

## CHAPTER VII

RECEIVING MONEY - ENTERING IN DOCKET OF ORIGINAL ENTRY -  
TAXING COSTS - SCHEDULE OF FEES TO BE TAXED BY CLERKS

It is the duty of the clerk, in his or her official capacity, to enter the receipt of all money in the proper records.

DETERMINE PURPOSE

When receiving money from the payor, the clerk should first ascertain from the payor what it is for. If the money is for support, the clerk will know that it must be entered in ISETS; if it is for costs, it will be entered in the docket where the cause was originally filed; if the money is being paid to the clerk for distribution in an estate, then it must be entered in the proper estate entry docket.

ENTERING RECEIPTS IN DOCKET

When it is determined what the money is for, select the docket of original entry -- the docket where the commencement of the action was filed. The clerk should verify the number and title of the cause. On the proper page and in the space designated for receipts, the clerk should enter therein the amount being paid. The receipt in the entry docket should be dated, the name of the payor, the amount received, what it is for, and acknowledging the receipt by signing it as clerk following the entry.

The clerk should be consistent in entering receipts in the docket. They should not be scattered all over the page but should be confined to the space designated for receipts.

TRUST ITEMS

If an item of trust is included in the amount of money received, the clerk should enter the name of the person and the amount of money to be paid to that person, together with the address, in the appropriate section designated for trust items. When the disbursement is made, it will be entered in the section designated for disbursements on the same line and opposite the name of the person to whom the money is due.

DISTRIBUTION OF ESTATE MONEY

The clerk often receives money for distribution to heirs in an estate. It frequently happens that at the time of payment to the clerk the names of the distributees are unknown. If distributees are unknown, the amount received would either be entered as name of the decedent (heirs of) or as "undistributed." Upon determination of who the heirs are and the amount due each heir, the clerk should then enter the name of each distributee and the amount each is to receive in the trust section of the entry docket and on the page where the estate opened.

TRANSFER AMOUNTS TO INDIVIDUALS IN REGISTER OF TRUST

If the original amount was entered in the "Register of Fees and Funds Held in Trust" at the time the money was received and was posted as one amount under the name of the decedent (heirs of), or as undistributed, then upon determination of the identity of the heirs the amount should be transferred to each of the respective heirs and entered in the name of each person together with the amount that each person is to receive. When such transfer is made, the clerk must be particularly cautious to show the transfer by proper entry on the disbursement side where the original payment was entered.

### ENTERING MONEY IN PAYMENT OF JUDGMENTS

It has been the custom of some clerks to enter payment of money judgments in the judgment docket at the place recorded. This is not entirely wrong but we recommend that such payments be entered in the docket of original entry. At the time of paying a judgment to the clerk, the costs are generally excluded. The costs are to be receipted in the entry docket and it will be just as convenient to enter the payment of the judgment therein.

### DISBURSING

The entry docket is designed for receipts and disbursements. Upon receipt of the money by the judgment plaintiff from the clerk, the proper disbursing entry will be made in the entry docket. The clerk will cause the judgment plaintiff to enter satisfaction of the judgment in the judgment docket at the time of receiving his or her money.

### RELEASES

The clerk will attest the release and also release the judgment as to costs, if the costs are paid, noting the reference to the docket and page wherein the costs are receipted.

### TRANSCRIPTS TO BIND REAL ESTATE

When a transcript of a judgment to bind real estate is received from another court, it is the duty of the clerk to enter such judgment in the judgment docket and to copy the transcript of the judgment in "Transcript Record" or other book provided for that purpose. The fee for recording such a judgment is \$3.00 if the other court is in Indiana. The docket of original entry would be the book wherein the judgment is copied and the receipt of the fee for recording should be entered therein.

### GROSS INCOME AND EMPLOYMENT SECURITY WARRANTS

The receipt of money from the sheriff in payment of the clerk's fee for recording gross income tax warrants and the payment of money for Department of Workforce Development warrants will be entered in the judgment docket. In this instance, the judgment docket is the docket of original entry because that is the only record wherein they are recorded.

### WRITING OFFICIAL RECEIPT

After the receipt of money has been entered in the docket of original entry, write the official receipt to give to the payor. The clerk must use the prescribed form, Official Receipt (Form No. 126), enter thereon all information required on the receipt and record the various cash book classifications on the appropriate lines of the space on the receipt if the proper items are not already on the receipt. If items of trust are collected, list the amount opposite "Trust Funds." You should enter each individual name and amount each is to receive. If there are not enough lines on the face of the receipt, the names should be listed on the back of the duplicate receipt for the convenience of the clerk posing to the trust fund register.

VALUE OF RECEIPT AND USE OF

If the clerk will write the receipt after entering the payment in the docket of original entry and enter the items received in the proper places on the receipt, the clerk will have no difficulty in making the proper entries in the cash book and posting to the proper columns. The receipt contains the proper cash book classification and the items are listed in the same order as the cash book. The cash book will be posted from the duplicate receipt.

DISBURSEMENT ENTRIES

It is just as important to show the disbursement of money as it is to show the receipt. The date, amount and check number of all money disbursed to parties entitled to receive it should be entered on the line in the space designated for disbursements. Disbursements should be shown in the docket of original entry in addition to the disbursements entered in the trust fund register.

POSTING TABLES OF FEES

The clerks of the supreme, circuit, superior, criminal and county courts shall post in a conspicuous place in their offices, a table of their fees, or on failure to do so, shall have no right to demand or receive any fees for services rendered. [IC 33-32-2-7]

TAXING COSTS

The clerk should use every precaution to tax, charge and collect the proper amount of fees chargeable in any court action. (See O.A.G. 16, 1964 -- Fees and Costs Not Charged to State)

COURT COST FEES TO BE CHARGED CIRCUIT, SUPERIOR,  
COUNTY, PROBATE AND MUNICIPAL COURTS  
(Effective July 1, 1997)

<u>Case Type</u>	<u>Case Class Code</u>	<u>Total Cost 100%</u>	<u>Due State Semi-annually 70%</u>	<u>Due County Monthly 27%</u>	<u>Due City/Town Monthly 3%</u>
Criminal Actions [IC 33-37-4-1] (Note 1):					
Criminal Felony	CM	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60
Criminal Misdemeanor	CM	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60
Miscellaneous Criminal	MC	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60
Judgments [IC 33-37-4-2] (Note 2):					
Infractions	IF	\$ 70.00	\$ 49.00	\$ 18.90	\$ 2.10
Local Ordinance Violations	OV	\$ 70.00	\$ 49.00	\$ 18.90	\$ 2.10
Juvenile Proceedings [IC 33-37-4-4] (Note 3):					
Juvenile CHINS	JC	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60
Juvenile Delinquency	JD	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60
Juvenile Paternity	JP	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60
Juvenile Miscellaneous	JM	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60

<u>Case Type</u>	<u>Case Class Code</u>	<u>Total Cost 100%</u>	<u>Due State Semi-annually 70%</u>	<u>Due County Monthly 27%</u>	<u>Due City/Town Monthly 3%</u>
Civil Actions [IC 33-37-4-4]:					
Civil Plenary	CP	\$ 100.00	\$ 70.00	\$ 27.00	\$ 3.00
Miscellaneous	MI	\$ 100.00	\$ 70.00	\$ 27.00	\$ 3.00
Domestic Relations	DR	\$ 100.00	\$ 70.00	\$ 27.00	\$ 3.00
Mental Health	MH	\$ 100.00	\$ 70.00	\$ 27.00	\$ 3.00
Adoptions	AD	\$ 100.00	\$ 70.00	\$ 27.00	\$ 3.00
Small Claims [IC 33-37-4-5 and IC 33-37-4-6]:					
Small Claims	SC	\$ 35.00	\$ 24.50	\$ 9.45	\$ 1.05
Probate and Related Proceedings [IC 33-37-4-7]:					
Estates	ES	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60
Guardianships	GU	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60
Trusts	TR	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60

Note 1. Instead of criminal costs fees prescribed by IC 33-37-4-1, the clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-39-1-8 requires the payment of those fees by the accused person. The pretrial diversion program fee is an initial user's fee of fifty dollars (\$50.00) and a monthly user's fee of ten dollars (\$10.00) for each month that the person remains in the pretrial diversion program. [IC 33-37-4-1(c)]

In addition, IC 33-37-5-17 requires the defendant to pay court costs of fifty dollars (\$50.00) where the court defers prosecution under IC 33-39-1-8.

