

IC 33-33-71

Chapter 71. St. Joseph County

IC 33-33-71-1

Application

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

IC 33-33-71-2

Judicial circuit

Sec. 2. St. Joseph County constitutes the sixtieth judicial circuit.
As added by P.L.98-2004, SEC.12.

IC 33-33-71-3

Magistrates

Sec. 3. The judge of the St. Joseph circuit court may appoint two (2) full-time magistrates under IC 33-23-5 to serve the circuit court. A magistrate continues in office until removed by the judge.
As added by P.L.98-2004, SEC.12.

IC 33-33-71-4

Repealed

(Repealed by P.L.118-2007, SEC.38.)

IC 33-33-71-5

Establishment of superior court; number of judges

Sec. 5. There is established a superior court in St. Joseph County. The court consists of eight (8) judges.
As added by P.L.98-2004, SEC.12.

IC 33-33-71-6

Name

Sec. 6. The superior court shall be known as the St. Joseph superior court.
As added by P.L.98-2004, SEC.12.

IC 33-33-71-7

Seal

Sec. 7. The superior court shall have a seal consisting of a circular disk containing the words "St. Joseph Superior Court", an impression of which shall be spread of record upon the order book of the court.
As added by P.L.98-2004, SEC.12.

IC 33-33-71-8 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. 8. The St. Joseph superior court has the following jurisdiction:

- (1) Original, appellate, concurrent, and coextensive jurisdiction

with the circuit court in all civil cases, criminal cases, and probate matters.

(2) Concurrent and coextensive jurisdiction with the circuit court in all cases of appeal from boards of county commissioners and all other appellate jurisdiction vested in the circuit court.

(3) Concurrent and coextensive jurisdiction in all matters of probate and the settlement of decedents' estates, trusts, and guardianships.

(4) Jurisdiction in all other subject matters actionable in the circuit court.

(5) Original exclusive jurisdiction of all violations of ordinances of cities located in the county.

(6) Original exclusive jurisdiction in the trial of offenses constituting violation of traffic ordinances of the cities and violations of traffic laws of the state that occur in any city of St. Joseph County.

(7) Original jurisdiction of violations of traffic laws of the state that occur outside a city in St. Joseph County.

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

IC 33-33-71-8 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 33-33-71-9 Version a

Small claims and misdemeanor division

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

Sec. 9. The St. Joseph superior court has a standard small claims and misdemeanor division.

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

IC 33-33-71-9 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 33-33-71-10

Court of record; force and effect of judgments, decrees, and orders

Sec. 10. The St. Joseph 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 circuit court.

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

IC 33-33-71-11

Power and authority of judges

Sec. 11. The judges of the superior court may make and adopt rules and regulations for conducting the business of the court and have 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. The judges may administer oaths, solemnize marriages, take and certify acknowledgment of deeds, 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 33-33-71-12

Powers of judges same as circuit judges

Sec. 12. The judges of the superior court may:

- (1) grant restraining orders and injunctions;
- (2) issue writs of habeas corpus and of mandate and prohibition;
- (3) appoint receivers, masters, and commissioners to convey real property;
- (4) grant commissions for the examination of witnesses; and
- (5) appoint other officers necessary to facilitate and transact the business of the court;

the same as circuit courts or circuit court judges.

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

IC 33-33-71-13

Sessions of court; facilities; jurisdiction

Sec. 13. (a) The St. Joseph superior court shall hold its sessions in:

- (1) the St. Joseph County courthouse in South Bend; and
- (2) at least one (1) appropriate place in Mishawaka.

The superior court in Mishawaka shall be full time and shall exercise full superior court jurisdiction in that city. The board of county commissioners of St. Joseph County shall provide and maintain in the courthouse in South Bend and in an appropriate place in Mishawaka court facilities that include suitable and convenient courtrooms, jury rooms, and offices for the judges, secretaries, and official court reporters, and other necessary facilities, including all the necessary furniture and equipment for the rooms and offices of the court for the conduct of all criminal and civil business, including the necessary facilities for jury trials.

(b) The judges of the court have all jurisdiction and authority granted them by law regardless of the city in which they are located.

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

IC 33-33-71-14

Dockets; books, papers, and records

Sec. 14. The clerk, under the direction of the judge, shall provide order books, judgment dockets, execution dockets, fee books, and other books, papers, and records as necessary for the court, and all books, papers, and proceedings of the superior court shall be kept

distinct and separate from those of other courts.
As added by P.L.98-2004, SEC.12.

IC 33-33-71-15

Single order book for entire court

Sec. 15. The superior court shall maintain a single order book for the entire court that may be signed on behalf of the court by any of the sitting judges of the court, and the signature constitutes authentication of the actions of each judge in the court.

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

IC 33-33-71-16

Bailiff

Sec. 16. Each judge of the superior court shall appoint a bailiff for the court whose salary shall be fixed by the court and paid as provided by law.

