

CHAPTER XII  
CLERK'S GUIDE

RECORDING BY MINIATURE PHOTOGRAPHIC OR MICROFILM PROCESS

It is lawful for the clerk of the circuit court to record any and all instruments by miniature photographic process or microfilm process where the installation of such recording process is approved by the board of county commissioners. Any such process shall provide for an original and duplicate film copy of each instrument which by law such officer is required to record at length. The original copy shall be properly indexed and filed in a suitable container, folder or other device in the office where such instrument is recorded in such a manner that it will be easily accessible and readable by any interested person. The duplicate shall be preserved in a fireproof vault either within the courthouse where the clerk's office is located or in such other place as may be designated by the board of commissioners. [IC 36-2-17-4]

REMANDED CASES

A case leaving one county on a change of venue and thereafter remanded to the county from which it was sent has the status the same as if it had never left the county in the first instance. Therefore, no per diems for trial dates are allowable upon disposition by the trial court.

CERTIFIED MAIL

If a statute enacted by the general assembly or a rule, as defined by IC 4-22-2-3, requires that notice or other matter be given or sent by registered mail or certified mail, a person may use:

- (1) any service of the United States Postal Service or any service of a designated private delivery service (as defined by the United States Internal Revenue Service) that:
  - (A) Tracks the delivery of mail; and
  - (B) Requires a signature upon delivery; or
- (2) delivery by an employee of the unit of government sending the notice; to comply with the statute or rule.

If means of giving notice is not covered by rules adopted by the supreme court and if a notice or other matter sent as described above is returned undelivered, the notice or other matter must be given by":

- (1) delivering a copy of the notice or other matter to the person to whom the notice or other matter must be given personally;
- (2) leaving a copy of the notice or other matter at the dwelling house or usual place of abode of the person to whom the notice or other matter must be given;
- (3) sending by first class mail a copy of the notice or other matter to the last known address of the person to whom the notice or other matter must be given; or
- (4) serving the agent of the person to whom the notice or other matter must be given as provided by rule, statute, or valid agreement. [IC 1-1-7-1]

### OPEN DOOR AND PUBLIC ACCESS

Open door law, IC 5-14-1.5, and the access to public records law in IC 5-14-3 allow attendance by the public at public meetings, as well as, the ability to inspect and copy records. There are exceptions to both laws. You should review the statutes and the Public Access Handbook on the Public Access Counselor's website at [www.in.gov/pac](http://www.in.gov/pac) before developing your office policies in this area.

### FILING COMPLAINT - SUMMONS

A civil action shall be commenced by filing with the court a complaint and causing a summons to be issued thereon. The clerk shall examine, date, sign and affix the seal to the summons and thereupon issue and deliver the papers to the appropriate person for service. (Trial Rule 3, 4-4.17)

### LIS PENDENS RECORDS

Each clerk shall keep in the office a book called the "Lis Pendens Record," which shall be a public record. [IC 32-30-11-1]

When a suit is commenced upon any bond payable to the state in any of the courts of this state or in a district court of the United States sitting in Indiana, the plaintiff in the case shall file with the clerk of the circuit court a written notice containing:

- (1) the title of the court; and
- (2) the names of all parties to the suit and a statement that it is upon an official bond. [IC 32-30-11-2]

When a person commences a suit:

- (1) in any court of this state or in a district court of the United States sitting in Indiana;
- (2) whether by complaint as plaintiff or by cross-complaint as defendant; and
- (3) to enforce any lien upon, right to, or interest in any real estate upon any claim not founded upon:
  - (a) an instrument executed by the party having the legal title to the real estate, as appears from the proper records of the county, and recorded as required by law; or
  - (b) a judgment of record in the county wherein the real estate is located, against the party having the legal title to the real estate, as appears from the proper records;

the person shall file, with the clerk of the circuit court in each county where the real estate sought to be affected is located, a written notice containing the title of the court, the names of all the parties to the suit, a description of the real estate to be affected, and the nature of the lien, right, or interest sought to be enforced against the real estate. [IC 32-30-11-3]

The clerk shall record a notice filed in the Lis Pendens Record and shall note upon the record the day and hour when the notice was filed and recorded. [IC 32-30-11-4]

It is the duty of the clerk to index the record by the names of each party whose interest in the real estate might be affected by the suit, attachment, or execution. [IC 32-30-11-6]

#### LIS PENDENS RECORD - WRITTEN NOTICE TO BE FILED BY SHERIFF OR CORONER

When a sheriff or coroner seizes upon real estate or levies upon real estate by order of a court, a copy of the sheriff's or coroner's written notice of attachment or levy shall be filed with the clerk who shall record it in the Lis Pendens Record. The sheriff or coroner is allowed a fee of fifty cents (\$0.50) to be taxed as costs for making and filing the notice. However, the sheriff or coroner is not required to file the notice until the attachment or execution plaintiff provides the money to pay the clerk for filing and recording the notice. [IC 32-30-11-5]

#### LIS PENDENS RECORD OF DISMISSALS AND SATISFACTION, LIEN OR ATTACHMENTS TO BE INDEXED

All entries in relation to dismissals or satisfaction of liens or attachments shall be indexed in the Lis Pendens Record in the names of the judgment plaintiffs, the defendant owning the same and also in the name of the defendant at the suit of said plaintiffs. [IC 32-30-11-6]

#### SATISFACTION OF LIEN

It is the duty of the clerk to enter in the "Lis Pendens Record" a satisfaction of the lien, right or interest on order of the court rendering judgment in final determination of the suit. [IC 32-30-11-7]

#### LIS PENDENS RECORD - DISMISSAL OR SATISFACTION OF ATTACHMENT - CERTIFICATE

The matter of redeeming property after the written notice of attachment or levy is recorded by the clerk and the duties of the clerk thereafter relating to making the record of dismissal or satisfaction in the Lis Pendens Record must be strictly followed in accordance with the provisions of IC 32-30-11-7 and IC 32-30-11-8. The clerk is generally guided in the legal procedure by the attorney representing the redeemer.

#### DISMISSAL OR SATISFACTION OF ATTACHMENT - CERTIFICATE - FEE

Whenever any such attachment shall be dismissed, judgment satisfied or such execution shall be satisfied without sale, or upon redemption within the time allowed by law after a sale upon execution, it shall be the duty of the clerk of the court, from which such attachment or execution was issued to make a certificate of such dismissal or satisfaction, to be entered upon the "Lis Pendens Record" if the same is in the clerk's office, or to be recorded in the "Lis Pendens Record" of the proper county where such real estate is situated; and upon such certificate being entered or recorded, such real estate shall be discharged from the lien of such attachment or execution. [IC 32-30-11-8]

#### CHANGE OF VENUE - CLERK STRIKING

In a change of venue, if either of the parties fail to strike off the names of the adjoining counties submitted by the court within the time limited, the clerk of the court shall strike off such names for such party. [IC 34-35-2-4]

### PARTITION OF REAL ESTATE - TRANSCRIPT

If a court of this state renders a judgment for the partition or transfer of real property, the clerk of the court shall prepare a transcript of the judgment. The transcript shall describe the partition or transfer and shall state the volume and page of the order-book in which the judgment is entered. The transcript shall be signed by the clerk under the seal of the court. Except in a consolidated city, the clerk shall deliver the transcript to the auditor of the county in which the real property is situated. The auditor shall make the entries on his transfer book, note the transfer upon the back of the transcript, and then deliver the transcript in the record of deeds.

For their respective services, the clerk of the court and the county recorder shall each charge the person entitled to the real property the fees the officials are by law permitted to charge for similar services. These fees shall be included as part of the cost of the court proceedings by the court rendering the judgment. [IC 6-1.1-5-6]

### TRANSCRIPTS OF RECORDS

Certificates to transcripts of records made by the clerk of the court must be attested by the seal of the court. (See *Brunt v. State ex rel. French* (1871), 36 Ind. 330; *Conkey v. Conder* (1894), 137 Ind. 441, 37 N. E. 132; *Johnson v. Johnson* (1901), 156 Ind. 592, 60 N. E. 451; *State ex rel. Miller v. Webster* (1901), 157 Ind. 508, 62 N. E. 8; *Comstock v. Stoner* (1903), 30 App. 529, 66 N. E. 501; *Hurst v. Mann* (1912), 51 App. 466, 99 N. E. 828.)

