

IC 33-33-2

Chapter 2. Allen County

IC 33-33-2-1

Application

Sec. 1. IC 33-29-1 does not apply to this chapter.
As added by P.L.98-2004, SEC.12.

IC 33-33-2-2

Judicial circuit

Sec. 2. Allen County constitutes the thirty-eighth judicial circuit.
As added by P.L.98-2004, SEC.12.

IC 33-33-2-3

Magistrate

Sec. 3. The judge of the Allen circuit court may appoint one (1) full-time magistrate under IC 33-23-5. The magistrate continues in office until removed by the judge.
As added by P.L.98-2004, SEC.12.

IC 33-33-2-4

Magistrate; hearing officer

Sec. 4. (a) In addition to the magistrate appointed under section 3 of this chapter, the judge of the Allen circuit court may appoint a hearing officer with the powers of a magistrate under IC 33-23-5. The hearing officer continues in office until removed by the judge.

(b) The salary of a hearing officer appointed under subsection (a) is equal to that of a magistrate under IC 33-23-5. The hearing officer's salary must be paid by the county. The hearing officer is a county employee.

As added by P.L.98-2004, SEC.12. Amended by P.L.201-2011, SEC.31.

IC 33-33-2-5

Establishment of superior court

Sec. 5. (a) There is established a superior court in Allen County.

(b) The superior court shall be known as the Allen superior court.

(c) The Allen superior court is a court of record, and its judgments, decrees, orders, and proceedings have the same force and effect and shall be enforced in the same manner as those of the Allen circuit court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-6

Seal

Sec. 6. The Allen superior court shall have a seal consisting of a circular disk containing the words, "Allen Superior Court", "Indiana", and "Seal", in a design as the court may determine. An impression of the seal shall be spread of record upon the order book of the superior court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-7

Location of superior court sessions

Sec. 7. (a) The Allen superior court shall hold its sessions in:

- (1) the Allen County courthouse in Fort Wayne; and
- (2) in other places in Allen County as the court may determine.

(b) The board of county commissioners of Allen County shall provide and maintain in the courthouse and at other places in Allen County as the court may determine:

- (1) suitable and convenient courtrooms for the holding of the court;
- (2) suitable and convenient jury rooms and offices for the judges and other court officers and personnel; and
- (3) other facilities as may be necessary.

(c) The board of county commissioners of Allen County shall also provide all necessary furniture and equipment for rooms and offices of the court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-8

Judges; divisions

Sec. 8. (a) The Allen superior court consists of nine (9) judges as follows:

- (1) Two (2) judges serve in the family relations division.
- (2) Three (3) judges serve in the criminal division.
- (3) Four (4) judges serve in the civil division.

A newly elected or appointed judge assumes the division assignment of the judge whom the judge replaces.

(b) If in the opinion of a majority of the judges there is an undue disparity in the number of cases in any division, the chief judge may assign specific cases normally assigned to that division to a judge in another division as directed by a majority of the judges.

(c) During the period under IC 3-8-2-4 in which a declaration of candidacy may be filed for a primary election, any person desiring to become a candidate for one (1) of the Allen superior court judgeships must file with the election division a declaration of candidacy adapted from the form prescribed under IC 3-8-2 that:

- (1) is signed by the candidate; and
- (2) designates the division and the name of the incumbent judge of the judgeship that the candidate seeks.

(d) A petition without the designation required under subsection (c) shall be rejected by the election division (or by the Indiana election commission under IC 3-8-1-2).

(e) If an individual who files a declaration under subsection (c) ceases to be a candidate after the final date for filing a declaration under subsection (c), the election division may accept the filing of additional declarations of candidacy for that seat not later than noon on August 1.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-9

Judicial candidates; terms

Sec. 9. (a) All candidates for each respective Allen superior court judgeship shall be listed on the general election ballot in the form prescribed by IC 3-11, without party designation. The candidate receiving the highest number of votes for each judgeship shall be elected to that office.

(b) IC 3, except where inconsistent with this chapter, applies to elections held under this chapter.

(c) The term of each Allen superior court judge:

(1) begins January 1 following election and ends December 31 following the election of a successor; and

(2) is six (6) years.