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

IC 33-33-71-17

Court reporter

Sec. 17. Each judge of the superior court shall appoint a court reporter whose duties, salary, and term shall be regulated in the same manner as the court reporter of circuit court.

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

IC 33-33-71-18

Laws and rules governing practice and procedure

Sec. 18. All laws and rules adopted by the supreme court governing the circuit court in matters of pleading, practice, the issuing and service of process, the giving of notice, the appointment 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 shall be applicable to and govern the superior court.

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

IC 33-33-71-19

Repealed

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

IC 33-33-71-20

Appeal from order or judgment of court

Sec. 20. Any party may appeal to the supreme court or the court of appeals from any order or judgment of the superior court in any case where, under Indiana law, an appeal may be had from a similar order or judgment of the circuit court. The appeal is governed by the law governing appeals from the circuit court to the court of appeals and the supreme court.

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

IC 33-33-71-21

Process of court

Sec. 21. The process of the superior court must have the seal affixed. The process must be attested, directed, served, returned, and in the form as is provided for process issuing from the circuit court.
As added by P.L.98-2004, SEC.12.

IC 33-33-71-22

Appointment of officers and personnel

Sec. 22. Each judge of the superior court may appoint additional officers and personnel as necessary for the proper administration of the judge's duties as judge of the court.
As added by P.L.98-2004, SEC.12.

IC 33-33-71-23

Chief judge

Sec. 23. (a) The superior court, by rules duly adopted by the court, shall designate one (1) of the judges as chief judge and fix the time the chief judge presides.

(b) The chief judge shall be responsible for the operation and conduct of the court and to seeing that the court operates efficiently and judicially.

(c) The chief judge shall do the following:

(1) Assign cases to a judge of the court or reassign cases from one (1) judge of the court to another judge of the court to ensure the efficient operation and conduct of the court.

(2) Assign and allocate courtrooms, other rooms, and other facilities to ensure the efficient operation and conduct of the court.

(3) Annually submit to the fiscal body of St. Joseph County a budget for the court.

(4) Make appointments or selections on behalf of the court that are required of a superior court judge under any statute.

(5) Direct the employment and management of court personnel.

(6) Conduct cooperative efforts with other courts for establishing and administering shared programs and facilities.

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

IC 33-33-71-24

Judges acting in concert; majority decision

Sec. 24. When any action of the entire superior court is required, the judges of the court shall act in concert. If there is a disagreement, the decision of the majority of the judges controls. However, if the judges are evenly divided, the decision joined by the chief judge controls.

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

IC 33-33-71-25

Administrative officer of court

Sec. 25. The superior court shall, when it believes it is necessary,

appoint additional personnel for the proper administration of the court, including an administrative officer who shall operate under the jurisdiction of the chief judge.

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

IC 33-33-71-26

Transfer of causes from circuit court

Sec. 26. The judge of the circuit court may, with the consent of the chief judge, 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 further transcript to be redocketed and disposed of as if originally filed with the superior court.

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

IC 33-33-71-27

Transfer of causes to circuit court

Sec. 27. The chief judge of the superior court may, with the consent of the judge of the 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 to be redocketed and disposed of as if originally filed with the circuit court.

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

IC 33-33-71-28

Circuit court judge sitting as superior court judge

Sec. 28. The judge of the St. Joseph circuit court at the circuit court judge's discretion, may sit as a judge of the superior court, with the chief judge's permission, in all matters pending before the superior court, without limitation and without any further order, in the same manner as if the judge of the circuit court were a judge of the superior court with all the rights and powers as if the judge of the circuit court were an elected judge of the superior court.

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

IC 33-33-71-29

Judicial nominating commission; establishment

Sec. 29. (a) There is established a judicial nominating commission for the St. Joseph superior court, the functions, responsibilities, and procedures of which are set forth in sections 30 through 40 of this chapter.

(b) The board of county commissioners of St. Joseph County shall provide all facilities, equipments, supplies, and services necessary for the administration of the duties imposed upon the commission. The members of this commission shall serve without compensation. However, the board of county commissioners of St. Joseph County shall reimburse members of this commission for their actual expenses incurred in performing their duties.

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

IC 33-33-71-30

Judicial nominating commission; membership

Sec. 30. (a) The judicial nominating commission (referred to as the "commission" in this chapter) consists of seven (7) members, the majority of whom shall form a quorum. The chief justice shall appoint a justice of the supreme court or a judge of the court of appeals to serve as a member and chairman of the commission until a successor is appointed. Those admitted to the practice of law in Indiana and residing in St. Joseph County or maintaining their principal law office in St. Joseph County shall elect, under sections 32 and 33 of this chapter, three (3) of their number to serve as attorney members of the commission. If any attorney member of the commission terminates residence in St. Joseph County or discontinues the maintenance of a principal law office in St. Joseph County, the member shall be considered to have resigned from the commission. The three (3) remaining members of the commission must be persons not admitted to the practice of law (referred to as "nonattorney members" in this chapter) and residents of St. Joseph County. However, not more than two (2) of the nonattorney members may be from the same political party and that the appointment of the nonattorney members of the commission shall be made under section 31 of this chapter. Not more than four (4) commission members may be from the same political party.