The fifty dollars (\$50.00) would be distributed as follows:

<u>Total Cost 100%</u>	<u>Due State Semiannually 70%</u>	<u>Due County Monthly 27%</u>	<u>Due City/Town Monthly 3%</u>
<u>\$ 50.00</u>	<u>\$ 35.00</u>	<u>\$ 13.50</u>	<u>\$ 1.50</u>

Note 2. Instead of the infraction or ordinance violation costs prescribed by IC 33-37-4-2, the clerk shall collect a deferral program fee if an agreement between a prosecuting attorney or an attorney for a municipal corporation and the person charged with a violation entered into under IC 34-4-32-1 requires payment of those fees by the person charged with the violation. The deferral program fee is an initial user's fee of not to exceed fifty-two dollars (\$52.00) and a monthly user's fee of not to exceed ten dollars (\$10.00) for each month the person remains in the deferral program. [IC 33-37-4-2(e)]

In addition, IC 34-28-5-1 requires the defendant in the action to agree to pay court costs of twenty-five dollars (\$25.00) to the clerk of the court if the action involves a moving traffic offense (as defined in IC 9-13-2-110).

The twenty-five dollars (\$25.00) would be distributed as follows:

Total Cost	Due State Semiannually	Due County Monthly	Due City/Town Monthly
<u>100%</u>	<u>70%</u>	<u>27%</u>	<u>3%</u>
\$ 25.00	\$ 17.50	\$ 6.75	\$ 0.75

Note 3. Instead of the court costs fees prescribed by IC 33-37-4-3, the juvenile court may order each child who participates in a program of informal adjustment or the child's parents to pay an informal adjustment program fee of at least five dollars (\$5.00) but not more than fifteen dollars (\$15.00) for each month that the child participates in the program.

The probation department for the juvenile court shall collect the informal adjustment program fee. The probation department shall transfer the informal adjustment program fees to the county auditor, within thirty (30) days after they are collected, for deposit by the auditor in the county user fee fund established under IC 33-37-8-5. [IC 31-34-8-8]

#### DOCUMENT FEES

For preparing a transcript or copy of any record, legal size or letter size page including a page only partially covered with writing (The Board of County Commissioners may pass an ordinance reducing this fee). [IC 33-37-5-1]	\$ 1.00
For each certificate under seal attached in authentication of a copy of any record, paper or transcript [IC 33-37-5-3]	\$ 1.00
For preparing or recording a transcript of a judgment to become a lien on real estate [IC 33-37-5-4]	\$ 3.00

#### LICENSES

Marriage License (One or both individuals are residents of Indiana)	
For Family Violence and Victim Assistance [IC 33-32-5-1(a)]	\$ 10.00
For County General Fund [IC 33-32-5-1(b)]	<u>8.00</u>
Total	<u>\$ 18.00</u>
Marriage License (If neither of the individuals is a resident of Indiana)	
For Family Violence and Victim Assistance [IC 33-32-5-1(a)]	\$ 10.00
For County General Fund [IC 33-32-5-1(b)]	<u>50.00</u>
Total	<u>\$ 60.00</u>
Distress Sale Under IC 25-18-1-6	
Based Upon Value of Inventory [IC 33-32-5-2]	
\$0 - \$25,000	\$ 40.00
\$25,000 - \$50,000	\$ 65.00
\$50,000 - \$75,000	\$ 100.00
\$75,000 and Over	\$ 150.00

MISCELLANEOUS FEES

Gross Income Tax Warrant Fees; For entering in the judgment docket, each warrant [IC 6-8.1-8-2]	\$ 3.00
Department of Workforce Development Warrants [IC 22-4-29-8]: (1) for recording the warrant	\$ 3.00
Recognizance Bonds - Recording and Releasing [IC 35-33-8.5-9]: When Recorded in a County Other Than Where Prosecution is Pending	\$ 1.00
For Recording any Such Release	\$ 0.50
Support and Maintenance Fee - Applies to an action in which the final court order requires a person to pay support or maintenance payments through the clerk. [IC 33-37-5-6]	
Initial Order - If 1st payment due before June 30	\$ 20.00
Initial Order - If 1st payment due after June 30	\$ 10.00
Subsequent Year - If paid before February 1	\$ 20.00
Subsequent Year - If paid after January 31	\$ 30.00
Document Storage Fee [IC 33-37-5-20] Applies to all civil, criminal, infraction, and ordinance violation actions.	\$ 2.00
Document storage fees are remitted monthly to the County Auditor for deposit to the Clerk's Record Perpetuation Fund.	
Late Payment Fees [IC 33-37-5-22] Applies to each action where a defendant is found, in a court that has a local court rule imposing a late payment fee, to have: committed a crime; violated a statute defining an infraction; violated an ordinance; or committed a delinquent act. The defendant is required to pay court costs, a fine, or civil penalty. The defendant is not indigent and fails to pay the costs, fine, or penalty in full before the later of the following: the end of the business day on which the court enters conviction or judgment; or the end of the period specified in a payment schedule set under rules adopted for the operation of the court.	\$ 25.00
A court may suspend this fee if it finds the defendant had good cause for failure to make timely payment.	
The clerk of the circuit court shall monthly distribute 100% of late payment fees collected to the county auditor. If so directed by ordinance, the county auditor shall deposit 40% of the late payment fees in the Clerk's Record Perpetuation Fund and 60% into the County General Fund. If the county council has not adopted an ordinance, late payment fees are deposited in the County General Fund.	
Sexual Assault Victims Assistance Fee [IC 33-37-5-23] The court shall assess the sexual assault victims assistance fee in certain sexual assault cases.	At Least \$250 and Not More Than \$1,000
The clerk semiannually distributes 100% of the sexual assault victims assistance fee to the Auditor of State for deposit to the Sexual Assault Victim's Assistance Fund.	
Small Claims Service Fee [IC 33-37-4-6, effective July 1, 2005] After July 1, 2005, applies to all small claims actions.	\$5.00 For Each Defendant Named or Added

The clerk distributes monthly to the County Auditor for deposit in the County General Fund.

## Alternative Dispute Resolution Fee [IC 33-23-6-1]

If the county has an approved alternative dispute resolution program, applies to a party filing a petition for legal separation, paternity, or dissolution of marriage. \$ 20.00

The clerk distributes these fees from the circuit court and superior court separately each month to the county auditor for deposit into circuit court alternative dispute resolution fund and superior court alternative dispute resolution fund.