As added by P.L.98-2004, SEC.12. Amended by P.L.58-2005, SEC.33.

IC 33-33-2-10

Candidate for judge; qualifications

Sec. 10. (a) To qualify as a candidate for Allen superior court judge, a person:

(1) must be a citizen of the United States domiciled in Allen County;

(2) must have at least five (5) years active practice of law, including cases involving matters assigned to the division in which the person would serve as judge;

(3) may not previously have had any disciplinary sanction imposed upon the person by the supreme court disciplinary commission of Indiana or any similar body in another state; and

(4) may not previously have been convicted of any felony.

(b) If a person does not qualify under subsection (a), the person may not be listed on the ballot as a candidate. However, an individual who was a judge of the court on January 1, 1984, does not have to comply with subsection (a)(2).

As added by P.L.98-2004, SEC.12.

IC 33-33-2-11

Limits on acceptance of contributions

Sec. 11. A judge or candidate for judge of the Allen superior court may not:

(1) accept a contribution (as defined in IC 3-5-2-15) from any political party, political action committee (as defined in IC 3-5-2-37), or regular party committee (as defined in IC 3-5-2-42); or

(2) accept more than a total of ten thousand dollars (\$10,000) in contributions from all sources to pay expenses connected with the candidate's candidacy.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-12

Rules and regulations; incidental powers of judges

Sec. 12. (a) The Allen superior court:

(1) may make and adopt rules and regulations for conducting the business of the court, not repugnant to Indiana laws and the rules of the supreme court; and

(2) has all the powers incident to a court of record in relation to the attendance of witnesses, the punishment of contempts, and the enforcement of its orders.

(b) The judges of the superior court may administer oaths, solemnize marriages, take and certify acknowledgments of deeds, and all legal instruments, and give all necessary certificates for the authentication of the records and proceedings in the court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-13

Orders, writs, appointments, and commissions

Sec. 13. The Allen superior court may:

(1) grant restraining orders and injunctions;

(2) issue writs of habeas corpus;

(3) appoint receivers, masters, and commissioners to convey real property and to grant commissions for the examination of witnesses; and

(4) appoint other officers necessary to facilitate and transact the business of the court;

as conferred on circuit courts or the judges of circuit courts.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-14

Personnel

Sec. 14. (a) The Allen superior court may appoint probate commissioners, juvenile referees, bailiffs, court reporters, probation officers, and other personnel, including an administrative officer, the court believes are necessary to facilitate and transact the business of the court.

(b) In addition to the personnel authorized under subsection (a) and IC 31-31-3, the following magistrates may be appointed:

(1) The judges of the Allen superior court-civil division may jointly appoint not more than four (4) full-time magistrates under IC 33-23-5 to serve the Allen superior court-civil division. The judges of the Allen superior court-civil division may jointly assign any magistrates the duties and powers of a probate commissioner.

(2) The judge of the Allen superior court-criminal division may jointly appoint not more than three (3) full-time magistrates under IC 33-23-5 to serve the Allen superior court-criminal division. Any magistrate serves at the pleasure of, and continues in office until jointly removed by, the judges of the division that appointed the magistrate.

(c) All appointments made under this section must be made without regard to the political affiliation of the appointees. The salaries of the personnel shall be fixed and paid as provided by law.

If the salaries of any of the personnel are not provided by law, the amount and time of payment of the salaries shall be fixed by the court, to be paid out of the county treasury by the county auditor, upon the order of the court, and be entered of record. The officers and persons appointed shall perform duties as are prescribed by the court. Any administrative officer appointed by the court shall operate under the jurisdiction of the chief judge and serve at the pleasure of the chief judge. Any probate commissioners, magistrates, juvenile referees, bailiffs, court reporters, probation officers, and other personnel appointed by the court serve at the pleasure of the court.