(b) A member of the commission may not hold any other salaried public office nor an office in a political party organization. A member of the commission is not eligible for appointment to a judicial office in St. Joseph County who has, within four (4) years immediately preceding an appointment, served on the commission. If any nonattorney member of the commission terminates residence in St. Joseph County, the member is considered to have resigned from the commission.

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

IC 33-33-71-31

Appointment of nonattorney commissioners

Sec. 31. (a) The appointment to membership on the commission of the nonattorney members shall be made by a selection committee consisting of the judge of the St. Joseph circuit court, the president of the board of St. Joseph County commissioners, and mayors in each of the two (2) cities having the largest populations in St. Joseph County. These appointments shall be made by a majority vote of the selection committee. If a vacancy occurs on the commission among the nonattorney members, that fact shall be reported to the judge of the St. Joseph circuit court by the commission. Upon notification, the judge of the St. Joseph circuit court shall call into session the selection committee, which shall, by majority vote, select a person or persons not admitted to the practice of law, who shall serve the unexpired term of the vacant commission membership position and

that this selection and appointment by the selection committee shall be made within sixty (60) days after the date the St. Joseph circuit court is notified of the creation of the vacancy. If the selection committee fails to act to fill an unexpired term of a nonattorney member of the commission within sixty (60) days after the notification that the vacancy exists, the vacancy shall be filled by a majority vote of the remaining members of the commission.

(b) Not less than sixty (60) days before the expiration of the term of a nonattorney member of the commission, the judge of the St. Joseph circuit court shall call into session the selection committee that shall appoint, by a majority vote, a person to the commission to serve a new term. If the selection committee fails to act to fill an expired term of a nonattorney member of the commission by the date of expiration of the term of a nonattorney member of the commission, the remaining members on the commission shall, by majority vote, appoint a person to serve for the succeeding term. All appointments made to the commission shall be certified within ten (10) days to the clerk of the St. Joseph superior court.

(c) Each appointee of a nonattorney member to the commission, except those who fill a vacancy, shall serve for four (4) years.

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

IC 33-33-71-32

Election of attorney commissioners

Sec. 32. (a) Each year in which an attorney member's term expires, those admitted to the practice of law in Indiana and residing in St. Joseph County (referred to as "attorney electors" in this chapter) shall elect three (3) of their number to serve on the commission. Each attorney member of the commission shall serve for four (4) years. The term of each attorney member begins on the first day of October following the member's election. The election day is the date on which the ballots are counted. 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 to the commission shall be filled for the unexpired term of the member creating the vacancy by a special election.

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

IC 33-33-71-33

Procedure for election of attorney commissioners

Sec. 33. The attorney members of the commission shall be elected by the following process:

- (1) The clerk of the St. Joseph superior court shall at least ninety (90) days before the date of election notify all attorneys in St. Joseph County of the upcoming 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.

The clerk shall secure a list of all attorneys in the county and their correct addresses from the clerk of the supreme court.

(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 or group of attorney electors residing in St. Joseph County, by mail or otherwise, in the office of the clerk of St. Joseph superior court at least sixty (60) days before the election.

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

The ballot must read:

"ST. JOSEPH SUPERIOR COURT
NOMINATING COMMISSION BALLOT

To be cast by individuals residing in St. Joseph County and admitted to the practice of law in Indiana. Vote for one (1) of the following candidates for the term commencing:

(Insert Date)

- | | | |
|-----|--------|-----------|
| () | (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 St. Joseph superior court not later than _____ (insert date).

DESTROY BALLOT IF NOT USED".

(4) The nominee receiving the most votes is elected.

(5) 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 that ballot, certifying that the attorney elector is admitted to the practice of law in Indiana, resides in St. Joseph County, and voted the ballot returned. A ballot not accompanied by the signed certificate of the voter may not be counted.

(6) To maintain the secrecy of each vote, 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.

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

(8) Upon receiving the completed ballots and the accompanying certificates, the clerk shall insure 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.

(9) The clerk of St. Joseph superior court, with the assistance of

the St. Joseph County election board, shall open and canvass all ballots at 4 p.m. on the day of election in the office of the clerk of St. Joseph superior court. Ballots received after 4 p.m. may not be counted. Upon canvassing the ballots the clerk shall place all ballots back in their package. These, along with the certificates, shall be retained in the clerk's office for six (6) months. The clerk may not allow a person to inspect them except upon an order of the court of appeals.

(10) In any election held for selection of attorney members of the commission, in case 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 elected.

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

IC 33-33-71-34

Notification

Sec. 34. After:

(1) the attorney members of the commission have been elected;
and

(2) the names of the nonattorney commissioners appointed by the selection committee have been certified to the secretary of state, clerk of the supreme court, and the clerk of St. Joseph superior court under this chapter;

the clerk of St. Joseph superior court shall by regular mail notify the members of the commission of their election or appointment, and shall notify the chairman of the commission of the same.