COUNTY USER FEES

## Marijuana Eradication Program Fee - Applies only to Criminal Actions - Not more than [IC 33-37-5-7]

\$ 300.00

The clerk shall collect the marijuana eradication program fee set by the court under IC 15-3-4.6-4.1 if: (1) a weed control board has been established under IC 15-3-4.6-1, and (2) the person has been convicted of an offense under IC 35-48-4 in a case prosecuted in that county.

## Alcohol and Drug Services Program Fee - Applies to criminal, infraction and ordinance violations - May not exceed [IC 33-37-5-8]

\$ 400.00

The clerk shall collect the alcohol and drug services program fee set by the court under IC 12-23-14-16 in a county that has established an alcohol and drug services program.

## Alcohol Abuse Deterrent Program Fee - Applies to criminal actions defined under IC 9-11-2 and IC 9-30-9-8 - May not exceed

\$ 400.00

## Alcohol Abuse Deterrent Program Medical Fee - Applies to criminal actions, defined under IC 9-11-2 and IC 9-30-9-8 - May not exceed

\$ 150.00

The clerk shall collect the alcohol abuse deterrent program fee, or a medical fee, or both in a county that has established a Circuit Court Alcohol Abuse Deterrent Program Under IC 9-11-5.

## Law Enforcement Continuing Education - Applies to any action in which a defendant is found to have committed a crime, violated a statute defining an infraction, or violated an ordinance of a city or town.

\$ 3.00

The clerk shall collect a law enforcement continuing education program fee of three dollars (\$3.00) [IC 33-37-5-8]

## Pretrial Diversion Program Fee - Applies to criminal actions.

The clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-39-1-8 requires the payment of those fees by the accused person in the amounts specified in IC 33-37-4-1.

Initial User's Fee \$ 50.00  
Monthly User's Fee \$ 10.00

## Deferral Program Fee - Applies to infractions or ordinance violations.

The clerk shall collect a deferral program fee if an agreement between a prosecuting attorney and the person charged with a violation under IC 34-4-32-1 requires payment of those fees by the person charged with the violation.

Initial User's Fee - May Not Exceed \$ 52.00  
Monthly User's Fee - May Not Exceed \$ 10.00

STATE USER FEES

Alcohol and Drug Countermeasures Fee [IC 33-37-5-10]	\$ 200.00
Applies to actions in which a person is found to have committed an offense under IC 9-30-5, violated a statute defining an infraction under IC 9-30-5, or been adjudicated a delinquent that would be an offense under IC 9-30-5, if committed by an adult, and the person's driving privileges are suspended as a result of the finding.	
Drug Abuse, Prosecution, Interdiction and Corrections Fee [IC 33-37-5-9]	At Least \$200 and Not More Than \$1,000
Applies to persons convicted of offenses under IC 35-48-4 (offenses relating to controlled substances).	
Child Abuse Prevention Fee [IC 33-37-5-12]	
In each criminal action in which a person is found to have committed the offense of murder; causing suicide; voluntary manslaughter, reckless homicide; battery; rape, criminal deviate conduct; child molesting; child exploitation; various sexual gratification; child solicitation; incest; neglect of a dependent; child selling; or child seduction, and the victim of the offense is less than eighteen (18) years of age.	
	\$ 100.00
Domestic Violence Prevention and Treatment Fee [IC 33-37-5-13]	
In each criminal action in which a person is found to have committed the offense of murder, causing suicide; voluntary manslaughter; reckless homicide; battery; or rape, and the victim is a spouse or former spouse of the person who committed the offense.	
	\$ 50.00
Highway Worksite Zone Fee [IC 33-37-5-14]	
Applies to criminal, infraction or ordinance violation actions that are traffic offenses (as defined in IC 9-30-3-5).	
	\$ 0.50
If the criminal action or infraction is exceeding a worksite speed limit (as provided in IC 9-21-5-11) or failure to merge (as provided in IC 9-21-8-7.5) and the judge orders the clerk to collect the fee for exceeding a worksite speed limit.	
	\$ 25.50
Safe Schools Fee [IC 33-37-5-18]	
In each criminal action in which a person is convicted of an offense in which the possession or use of a firearm was an element of the offense, the court shall assess a safe schools fee.	
	At Least \$200 and Not More Than \$1,000
Automated Record Keeping Fee [IC 33-37-5-21]	
Applies to all civil, criminal, infraction, and ordinance violation actions. (After June 30, 2009, this fee will be reduced to \$4.00)	
	\$ 7.00

IC 33-37-7-2 requires the clerk to semiannually distribute 25% of the drug abuse, prosecution, interdiction, corrections, and alcohol and drug countermeasurer fees collected to the Auditor of State for deposit in the state user fee fund. The remaining 75% of these fees shall be distributed to the county auditor monthly. 50% of the child abuse prevention fees collected are to be distributed to the Auditor of State for deposit in the state user fee fund. The remaining 50% is to be distributed to the county auditor monthly. 100% of the domestic violence prevention and treatment fees, safe schools fees, automated record keeping fees, and the highway work zone fees are to be distributed semiannually to the Auditor of State.

SUPPLEMENTAL PUBLIC DEFENDER SERVICES FUND

Where a court finds that a person has the ability to pay the cost of his or her defense, the court will require payment of the following into this fund [IC 33-9-11.5-6]:

1. Reasonable attorney fees, if any attorney was approved by the court, and
2. Costs incurred by a county as a result of court-appointed legal services rendered to this person.

Such payments should be receipted separately and remitted monthly to the County Auditor.

BAIL (10% CASH BONDS) - ADMINISTRATIVE FEE

The court may admit a defendant to bail and require the defendant to execute a bail bond by depositing cash or securities with the clerk in an amount not less than ten percent (10%) of the bail. If the defendant is convicted, the court may retain all or part of the cash or securities to pay fines, costs, fees, and restitution, if ordered by the court. A portion of this deposit, not to exceed ten percent (10%) of the monetary value or fifty dollars (\$50.00), whichever is the lesser amount, may be retained as an administrative fee. [IC 35-33-8-3.2]

FILING FEES TO BE CHARGED CIRCUIT, SUPERIOR,  
COUNTY, PROBATE AND MUNICIPAL COURTS

CRIMINAL COURT COST FEES

For each action that results in a felony conviction under IC 35-50-2 or a misdemeanor conviction under IC 35-50-3, the clerk shall collect from the defendant a criminal costs fee of one hundred twenty dollars (\$120.00). [IC 33-37-4-1]

In addition to the criminal costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-37-5:

1. A document fee.
2. A marijuana eradication program fee.
3. An alcohol and drug services program fee.
4. A law enforcement continuing education program fee.
5. A drug abuse, prosecution, interdiction, and correction fee.
6. A deferred prosecution fee.
7. An alcohol and drug countermeasures fee.
8. A child abuse prevention fee.
9. A domestic violence prevention and treatment fee.
10. A highway work zone fee.
11. A document storage fee.
12. An automated record keeping fee.
13. A late payment fee.
14. A sexual assault victim's assistance fee.

INFRACTIONS AND VIOLATIONS OF ORDINANCES COURT COST FEES

For each action that results in a judgment for a violation constituting an infraction, or for a violation of an ordinance of a municipal corporation, the clerk shall collect from the defendant an infraction or ordinance violation costs fee of seventy dollars (\$70.00). [IC 33-37-4-2]

In addition to the infraction or ordinance violation costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-37-5.