### EXECUTION AND FEE BILL

No execution shall be issued except on written praecipe of a party to a suit, his/her representatives or assigns or attorney of record; no fee bill shall be issued unless ordered by the person to whom such fees are due and the clerk shall receive nothing for any fee bill issued for his/her own fee. [IC 34-55-2-8]

This section does not prohibit the clerk from issuing fee bills for the collection of costs. The provisions of this section refer to fees due other persons.

### EXECUTION NOT ISSUED AFTER TEN YEARS

An execution cannot be issued after ten years from the entry of judgment except on motion and leave of the court and upon notice given to the adverse party. [IC 34-55-1-2]

### EXECUTION MAY ISSUE ON SUNDAY

An execution may be issued and executed on Sunday whenever an affidavit shall be filed by the plaintiff, or another person on the plaintiff's behalf, stating that the plaintiff has fear and reason to believe that he/she will lose his/her judgment unless process issue on that day. The clerk shall endorse on such execution that the defendants are not privileged from service on Sunday. [IC 34-55-1-15]

### EXECUTION DOCKET

The clerk is required to keep an execution docket in which the clerk shall enter all executions as they are issued specifying in proper columns the names of the parties, amounts of judgment and the interest due at the time of issue, and the costs. The clerk shall prepare an additional column in which the clerk shall enter the return of the sheriff. [IC 33-32-3-5]

STAY OF EXECUTION - BAIL

Bail may be taken and approved by the clerk, and the recognizance entered of record, at any time before the term of the stay of execution expires. The undertaking is for the payment of the judgment, interest and costs that may accrue at or before the expiration of the term of the stay of execution. The recognizance shall be written immediately following the entry of the judgment and signed by the bail. [IC 34-55-2-1]

CLERK TO NOTIFY SHERIFF

When bail is entered after an execution is issued, the clerk shall immediately notify the sheriff. The sheriff shall immediately return the execution, noting the sheriff's actions on the execution.

EXPIRATION OF STAY - JOINT EXECUTION SHALL ISSUE

At the expiration of the stay it shall be the duty of the clerk to issue a joint execution against the property of the judgment debtors and replevin bail. [IC 34-55-2-9]

CONTEMPT PROCEEDINGS – (Child Support) – BAIL OR ESCROW

For the purpose of procuring personal jurisdiction over a person who has allegedly violated a court order or who is otherwise in contempt of court, the court may issue a writ of attachment of the body of the person.

A writ of attachment issued under subsection (a) shall:

- (1) be directed to a sheriff or assisting sheriff; and
- (2) fix an amount of:
  - (A) bail, if the order that the person has allegedly violated does not concern a child support obligation; or
  - (B) escrow, if the order that the person has allegedly violated concerns a child support obligation.

A sheriff or assisting sheriff who receives an order under this section shall immediately:

- (1) serve the writ; and
- (2) take the person into custody.

A sheriff may serve a writ of attachment and take the person into custody in any county.

If an assisting sheriff takes a person into custody, the assisting sheriff shall notify the sheriff. The sheriff, after notification, shall immediately return the person to the county in which the writ was issued and take the person before the court that issued the writ. However, the sheriff may release the person:

- (1) on bail as in criminal matters; or
- (2) after any person has deposited the amount of escrow required.

The escrow shall be:

- (1) deposited with the clerk of the court;
- (2) an amount:
  - (A) fixed by the court; and
  - (B) not more than any delinquent child support allegedly owed by the person to another; and
- (3) subject to a court ordered attachment for satisfaction of delinquent child support and interest under IC 31-16-12-2 and IC 31-14-12-1 (before it's repeal).

All escrow money collected under this section (or IC 34-4-9-2.1 before its repeal) by the clerk of the court shall be deposited into a single account. The clerk shall:

- (1) keep an accounting of all money transferred to the escrow account;
- (2) issue a receipt to any person who transfers money to the clerk under this section; and
- (3) transfer money from the escrow amount only under an order from the court that issued the writ of attachment. [IC 34-47-4-2]

#### ORDER OF ATTACHMENT ISSUED BY CLERK - APPROVAL OF BOND

The clerk is required to issue an order of attachment to the sheriff when a proper affidavit is filed in the office of the clerk and the plaintiff has executed a written undertaking with sufficient surety to be approved by the clerk. [IC 34-25-2-4; IC 34-25-2-5; IC 34-25-2-6]

#### EJECTIONS - AFFIDAVITS FOR POSSESSION – CLERK'S ORDER TO SEIZE

In all actions for ejectment, or for the recovery of the possession of real estate, the plaintiff may file an affidavit with the clerk stating that the plaintiff is entitled to the possession of the property described in the complaint, that the defendant unlawfully retains possession thereof, the estimated value of the property and the estimated rental value thereof. Upon filing of such affidavit, the clerk shall issue an order for a hearing to show cause why the defendant should not be taken from the property. [IC 32-30-3-1; IC 32-30-3-2]

#### QUIET TITLE PROCEEDINGS - NOTICE BY CLERK

For any of the following proceedings brought in a state court concerning real estate or any interest in real estate located in Indiana that are an action to:

- (1) An action to:
  - (A) quiet or determine title to;
  - (B) obtain title or possession of; or
  - (C) partition

real estate.

- (2) An action by an executor or administrator to:

- (A) Sell real estate to satisfy the debts of a decedent; or
- (B) Enforce or foreclose a mortgage or lien on real estate.

A person who institutes a proceeding described above may, under s circumstance set forth in (1) through (6) below, name as a defendant any of the following individuals:

- (1) A person:
  - (A) Who may have an interest in real estate that is the subject of the proceeding; and
  - (B) Whose name appears of record in a record concerning the real estate.
- (2) A person who bears one of the following relationships to a former owner or encumbrancer of the real estate.
  - (A) Spouse.
  - (B) Widow or widower
  - (C) Heir or devisee.

The person who institutes the proceeding does not have to know the name of a person described in subdivision (2).

A person who institutes the proceeding may name an individual described above as a defendant if public records in the county in which the real estate that is the subject of the proceeding is located any of disclose the following circumstances:

- (1) There is a break or hiatus in the record title of real estate.
- (2) There exists:
  - (A) A defect in;
  - (B) An apparent defect in; or
  - (C) A cloud upon;

the title of the real estate due to a defective or inaccurate legal description of the real estate.

- (3) There is no record that a grantor or mortgagor was unmarried when the deed to or mortgage on the real estate was executed.
- (4) An instrument affecting the real estate, including a deed, will, or mortgage, was not properly executed.
- (5) A mortgage, vendor's lien, or other lien or encumbrance affecting the real estate was not properly released
- (6) The person instituting the proceeding does not know:
  - (A) The name of another person who may claim an interest in the real estate based on the other person's relationship to a former owner, mortgage, or encumbrancer of the real estate; or
  - (B) Whether another person, including a person described in clause (A), who may have an interest in the real estate is alive or dead.

The plaintiff in the proceeding may state the following in the complaint:

- (1) The plaintiff asserts title to the real estate that is the subject of the proceeding against all other persons.
- (2) The purpose of the proceeding is to quiet the title to the real estate.
- (3) The plaintiff has names as defendants all persons whom the party knows may have a claim to or interest in the real estate.

The plaintiff shall file with the complaint an affidavit that states the following:

- (1) The complaint contains the names of all the persons disclosed by the public record by or through whom a claim or interest in the real estate may be asserted.
- (2) The plaintiff does not know the following information about a person described in subdivision (1):
  - (A) Whether the person is alive or dead.
  - (B) The person's legal residence.
  - (C) The person's marital status.
  - (D) If the person is or has been married, the name or address of the person's spouse, widow, or widower.
  - (E) If the person is dead, whether the person has left any heir or devisee,
  - (F) The name or legal residence of an heir or devisee.
- (3) The plaintiff claims full and complete right and title in the real estate that is the subject of the proceeding.
- (4) The plaintiff intends to quiet title to the real estate through the proceeding.

After the plaintiff files the complaint and affidavit, the plaintiff shall file an affidavit for publication of notice under IC 34-32-1.

After the plaintiff files the affidavit for publication of notice, the clerk of the county in which the real estate that is the subject of the proceeding is located shall publish notice of the following:

- (1) The filing and pendency of the proceeding.
- (2) The date on which the proceeding will take place.
- (3) Designations and descriptions of any defendant whose name and legal residence are unknown.
- (4) A legal description of the real estate.
- (5) The purpose of the proceeding, which is to quiet title to the real estate.