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

IC 33-33-71-35

Succession of membership

Sec. 35. A person who has been elected or appointed to a full four (4) year term upon the commission may not succeed himself or herself or be eligible for election or appointment to the commission for four (4) years after the expiration of the term to which the person was elected or appointed.

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

IC 33-33-71-36

Nominations for vacancies in superior court; meetings of commission

Sec. 36. (a) When a vacancy occurs in the St. Joseph superior court, the clerk of the court shall promptly notify the chairman of the commission of the vacancy. The chairman shall call a meeting of the commission within ten (10) days following this notice. The commission shall submit its nominations of five (5) candidates for each vacancy and certify them to the governor as promptly as possible, and not later than sixty (60) days after the vacancy occurs. When it is known that a vacancy will occur at a definite future date within the term of the serving governor, but the vacancy has not yet

occurred, the clerk shall notify the commission immediately. The commission may within fifty (50) days of the notice of vacancy make its nominations and submit to the governor the names of five (5) persons nominated for the forthcoming vacancy.

(b) Meetings of the commission shall be called by the chairman or, if the chairman fails to call a necessary meeting, upon the call of any four (4) members of the commission. The chairman, whenever the chairman considers a meeting necessary, or upon the request by any four (4) members of the commission for a meeting, shall give each member of the commission at least five (5) days written notice by mail of the time and place of every meeting unless the commission at its previous meeting designated the time and place of its next meeting.

(c) Meetings of the commission must be held at a place in the St. Joseph County courthouse in South Bend as the clerk of the St. Joseph superior court may arrange.

(d) The commission shall act only at a meeting and may act only by the concurrence of a majority of its members attending a meeting. Four (4) members are required to constitute a quorum at a meeting. The commission may adopt reasonable and proper rules and regulations for the conduct of its proceedings and the discharge of its duties.

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

IC 33-33-71-37

Qualifications of nominees; evaluation

Sec. 37. (a) The commission shall submit only the names of the five (5) most highly qualified candidates from among those eligible individuals considered. To be eligible for nomination as a judge of the St. Joseph superior court, a person must be domiciled in the county of St. Joseph, a citizen of the United States, and admitted to the practice of law in the courts of Indiana.

(b) In abiding by the mandate in subsection (a), the commission shall evaluate in writing each eligible individual on the following factors:

- (1) Law school record, including any academic honors and achievements.
- (2) Contribution to scholarly journals and publications, legislative draftings, and legal briefs.
- (3) Activities in public service, including:
 - (A) writings and speeches concerning public or civic affairs which are on public record, including but not limited to campaign speeches or writing, letters to newspapers, and testimony before public agencies;
 - (B) efforts and achievements in improving the administration of justice; and
 - (C) other conduct relating to the individual's profession.
- (4) Legal experience, including the number of years of practicing law, the kind of practice involved, and reputation as a trial lawyer or judge.

- (5) Probable judicial temperament.
- (6) Physical condition, including age, stamina, and possible habitual intemperance.
- (7) Personality traits, including the exercise of sound judgment, ability to compromise and conciliate patience, decisiveness, and dedication.
- (8) Membership on boards of directors, financial interest, and any other consideration that might create conflict of interest with a judicial office.
- (9) Any other pertinent information that the commission feels is important in selecting the best qualified individuals for judicial office.

(c) Written evaluations may not be made on an individual until the individual states in writing that the individual desires to hold a judicial office that is or will be created by vacancy.

(d) The political affiliations of any candidate may not be considered by the commission in evaluating and determining which eligible candidates shall be recommended to the governor for a vacancy on the St. Joseph superior court.

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

IC 33-33-71-38

List of nominees; submission to governor

Sec. 38. The commission shall submit with the list of five (5) nominees to the governor its written evaluation of the qualifications of each candidate, and the names and written evaluations shall be publicly disclosed. Every eligible candidate whose name was not submitted to the governor is entitled to access to any evaluation of the candidate by the commission and the right to make the evaluation public. Otherwise, the evaluation, including the names of the candidates applying for the office, shall remain confidential. If the commission determines that there are less than five (5) persons qualified under section 40 of this chapter, the commission must submit a lesser number under section 40 of this chapter.

As added by P.L.98-2004, SEC.12. Amended by P.L.2-2005, SEC.98.

IC 33-33-71-39

Withdrawal of list or names of nominees

Sec. 39. (a) After the commission has nominated and submitted to the governor the names of five (5) persons for appointment to fill a vacancy of the St. Joseph superior court:

- (1) any name may be withdrawn for a cause considered by the commission to be of a substantial nature affecting the nominee's qualifications to hold office; and
- (2) another name 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 there are existing at the same time two (2) or more vacancies

on the court, the commission shall nominate and submit to the governor a list of five (5) different persons for each of the vacancies. The commission may before an appointment is made:

- (1) withdraw the lists of nominations;
- (2) change the names of any persons nominated from one (1) list to another; and
- (3) resubmit the lists as changed or substitute a new name for any of those previously nominated.