1. A document fee.
2. An alcohol and drug services program fee.
3. A law enforcement continuing education fee.
4. An alcohol and drug countermeasures fee.
5. A highway work zone fee.
6. A deferred prosecution fee.
7. A document storage fee.
8. An automated record keeping fee.
9. A late payment fee.
10. A jury fee.

### JUVENILE PROCEEDINGS

For each action filed under delinquent children and children in need of services (IC 31-34 or IC 31-37), paternity (IC 31-14), the clerk shall collect a juvenile costs fee of one hundred twenty dollars (\$120.00). [IC 33-37-4-3]

In addition to the juvenile costs fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-37-5:

1. A document fee.
2. A marijuana eradication program fee.
3. An alcohol and drug services program fee.
4. A law enforcement continuing education fee.
5. An alcohol and drug countermeasures fee.
6. A document storage fee.
7. An automated record keeping fee.
8. A late payment fee.

### CIVIL PROCEEDINGS

For each civil action except proceedings to enforce a statute defining an infraction under IC 34-28-5-4, proceedings to enforce an ordinance under IC 34-28-5-4, proceedings in juvenile court under IC 31-34 or IC 31-37, proceedings in paternity under IC 31-14, proceedings in small claims court under IC 33-34, and proceedings in actions under IC 33-37-4-7, the clerk shall collect from the party filing the action a civil costs fee of one hundred dollars (\$100.00). [IC 33-37-4-4]

In addition to the civil costs fees collected under this section, the clerk shall collect the following fees if they are required under IC 33-37-5:

1. A document fee.
2. A support and maintenance fee.
3. A document storage fee.
4. An automated record keeping fee.

SMALL CLAIMS PROCEEDINGS

For each small claims action the clerk shall collect from the party filing the action a small claims costs fee of thirty-five dollars (\$35.00), except for small claims actions filed by or on behalf of the Attorney General. [IC 33-37-4-5]

In addition to the small claims costs fee collected under this section, the clerk shall collect the following fees if they are required under IC 33-37-5:

1. A document fee.
2. A document storage fee.
3. An automated record keeping fee.

Beginning July 1, 2005, a small claims service fee should be collected in the amount of five dollars (\$5.00) for each defendant named or added in the action. This fee is in addition to costs. [IC 33-37-4-6]

PROBATE AND RELATED PROCEEDINGS

Except as provided below, for each action filed under Determination of Inheritance Tax (IC 6-4.1-5), Probate (IC 29), and Trusts (IC 30), the clerk shall collect from the party filing the action a probate costs fee of one hundred twenty dollars (\$120.00). [IC 33-37-4-7]

In addition to the probate costs fee collected under this section, the clerk shall collect from the party filing the action the following fees if required under IC 33-37-5:

1. A document fee.
2. A document storage fee.
3. An automated record keeping fee.

A clerk may not collect a court costs fee for the filing of the following exempted actions: (1) petition to open a safety deposit box; (2) filing an inheritance tax return, unless proceedings other than the probate court's approval of the return become necessary. (3) Offering a will for probate (IC 29-1-7), unless proceedings other than admitting the will to probate become necessary.

ACCRUED COSTS DEFINED

The expression "costs that have accrued" as used in a compromise of a pending suit, or in a private statute providing for such compromise, means costs that would follow the judgment. Tallassee Mfg. Co. v. Glenn, 50 Ala., 489-491.

ADDITIONAL FEE - WHEN RULE OF COURT REQUIRES

If the judge of any court requires prepayment of other costs in addition to the filing fee required by law, the distribution will have to be made to include the additional fee.

FEE FOR PREPARING OR RECORDING TRANSCRIPT OF JUDGMENT TO BECOME LIEN ON REAL ESTATE

Clerks who issue and clerks who record such transcript shall each tax an additional document fee of \$3.00 to be paid by the judgment debtor. Upon collection, such document fee accrues to and becomes the property of the county. [IC 34-35-7-5; IC 33-37-5-4]

### APPEAL FROM CITY COURT - TAXING AND REMITTING COSTS

An appeal from a judgment of a city court may be taken to the circuit court. The proceeding in the circuit court is de novo. Furnishing an appeal bond stays the execution of judgment in the city court.

At the time of sending the transcript to the clerk of the circuit court, the fine and costs addressed in city court should be included in the transcript and taxed in the records of the clerk of the circuit court pending adjudication on the appeal.

If the judgment of the circuit court is that of guilty and fine and costs are assessed, the defendant will pay the amount of fine assessed in the circuit court whether it be greater or smaller than that assessed in the city court.

The clerk of the circuit court will retain the fine and remit it to the proper treasury.

### BAIL AND BAIL PROCEDURES

The court may admit the defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings:

- (1) Require the defendant to execute a bail bond with sufficient solvent sureties or to deposit cash or securities in an amount equal to the bail, or to execute a bond secured by real estate in the county where thirty-three hundredths (.033) of the true tax value less encumbrances is at least equal to the amount of the bail.
- (2) Require the defendant to execute a bail bond by depositing cash or securities with the clerk of the circuit court, in an amount not less than ten percent (10%) of the bail. If the defendant is convicted, the court may retain all or part of the cash or securities to pay fines, costs, fees, and restitution, if ordered by the court. A portion of this deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as and administrative fee.
- (3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.
- (4) Require the defendant to refrain from any direct or indirect contact with an individual.
- (5) Place the defendant under reasonable supervision of a probation officer or other appropriate public official.
- (6) Release the defendant into the care of some qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court.
- (7) Release the defendant on personal recognizance.
- (8) Impose any other reasonable restrictions designed to assure the defendant's appearance in court or the physical safety of another person or the community. [IC 35-33-8-3.2]

### BAIL AGENTS - FORFEITED BONDS - DUTY OF CLERK

If the undertaking is a property bond, the clerk shall record the same in the proper records of the county. If the undertaking describes property in another county, the clerk of the trial court shall transmit the undertaking to the clerk of such other county, who shall likewise record it and return it to the first mentioned clerk. The undertaking shall be a lien on any real property described in it, until released in accordance with IC 35-33-8.5. [IC 27-10-2-9]

Any undertaking written after August 31, 1985, shall expire thirty-six (36) months after it is posted for the release of a defendant from custody. This does not apply to cases in which a bond has been declared to be forfeited, or in which the defendant is a fugitive from the jurisdiction after thirty-six (36) months. [IC 27-10-2-3]

The court having jurisdiction of the offense shall order that a surety be exonerated from liability for an undertaking and that any money or bonds deposited as bail be refunded when the person surrendering the defendant has: (1) presented to the court both of the documents described in IC 27-10-2-6(a); and (2) given to the prosecuting attorney: (A) three (3) days notice; and (B) copies of both the documents described in IC 27-10-2-6(a). [IC 27-10-2-6]

Recognizances, in a form similar to the one shown at the end of this manual, together with a transcript of the proceedings and all papers in the case, shall be filed forthwith with the clerk of the proper court, who shall docket the cause and record such recognizance forthwith and enter it on the judgment docket, all as provided in IC 35-33-8.5. From the date of the entries in the records of the respective counties as provided in IC 35-33-8.5, it shall be a lien upon all lands in the counties where recorded owned by any of the obligors, and any judgment afterward had upon it shall relate back to the date of entry in such county, or counties, where any such lands are situated.

If a defendant does not appear as provided in the bond, the court shall issue a warrant for the defendant's arrest and order the bail agent and the surety to surrender the defendant to the court immediately and the clerk shall mail notice of the order to both the bail agent and the surety at each of the addresses indicated in the bonds. The bail agent must produce the defendant or prove that the appearance of the defendant was prevented by the defendant's illness or death, because the defendant was at the scheduled time of appearance or currently is in the custody of the United States, a state, or a political subdivision thereof, or because the required notice was not given, and the defendant's absence was not with the consent or connivance of the sureties.