After the clerk publishes notice, the clerk shall provide proof of the publication to the court in which the proceeding is pending. Not earlier than thirty (30) days after the last publication of notice, the court may hear and determine all matters in the proceeding as if the plaintiff has known and sued all possible claimants by their proper names. All decrees, orders, and judgments issued by the court are binding and conclusive on all parties and claimants. The proceeding shall be taken as a proceeding in rem against the real estate.

If the real estate that is the subject of the proceeding described in subsection (a) is located in more than one (1) county, the plaintiff may file a complaint in a court located in any county in which the real estate is located. The plaintiff may not file a complaint in more than one (1) court. The plaintiff shall publish notice of the complaint in each county in which the real estate is located. The published notice in each county shall contain the following:

- (1) The legal description of the real estate that is located in the county.
- (2) The other counties in which the real estate is located.
- (3) Notice that a certified copy of the final judgment in the proceeding will be filed, not more than three (3) months after the judgment is entered, in the recorder's office in each county in which the real estate is located.

#### RECORDING DECREE IN THE RECORDER'S OFFICE

The clerk of a court shall enter in the civil order book all orders and decrees in any suit to quiet title to real estate. After a court enters final judgment in a proceeding, the clerk shall certify a copy of the final judgment and deliver the certified copy to the county recorder. The clerk shall include the costs of the transcript of the proceedings and the recording fees in the costs of the proceeding. [IC 32-30-3-17]

#### RECEIVERSHIPS - RECORD OF STATEMENTS

It shall be the duty of the clerk to keep a record suitable to enter and record statements of assets and liabilities. [IC 32-30-5-12]

All claims against the assets in the hands of the receiver are to be filed by the receiver with the clerk. It is the duty of the clerk to record such claims with the statements in the book provided for that purpose thus making a complete record of the same. [IC 32-30-5-13]

#### REPLEVIN ACTION

If any personal goods are wrongfully taken or unlawfully detained from the owner or person claiming the possession or taken on execution or attachment, are claimed by any person other than the defendant, the owner or claimant may bring an action for the possession thereof. When a delivery is claimed, an affidavit must be made by the plaintiff, or by someone in the plaintiff's behalf. [IC 32-35-2-1; IC 32-35-2-3]

#### ORDER FOR DELIVERY

When such affidavit is filed with the clerk, the clerk shall issue an order for a time fixed by the judge directing the defendant to appear for the purpose of controverting plaintiff's affidavit or to otherwise show cause why: a prejudgment order for possession should not issue; and the property should not be delivered to plaintiff. [IC 32-35-2-5]

### BIRTHS - PROCEEDINGS TO ESTABLISH TIME AND PLACE

Residents and nonresidents of the State of Indiana may file their verified petition to establish a public record of the time and place of birth as provided by IC 34-28-1-1 and IC 34-28-1-2.

It shall be the duty of the clerk to provide the forms for the petition in the same manner as other forms are provided for by law. [IC 34-28-1-3]

### BIRTHS - NOTICE TO BE GIVEN

Upon filing the application, the applicant shall give notice thereof by one insertion in some qualified newspaper of general circulation. The form of notice shall be in the form as provided by law. The cost of the notice shall not exceed one dollar and fifty cents (\$1.50). In the event the notice cannot be published for such fee, notice shall be given by posting at a door of the courthouse and it is the duty of the clerk to make such posting and file proof thereof. If no newspaper is published in the county where the application is filed, the applicant shall give notice in the closest newspaper printed and published in an adjoining county. [IC 34-28-1-4]

### BIRTH CERTIFICATES RECORD TO BE KEPT BY CLERK -

In addition to the requirement for keeping a birth certificate record, the clerk shall also send a certified copy of the judgment decree to the Division of Vital Records, State Department of Health, Indianapolis, Indiana. Such judgment and decree shall be considered to be a delayed certificate of birth under the provisions of IC 16-37-2. [IC 34-28-1-9]

### DISMISSAL FOR FAILURE TO PROSECUTE

If the applicant fails to prosecute his/her action within 120 days after filing the petition, the court shall dismiss the application and it shall be the duty of the clerk to destroy all such applications immediately subsequent to such dismissal. [IC 34-28-1-11]

### GRAND JURIES

Under the supervision of the supervising judge, the jury administrator shall prepare a written plan for the selection of grand and petit jurors in the county. The plan must be designed to achieve the objective of IC 33-28-5. The plan must specify the following:

- (1) Source of names for the master list.
- (2) Form of the master list.
- (3) Method of selecting names from the master list.
- (4) Methods for maintaining records of names drawn, jurors qualified, and jurors' deferrals and reasons to be deferred, including specifying any necessary forms.
- (5) Method of drawing names of qualified jurors for prospective service.
- (6) Procedures to be followed by prospective jurors in requesting to be deferred from jury service.
- (7) Number of petit jurors that constitutes a panel for civil and criminal cases or a description of the uniform manner in which this determination is made.

- (8) That upon receipt of an order for a grand jury, the jury administrator shall publicly, and in accordance with section 20 of this chapter, draw at random from the jury pool twelve (12) qualified jurors and direct them to appear before the supervising judge. The supervising judge shall randomly select six (6) jurors after:
- (A) explaining to the twelve (12) prospective jurors the duties and responsibilities of a grand jury; and
  - (B) deferring jurors under IC 33-28-5-18.

The plan must be submitted by the jury administrator to the judges of the courts. The judges of the courts shall approve or direct modification of the plan not later than sixty (60) days after its receipt. If the plan is found not to comply, the court shall order the jury administrator to make the necessary changes to bring the plan into compliance. The approved plan must go into effect not later than sixty (6) days after the plan is approved by the judges of the courts.

The plan may be modified at any time according to the procedure specified in IC 33-28-5.

The plan is a public document on file in the office of the jury administrator and must be available for inspection at all reasonable times. [IC 33-28-5-12]

The judge of any court having criminal jurisdiction may, upon due cause shown by petition of the prosecuting attorney of the judicial circuit, extend the terms of the members of the grand jury then convened for an additional term of three (3) months or more, as requested by the prosecuting attorney. The terms of the members of any grand jury may be so extended for successive periods of increments of three (3) months or more, to a total length of no more than two (2) years. [IC 35-34-2-13]

The judge of any court having criminal jurisdiction may, upon due cause shown by petition of the prosecuting attorney of the judicial circuit, order the clerk of the courts, or jury administrator as defined in IC 33-28-5-3, to draw the names of competent persons to be summoned to serve on a special grand jury, which shall serve in addition to the grand jury regularly summoned and convened pursuant to law.

A special grand jury has the powers and duties of a grand jury prescribed by law.

The members of the special grand jury serve terms of three (3) months or more, as requested by the prosecuting attorney. The terms of members of a special grand jury shall be extended for the same period of time and in the same manner in which the terms of grand jury members may be extended under section 13 of this chapter. [IC 35-34-2-14]

When names of grand jurors are ordered drawn to be summoned under section 14 of this chapter, the judge shall specify the number of names to be drawn, and shall enter an order in sufficient time before the grand jury session to permit counsel to know and investigate the panel of special grand jurors. The order of names listed in the panel and called for service and entered in the order book of the court shall be the same as provided in IC 33-28-5. The clerk shall issue summonses for such jurors as the courts may direct. The sheriff or bailiff shall then call the special grand jurors to the jury box in the same order as that in which their names were drawn from the jury pool and certified thereto. [IC 35-34-2-15]

#### OATH OF ATTORNEYS - ATTORNEY LIST

A person before proceeding to discharge the duties of an attorney shall take an oath to support the Constitution of the United States and of this state, and faithfully and honestly discharge the duties of an attorney at law. The oath shall be entered in the order book of the court. At each term of court, the clerk will furnish a list of names to the court of all attorneys having business in such court. [IC 33-43-1-1; IC 33-43-1-2]

As a ready reference and a method of convenience, we recommend each clerk of the circuit court keep a record or roll of the names of attorneys admitted to practice law in their respective courts. The register should show the name, date of admission and any other pertinent information necessary for a complete record. The names should be filed in alphabetical order.

#### CERTIFICATE OF AUTHORITY OR ACKNOWLEDGMENT - FEE

The clerk is often requested to attest the official character of persons who affix their seal and signature to conveyances or other instruments. This is frequently true when a notary public affixes their jurat to an instrument.