(d) Any probate commissioner appointed by the court may be vested by the court with all suitable powers for the handling and management of the probate and guardianship matters of the court, including the fixing of all bonds, the auditing of accounts of estates and guardianships and trusts, acceptance of reports, accounts, and settlements filed in the court, the appointment of personal representatives, guardians, and trustees, the probating of wills, the taking and hearing of evidence on or concerning such matters, or any other probate, guardianship, or trust matters in litigation before the court, the enforcement of court rules and regulations, the making of reports to the court concerning the probate commissioner's actions under this subsection, including the taking and hearing of evidence together with the commissioner's findings and conclusions regarding the evidence. However, all matters under this subsection are under the final jurisdiction and decision of the judges of the court.

(e) A juvenile referee appointed by the court may be vested by the court with all suitable powers for the handling and management of the juvenile matters of the court, including the fixing of bonds, the taking and hearing of evidence on or concerning any juvenile matters in litigation before the court, the enforcement of court rules and regulations, and the making of reports to the court concerning the referee's actions under this subsection. The actions of a juvenile referee under this subsection are under final jurisdiction and decision of the judges of the court.

(f) A probate commissioner or juvenile referee may:

- (1) summon witnesses to testify before the commissioner or juvenile referee; and
- (2) administer oaths and take acknowledgments;

to carry out the commissioner's or juvenile referee's duties and powers.

As added by P.L.98-2004, SEC.12. Amended by P.L.1-2007, SEC.216; P.L.127-2008, SEC.9.

IC 33-33-2-15

Salary of juvenile referee

Sec. 15. Each juvenile referee appointed under section 14 of this chapter who:

- (1) is appointed by the court to serve as a full-time referee; and
 - (2) does not practice law during the referee's term as referee;
- is entitled to receive an annual salary as provided in IC 33-38-5-7.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-16

Clerk and sheriff

Sec. 16. The clerk of the Allen circuit court and the sheriff of Allen County shall be the clerk and sheriff of the Allen superior court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-17

Clerk and sheriff; duties, liabilities, fees, and procedure

Sec. 17. (a) The clerk and sheriff shall attend the Allen superior court and discharge all the duties pertaining to their respective offices as they are required to do by law in the circuit court.

(b) All laws prescribing the duties and liabilities of clerk and sheriff and the mode of proceeding against them, or either of them, for neglect of official duty, allowing fees, and providing for the collection fees in the circuit court, apply to the Allen superior court.

(c) In a case in the Allen superior court based upon a violation of a city ordinance where fines or forfeitures are adjudged against a party:

(1) the fines or forfeitures shall be paid to and collected by the clerk and regularly remitted to the city clerk of the city that issued the ordinance; and

(2) the city clerk shall disburse the fines or forfeitures as required by law.

Payment of fines for admitted parking violations shall be made to the city clerk of the city that issued the ordinances concerning parking violations.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-18

Record books and dockets

Sec. 18. The clerk, under the direction of the Allen superior court, shall provide:

- (1) order books;
- (2) judgment dockets;
- (3) execution dockets;
- (4) fee books; and
- (5) other books, papers, and records;

as are necessary for the court. All books, papers, and proceedings of the court shall be kept distinct and separate from those of other courts.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-19

Single order book

Sec. 19. The Allen superior court shall maintain a single order book for the entire court. The order book may be signed on behalf of the court by any of the judges of the court. The signature constitutes

authentication of the actions of each judge in the court.
As added by P.L.98-2004, SEC.12.

IC 33-33-2-20 Version a
Jurisdiction

Note: This version of section effective until 1-1-2012. See also following repeal of this section, effective 1-1-2012.

Sec. 20. (a) The Allen superior court has the same jurisdiction as the Allen circuit court. Except as provided in subsection (b), the superior court has exclusive juvenile jurisdiction in Allen County.

(b) The Allen superior court has concurrent jurisdiction with the Allen circuit court concerning paternity actions.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-20 Version b
Repealed

(Repealed by P.L.201-2011, SEC.115.)

Note: This repeal of section effective 1-1-2012. See also preceding version of this section, effective until 1-1-2012.