If the bail agent does not comply with the above terms within one hundred twenty (120) days of the mailing of notice required, a late surrender fee shall be assessed against the bail agent as follows:

- (1) If compliance occurs more than one hundred twenty (120) days but not more than one hundred eighty (180) days after the mailing of notice, the late surrender fee is twenty percent (20%) of the face value of the bond.
- (2) If compliance occurs more than one hundred eighty (180) days but not more than two hundred ten (210) days after the mailing of notice, the late surrender fee is thirty percent (30%) of the face value of the bond.
- (3) If compliance occurs more than two hundred ten (210) days but not more than two hundred forty (240) days after the mailing of notice, the late surrender fee is fifty percent (50%) of the face value of the bond.
- (4) If compliance occurs more than two hundred forty (240) days but not more than three hundred sixty-five (365) days after the mailing of notice, the late surrender fee is eighty percent (80%) of the face value of the bond.
- (5) If the bail agent does not comply with the above terms within three hundred sixty-five (365) days of the mailing of notice, the late surrender fee is eighty percent (80%) of the face value of the bond.

All late surrender fees are due as of the date of compliance or three hundred sixty-five (365) days after the mailing of notice, whichever is earlier.

If the bail agent does not comply with the terms of IC 27-10-2-12(b) within three hundred sixty-five (365) days of the mailing of notice, the court shall declare forfeited an amount equal to twenty percent (20%) of the face value of the bond. The court shall immediately enter judgment on the forfeiture, without pleadings and without change of judge or change of venue, and assess against the bail agent all actual costs resulting from the defendant's failure to appear. These costs include jury fees, witness fees, and any other documented costs incurred by the court. [IC 27-10-2-12(d)]

Proceedings relative to the bond, forfeiture of any bond, judgment on the forfeiture, execution of judgment, or stay of proceedings shall be in the court in which the bond was posted. Costs and late surrender fee assessed against a bail agent shall be satisfied without further order of the court. The court may waive the late surrender fee or extend the period for payment beyond the statutorily permitted period, or both, if a written request is filed with the court and the prosecutor and the surety or bail agent provides evidence satisfactory to the court that diligent efforts were made to locate the defendant. [IC 27-10-2-12(e)]

In case of an insurer, if the fees, costs, or judgment is not paid, then the clerk shall mail notice to the commissioner. The commissioner shall:

- (1) Within ten (10) days of receipt of the notice forward a copy by certified mail to the insurer;
- (2) Forty-five (45) days after receipt of the notice from the clerk, if the commissioner has not been notified by the clerk that the fees or judgment or both have been paid, pay the late surrender fee assessment, costs, and any judgment of forfeiture ordered by the court from funds the insurer has on deposit with the department of insurance;
- (3) Upon paying the assessment, costs, and judgment, if any, from funds on deposit, immediately revoke the license of the insurer, if the satisfaction causes the deposit remaining to be less than the amount required by this article; and,
- (4) Within ten (10) days of revoking a license, notify the insurer and its agents and the clerk of each county in Indiana of the revocation and the insurer shall be prohibited from conducting bail bond business in Indiana until the deposit has been replenished. [IC 27-10-2-12(f)]

The notice mailed by the clerk to the commissioner shall include:

- (1) The date on which the defendant originally failed to appear as provided in the bond.
- (2) The date of compliance, if compliance was achieved within three hundred sixty-five (365) days after the mailing of the notice.
- (3) The amount of the bond.
- (4) The dollar amount of the late surrender fee due.
- (5) The amount of costs resulting from the defendant's failure to appear.
- (6) If applicable, the dollar amount of the judgment of forfeiture entered by the court.

Any surety on such bond may appeal to the court of appeals as in other civil cases without moving for a new trial, and on such appeal the evidence, if any, shall be reviewed.

Fifty percent (50%) of the late surrender fees collected shall be deposited in the police pension trust fund established under IC 36-8-10-12 and fifty percent (50%) shall be deposited in the county extradition fund established under IC 35-33-14. [IC 27-10-2-12(j)]

A bail agent may not become a surety on an undertaking unless the bail agent has registered the bail agent's license in the office of the sheriff and with the clerk of the circuit court in the county in which the bail agent resides. The bail agent may then become a surety on an undertaking in any other county upon filing a copy of the bail agent's license in the office of the sheriff and with the clerk of the circuit court in the other county. A surety bail agent must also file an original qualifying power of attorney signed by the bail agent and attached to a specimen bail bond with the clerk of the circuit court and file a copy of the qualifying power of attorney with the office of the sheriff. The clerk of the circuit court and the sheriff may not permit the registration unless the recovery agent is properly licensed by the commissioner under this article.

A recovery agent may not perform the recovery agent's duties unless the recovery agent has registered the recovery agent's license within fifteen (15) days of issuance or any renewal in the office of the sheriff and with the clerk of the circuit court in the county where the recovery agent resides. The clerk of the circuit court and the sheriff may not permit a registration unless the recovery agent is properly licensed by the commissioner under this article. [IC 27-10-3-17]

#### CERTIFIED COPIES - WHEN TO FURNISH WITHOUT CHARGE

When a copy of any public record is required by the Veterans Administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official custodian of such public record (clerk) shall without charge provide the applicant for such benefits or any person on the applicant's behalf or the authorized representative of the veterans administration with a certified copy of such record. [IC 29-1-19-16]

#### CERTIFIED COPIES OF RECORD TO BE FURNISHED TO HONORABLY DISCHARGED VETERANS OF ANY WAR, THEIR WIDOWS AND DEPENDENTS

It shall be the duty of the clerk to provide upon request, without charge or fee, one (1) certified copy of any record if it is shown that the certified copy is necessary to secure benefits to members of the military service, honorably discharged veterans, or their surviving spouses or dependents under any federal or state law.

Honorably discharged veterans includes persons placed on active duty under honorable conditions but not discharged from military service. [IC 10-5-7-1]

#### CERTIFIED COPY FEES

All fees for certified copies of record in any action or of any filing belong to and are the property of the county.

There may be a charge for additional copies of not to exceed the amount specified in IC 3-37-5-1(b); and all of which funds so received shall be placed in the general fund of the county.

Taxing and charging costs is a ministerial rather than a judicial act. Clerks of the circuit court are charged by statute to perform administratively in compliance with such statutes.

IC 33-37-5 requires the clerk to tax, charge and collect:

For each certificate under seal attached in authentication of a copy of any record, paper or transcript, one dollar (\$1.00).

For preparing a transcript or copy of any record in all cases when required by law or ordered by the court or requested by parties, per page, legal size, or part thereof, one dollar (\$1.00).

In Official Opinion No. 22 of the Attorney General, dated March 20, 1958, involving a copy of an instrument by the county recorder, it was held that the mere placing of a file stamp or signature on a "duplicate" copy of an instrument showing that such instrument has been received for record does not constitute the furnishing of a certified copy under the above statute; and, therefore, no fee should be charged for such service. However, if requested to certify as to the correctness of any such instrument, whether prepared in the recorder's office or furnished by the person requesting certification, the fees provided by IC 36-2-7-10 must be charged for each copy furnished.

The same rule is applicable to the clerk of the circuit court when a file stamp or signature is merely placed on an instrument or duplicate copy of a record showing that it has been received for record.