A certificate of acknowledgement of conveyance or other instrument in writing that is required to be recorder, signed, and sealed by the officer taking the acknowledgement shall be written on or attached to a deed. When by law the certificate of the clerk of the proper county is required to accompany the acknowledgement, the certificate shall state that: the officer before whom the acknowledgement was taken was, at the time of acknowledgment acting lawfully; and the clerk's signature to the certificate of acknowledgement is genuine. [IC 32-21-2-9]

The clerk's fee for this service is one dollar (\$1.00) and is the property of the county. [IC 33-37-5-3]

#### TENDER OF MONEY REFUSED

When an action is begun in court where money has been tendered in settlement of a demand and the tender refused by the party or parties, the money may be brought into court to keep the tender good. The clerk shall accept such tender and enter it in the proper records to the credit of the person for whom it is intended. The tender is an item of trust. The clerk must be particularly cautious not to disburse the money until the case in litigation is finally adjudicated by judgment by the court or jury or upon dismissal by the plaintiff. The clerk must never refund the tender to the party who paid it unless by judgment of the court it is so ordered and the amount determined. When money is tendered into court, the clerk is responsible for the money. The disbursement of the tender, except by judgment or order of the court, may result in an action against the clerk or on his/her official bond.

If the court or jury trying the case finds that a less amount is due on the demand than that tendered and brought into court, the person refusing the tender shall receive no more of the sum paid into court than the court or jury finds is due on the demand. [IC 34-54-9-2]

#### FAILURE TO PAY OVER FEES COLLECTED

An officer who fails to pay the amount due from him/her into the county treasury shall forfeit to the state a sum equal to the amount of fees actually collected during the quarter, to be collected by the prosecuting attorney of the county and paid into the common school fund of the county. [IC 36-2-7-17]

#### WITNESSES FOR GRAND JURY

The clerk is required to issue subpoenas for witnesses to appear before any regular session of the grand jury in the manner provided by law for the issuance of such. [IC 35-34-2-5]

The clerk may be required to draw names of competent persons to serve on the grand jury. [IC 35-34-2-14]

### INDICTMENT - DUTY OF CLERK

Whenever an indictment or information is filed, the clerk of the court shall mark the date of filing on the instrument and the indictment or information shall be recorded in a record book kept for that purpose by the clerk. The clerk shall make available to the defendant, or the defendant's attorney, a copy of the indictment or information.

Whenever an indictment or information is filed and the defendant has not been arrested or otherwise brought within the custody of the court, the court shall issue a bench warrant for the arrest of the defendant.

The court may order that the indictment or information be sealed. If a court has sealed an indictment or information, no person, may disclose the fact that an indictment or information is in existence or pending until the defendant has been arrested or otherwise brought within the custody of the court. A violation of this subsection is punishable as a contempt. [IC 35-34-1-1]

### RECOGNIZANCE FILED WITH AND RECORDED BY CLERK

Every recognizance taken by any peace officer must be delivered to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance and it shall have the same effect as if taken in open court. [IC 35-33-8.5-2]

### RECOGNIZANCE - RECORDING A LIEN - REAL ESTATE IN OTHER COUNTIES - RELEASE OF LIENS - FEES OF CLERK - JUDGMENT UPON FORFEITURE

All recognizances taken to secure the appearance of a defendant in the criminal or circuit court shall be immediately recorded by the clerk of said court in the order book and entered in the judgment docket of said court and from the date of recording shall be a lien on all the real estate in such county owned by the several obligors.

If the real estate of any one or more of the obligors be situated in a county other than in that where the prosecution is pending, it shall be the duty of the clerk, upon order of the court and as such court may direct, to immediately transmit to the clerk of the court of the county where such real estate is situated, a certified copy of the recognizance.

The clerk of the court to which the transcript is sent shall immediately record the recognizance upon the judgment docket of the circuit court of such county in the same manner as required of the clerk wherein the cause is pending. And the same shall be a lien on real estate owned by the obligors in such county in the same manner and to the same extent as if the lands were situated in the county where the cause is pending.

The clerk to which such document is transmitted shall be entitled to charge and collect one dollar (\$1.00) to be paid by the defendant or the obligors, which sum shall accompany the certified copy.

Upon the final determination of said cause and the full and complete compliance with all requirements and conditions of the recognizance, the court shall order the release of all liens created by the recognizance and the clerk shall transmit to the clerk of the circuit court of each county wherein said lien may have been recorded, and such order when recorded in any of said counties shall operate as a full and complete release of all lands of such obligors situated in such county.

The fee of any clerk for recording any such release shall be fifty cents (\$.50), which fee shall be paid by the obligor and shall accompany the order of release when transmitted by the clerk.

Judgment, if any, rendered in the event of a forfeiture of any recognizance, shall bind and be a lien upon the real estate of the principal and sureties within the county in which such judgment is rendered. A transcript of the judgment shall also be filed in the office of the clerk of each other county, if any, where such recognizance may have been recorded and when recorded, shall be a lien upon the lands of any obligor therein situated in like manner as in the county of origin jurisdiction. Should such surety be relieved from liability from such bond as by law provided, such clerk shall proceed to release from the lien provided herein all his/her such real estate as though such case had been completed and the case finally determined. [IC 35-33-8.5-9]

#### FINES OR COSTS - DEFAULT

Whenever the court imposes a fine, it shall conduct a hearing to determine whether the convicted person is indigent. If the convicted person is not indigent, the court shall order: (1) that the person pay the entire amount at the time sentence is pronounced; (2) that the person pay the entire amount at some later date; (3) that the person pay specified parts at designated intervals; or (4) at the request of the person, commitment of the person to the county jail for a period of time set by the court in lieu of a fine. If the court orders a person committed to jail, the person's total confinement for the crime that resulted in the conviction must not exceed the maximum term of imprisonment prescribed for the crime under IC 35-50-2 or IC 35-50-3.

A court may impose a fine and suspend payment of all or part of the fine until the convicted person has completed all or part of the sentence. If the court suspends payment of the fine, the court shall conduct a hearing at the time indigent. If the convicted person is not indigent, the court shall order the convicted person to pay the fine:

- (1) at the time the fine is due; or
- (2) in the manner described in (2) through (4) above.

If the court suspends payment of the fine, the court retains jurisdiction over the convicted person until the convicted person has paid the entire amount of the fine.

Upon any default in the payment of the fine: (1) The county attorney may bring an action on a debt for the unpaid amount; (2) the court may direct that the person, if he/she 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 he/she is confined, until the amount paid plus the amount credited equals the entire amount due; or the court may institute contempt proceedings or order the convicted person's income garnished in accordance with IC 24-4.5-5-105. [IC 35-38-1-18]

#### OFFICIAL BONDS APPROVED BY CLERK

The official bonds of county officers, required to give bonds except: county sheriff; county coroner; county recorder; and clerk of the circuit court, if sufficient, shall be approved by the clerk of the circuit court. The specific officers mentioned above shall have their bonds approved by the county executive. [IC 5-4-1-8]

#### NEW BOND - NOTICE BY CLERK

Whenever the clerk of the circuit court with jurisdiction in the county where an officer resides determines or a voter eligible to vote for an officer files an affidavit with the clerk stating that:

- (1) the sureties for the official bond of an officer have ceased to do business in Indiana;
- (2) the security for an official bond of an officer has become insufficient; or

- (3) the penalty has become inadequate to secure the faithful performance of the duties of an officer's office by the diminution of the penalty by suit, an increase of liabilities from the enactment of statutes after the commencement of an officer's term, or other sufficient cause:

the clerk shall issue a writ to the sheriff commanding the officer to appear before the judge of the circuit court with jurisdiction in the county in which the officer resides ten (10) days after the service of process and answer the complaint. The summons shall be served, return made, and fees charged as in the case of other summons. [IC 5-4-4-1]

On the return of the process served, the clerk shall immediately notify the judge of the time and place of hearing the complaint and the judge shall attend thereupon. [IC 5-4-4-2]

#### ADMINISTRATION OF OATH

Clerks of the circuit courts are authorized to administer oaths and take acknowledgments of all documents pertaining to all matters where an oath is required. [IC 33-42-4-1; IC 33-32-2-5]

#### COMPENSATION - DIVISION OF PENALTY

It is a Class B misdemeanor for any deputy or assistant to divide the compensation with the officer or any other person in consideration of such employment or for the officer or other person to accept any such division of compensation. [IC 36-2-8-6]

#### SESSION LAWS - RECEIPT BY CLERK - DISTRIBUTION

Immediately upon receipt of the session laws by the legislative council, one (1) copy of these session laws shall be delivered by certified mail to each of the clerks of the counties of the state.