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

IC 33-33-71-40

Appointment to fill vacancies

Sec. 40. (a) A vacancy occurring in the St. Joseph superior court shall be filled by appointment of the governor from a list of nominees presented to the governor by the judicial nominating commission. If the governor fails to make an appointment from the list within sixty (60) days from the day it is presented to the governor, the appointment shall be made by the chief justice or the acting chief justice of the supreme court from the same list presented to the governor.

(b) The governor shall make all appointments to the St. Joseph superior court without regard to the political affiliation of any of the nominees submitted to the governor. In the interest of justice, the governor shall consider only those qualifications of the nominees included in section 37 of this chapter.

(c) If the St. Joseph County judicial nominating commission, by a vote of any five (5) of its members, determines that, of the persons considered for any existing or expected vacancy in the St. Joseph superior court, less than five (5) are qualified for judicial office, within the scope of this chapter, the commission shall certify that determination to the governor together with the name or names of the person or persons found to be qualified under this chapter. In that event, the governor, chief justice, or acting chief justice shall make the selection or, if only one (1) name is submitted, make the appointment.

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

IC 33-33-71-41

Effective date of appointments

Sec. 41. An appointment by the governor, chief justice, or acting chief justice, as required by section 40 of this chapter, to the St. Joseph County superior court shall take effect immediately if a vacancy exists at the date of the appointment. The appointment shall take effect on the date the vacancy is created if a vacancy does not exist on the date of the appointment.

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

IC 33-33-71-42

Tenure of judges

Sec. 42. (a) Each judge appointed serves an initial term that begins

on the effective date of the judge's appointment and continues through December 31 in the year of the general election that follows the expiration of two (2) years after the effective date of the judge's appointment.

(b) Thereafter, unless rejected by the electorate of St. Joseph County under this chapter, each judge of the St. Joseph superior court serves successive six (6) year terms. Each successive six (6) year term begins on the first day of January following the expiration of the preceding initial term or the preceding six (6) year term and continues for six (6) years.

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

IC 33-33-71-43

Submission of question of retention in office or rejection of judge to electorate

Sec. 43. (a) The question of the retention in office or rejection of each judge of the St. Joseph superior court shall be submitted to the electorate of St. Joseph County at the general election immediately preceding expiration of the term of that judge.

(b) If a judge subject to this chapter does not desire to serve a further term, the judge shall notify the judge's intention in writing to the clerk of the St. Joseph circuit court at least sixty (60) days before the general election immediately preceding expiration of the judge's term in which case the question of the judge's retention in office or rejection may not be submitted to the electorate, and the office is vacant at the expiration of the term.

(c) The St. Joseph County election board shall submit the question of the retention in office or rejection of any judge to the electorate of St. Joseph County. The submission of this question is subject to the provisions of IC 3 that are not inconsistent with this chapter.

(d) At the general election, the question of the retention in office or rejection of a judge shall be submitted to the electorate of St. Joseph County in the form prescribed by IC 3-11 and must state "Shall Judge (insert name) of the St. Joseph superior court be retained in office for an additional term?".

(e) If a majority of the ballots cast by the electors voting on the question is "No", the judge whose name appeared on such question is rejected. The office of the rejected judge is vacant on January 1 following the rejection. The vacancy shall be filled by appointment of the governor under section 40 of this chapter. The name of the rejected judge may not be included among those submitted to the governor. However, the judge's rejection does not disqualify a rejected judge from being considered for another judicial office that becomes vacant.

As added by P.L.98-2004, SEC.12. Amended by P.L.58-2005, SEC.36.

IC 33-33-71-44

Conditions of office

Sec. 44. (a) During a term of office, a judge of the St. Joseph

superior court may not engage in the practice of law, run for an elective office other than a judicial office, or directly or indirectly make any contributions to or hold any office in a political party or organization. A judge may not take part in any political campaign except as a candidate for retention in judicial office and, in that event, the judge's campaign participation must be absolutely devoid of partisan association and be limited to activities designed to acquaint the electorate with the judge's judicial record.

(b) Failure to comply with this section is sufficient cause for the commission on judicial qualifications established by section 45 of this chapter to recommend to the supreme court that the judge be censured or removed from office.

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

IC 33-33-71-45

Judicial qualifications commission; membership; employment of special counsel

Sec. 45. There is established a commission on judicial qualifications for the St. Joseph superior court, whose membership is the same as that of the judicial nominating commission under section 29 of this chapter. The commission on judicial qualifications may employ special counsel in any proceedings it undertakes under the responsibilities imposed upon it by this chapter.

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

IC 33-33-71-46

Recommendation for suspension or removal of judge

Sec. 46. (a) On recommendation of the commission on judicial qualifications, the supreme court may suspend a judge of the St. Joseph superior court from office without salary when in any court in the United States the judge enters a plea of guilty or nolo contendere to, or is found guilty of, any crime punishable as a felony under the laws of Indiana or of the United States, or of any other crime that involves moral turpitude under that law. If the judge's conviction is reversed, suspension terminates, and the judge shall be paid the judge's salary for the period of suspension. If the judge is suspended and the judge's conviction is affirmed or otherwise becomes final, the supreme court shall remove the judge from office.