IC 33-33-2-21
Fees

Sec. 21. The same fees shall be taxed in the Allen superior court as are provided by law to be taxed in the Allen circuit court. When collected in the Allen superior court, the fees shall be disbursed in the same manner as similar fees are disbursed in the Allen circuit court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-22
Laws applicable to superior court

Sec. 22. All laws of the state and rules adopted by the supreme court governing the Allen circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointing of judges pro tempore and special judges, changes of venue from the judge and from the county, adjournments by the court and by the clerk in the absence of the judge, and the selection of jurors for the court apply to and govern the Allen superior court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-23
Repealed

(Repealed by P.L.118-2007, SEC.38.)

IC 33-33-2-24
Fees of jurors and witnesses

Sec. 24. Jurors and witnesses in attendance upon the Allen superior court shall receive the same fees as are provided for by law for jurors and witnesses in the circuit court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-25**Transfer of cases from circuit court**

Sec. 25. The judge of the Allen circuit court may, with the consent of the Allen superior court, transfer any action, cause, or proceeding filed and docketed in the circuit court to the superior court by transferring all original papers and instruments filed in the action, cause, or proceeding without a further transcript to be redocketed and disposed of as if originally filed with the Allen superior court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-26**Transfer of cases to circuit court**

Sec. 26. Any judge of the Allen superior court may, with the consent of the judge of the Allen circuit court, transfer any action, cause, or proceeding filed and docketed in the superior court to the circuit court by transferring all original papers and instruments filed in the action, cause, or proceeding without further transcript thereof to be redocketed and disposed of as if originally filed with the circuit court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-27**Authority of circuit judge to sit in superior court**

Sec. 27. The judge of the Allen circuit court may sit as a judge of the superior court, with the superior court's permission, in all matters pending before the superior court, without limitation and without any further order, in the same manner as if the circuit court judge were a judge of the superior court with all the rights and powers as if the circuit court judge were appointed judge of the superior court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-28**Appeals**

Sec. 28. Any party may appeal from any order or judgment of the superior court in any case where an appeal may be had from a similar order or judgment of the circuit court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-29**Process**

Sec. 29. The process of the Allen superior court must have the seal affixed and be attested, directed, served, and returned, and be in the form as is provided for process issuing from the circuit court.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-30**Board of judges**

Sec. 30. (a) The Allen superior court shall be governed and operated by a board of judges composed of all the judges of the superior court. Six (6) judges are required for a quorum for

conducting business and as a majority for taking action. Every two (2) years the board of judges shall elect a chief judge to carry out ministerial functions of representation as the board of judges periodically determines by a majority of the board's members.

(b) Matters of administration, budget, expenditures, policy, and procedure affecting the entire superior court shall be determined by a majority of the board of judges. Any determination binds the entire board of judges and each judge of the board.

(c) One (1) budget covering all the divisions of the superior court shall be prepared for the superior court and submitted to the county fiscal body. However, each division shall prepare its own budget as a component of the superior court's total budget.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-31

Divisions of the court

Sec. 31. (a) The court, by rules adopted by the Allen superior court, shall divide the work of the court into the following divisions:

(1) A family relations division.

(2) A criminal division (including a standard minor offenses and violations docket under IC 33-29-2-8).

(3) A civil division (including a standard small claims docket under IC 33-29-2-4).

(b) Cases involving juvenile matters shall be assigned to the family relations division.

(c) Cases involving matters specified in IC 33-29-2-8 shall be assigned to the criminal division.

(d) Cases involving matters specified in IC 33-29-2-4 shall be assigned to the small claims docket in the civil division.

(e) The work of each division may be divided further by rules adopted by the court.

(f) Every two (2) years each division of the court shall elect an administrative judge for that division. The administrative judge shall carry out ministerial, administrative, and assignment functions as are periodically determined by a majority of the judges of that division.

(g) Matters of administration, budget, expenditures, policy, and procedure in each division shall be determined by a majority of the judges of that division.

(h) Disputes within any division concerning administration, budget, expenditures, policy, procedure, and assignments that pertain to the division as a whole or to any individual judge of the division, that for any reason cannot be resolved by a majority of the judges in the division, shall be submitted to the board of judges and determined by a majority of the board of judges.

(i) A resolution approved by a majority of the board of judges that resolves disputes within a division must include at least one (1) of the judges of that division and binds all of the judges of that division.

As added by P.L.98-2004, SEC.12. Amended by P.L.1-2007, SEC.217.