It is the duty of each county clerk, upon delivery to the county clerk of the copy of the session laws referred to in the preceding paragraph, to send to the Governor by first class mail a certificate under the seal of the clerk's office showing the date of the clerk's receipt for such laws, as provided in IC 1-1-3-1.

The legislative council shall furnish additional copies of the session laws to each county clerk sufficient to provide copies for local officials as directed by the legislative council.

The legislative council shall distribute copies of the session laws to all state elected officials and state governmental agencies and shall fill requests from official agencies in other states. When such distribution is completed, additional copies of the session laws may be sold by the Indiana Legislative Services Agency at the cost set by statute. All moneys so collected shall be turned over to the Treasurer of State. [IC 2-6-1.5-4]

#### UNCLAIMED PROPERTY - REPORT TO ATTORNEY GENERAL

It is the duty of the clerk to report all property of whatsoever kind or character which remains unclaimed in the office for a period of five years to the Attorney General of the state. The provision of this statute covers any item of trust. [IC 32-34-1-20 and IC 32-34-1-26]]

### DELIVERY OF UNCLAIMED PROPERTY TO ATTORNEY GENERAL

On the date the report of unclaimed property is filed with the Attorney General, the clerk shall deliver or pay to the Attorney General the property described in the report with few exceptions as listed in IC 32-34-1-27.

Follow the guidance on the Attorney General's Website for reporting and remittance.

### SUCCESSOR TO RECEIVE BOOKS, RECORDS AND PAPERS

At the expiration of his/her term, the clerk shall deliver to his/her successor all the records, books and papers belonging to the office. [IC 33-32-3-8]

### DEPARTMENT OF WORKFORCE DEVELOPMENT (DWD) WARRANTS

Upon receipt of a warrant for the collection of delinquent contributions due the Department of Workforce Development, the clerk shall, within five (5) days, enter the warrant in the judgment docket in the same manner as other judgments are entered, which shall constitute a lien upon the title and interest in the real and personal property of the employing unit against which it is issued. After making the proper entry in the judgment docket, the clerk will return the original warrant to the department. [IC 22-4-29-7]

If the clerk fails to record and issue the warrant, to the department, within five (5) days after it has been received, the clerk shall forfeit to the State of Indiana for each failure the sum of twenty dollars (\$20.00). [IC 22-4-29-8]

Within one hundred twenty (120) days from the date of receipt of the warrant (or immediately after service if the warrant is fully satisfied or found to be wholly uncollectible) the sheriff shall return it, together with the money collected, less fees and costs payable to the department, and make his/her return thereon.

"Costs" as referred to in this subsection includes the fees of the clerk and sheriff as are specifically provided for and costs of storage, appraisal, publication, and other necessary and properly chargeable expenses incurred in the sale of property on execution. The costs herein specifically prescribed for the clerk and sheriff shall be as follows:

- (1) Clerk's fee of three dollars (\$3.00) to be charged on the warrant and paid to the clerk for recording the warrant.
- (2) Sheriff's fee of:
  - (a) six dollars (\$6.00) to be charged on the warrant and paid to the sheriff in every instance in which the warrant has been duly and properly served and the schedules and affidavits hereinafter provided for have been executed and signed; or
  - (b) ten dollars (\$10.00) for sale of property on execution or decree, including making a deed or certificate of sale, to be charged on the warrant. [IC 22-4-29-8]

The fees and charges provided in IC 22-4-29-8 for the clerk and sheriff shall be the property of the clerk and sheriff, and, excepting additional payments to the sheriff provided for in this section, shall be the only fees and charges payable for their services relating to the warrants herein and shall be in lieu of all fees and charges provided for in other statutes for services relating to recording and serving of warrants and levying of executions, whether such other statutes relate to clerks, sheriffs, governmental units, or subdivisions thereof. Such costs shall be charged against the employing unit and collected from it by the sheriff.

In case the amount collected is sufficient to satisfy the entire amount of the warrant and all costs thereon, the sheriff shall retain an amount equal to ten percent (10%) of the assessment in addition to the fees provided in section 8 of this chapter. If such amount is not collected in full, the sheriff shall retain an amount equal to five percent (5%) of the amount collected.

However, in instances wherein the sheriff makes no collection upon a warrant and it has been returned to the department as uncollectible and the warrant is thereafter paid voluntarily in whole or in part by the employing unit to the clerk or to the department, the sheriff shall not be entitled to either of the payments mentioned above, and the damages assessed in the warrant shall be deposited in the unemployment insurance benefit fund. [IC 22-4-29-9]

The return by the sheriff to the department of the warrants shall be made monthly on or before the fifth day of the month. All money so returned to the department shall be receipted for by the department and its endorsement upon the check transmitted by the sheriff shall be conclusive evidence of such payment by the sheriff and no other receipt shall be necessary.

If a warrant is not satisfied within one hundred twenty (120) days specified in IC 22-4-29-8, nothing herein shall operate to prevent the department from issuing subsequent warrants upon the identical amount of the unpaid assessment. Subsequent warrants shall not be recorded by the clerk, and no fees shall be chargeable by the clerk. Upon any subsequent warrant, the sheriff shall be entitled to a sum for mileage equal to that sum per mile paid to state officers and employees, with the rate changing each time the state government changes its rate per mile, but shall not be entitled to any other fee if the same has been paid the sheriff for services upon the original warrant, except that in case collection is made in part or in full with respect to any such subsequent warrant, the sheriff is entitled to the five percent (5%) or ten percent (10%) as provided in IC 22-4-29-9(b).

In every instance in which the sheriff shall return any warrant unsatisfied, the sheriff shall attach to the sheriff's return an inventory or schedule of all the property, real and personal, tangible and intangible, of the employing unit, sworn to by the employing unit, and describing the real estate by metes and bounds and the personal property by separate items, specifically noting thereon all encumbrances, or in lieu thereof a sworn statement by the employing unit that it possesses no property whatever. [IC 22-4-29-10]

#### GROSS INCOME TAX WARRANTS - CLERK TO ENTER

When the Department of State Revenue issues a tax warrant, it may not file the warrant with the circuit court clerk of any county in which the person owns property until at least twenty (20) days after the date the demand notice was mailed to the taxpayer. The department may also send the warrant to the sheriff of any county in which the person owns property and direct the sheriff to file the warrant with the circuit court clerk:

- (1) at least twenty (20) days after the date the demand notice was mailed to the taxpayer;  
and
- (2) no later than five (5) days after the date the department issues the warrant.

When the circuit court clerk receives a tax warrant from the department or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record, listing the following:

- (1) The name of the person owing the tax.
- (2) The amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable.
- (3) The date the warrant was filed with the clerk.

When the entry is made, the total amount of the tax warrant becomes a judgment against the person owing the tax. The judgment in favor of the state that attaches to all the person's interest in any:

- (1) chose in action in the county; and
- (2) real or personal property in the county

excepting only negotiable instruments not yet due.

A judgment obtained under this section is valid for ten (10) years from the date the judgment is filed. The department may renew a judgment for additional ten (10) year periods by filing an alias tax warrant with the circuit court clerk of the county in which the judgment previously existed.

A judgment in a county shall be released by:

- (1) the department after the judgment, including all accrued interest to the date of payment, has been fully satisfied; or
- (2) the department if the department determines that the tax assessment or the issuance of the tax warrant was in error.

If the department determines that the filing of a tax warrant was in error, the department shall mail a release of the judgment to the taxpayer and the circuit court clerk of each county where the warrant was filed. Each clerk where the warrant was filed shall expunge the warrant from the judgment debtor's column of the judgment record. The department shall mail the release as soon as possible but no later than seven (7) days after:

- (1) the determination by the department that the filing of the warrant was in error; and
- (2) the receipt of information by the department that the judgment has been recorded under subsection (d).

If the department determines that a judgment described in IC 6-8.1-8-2(h) is obstructing a lawful transaction, the department shall immediately upon making the determination mail:

- (1) a release of judgment to the taxpayer; and
- (2) an order requiring the clerk of each county where judgment was filed to expunge the warrant.

A release issued must state that the filing of the tax warrant was in error. Upon the request of the taxpayer, the department shall mail a copy of a release issued and the expungement order to each major credit reporting company located in each county where the judgment was filed.