(b) On recommendation of the commission on judicial qualifications, the supreme court may:

- (1) retire a judge of the St. Joseph superior court for disability that seriously interferes with the performance of the judge's duties and is likely to become permanent; and
- (2) censure or remove a judge of the St. Joseph superior court for conduct occurring not more than six (6) years before the commencement of the judge's current term, when the conduct constitutes willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, or conduct prejudicial to the administration of justice or that brings or tends to bring judicial office into disrepute.

(c) When the supreme court receives any recommendation from the commission on judicial qualifications, it shall hold a hearing, at which the affected judge is entitled to attend, and shall make a determination as is required. The supreme court shall make rules regarding the convening and conduct of hearings, which shall, upon request of the judge whom it concerns, be public.

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

IC 33-33-71-47

Meetings of commission

Sec. 47. (a) The commission on judicial qualifications shall meet periodically as necessary to discharge its statutory responsibilities. Meetings of the commission on judicial qualifications shall be called in the same manner as prescribed for the judicial nominating commission. A quorum for the transaction of business is four (4) members.

(b) The clerk of the St. Joseph circuit court shall make arrangements for a meeting place in St. Joseph County as the commission may request.

(c) The commission on judicial qualifications may act only at a meeting. The commission on judicial qualifications may adopt reasonable and proper rules and regulations for the conduct of its meetings and discharge of its duties.

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

IC 33-33-71-48

Confidentiality of proceedings

Sec. 48. (a) All papers filed with and proceedings had before the commission on judicial qualifications before the institution of formal proceedings are confidential unless the judge against whom a complaint has been filed elects to have the information divulged or unless the commission elects to answer publicly disseminated statements issued by any complainant.

(b) All papers filed with the commission on judicial qualifications at the time of or after the institution of formal proceedings are open for public inspection at all reasonable times. Records of proceedings are open for public inspection at all reasonable times. All hearings and proceedings before the commission on judicial qualifications are open to the public.

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

IC 33-33-71-49

Defamatory material

Sec. 49. The filing of papers with or the giving of testimony before the commission on judicial qualifications under this chapter are absolutely privileged in any action for defamation.

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

IC 33-33-71-50

Complaints

Sec. 50. Complaints directed to the commission on judicial qualifications do not have to be in writing. A specified form of complaint may be required if presented in writing.
As added by P.L.98-2004, SEC.12.

IC 33-33-71-51

Complaint by citizen; investigation

Sec. 51. (a) Any citizen of Indiana may complain to the commission on judicial qualifications with reference to the activities, fitness, or qualifications of any judge of the St. Joseph superior court. Upon receiving a complaint or request, the commission on judicial qualifications shall make an initial inquiry to determine if a complaint is founded and not frivolous. The commission on judicial qualifications, without receiving a complaint, may make an initial inquiry on its own motion.

(b) If the commission on judicial qualifications considers it necessary as a result of its initial inquiry to conduct further investigation, the judge involved may then be notified of the investigation, the nature of the charge, the complaint that must be in writing, the name of the person making the complaint, if any, or that the investigation is on the commission's own motion and the judge shall be afforded reasonable opportunity in the course of the investigation to present matters as the judge may choose. When this notice is given, it must be by prepaid registered or certified mail addressed to the judge at the judge's chambers and at the judge's last known address. If the investigation does not disclose sufficient cause to warrant further proceedings, the judge may be so notified. The commission on judicial qualifications may make investigations by members of the commission or by special investigators employed by the commission, hold confidential hearings with the person filing the complaint or with the person's agents or attorneys, and hold confidential hearings with the judge involved in the complaint.

(c) If the commission on judicial qualification's initial inquiry or investigation does not disclose sufficient cause to warrant further proceedings and if the complainant subsequently issues any statement or statements of any kind for public dissemination relating to the activities or actions of the commission, the commission may answer that statement by reference to as much of the record of its proceedings or results of its investigation as it considers necessary.
As added by P.L.98-2004, SEC.12.

IC 33-33-71-52

Notification of formal proceedings

Sec. 52. (a) After the investigation is completed and if the commission on judicial qualifications concludes that formal proceedings should be instituted, the commission shall give written notice to the judge advising the judge of the institution of formal proceedings to inquire into the charges against the judge. These proceedings shall be entitled:

"BEFORE THE ST. JOSEPH COUNTY JUDICIAL

QUALIFICATIONS COMMISSION

Inquiry Concerning a Judge, No. _____."

(b) The notice must be issued in the name of the commission on judicial qualifications, specify in ordinary and concise language the charges against the judge and the alleged facts upon which the charges are based, and advise the judge of the judge's right to file a written answer to the charges against the judge within twenty (20) days after service of the notice upon the judge. A charge is not sufficient if it merely recites the general language of the original complaint. The charge must specify the facts relied upon to support a particular charge. A copy of the notice shall be filed in the office of the commission on judicial qualifications.