IC 33-33-2-32

Judicial nominating commission; establishment

Sec. 32. (a) There is established a judicial nominating commission for the Allen superior court.

(b) The board of county commissioners of Allen County shall provide all facilities, equipment, supplies, and services necessary for the administration of the duties of the commission.

(c) The members of the commission serve without compensation. However, the board of commissioners shall reimburse members of the commission for actual expenses incurred in performing their duties.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-33

Judicial nominating commission; membership

Sec. 33. (a) The judicial nominating commission consists of seven (7) members, the majority of whom shall form a quorum. The chief justice of the supreme court (or a justice of the supreme court or judge of the court of appeals designated by the chief justice) shall be a member and shall act as chairman. Persons who are admitted to the practice of law and who reside in Allen County shall, under sections 35 and 36 of this chapter, elect three (3) members to serve on the commission. The governor shall appoint to the commission three (3) residents of Allen County who are not admitted to the practice of law. However, not more than two (2) of these appointees may be from the same political party. If the governor fails to appoint any of the nonattorney commission members within the time required under section 34 of this chapter, the appointment shall be made by the chief justice of the supreme court.

(b) A member of the commission other than a judge or justice may not hold any other salaried public office, and a member may not hold an office in a political party or organization. A member of the commission is ineligible for appointment to a judicial office in Allen County while the member is a member of the commission and for three (3) years thereafter. If any member of the commission other than a judge or justice terminates the member's residence in Allen County, the member is considered to have resigned from the commission.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-34

Judicial nominating commission; nonattorney members

Sec. 34. (a) The governor shall appoint the three (3) nonattorney members of the commission.

(b) One (1) month before the expiration of a term of office of a nonattorney commissioner, the governor shall:

- (1) reappoint the commissioner; or
- (2) appoint a replacement.

All appointments shall be certified to the secretary of state, the clerk of the supreme court, and the clerk of Allen superior court not more

than ten (10) days after the appointment.

(c) After their initial terms, the governor shall appoint each nonattorney commissioner for a term of four (4) years.

(d) When a vacancy occurs in the office of a nonattorney commissioner, the chairman of the commission shall promptly notify the governor in writing of that fact. Vacancies in the office of nonattorney commissioners shall be filled by appointment of the governor not more than sixty (60) days after the governor has notice of the vacancy. The nonattorney commissioner appointed shall serve during the unexpired term of the member whose vacancy the nonattorney commissioner has filled.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-35

Judicial nominating commission; attorney members

Sec. 35. (a) Persons who are admitted to the practice of law and who reside in Allen County (referred to as "attorney electors") shall elect three (3) members to serve on the commission. The term of office of each elected attorney member is four (4) years, commencing on the first day of October following the member's election. The election day is the first Tuesday in September 1983, and every four (4) years thereafter. During the month before the expiration of each attorney commissioner's term of office, an election shall be held to fill the succeeding four (4) year term of office.

(b) Except when a term of office has less than ninety (90) days remaining, vacancies in the office of an attorney commissioner shall be filled for the unexpired term by a special election.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-36

Judicial nominating commission; election of attorney members

Sec. 36. The attorney members of the commission shall be elected by the following process:

(1) The clerk of the superior court shall, at least ninety (90) days before the date of election, notify all attorneys in Allen County of the election by mail, informing them that nominations must be made to the clerk of the superior court at least sixty (60) days before the election.

(2) A nomination in writing, accompanied by a signed petition of ten (10) attorney electors and the written consent of the qualified nominee, shall be filed by an attorney elector in the office of the clerk at least sixty (60) days before the election.

(3) The clerk shall prepare and print ballots containing the names and residential addresses of all attorney nominees whose written nominations, petitions, and written statements of consent have been received sixty (60) days before the election.

(A) The ballot must read:

"ALLEN SUPERIOR COURT

NOMINATING COMMISSION BALLOT

To be cast by individuals residing in Allen County and admitted

to the practice of law in Indiana. Vote for not more than three (3) of the following candidates for terms commencing _____.

(Name) (Address)

(Name) (Address)

(etc.) (etc.)