The commissioner shall notify each state agency or officer supplied with a tax warrant list of the issuance of a release.

If the sheriff collects the full amount of a tax warrant, the sheriff shall disburse the money collected. If a judgment has been partially or fully satisfied by a person's surety, the surety becomes subrogated to the department's rights under the judgment. If a sheriff releases a judgment:

- (1) before the judgment is fully satisfied;
- (2) before the sheriff has properly disbursed the amount collected; or
- (3) after the sheriff has returned the tax warrant to the department;

the sheriff commits a Class B misdemeanor and is personally liable for the part of the judgment not remitted to the department. [IC 6-8.1-8-2]

A lien on real property described in IC 6-8.1-8-2(e)(2) is void if both of the following occur:

- (1) The person owing the tax provides written notice to the department to file an action to foreclose the lien.
- (2) The department fails to file an action to foreclose the lien not later than one hundred eighty (180) days after receiving the notice.

A person who gives notice in number (1) above by registered or certified mail to the department may file an affidavit of service of the notice to file an action to foreclose the lien with the circuit court clerk in the county in which the property is located. The affidavit must state the following:

- (1) The facts of the notice.
- (2) That more than one hundred eighty (180) days have passed since the notice was received by the department.
- (3) That no action for foreclosure of the lien is pending.
- (4) That no unsatisfied judgment has been rendered on the lien.

Upon receipt of the affidavit, the circuit court clerk shall make an entry showing the release of the judgment lien in the judgment records for tax warrants. [IC 6-8.1-2]

The county sheriff of a county shall attempt to levy on and collect a judgment on a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment is entered, unless the sheriff is relieved of that duty at an earlier time by the department. The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason the sheriff's authority to collect that tax warrant ceases. During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment plus the accrued interest to the date of the payment. The sheriff shall make the collection by garnisheeing the person's wages and by levying on and selling any interest in property or rights in any chose in action that the person has in the county. The Indiana laws which provide relief for debtors by exempting certain property from levy by creditors do not apply to levy and sale proceedings for judgments arising from tax warrants.

A sheriff shall sell property to satisfy a tax warrant in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale. A sheriff may engage an auctioneer to advertise a sale and to conduct a public auction, unless the person being levied files an objection with the clerk of the circuit or superior court having the tax warrant within five (5) days of the day that the sheriff informs the person of the person's right to object. The advertising conducted by the auctioneer is in addition to any other notice required by law, and shall include a detailed description of the property to be sold. When an auctioneer is engaged under this subsection and the auctioneer files a verified claim with the clerk of the circuit or superior court with whom the tax warrant is filed, the sheriff may pay the reasonable fee and reasonable expenses of the auctioneer from the gross proceeds of the sale before other expenses and the judgment arising from the tax warrant are paid. As used in this section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

The sheriff shall deposit all amounts that the sheriff collects under this section, including partial payments, into a special trust account for judgments collected that arose from tax warrants. On or before the fifth day of each month the sheriff shall disburse the money in the tax warrant judgment trust account in the following order:

- (1) The sheriff shall pay the department the part of the collections that represents taxes, interests, and penalties.
- (2) The sheriff shall pay the county treasurer and the clerk of the circuit or superior court the part of the collections that represents their assessed costs.

- (3) Except as provided in (4) and (5) below, the sheriff shall keep the part of the collections that represents the ten percent (10%) collection fee added.
- (4) If the sheriff has entered a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that represents the ten percent (10%) collection fee added.
- (5) If the sheriff has not entered a salary contract under IC 36-2-13-2.5 the sheriff shall deposit in the county general fund the part of the collections that:
  - (A) Represents the ten percent (10%) collection fee; and
  - (B) Would, if kept by the sheriff, result in the total amount of the sheriff's annual compensation exceeding the maximum amount allowed under IC 36-2-13-17.

The department shall establish the procedure for the disbursement of partial payments so that the intent of this section is carried out.

After the period described has passed, the sheriff shall return the tax warrant to the department. However, the department determines that: (1) at the end of this period the sheriff is in the process of collecting the judgment arising from a tax warrant in periodic payments of sufficient size that judgment will be fully paid within one (1) year after the date the judgment was filed; and (2) the sheriff's electronic data base regarding tax warrants is compatible with the department's data base; the sheriff may keep the tax warrant and continue collections.

Notwithstanding any other provision of this chapter, the department may order a sheriff to return a tax warrant at any time, if the department feels that action is necessary to protect the interests of the state.

The following applies only to the sheriff of a county having a consolidated city or second class city. In such a county, the ten percent (10%) collection fee added under section 2(b) of this chapter shall be divided as follows:

- (1) Unless it causes the sheriff's annual compensation to exceed the maximum allowed by IC 36-2-13-17, the sheriff may retain forty thousand dollars (\$40,000), plus one-fifth (1/5) of any fees exceeding that forty thousand dollar (\$40,000) amount.
- (2) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the sheriff's department's pension trust fund.
- (3) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the county general fund.

Money deposited into a county general fund must be used to reduce any unfunded liability of a sheriff's pension trust. Any remaining amount must be applied to the costs of operating the sheriff's department. [IC 6-8.1-8-3]

#### DISTRESS SALES (GOING OUT OF BUSINESS SALES) - LICENSE

Any applicant for a license to conduct a distress sale under the provisions of IC 25-18-1, shall file an application for a license with the clerk of the circuit court. [IC 25-18-1-3]

The application shall be in such form and contain such information as set out in IC 25-18-1-3. This application shall be made in writing and under oath, at least ten (10) days prior to the opening date of the sale. A detailed and complete inventory of all goods to be sold shall be filed with the application. The form of inventory is prescribed by the act.

The clerk shall note on the license the effective date of the sale which shall not be less than ten (10) nor more than fifteen (15) days from the date of the issuance of the license. The license shall expire and be void sixty (60) days after the effective date unless renewed in accordance with the requirements and limitations of Section 9. A renewal license shall expire thirty days from its effective date. An additional license fee is required.

The form of license shall contain information and statements prescribed by IC 25-18-1-6. It shall be issued in duplicate either in typewritten or printed form. The clerk shall retain one copy.

The clerk shall endorse upon each application the date of its filing and preserve it as a public record of the office. A book shall be kept and properly indexed, showing the name of the applicant, date of application, the descriptive name of the proposed sale, place where sale is to be conducted, date of issuance of license and effective date thereof.

No license required by the act shall be issued if such business was established or relocated for the ultimate purpose of holding such sale. It shall be presumed by the clerk that any business maintained at the sale location less than six months was established for such ultimate purpose. The applicant may rebut such presumption to the satisfaction of the clerk when the application is filed. [IC 25-18-1-14]

The clerk is charged with the duty to see that the provisions of the act are strictly complied with and to report for prosecution all cases of violation of or refusal or neglect to comply with such provisions. It is unlawful for any licensee to refuse any information or facts in connection with the sale for which a license was issued which the clerk may require for the enforcement of the act. [IC 25-18-1-18]

#### DISTRESS SALES - LICENSE FEE

Inventories of \$25,000.00 or less, the fee is \$40.00; inventories of \$25,000.00 to \$50,000.00, \$65.00; \$50,000.00 to \$75,000.00, \$100.00; \$75,000.00 and over, \$150.00. [IC 33-32-5-2]

#### COUNTY COMMISSION ON PUBLIC RECORDS - CREATED

A commission is created in each county of the state to be known as the commission of public records of \_\_\_\_\_ county. The commission consists of the judge of the circuit court, the president of the board of county commissioners, the county auditor, the clerk of the circuit court, the county recorder, the superintendent of schools of the school district in which the county seat is located and the city controller of the county seat city, and if there be no such city controller then the clerk-treasurer of such county seat city or town, shall be a member of the commission. The commission shall elect one of the members to be chairman and the clerk shall be the secretary. The members shall serve without compensation and shall receive no reimbursement for any expense. [IC 5-15-6-1]

#### COUNTY COMMISSION ON PUBLIC RECORDS - DUTIES

According to IC 5-15-6-2, as amended by Acts of 1979, Public Law 40, Section 17, the county records commission is to determine:

- (1) Which public records, if any, are no longer of official or historical value.
- (2) Which public records are of current official value and should be retained in the office where they are required to be filed.
- (3) Which public records are of official value but are consulted and used so infrequently that they are no longer of appreciable value to the officer with whom they are required to be filed.