(c) The notice shall be made upon the judge by registered or certified mail addressed to the judge at the judge's chambers and the judge's last known address.

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

IC 33-33-71-53

Answer

Sec. 53. Within twenty (20) days after service of the notice of formal proceedings, the judge may file with the commission on judicial qualifications a signed original and one (1) copy of an answer, and shall serve a copy on the counsel by mail.

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

IC 33-33-71-54

Time and place for hearing

Sec. 54. Upon filing an answer or upon the expiration of the time for its filing, the commission on judicial qualifications shall order a hearing to be held before it concerning the discipline, retirement, or removal of the judge. The commission on judicial qualifications shall set an approximate date, time, and place for a hearing and shall give notice of the hearing by registered or certified mail to the judge and to the counsel at least twenty (20) days before the date set.

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

IC 33-33-71-55

Hearing

Sec. 55. (a) At the date, time, and place set for hearing, the commission on judicial qualifications may proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

(b) The failure of the judge to answer or to appear at the hearing, standing alone, may not be taken as evidence of the truth of the facts alleged to constitute grounds for censure, retirement, or removal. In any proceeding for involuntary retirement for disability, the failure of the judge to testify in the judge's own behalf or to submit to a medical examination requested by the commission on judicial qualifications may be considered, unless the failure to appear was due to circumstances beyond the judge's control.

- (c) The proceedings at the hearing shall be reported verbatim.
 - (d) At least four (4) members of the commission on judicial qualifications must be present when the evidence is produced.
- As added by P.L.98-2004, SEC.12.*

IC 33-33-71-56

Evidence

Sec. 56. At a hearing before the commission on judicial qualifications the evidentiary rules of the courts of Indiana apply.

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

IC 33-33-71-57

Rights of judge in formal proceedings

Sec. 57. (a) In formal proceedings involving the judge's discipline, retirement, or removal, a judge has the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. The judge has the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.

(b) When a transcript of the testimony has been prepared at the expense of the commission on judicial qualifications, a copy shall be furnished without cost to the judge. The judge has the right, without any order or approval, to have all or any part of the testimony in the proceedings transcribed at the judge's expense.

(c) Except as otherwise provided in this chapter, whenever provision is made for giving notice or sending any matter to the judge, that notice or matter must be mailed by registered or certified mail to the judge at the judge's office and residence unless the judge requests otherwise in writing, and a copy is mailed to the judge's attorney of record.

(d) If the judge has been adjudged incapacitated under IC 29-3, the guardian may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, a copy of the notice or matter also shall be served, given, or sent to the guardian.

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

IC 33-33-71-58

Amendments to notice or answer

Sec. 58. At any time before determination of the issues, the commission on judicial qualifications may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. If an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present the judge's defense against the

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

IC 33-33-71-59

Hearing additional evidence

Sec. 59. The commission on judicial qualifications may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order must set the date, time, and place of the hearing in St. Joseph County and must indicate the matters on which the evidence is to be taken. A copy of the order shall be sent by registered or certified mail to the judge and to the counsel at least ten (10) days before the date of the hearing.

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

IC 33-33-71-60

Recommendation of commission; vote

Sec. 60. If the commission on judicial qualifications finds good cause, it shall recommend to the supreme court the censure, retirement, or removal of the judge. The affirmative vote of four (4) members of the commission on judicial qualifications, including a majority of those who were present at the hearing or hearings when the evidence was produced, is required for a recommendation of discipline, retirement, or removal of a judge.

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

IC 33-33-71-61

Certified recommendation to supreme court

Sec. 61. Upon making a determination recommending the censure, retirement, or removal of a judge, the commission on judicial qualifications shall promptly file a copy of the recommendation certified by the chairman or secretary of the commission, together with the transcript and findings and conclusions, with the clerk of the supreme court and shall promptly mail to the judge and to the counsel notice of the filing, together with a copy of the recommendation, finding, and conclusions.

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

IC 33-33-71-62

Petition to modify or reject commission recommendation

Sec. 62. (a) A petition to the supreme court to modify or reject the recommendation of the commission on judicial qualifications for censure, retirement, or removal of a judge may be filed by the judge within thirty (30) days after the filing with the clerk of the supreme court of the certified copy of the commission's recommendation. The petition must:

- (1) be verified;
- (2) be based on the record;
- (3) specify the grounds relied on; and
- (4) be accompanied by petitioner's brief together with proof of service on the commission of two (2) copies, and on the counsel

of one (1) copy, of the petition and the brief. Within twenty (20) days after service of petitioner's brief the commission on judicial qualifications shall file a respondent's brief and serve a copy of the respondent's brief on the judge. Within twenty (20) days after service of the respondent's brief, the petitioner may file a reply brief, two (2) copies of which shall be served on the commission on judicial qualifications and one (1) copy shall be served on the counsel.