#### CERTIFIED COPY FEES - PRAECIPE

The purpose of IC 36-2-7-11 was to require a strict accounting of certified copy fees for the benefit of the county general fund. The State Board of Accounts was mandated to prescribe records in order to accomplish the purpose of the act. Hence, Form 138, "Record of Instruments Copied or Proofed" was prescribed.

Therefore, there must be a signed praecipe each time there is a request for a certified copy of any record or instrument. This is also true when a prepared copy of any record is submitted for proofing and certification.

The praecipe record prescribed requires all necessary information to be entered therein both by the requester and by the clerk. There is also a place for the entry of the receipt number and date of payment.

If a certified copy is prepared by the clerk or prepared by some other person and submitted for proofing and certification, an official receipt for the payment thereof is to be written with a cross reference listed on the praecipe. This is for the specific purpose of auditing such receipts.

A praecipe must be signed by the requester even if the certified copy is to be furnished without charge. When no fee is collected, a notation is to be entered on the praecipe such as "Free" or "No Charge" in the space where the charge is supposed to be entered. No copy can be furnished without fee or charge unless specifically provided by law that no charge be made.

Although the law contemplates payment of certified copy fees at the time the instrument is furnished, clerks must determine administratively whether such fees will be charged and taxed as additional items of cost in pending matters such as estates, guardianships, court orders, civil actions, etc.

If such fees are taxed in pending matters, a praecipe must be executed the same as if the copies were paid for at the time of delivery. A notation is to be made on the praecipe that the fees are charged in the pending matter, giving reference to the docket number and page and a cross reference to the docket number and page and a cross reference in the docket or other record to the identification number and date of the praecipe.

### CITY COURT - APPEAL FROM - REFUND OF FINE AND COSTS NOT AUTHORIZED

An appeal may be taken from the judgment of a city court although the defendant may have paid the fine and costs upon a plea of guilty or a finding of guilty. Although the defendant may be found not guilty in the circuit court, a refund of fine and costs previously paid in the lower court is not authorized. If the defendant had indicated that an appeal from the judgment of the city court was to be taken and had executed an appeal bond before paying the fine and costs, the execution of the judgment of the city court could have been stayed pending the judgment of the circuit court. Payment of the fine and costs in the lower would indicate that the defendant neglected or failed to utilize a procedure he or she would otherwise have been entitled to under the law. Therefore, at the time the defendant paid the fine and costs in the lower court the same were validly due and owing.

### CONSOLIDATION CAUSES

When two or more causes are ordered consolidated by the court, tax in the cause where judgment is rendered.

### COSTS

A person who is convicted of an offense is liable for costs. Costs are not a part of the sentence and may not be suspended. [IC 33-37-2-2]

However, whenever two (2) or more charges against a person are joined for trial; and the person is convicted of two (2) or more offenses in the trial; the court may waive the liability for all but one (1) of the offenses.

If a person is acquitted or an indictment or information is dismissed by order of the court, he or she is not liable for costs. [IC 33-37-2-2]

Rendering a judgment for costs is a judicial action -- a judicial function performed by the court and the taxation of costs is purely administrative performed by the clerk. (Sauthorn v. Bierhaus 44 Ind. App. 362)

The clerk is mandated to tax, charge and collect the amounts specified by law. If there is an error in the amount of costs taxed pursuant to a judgment therefor, the trial court that rendered the judgment has full power to correct any error through a motion to retax the costs or a motion to modify the judgment with respect to costs. If such a remedy is not pursued, the amount of costs, as any portion of the judgment, becomes final and binding. (Van Gundy et al v. Corrigan, 4 Ind. App. 333, Boyer v. Everetts, 185 Ind. 272)

### COSTS CANNOT BE REMITTED

The Supreme Court has held that the power to remit fines and forfeitures does not include costs which are charged in criminal cases. In the case of Ryan v. State 176, Indiana 281, the Supreme Court uses the following language:

"It is evident that the words 'fines and forfeitures' used in the Constitution, and in the statute passed thereunder, do not include costs, and that the governor of this state has no power to remit the costs due to the state or county in a criminal case." (Opinion of Attorney General 1937, Page 298)

Applying this decision and opinion, it must follow that no officer or official has any authority to set aside or remit costs assessed after judgment is entered.

GENERAL COURT COST PROVISIONS  
CRIMINAL ACTIONS

CRIMINAL ACTIONS - COSTS

Costs in a criminal action are not part of the sentence and may not be suspended. However, if two (2) or more charges against a person are joined for trial and the person is convicted of two (2) or more offenses in the trial, the court may waive the person's liability for costs for all but one (1) of the offenses. [IC 33-37-2-2]

WHEN NOT LIABLE FOR COSTS

If a person is acquitted or an indictment or information is dismissed by order of the court, the person is not liable for costs. [IC 33-37-2-2]

HEARING TO DETERMINE INDIGENCY

When the court imposes costs, it shall conduct a hearing to determine whether the convicted person is indigent. If the person is not indigent, the court shall order that the person pay the entire amount at the time sentence is pronounced, the entire amount at some later date, or specified parts at designated intervals. [IC 33-37-2-3]

DEFAULT IN PAYMENT OF COSTS

Upon any default in the payment of the costs, an attorney representing the county may bring an action on a debt for the unpaid amount or the court may direct that the person, if the person is not indigent, be committed to the county jail and credited toward payment at the rate of twenty dollars (\$20.00) for each twenty-four (24) hour period the person is confined, until the amount paid, plus the amount credited, equals the entire amount due. [IC 33-37-2-3]

STATE TO PAY COSTS OF TRIAL OF OFFENSES COMMITTED BY PRISON INMATES

The state shall pay all costs of trial in a prosecution for an offense committed by an inmate of a state correctional facility and in the county in which the correctional facility is located.

The costs of trial to be paid include court fees and expenses incurred by the county sheriff in returning the defendant to the jurisdiction of the court and keeping the defendant in custody until trial. [IC 33-37-2-4]

FINES OR PENALTY IN ADDITION TO COSTS

The fees prescribed by IC 33-37-4-2 are costs and may be collected from the defendant against whom a conviction is entered. Any penalty assessed is in addition to costs.

COSTS - OTHER - WHEN REQUIRED

The judges of circuit, superior and probate courts are authorized and directed to require by court order the advance payment of other court costs.

### DOCKETING - DOCKET DEFINED

Upon filing an action, it must necessarily be entered in some kind of book. The process of entering and indexing such filing is commonly called docketing.

The origin of the word "docket" seems to have been lost in antiquity. Various courts and other legal authorities have held that the word docket is usually applied to the book or paper in which is entered a brief abstract of all proceedings in court. It is a formal record, entered in brief, of the proceedings in a court of justice. It has been further defined as a book containing a brief entry of all important acts done in court in the conduct of each case, from its inception to its conclusion.

### FEE BILLS - COLLECTION OF COSTS

Fee bills and executions may issue for collection of costs in the proper cases against parties to the action, relators, persons for whose use an action is brought and sureties on undertakings for the payment of costs. [IC 34-52-1-8]

### FEE BILLS - ISSUANCE AND COLLECTION

Within seventy-five (75) days after a judgment is entered in an action, the clerk shall issue an itemized fee bill for the collection of fees that were charged against the party in that action and that remain unpaid. The clerk shall present the fee bill for collection to the sheriff of a county where the debtor party resides or where the debtor party has property.