To be counted, this ballot must be completed, the accompanying certificate completed and signed, and both together mailed or delivered to the clerk of the Allen Superior Court not later than

_____.

DESTROY BALLOT IF NOT USED".

(B) The three (3) nominees receiving the most votes are elected.

(4) The clerk shall also supply with each ballot distributed by the clerk a certificate, to be completed and signed and returned by the attorney elector voting the ballot, certifying that the attorney elector is admitted to the practice of law in Indiana, that the attorney elector resides in Allen County, and that the attorney elector voted the ballot returned. A ballot not accompanied by the signed certificate of the voter may not be counted.

(5) A separate envelope shall be provided by the clerk for the ballot, in which only the voted ballot is to be placed. This envelope may not be opened until the counting of the ballots.

(6) The clerk of the superior court shall mail a ballot and its accompanying material to all qualified electors at least two (2) weeks before the date of election.

(7) Upon receiving the completed ballots and the accompanying certificates, the clerk shall ensure that the certificates have been completed in compliance with this chapter. All ballots that are accompanied by a valid certificate shall be placed in a package designated to contain ballots. All accompanying certificates shall be placed in a separate package.

(8) The clerk, with the assistance of the Allen County election board, shall open and canvass all ballots after 4 p.m. on the day of the election in the office of the clerk of the Allen superior court. A ballot received after 4 p.m. may not be counted unless the chairman of the judicial nominating commission orders an extension of time because of extraordinary circumstances. Upon canvassing the ballots the clerk shall place all ballots in their package. These, along with the certificates, shall be retained in the clerk's office for six (6) months, and the clerk may not permit anyone to inspect them except upon an order of the court of appeals.

(9) If two (2) or more nominees are tied so that one (1) additional vote cast for one (1) of them would give that nominee a plurality, the canvassers shall resolve the tie by lot, and the winner of the lot is considered to have been elected.

As added by P.L.98-2004, SEC.12.

Judicial nominating commission; notification of election or appointment

Sec. 37. After:

- (1) the attorney members of the commission have been elected; and
- (2) the names of the nonattorney commissioners appointed by the governor have been certified to the secretary of state, the clerk of the supreme court, and the clerk of Allen superior court;

the superior court clerk shall notify the members of the commission of their election or appointment.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-38

Judicial nominating commission; service; limitation

Sec. 38. (a) A member of the commission shall serve until the member's successor is appointed or elected.

(b) An attorney commissioner or nonattorney commissioner is not eligible for more than two (2) successive reelections or reappointments.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-39

Vacancy in judgeship; nomination of candidates; meetings of commission

Sec. 39. (a) When a judge of the superior court:

- (1) dies, resigns, is removed from office; or
- (2) is for any reason ineligible to continue or incapable of continuing in office until the end of the judge's term in office;

a judge in another division may not more than thirty (30) days after the vacancy occurs transfer to the vacant position for the remainder of the transferring judge's term. A judge who has made one (1) transfer is ineligible to make any other transfers. If more than one (1) judge desires to transfer, the most senior of these judges is entitled to transfer. After a transfer, or the thirty (30) day period if a transfer is not made, the commission shall meet to nominate three (3) candidates to fill the unexpired term of the vacancy caused by the transferring judge or the original vacancy if a transfer is not made.

(b) The clerk shall promptly notify the members of the commission of a vacancy that the commission must fill under subsection (a), and the chairman shall call a meeting of the commission within ten (10) days following that notice. The commission shall submit its nominations of three (3) candidates for the vacancy and shall certify them to the governor not later than sixty (60) days after the vacancy occurred. When it is known that a vacancy will occur at a definite future date within the term of the governor then serving:

- (1) the clerk shall notify the chairman and each member of the commission immediately; and
- (2) the chairman shall call a meeting of the commission within

ten (10) days following that notice.
The commission may then submit its nominations of three (3) candidates for each impending vacancy and shall certify them to the governor.

(c) Meetings of the commission shall be called by its chairman, or, if the chairman fails to call a necessary meeting, upon the call of any four (4) members of the commission. Written notice of a meeting shall be given by mail to each member of the commission at least five (5) days before the meeting, unless the commission at its previous meeting designated the time and place of its next meeting.