- (4) Which public records are of no apparent official value but which do have historical value.

The county commission may request the assistance of the commission on public on public records at the state in developing records management programs. Additional information is available at [www.IN.gov/icpr](http://www.IN.gov/icpr).

No financial records or records relating thereto shall be destroyed until an examination and audit of such records by the State Board of Accounts has been completed, a report filed and any exceptions set out in such report satisfied.

#### RAILROAD POLICE

Each police officer commissioned by the Governor shall, before entering upon his/her duties, take and subscribe an oath of office, which shall be endorsed upon his/her commission, and such commission, with the oath, shall be recorded in the office of the clerk of the circuit court of the county in which such police officer resides. [IC 8-3-17-2]

When the services of the police officer are terminated by the company, it shall file a notice to the effect, under its corporate seal, with the clerk where the commission is recorded. The notice of termination must be noted on the margin of the record where the commission is recorded. The company shall also file a notice with the Secretary of State. Thereupon, the powers of such police officer shall cease and terminate. [IC 8-3-17-8]

#### HANDWRITTEN RECORDS

The clerk of the circuit court, county auditor and county recorder shall use permanent, jet-black, nonfading ink when preparing official records in longhand. A person who violates this subsection commits a Class C infraction. [IC 36-2-17-2]

#### ATTORNEY LIEN

An attorney, not later than sixty (60) days after the date judgment is rendered, must enter in writing upon the docket or record in which the judgment is recorded, the attorney's intention to hold a lien on the judgment, along with the amount of the attorney's claim. If an appeal is taken on a judgment, the lien may be entered not later than sixty (60) days from the date the opinion of the higher court is recorded in the office of the clerk of the trial court or after the date of final judgment where the case is reversed and retried. [IC 33-43-4-2]

#### OFFICIAL'S BONDS

Bonds of elected or appointed public officials, except those of the county recorder, deputy or employees thereof, are required to be filed and recorded in the office of county recorder in the county of residence of such official. The bonds of the county recorder, deputy or employee are required to be filed and recorded in the office of clerk of the circuit court. [IC 5-4-1-5.1]

### CITY AND MUNICIPAL COURT JUDGES

When a person is appointed as a judge of a city or municipal court, a certified copy of the appointment shall be sent by the appointing authority to the clerk of the circuit court of the county in which the city is located. The appointment shall be recorded in the order book of the circuit court. The record or municipal authorizes the clerk to certify that the judge is the duly appointed, qualified and acting judge of the city or municipal court for which the judge was appointed. [IC 33-38-3-1; IC 33-38-3-2]]

### ACTING TOWNSHIP TRUSTEE

Upon filing a petition by not less than twenty-five (25) resident freeholders of any township alleging that the duly elected, qualified and acting township trustee is incapable of performing the duties of that office due to mental or physical incapacitation, the clerk shall issue a summons to be served upon such trustee to be returnable not less than ten (10) days from date of issue. Immediately following the return date as set out in the summons, a hearing shall be held by the judge of the court on the alleged matter. Upon hearing the evidence and being duly advised, the court shall enter its finding and judgment.

If the court or judge thereof determines the elected trustee is incapable of holding such office, the clerk shall certify a copy of the judgment to the board of county commissioners who shall within five (5) days appoint a resident of the township to act as trustee during the period of incapacitation.

When an incapacitated executive files a petition with the circuit court of the county alleging that the executive is restored to mental or physical ability to perform the duties of office, the court shall immediately hold a hearing on the matters alleged. After hearing the evidence and being fully advised, the court shall enter its findings and judgment.

If the court finds the executive capable of resuming duties, the clerk of the court shall certify a copy of the judgment to the county executive, which shall, within five (5) days, revoke the appointment of the acting executive.

For purposes of this section, the board of county commissioners is considered the executive of a county having a consolidated city. [IC 36-6-4-16]

Since the hearing and determination of the action seems to be summary, it is our opinion that a filing fee is not required at the time of filing. Neither should any other items of costs be taxed, charged and collected upon final determination.

### REVOCAION AND SUSPENSION OF LICENSE -REPORTING

Any court or other agency of this state, or a subdivision thereof, that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report that action and the adjudication upon which the action is based to the bureau within five (5) days on forms approved by the bureau. [IC 9-28-1-5]

### NOTICE OF CONVICTION – MOTOR VEHICLE OWNERS

If a court convicts a person for a moving traffic offense and the person is known or believed by the court not to be the owner of the motor vehicle, the court shall, within seven (7) days after entering the conviction, deposit with the United States Postal Service, first class postage prepaid, notice addressed to the owner of the motor vehicle giving the owner the following information:

- (1) The name and addresses of the person convicted.
- (2) The name and addresses of the owner of the motor vehicle.
- (3) The offense upon which the conviction was made.
- (4) The date of arrest of the person convicted and the location of the place of the offense.
- (5) The license plate number of the motor vehicle.
- (6) The operator's or chauffeur's license number of the person convicted.
- (7) The date of the conviction and the name of the court making the conviction. [IC 9-30-3-14]

### REPORT OF JUDGMENT

A court, shall forward to the bureau a certified abstract of the record of a judgment for damages if the rendering and nonpayment of the judgment requires the bureau to suspend or revoke the driving license of the judgment debtor under IC 9-25. The abstract shall be forwarded to the bureau immediately upon the expiration of thirty (30) days after the judgment becomes final and has not been stayed or satisfied, as shown by the records of the court. [IC 9-25-6-9]

### CHANGE OF VENUE - APPEAL

On the filing of a petition under IC 9-30-4-10 for judicial review, the cause shall be docketed by the clerk of the court in the name of the petitioner against the bureau. The issues shall be considered closed by denial of all matters at issue without the necessity of filing any further pleadings. Changes of venue from the judge or from the county shall be granted either party under the law governing changes of venue in civil causes. The bureau is not liable or taxable for any costs in any action for judicial review.

An appeal from the judgment of the court may be prosecuted by either party as in civil causes, provided a notice of intention to appeal is filed with the court within fifteen (15) days from the date of the judgment, together with an appeal bond conditioned that the appellant will duly prosecute the appeal and pay all costs if the decision of the court having appellate jurisdiction over the appeal is determined against the appellant with surety approved by the court. A bond is not required of the bureau.

IC 4-21.5 does not apply to this chapter. A court does not have jurisdiction to review any order or act of the bureau except as provided for in this chapter, any other law to the contrary, regardless of the date of enactment of the other law. [IC 9-30-4-11]

### JUDICIAL REVIEW

A petition for judicial review under IC 9-30-10 must:

- (1) be verified by the petitioner;
- (2) state the petitioner's age, date of birth, place of residence, and driver's license identification number;
- (3) state the grounds for relief and the relief sought;
- (4) be filed in the county in which the petitioner resides; and
- (5) be filed in a circuit, superior, county, or municipal court.

A summons in an action under IC 9-30-10 shall be issued and served in the manner provided for civil actions. The prosecuting attorney of the county in which the petition is filed and the bureau shall be served with the summons and a copy of the petition.

In an action under IC 9-30-10, the petitioner must bear the burden of proof by a preponderance of the evidence to prevail.

IC 9-30-3-15 and the rules of trial procedure apply in these proceedings. However, a responsive pleading is not required when a petition for review has been filed, and a person is not entitled to a change of venue from the county.

The prosecuting attorney of the county in which the petition is filed shall represent the state in relation with the bureau.

Court costs (including fees) shall be assessed and paid by the petitioner at the time of filing in an amount equal to the costs (including fees) assessed in the enforcement of infractions. However, a petitioner who has the petitioner's driving privileges reinstated under IC 9-30-10-8 is entitled to a refund of all costs paid. [IC 9-30-10-7]

#### REORGANIZATION OF SCHOOLS - ELECTIONS - PETITIONS

After the state board approves a comprehensive plan or partial plan for reorganization of school corporations as submitted to the state board by a county committee, the state board shall promptly, by certified mail with return receipt requested, give written notice of the approval to: the chairperson of the county committee submitting the plan; and the judge of the circuit court of the county from which the county committee was appointed.

After notice is given under subsection (a), a community school corporation proposed by a plan referred to in subsection (a) may be created:

- (1) by petition as provided in IC 20-23-4-20;
- (2) by election as provided in IC 20-23-4-21; or
- (3) under IC 20-23-4-22.