The sheriff shall:

1. Collect the amount due under the fee bill; and
2. Return the fee bill to the clerk not more than sixty (60) days after the fee bill was issued.

After the fee bill is presented to the sheriff, it has the effect of an execution and operates as a lien upon the real and personal property of the debtor.

A successor of an officer may issue fee bills for the fees of the officer's predecessors in office in the manner provided. A clerk may issue the fee bills of the sheriff or former sheriffs of the county in the same manner. [IC 33-37-4-10]

### FEE - WHEN IS PAYABLE

Thus, it appears from the authorities and definitions hereinbefore cited, that a civil action is considered an adversary proceeding. The docket or filing fee is payable when such civil action or proceeding is filed and made a matter of record by a docket, except in those cases specifically exempt by the act or in actions not included within the legal definition thereof.

### FILING FEE NOT REQUIRED FOR PETITION FOR REINSTATEMENT

Neither a filing nor a docket fee will be required upon redocketing a case.

For instance, a petition to redocket a divorce action for the modification of a support order or a petition to reinstate to the docket other actions or proceedings, is actually a petition for reinstatement to the trial docket or calendar. It is for the purpose of considering, reconsidering or reviewing a judgment in an action that was actually filed at a prior date and even to the extent that consideration may be given to new or additional matters.

The reinstatement merely means replacing the original docket sheet in the bench docket under the original cause number. It is not given a new number or entered as a new case in the entry docket.

A reinstatement to the docket after final judgment will be an additional proceeding to the original civil action for which a fee had previously been paid or was not required if the original action was commenced prior to July 1, 1949.

#### FINES AND FORFEITURES - REMISSION OF

By constitutional and statutory authority the Governor of the state is the only person vested with legal authority to remit a fine or forfeiture.

Article 5, Section 17, of the State Constitution provides in part that the Governor "shall have power to remit fines and forfeitures under such regulations as may be prescribed by law; . . ." Attention is also directed to IC 11-9-2-1 whereupon it is apparent that the Governor has authority to remit fines and forfeitures upon proper application, where such application is approved by a majority of such officers as shall, from time to time, have the care and custody of the common school fund within the county.

In the case of *State v. Rowe*, 103 Indiana 118, the court held that "forfeitures can only be remitted by the governor after judgment has been entered declaring the forfeitures."

Article 8, Section 3, of the Constitution of Indiana provides that "the principal of the common school fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of common schools, and to no other purpose whatever."

IC 5-11-1 requires an accounting of the receipts of fines and forfeitures, a report of all fines assessed, a report of the payment of all fines assessed, a report of the payment of all fines paid and a report, upon occurrence thereof, of the forfeiture of all bonds and recognizances and a report of the payment of such forfeitures.

In Official Opinion No. 29, March 27, 1952, the Attorney General held that the legislature intended fines and forfeitures to be vested in the common school fund when they have been paid into the hands of the county treasurer and a report of such payments made to the Auditor of State. Therefore, fines and forfeitures vest in the common school fund at the time they are paid into the county treasury and a report is made to the Auditor of State. Under these conditions, and pursuant to the restrictions of Article 8, Section 3, of the Constitution of Indiana, such funds being then vested in the common school fund are beyond recall and the Governor is without authority to remit.

GENERAL COURT COST PROVISIONS  
CIVIL ACTIONS

CIVIL ACTIONS - COSTS WHEN NOT REQUIRED

Actions Brought by or on Behalf of State or Any Political Subdivision

The fees prescribed in civil actions (or paternity actions) may not be collected from the state or a political subdivision in an action brought by or on behalf of the state or any political subdivision. However, the state or a political subdivision is not prohibited from collecting such fees if successful in its action. [IC 33-37-3-1]

Exemption Because of Poverty

A person entitled to bring a civil action or to petition for the appointment of a guardian under IC 29-3-5 may do so without paying the required fees or other court costs upon filing in court, under oath and in writing, a statement declaring the person is unable to make the payments or give security for them because of the person's indigency, declaring that the person believes that the person is entitled to the redress sought in the action and setting forth briefly the nature of the action. [IC 33-37-3-2]

PARTY ENTITLED TO RECOVER COSTS

A party for whom judgment is entered in a civil action is entitled to recover costs. [IC 33-37-3-4]

PREPAYMENT NOT REQUIRED IN APPEALS

The prepayment of fees under this chapter is not required in appeals of civil matters to circuit courts from courts of inferior jurisdiction. [IC 33-37-3-5]

COURT COSTS INCLUDE SERVICE OF PROCESS BY CERTIFIED MAIL

Court cost fees under this chapter include service of process by certified mail, unless service by sheriff is requested by the person who institutes the action. [IC 33-37-3-6]

PARTY ENTITLED TO RECOVER PRIVATE SERVICE OF PROCESS FEE

If personal service of process is carried out by a process server other than the sheriff, the party who paid for the private service is entitled to reimbursement of the cost of the private service as a part of any judgment that the party may recover. [IC 33-37-3-7]

NO FEE TO BE CHARGED FOR NAME CHANGE UNDER IC 31-1-11.5-18

Notwithstanding IC 33-37-4-4, the clerk may not collect a separate civil fee for a name change action initiated under IC 31-15-2-18. [IC 33-37-3-8]

## MISCELLANEOUS GENERAL COURT COST PROVISIONS

### PREPAYMENT WHEN NOT REQUIRED

Prepayment of fees is not required in proceedings for adoption or the appointment of a guardian. [IC 33-37-3-9]

### COURT COST FEES - INFRACTIONS

The fees prescribed by IC 33-37-41 are costs for purposes of IC 34-28-5-4 and may be collected from a defendant against whom judgment is entered. Any penalty assessed is in addition to costs. [IC 33-37-2-5]

### CHANGE OF VENUE COURT COST FEE

The clerk of the court from which the action is transferred shall collect from the party seeking a change of venue a fee equal to that required by IC 33-37-4-4, Civil \$100.00, IC 33-37-4-6, Small Claims Cost \$35.00, or IC 33-37-4-7, Probate \$120.00. The clerk of the transferring court shall forward the fee to the clerk of the court to which the action is transferred. [IC 33-37-4-8]

### PUBLICATION REQUIREMENTS

If publication by notice is required by law in any action, the party or the attorney for the party from whom the notice is required shall pay the cost of publication directly to the publisher of the notice and file proof of publication with the clerk. [IC 33-37-1-4]

### JUVENILE COURT - PREGNANT MINORS

Payment of filing fees is not required by a pregnant minor filing proceedings under IC 16-34-2-4 concerning abortion cases.