(d) Meetings of the commission may be held in the Allen County courthouse or in another public building in Allen County designated by the commission.

(e) The commission shall act only at a meeting and may act only by the concurrence of a majority of its members attending a meeting. The commission may adopt rules for the conduct of its proceedings and the discharge of its duties.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-40

Vacancy in judgeship; nomination of candidates; requirements

Sec. 40. In selecting the three (3) nominees to be submitted to the governor, the commission shall comply with the following requirements:

(1) The commission shall submit only the names of the three (3) most highly qualified candidates from among all those eligible individuals considered. To be eligible for nomination as a judge of the Allen superior court, a person must meet the qualifications listed in section 10 of this chapter.

(2) As an aid in choosing the three (3) most qualified candidates, the commission shall in writing evaluate each eligible individual it considers on the following factors:

(A) Law school record, including any academic honors and achievements.

(B) Contributions to scholarly journals and publications, legislative draftings, and legal briefs.

(C) Activities in public service, including:

(i) writings and speeches concerning public or civic affairs that are on public record, including campaign speeches or writing, letters to newspapers, and testimony before public agencies;

(ii) government service;

(iii) efforts and achievements in improving the administration of justice; and

(iv) other conduct relating to the candidate's profession.

(D) Legal experience, including the number of years practicing law, the kind of practice involved, and reputation as a trial lawyer or judge.

(E) Probable judicial temperament.

(F) Physical condition, including age, stamina, and possible

habitual intemperance.

(G) Personality traits, including the exercise of sound judgment, ability to compromise and conciliate, patience, decisiveness, and dedication.

(H) Membership on boards of directors, financial interests, and any other consideration that might create conflict of interest with a judicial office.

(I) Any other pertinent information that the commission feels is important in selecting the best qualified individuals for judicial office.

(3) An individual may not be evaluated before the individual states in writing that the individual desires to hold a judicial office that is or will be created by a vacancy.

(4) The political affiliations of a candidate may not be considered.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-41

Vacancy in judgeship; submission of list of nominees to governor

Sec. 41. The commission shall submit to the governor, with its list of nominees, its written evaluation of the qualifications of each nominee.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-42

Vacancy in judgeship; nomination of candidates; substitution of names

Sec. 42. (a) After the commission has nominated and submitted to the governor the names of three (3) nominees:

(1) a name may be withdrawn for a cause considered by the commission to substantially affect the nominee's qualifications to hold office; and

(2) another name or other names may be substituted at any time before the appointment is made to fill the vacancy.

(b) If a nominee dies or requests in writing that the nominee's name be withdrawn, the commission shall nominate another person to replace the nominee.

(c) If two (2) or more vacancies exist, the commission shall nominate and submit to the governor a list of three (3) different persons for each of the vacancies. Before an appointment is made, the commission may withdraw the lists of nominations and change the names of any persons nominated from one (1) list to another, or may substitute a new name for any of those previously nominated.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-43

Vacancy in judgeship; appointment from list of nominees

Sec. 43. (a) A vacancy created by a superior court judge's departure from office before the expiration of the judge's term in office that is not filled by a transfer under section 39 of this chapter

shall be filled by appointment of the governor from the list of nominees. If the governor fails to make an appointment from the list within sixty (60) days after the list is presented to the governor, the appointment shall be made by the chief justice of the supreme court from the same list.

(b) The governor shall make all appointments to the Allen superior court without regard to the political affiliation of any of the nominees and shall consider only those qualifications included in section 40 of this chapter.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-44

Vacancy in judgeship; effective date of appointment

Sec. 44. An appointment to the Allen superior court for the remainder of a departing judge's term in office takes effect immediately if a vacancy exists at the date of the appointment. The appointment takes effect on the date the vacancy is created if the vacancy does not yet exist.

As added by P.L.98-2004, SEC.12.

IC 33-33-2-45

Vacancy in judgeship; appointee to serve unexpired term

Sec. 45. A judge appointed under section 43 of this chapter serves during the unexpired part of the judge's predecessor's term in office.

As added by P.L.98-2004, SEC.12.