.E.2d 222 (Ind. 2012); LaPorte Cnty. Schs. Corp. v. Rosales, 963 N.E.2d 520 (Ind. 2012); Person v. Shipley, 962 N.E.2d 1192 (Ind. 2012); Bennett v. Richmond, 960 N.E.2d 782 (Ind. 2012); Ind. Dep't of Ins. v. Everhart, 960 N.E.2d 129 (Ind. 2012); Whitaker v. Becker, 960 N.E.2d 111 (Ind. 2012); Haag v. Castro, 959 N.E.2d 819 (Ind. 2012).

<sup>dd</sup> Wisner v. Laney, 984 N.E.2d 1201 (Ind. 2012); Alsheik v. Guerrero, 979 N.E.2d 151 (Ind. 2012); Robertson v. B.O., 977 N.E.2d 341 (Ind. 2012); Ind. Dep't of Ins. v. Everhart, 960 N.E.2d 129 (Ind. 2012); Ramsey v. Methodist Hosps., Inc., 959 N.E.2d 246 (Ind. 2012).

<sup>ee</sup> Gill *ex rel.* Estate of Gill v. Evansville Sheet Metal Works, Inc., 970 N.E.2d 633 (Ind. 2012).

<sup>ff</sup> Ind. Dep't of Revenue v. Miller Brewing Co., 975 N.E.2d 800 (Ind. 2012); Ind. Dep't of Revenue v. United Parcel Serv., Inc., 969 N.E.2d 596 (Ind. 2012); Marion Cnty. Auditor v. Sawmill Creek, LLC, 964 N.E.2d 213 (Ind. 2012); Ind. Dep't of State Revenue v. AOL, LLC, 963 N.E.2d 498 (Ind. 2012); Ind. Dep't of State Revenue v. Rent-A-Center E., Inc., 963 N.E.2d 463 (Ind. 2012).

<sup>gg</sup> Allen v. Clarian Health Partners, Inc., 980 N.E.2d 306 (Ind. 2012); Nat'l Wine & Spirits, Inc. v. Ernst & Young, LLP, 976 N.E.2d 699 (Ind. 2012); Purcell v. Old Nat'l Bank, 972 N.E.2d 835 (Ind. 2012); Lyles v. State, 970 N.E.2d 140 (Ind. 2012).

<sup>hh</sup> Reed v. Reid, 980 N.E.2d 277 (Ind. 2012).

<sup>ii</sup> Haegert v. Univ. of Evansville, 977 N.E.2d 924 (Ind. 2012); Nat'l Wine & Spirits, Inc. v. Ernst & Young, LLP, 976 N.E.2d 699 (Ind. 2012); J.M. v. Review Bd. of Ind. Dep't of Workforce Dev., 975 N.E.2d 1283 (Ind. 2012); Gill *ex rel.* Estate of Gill v. Evansville Sheet Metal Works, Inc., 970 N.E.2d 633 (Ind. 2012); Loparex, LLC v. MPI Release Techs., LLC, 964 N.E.2d 806 (Ind. 2012); Richmond State Hosp. v. Brattain, 961 N.E.2d 1010 (Ind. 2012); Chrysler Grp., LLC v. Review Bd. of Ind. Dep't of Workforce Dev., 960 N.E.2d 118 (Ind. 2012).

<sup>jj</sup> Inman v. State Farm Mut. Auto. Ins. Co., 981 N.E.2d 1202 (Ind. 2012); Alsheik v. Guerrero, 979 N.E.2d 151 (Ind. 2012); Kosarko v. Padula, 979 N.E.2d 144 (Ind. 2012); State Auto. Mut. Ins. Co. v. Flexdar, Inc., 964 N.E.2d 845 (Ind. 2012); Lakes v. Grange Mut. Cas. Co., 964 N.E.2d 796 (Ind. 2012); Hardy v. Hardy, 963 N.E.2d 470 (Ind. 2012), *abrogated by* Hillman v. Maretta, 133 S. Ct. 1943 (2013); Haag v. Castro, 959 N.E.2d 819 (Ind. 2012).

<sup>kk</sup> Reed v. Reid, 980 N.E.2d 277 (Ind. 2012); Crowel v. Marshall Cnty. Drainage Bd., 971 N.E.2d 638 (Ind. 2012); State Auto. Mut. Ins. Co. v. Flexdar, Inc., 964 N.E.2d 845 (Ind. 2012); Witt v. Jay Petroleum, Inc., 964 N.E.2d 198 (Ind. 2012).

<sup>ll</sup> Chrysler Grp., LLC v. Review Bd. of Ind. Dep't of Workforce Dev., 960 N.E.2d 118 (Ind. 2012).

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<sup>mm</sup> Perdue v. Gargano, 964 N.E.2d 825 (Ind. 2012); Woodruff v. Ind. Family & Soc. Servs. Admin., 964 N.E.2d 784 (Ind. 2012).

<sup>nn</sup> Shepherd Props. Co. v. Int'l Union of Painters & Allied Trades, 972 N.E.2d 845 (Ind. 2012).

<sup>oo</sup> Cundiff v. State, 967 N.E.2d 1026 (Ind. 2012); Kole v. Faultless, 963 N.E.2d 493 (Ind. 2012); White v. Ind. Democratic Party *ex rel.* Parker, 963 N.E.2d 481 (Ind. 2012); Sanjari v. State, 961 N.E.2d 1005 (Ind. 2012); Hill v. State, 960 N.E.2d 141 (Ind. 2012).