### NONRESIDENT MOTORIST - SERVICE OF PROCESS UPON SECRETARY OF STATE - FEE

When service of process is required of a nonresident operator of a motor vehicle growing out of an accident or collision on Indiana streets or highways or any other place within this state, such service must be upon the Secretary of State. The Secretary of State is deemed to be the appointed attorney of the nonresident for purposes of service of process. Such appointment of the Secretary of State shall be irrevocable and binding upon the executor or administrator of the nonresident. Service of such process shall be made by leaving a copy thereof, with the fee of \$10.00, for such defendant to be served, with the Secretary of State or in that office. [IC 23-1-18-3]

If a nonresident has died before the commencement of an action brought under this chapter, service of process shall be made on the executor or administrator of the nonresident in the same manner and with the same notice as is provided for the nonresident. [IC 34-33-3-4]

If an action has been commenced under this chapter by service upon a nonresident who dies thereafter, the court shall allow the action to be continued against the executor or administrator upon motion with notice that the court considers proper. [IC 34-33-3-5]

### PATERNITY - ESTABLISHING BY ADVERSARY PROCEEDINGS

If proceedings are brought pursuant to IC 31-6-6.1, costs are to be taxed, charged and collected from the party against whom the finding and judgment is entered. Such proceedings are civil actions and not criminal. Therefore, the costs to be taxed are the same as are required to be charged and collected at any other civil action. Upon final judgment establishing paternity of a child, the clerk is required to make certification of such to the county health officer or secretary of city board of health in the form required by State Department of Health. [IC 31-6-6.1]

### RECOGNIZANCE BOND - FORFEITED

The surety cannot be discharged by surrendering the principal after judgment has been entered on a forfeited recognizance, before payment, but that by application to the Governor he may obtain remittance of the forfeiture. The right of a surety to be discharged from liability on his bond by surrender of his principal terminated with judgment upon forfeiture. The chances of remission of the forfeiture upon surrender after judgment are within the discretion of the Governor under the Constitution of Indiana, Art. 5, Sec. 17, when presented to him pursuant to the procedure provided by statute. (O.A.G. 33, 1961)

### REFUND - WHEN COSTS ARE REFUNDED

If an action or proceeding is terminated by dismissal or otherwise and the costs are less than the advance fee, the overage, if any, shall be returned to the party or parties who paid it.

### SHERIFF TO SUMMON JURORS

When a venire for jurors issued or the court orders a jury to be called to hear and try a cause, such venire or order must be returned to the clerk by the sheriff with his return thereon.

### STATEMENT WITH REMITTANCE - CHANGE OF VENUE

The clerk remitting the costs is required to furnish a statement with the remittance showing the cause number of the county of origin, the title of the cause and the items of costs paid. The form of statement has not been prescribed. Such statement may be entered on the check if there is sufficient room or the clerk may prepare his or her own remittance statement. [IC 34-35-6-2]

### TRUSTS - PUBLIC AND BENEVOLENT

Upon petition by the settlor, a beneficiary or his or her personal representative, a person designated by the settlor to have advisory or supervisory powers over the trust, or any other person having an interest in the administration or the benefits of the trust, including the attorney general in the case of a trust for a benevolent public purpose, the court may direct the trustee to file a verified written statement of accounts showing the items listed in IC 30-4-5-13(a). The petition may be filed at any time, provided, however, that the court will not, in the absence of good cause shown, require the trustee to file a statement more than once a year.

If the court's jurisdiction is of a continuing nature as provided in IC 30-4-6-2, the trustee shall file a verified written statement of accounts containing the items shown in IC 30-4-5-13(a) with the court biennially, and the court may, on its own motion, require the trustee to file such a statement at any other time provided there is good cause for requiring a statement to be filed. [IC 30-4-5-12]

### VEHICLE LICENSE - ADDITIONAL EXCISE TAX JUDGMENTS

IC 9-18-2-41 provides that the clerk of the court shall, on a calendar year basis, transfer additional vehicle license excise tax judgments collected under IC 6-6-5 or IC 6-6-5.5 to the county auditor who shall disburse the funds to the law enforcement agencies responsible for issuing the citations. The percentage of funds issued to a law enforcement agency is to equal the percentage of total of the citations issued by the law enforcement agency.

The State Board of Accounts has prescribed General Form 367 (1984), Clerk's Report to Auditor of Additional Judgments For Excise Tax. We recommend monthly filing to eliminate the necessity of carrying these items in trust.

### OVERWEIGHT VEHICLES - FINES AND PENALTIES - IMPOUNDMENT AND SALE

For the purposes of this chapter, the operation of a vehicle or combination of vehicles in violation of one (1) or more of the limitations in IC 9-20-4, IC 9-20-5, or IC 9-20-11 is a continuing offense and the venue for prosecution lies in a county in which the unlawful operation occurred. However, a conviction or acquittal in any one (1) county bars a prosecution in any other county. [IC 9-20-18-1]

When a person is apprehended operating or causing to be operated a vehicle or combination of vehicles on any public highway with a weight in excess of the limitation under IC 9-20-4, IC 9-20-5, or IC 9-20-11, the vehicle or combination of vehicles shall be detained until its weight is so reduced or distributed to comply with those limitations; the vehicle or combination of vehicles shall, while detained, be kept in the custody of the officer apprehending it and shall be moved only as directed by the officer or by direction of a court. The person who is apprehended may post a bond in a court. If bond is posted and the weight is reduced to within lawful limits, the vehicle or combination of vehicles shall be released by order of the court.

If no bond is posted, the court may have the apprehending officer impound the property until a bond is posted or until all fines and costs are paid or stayed. [IC 9-20-18-3]

### WITNESS FEES

#### Criminal Actions

A witness in a criminal action may receive a fee equal to the mileage paid to state officers for each mile required to travel to and from the court, and for each day of attendance in court a fee equal to fifteen dollars (\$15.00) for witnesses subpoenaed under IC 35-37-5-4, or five dollars (\$5.00) for all other witnesses if the witness was summoned by the state, was named on the indictment or information, and testified under oath to the material fact in aid of the prosecution. [IC 33-37-10-2]

#### Other Actions

A witness in an action listed in IC 33-37-4-2 through IC 33-37-4-7 is entitled to a fee equal to the mileage paid to state officers for each mile required to travel to and from the court, and five dollars (\$5.00) for each day of attendance in court. [IC 33-37-10-3]

Clerk to Forward Claims

The clerk shall note witness fees when they are claimed and forward claims to the county auditor or city or town fiscal officer. The clerk is not entitled to a fee for providing an affidavit or other proof of attendance to a witness. [IC 33-37-10-4]

Payment by County Auditor or City or Town Fiscal Officer

The county auditor or city or town fiscal officer shall disburse juror or witness fees. The county auditor shall forward the fee to the person within forty-five (45) days after receiving a claim for the fee. [IC 33-37-10-4]

JURY FEES

Jurors of circuit, superior, county, probate, and members of a grand jury are entitled to fees equal to the mileage rate paid to state officers for each mile necessarily traveled to and from the court and the payment at the rate of fifteen dollars (\$15) for each day the juror is in actual attendance in court until the jury is impaneled, and forty dollars (\$40) for each day the juror is in actual attendance after impaneling and until the jury is discharged.

County council may adopt an ordinance to pay from county funds a supplemental fee in addition to the aforementioned fees.

A prospective juror who is summoned for jury duty and who reports to the summoning court on the day specified in the summons is in actual attendance on that day for the purposes of this section. [IC 33-37-10-1]

Clerk to Forward Claims

The clerk shall note juror fees when they are claimed and forward the claims to the county auditor or city or town fiscal officer.

The clerk is not entitled to a fee for providing an affidavit or other proof of attendance to a juror. The county auditor or city or town fiscal officer shall disburse jury fees. [IC 33-37-10-4]

PUNITIVE DAMAGE AWARDS

Except as provided in IC 13-25-4-10, when a judgment that includes a punitive damage award is entered in a civil action, the party against whom the judgment was entered shall pay the punitive damage award to the clerk of the circuit court where the action is pending.

Upon receiving the payment for such punitive damages, the clerk of the court shall:

- (1) pay the person to whom punitive damages were awarded twenty-five percent (25%) of the punitive damage award; and
- (2) pay the remaining seventy-five percent (75%) of the punitive damage award to the Treasurer of State, who shall deposit the funds into the violent crime victims compensation fund established by IC 5-2-6.1-40. [IC 34-51-3-6]