(b) Failure to file a petition within the time provided is considered a consent to the determination on the merits based upon the record filed by the commission on judicial qualifications.

(c) To the extent necessary to implement this section and if not inconsistent with this section, the Indiana Rules of Appellate Procedure are applicable to reviews by the supreme court of commission on judicial qualifications proceedings.

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

IC 33-33-71-63

Powers of commission in investigations and hearings

Sec. 63. The commission on judicial qualifications has jurisdiction and powers necessary to conduct the proper and speedy disposition of any investigation or hearing, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of witnesses, and to order the production of books, records, or other documentary evidence. Any member of the commission on judicial qualifications may administer oaths and affirmations to witnesses in any matter within the jurisdiction of the commission.

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

IC 33-33-71-64

Subpoenas

Sec. 64. Subpoenas for the attendance of witnesses and the production of documentary evidence between the commission on judicial qualifications or for discovery shall be issued by the chairman of the commission and shall be served in the manner provided by law for the service of process.

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

IC 33-33-71-65

Enforcement of subpoena

Sec. 65. If in any proceeding before the commission on judicial qualifications, any witness fails or refuses to attend upon subpoena issued by the commission or any of the commission's representatives, or appearing, refuses to testify or refuses to produce any books and papers the production of which is called for by the subpoena, the attendance of any witness and the giving of the witness's testimony and the production of the books and papers required shall be enforced by the St. Joseph circuit court.

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

IC 33-33-71-66

Papers and pleadings filed with commission

Sec. 66. All papers and pleadings filed with the chairman of the commission on judicial qualifications at the chairman's office shall be considered filed with the commission.

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

IC 33-33-71-67

Discovery

Sec. 67. (a) In all formal proceedings, discovery shall be available to the commission on judicial qualifications and to the judge in accordance with the Indiana Rules of Civil Procedure. Any motions requesting court orders for discovery shall be made to the St. Joseph circuit court.

(b) In all formal proceedings before the commission on judicial qualifications, the counsel shall furnish to the judge not less than twenty (20) days before any hearing the following:

(1) The names and addresses of all witnesses whose testimony the counsel expects to offer at the hearing together with copies of all written statements and transcripts of testimony of the witnesses in the possession of the counsel or the commission that are relevant to the subject matter of the hearing and that have not previously been furnished the judge.

(2) Copies of all documentary evidence that the counsel expects to offer in evidence at the hearing. The testimony of any witness, except if offered in rebuttal or for impeachment, whose name and address have not been furnished to the judge, and documentary evidence, copies of which have not been furnished to the judge, as provided in this subsection, are not admissible in evidence at the hearing over the objection of the judge. After formal proceedings have been instituted, the judge may request in writing that the counsel furnish to the judge the names and addresses of all witnesses then or thereafter known to the counsel who have information that may be relevant to any charge against the judge and to any defense of the judge with respect to the charge. The counsel shall also furnish copies of such written statements, transcripts of testimony, and documentary evidence as are then or thereafter known to the counsel and are then or thereafter in the possession of the counsel or the commission that are relevant to any charges or defense and that have not previously been furnished the judge. The counsel shall comply with a request within ten (10) days after receipt of the request and thereafter within ten (10) days after any information or evidence becomes known to the counsel.

(c) During the course of an investigation by the commission on judicial qualifications, the judge whose conduct is being investigated may demand in writing that the commission either institute formal proceedings against the judge or enter a formal finding that there is not probable cause to believe that the judge is guilty of any misconduct. The commission on judicial qualifications shall within

sixty (60) days after the judge's demand comply with the demand. A copy of the demand must be filed with the supreme court and is a matter of public record. If, after a demand, the commission on judicial qualifications finds that there is not probable cause, that finding must be filed with the supreme court and is a matter of public record.

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

IC 33-33-71-68

Retirement; removal

Sec. 68. (a) Whenever a judge of a St. Joseph County court is retired by the supreme court under this chapter and on the grounds set forth in sections 44 and 46 of this chapter, the judge is considered to have retired voluntarily. In these situations, this chapter may not be construed to authorize any encroachment upon or impairment of any rights of the judge or the judge's surviving spouse under any constitutional or statutory retirement program.

(b) A judge of a St. Joseph County court who is removed from office by the supreme court on those grounds set forth in sections 44 and 46 of this chapter, is ineligible for judicial office and, pending further order of the supreme court, shall be suspended from the practice of law in Indiana.

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

IC 33-33-71-69

Magistrates

Sec. 69. (a) The court may appoint two (2) full-time magistrates under IC 33-23-5 to serve the court using the selection method provided by IC 36-1-8-10(b)(1) or IC 36-1-8-10(b)(2). Not more than one (1) of the magistrates appointed under this section may be a member of the same political party.

(b) A magistrate continues in office until removed by the judges of the court.

As added by P.L.98-2004, SEC.12. Amended by P.L.1-2007, SEC.219; P.L.127-2008, SEC.18.