If a proposal for the formation of a community school corporation is rejected by the voters, the county committee shall devise a new plan or direct the county election board to resubmit the same plan that was rejected by the voters to go through the process described in IC 20-23-4-23.

There is also an appeals process in IC 20-23-4-25 for those aggrieved by the decision of the county committee that the court plays a role in carrying out.

Additional information regarding responsibilities of the court and clerk can be found in each of the above statutes. If the county you serve is going through a school reorganization please review IC 20-23-4 for the details you will need to understand the process and carry out your duties.

Since the costs of conducting the special school election is to be paid by the school corporation, it is our opinion such expense will be paid by the county in the first instance and reimbursement made thereafter by the school corporation from current operating funds not otherwise appropriated and without appropriation therefor.

### EMINENT DOMAIN

Any person, plaintiff or defendant, aggrieved by the assessment of damages, benefits, compensation or value of property fixed by appraisers in proceedings for the condemnation or appropriation of property for public use, may file written exceptions in the office of clerk, where the case is pending. The case shall proceed to issue, trial and judgment as in civil actions. See additional information and duties in IC 32-24-1-11. [IC 32-24-6-1]

### EMINENT DOMAIN - EXECUTE DEED

The clerk is required to execute a deed conveying title of real property to the unit of government for the benefit of its department of redevelopment upon direction of the judge of the circuit or superior court when such real property is acquired by proceedings in the exercise of eminent domain. [IC 36-7-14-20]

### EMINENT DOMAIN - PAYMENT OF DAMAGES TO ONE OR MORE DEFENDANTS

When a report of the appraisers is filed with a court under this chapter, the circuit court clerk shall send written notice of the filing of the report by certified mail to:

- (1) all known parties to the action; and
- (2) the attorneys of record of the parties.

Any party to an action under this chapter aggrieved by the assessment of benefits or damages in a report of the appraisers may file written exceptions to the assessment in the office of the circuit court clerk. Exceptions to the assessment must be filed by a party:

- (1) after the report of the appraisers is filed with the court; and
- (2) not later than forty-five (45) days after the date the circuit court clerk mails the report.

The case shall further proceed to issue, trial, and judgment as in civil actions. The court may make orders and render findings and judgments that the court considers just. Either party may appeal a judgment as to benefits or damages as in civil actions.

Forty-five (45) days after the date the circuit court clerk mails the report, and if the plaintiff has paid the amount of damages assessed to the circuit court clerk, any one (1) or more of the defendants may file a written request for payment of each defendant's proportionate share of the damages held by the circuit court clerk. The defendants making a request for payment must also file sufficient copies of the request for service upon the plaintiff and all other defendants not joining in the request. The defendants making the request may withdraw and receive each defendant's proportionate share of the damages upon the following terms and conditions:

- (1) Each written request must:
  - (A) Be verified under oath; and
  - (B) state:
    - (i) the amount of the proportionate share of the damages to which each of the defendants joining in the request is entitled;

- (ii) the interest of each defendant joining in the request; and
  - (iii) the highest offer made by the plaintiff to each of the defendants for each defendant's respective interest in or damages sustained in respect to the property that has been acquired by the plaintiff.
- (2) Upon filing of a written request for withdrawal and payment of damages to any of the defendants, the circuit court clerk shall immediately issue a notice to the plaintiff and all defendants of record in the cause who have not joined in the request for payment. The notice must contain the following:
- (A) The names of the parties.
  - (B) The number of the case.
  - (C) A statement that a request for payment has been filed.
  - (D) A notice to appear on a day, to be fixed by the court, and show cause, if any, why the amounts requested should not be withdrawn and paid over by the circuit court clerk to those defendants requesting the amounts to be paid.
  - (E) A copy of the request for payment.

If a defendant not requesting payment is a nonresident of Indiana, or if that defendant's name or resident is unknown, publication and proof of the notice and request for payment shall be made as provided in IC 32-24-1-4.

- (3) After a hearing held after notice of a written request, the court shall determine and order the payment by the circuit court clerk of the proportionate shares of the damages due to the defendants requesting payment. Any of the defendants may appeal an order under this subdivision within the same time and in the same manner as provided for allowable appeals from interlocutory orders in civil actions.
- (4) If exceptions to the appraisers' report have been duly filed by the plaintiff or any defendant, the circuit court clerk may not make payment to any defendant of any part of the damages deposited with the clerk by the plaintiff until the defendants requesting payment have filed with the circuit court clerk a written undertaking, with surety approved by the court, for the repayment to the plaintiff of all sums received by those defendants in excess of the amount or amounts awarded as damages to those defendants by the judgment of the court upon trial held on the exceptions to the assessment of damages by the appraisers. However, the court may waive the requirement of separate surety as to any defendant who is a resident freeholder of the county in which the case is pending and who is owner or real property in Indiana that is liable to execution, not included in the real property appropriated by the plaintiff, and equal in value to the amount by which the damages to be withdrawn exceed the amount offered to the defendants as stated in their request or the amount determined by the court if the plaintiff has disputed the statement of the offer. A surety or written undertaking may not be required for a defendant to withdraw those amounts previously offered by the plaintiff to the defendant if the plaintiff has previously notified the court in writing of the amounts so offered. The liability of any surety does not exceed the amount by which the damages to be withdrawn exceed the amount offered to the defendants with whom the surety joins in the written undertaking. Each written undertaking filed with the circuit court clerk shall be immediately recorded by the clerk in the order book and entered in the judgment docket, and from the date of the recording and entry the written undertaking is a lien upon all the real property in the county owned by the several obligors, and the undertaking is also a lien upon all the real property owned by the several obligors in each county of Indiana in which the plaintiff causes a certified copy of the judgment docket entry to be recorded, from the state of the recording.

- (5) The withdrawal and receipt from the circuit court clerk by any defendant of that defendant's proportionate share of the damages awarded by the appraisers, as determined by the court upon the written request and hearing, does not operate and is not considered as a waiver of any exceptions duly filed by that defendant to the assessment of damages by the appraisers.
- (6) In any trial of exceptions, the court or jury shall compute and allow interest at an annual rate of eight percent (8%) on the amount of a defendant's damages from the date plaintiff takes possession of the property. Interest may not be allowed on any money paid by the plaintiff to the circuit court clerk:
  - (A) after the money is withdrawn by the defendant; or
  - (B) that is equal to the amount of damages previously offered by the plaintiff to any defendant and which amount can be withdrawn by the defendant without filing a written undertaking or surety with the court for the withdrawal of that amount. [IC 32-24-1-11]

#### EMINENT DOMAIN PAYMENT OF DAMAGES - POSSESSION OF PROPERTY

If the plaintiff pays to the clerk of the circuit court the amount of damages assessed, the plaintiff may take possession of and hold the interest in the property so acquired, for the uses stated in the complaint, subject to the appeal provided for in IC 32-24-1-8. But the amount of the benefits or damages shall be subject to review as provided in IC 32-24-1-11.

Upon payment by the plaintiff of the amount of the award of the court appointed appraisers, the plaintiff shall file or cause to be filed with the auditor of the county in which the property is located a certificate, certifying the amount paid to the clerk of the court and including the description of the property being acquired. The auditor of the county shall then transfer the property being acquired to the plaintiff on the tax records of the county. [IC 32-24-1-10]

#### WHEN FILING FEE IS REQUIRED

If exceptions to the report are filed by a person other than one acting in behalf of the state or any municipality specified in the act, such other exceptor or exceptors will be required to pay the filing fee. It is the exceptor who institutes the action. Although either party aggrieved may file such exceptions, the state or any of its subdivisions are exempt from payment of the filing fee. [1933 Attorney General Opinion]

#### DIRECT DEPOSIT OF COMPENSATION BY AUDITOR

An employee of any county may make written request to have any compensation due the employee from the county to be deposited to the employee's account in any bank or trust company specified in the request. [IC 5-10-9-2]

#### DELINQUENT TAX JUDGMENTS

Delinquent personal property installments shall be listed in a record by the county treasurer and filed with the clerk of the circuit court in accordance with the provisions of IC 6-1.1-23-9. The treasurer shall swear to the accuracy of the record before the clerk of the circuit court. Upon depositing the record in the clerk's office, the amounts of the delinquent taxes, penalties and costs stated therein shall have the same force and effect as judgments. The judgment shall be in favor of the county for the benefit of all taxing units having an interest in it. Beginning the day the record is filed, the delinquent taxpayer shall instead of penalties, pay interest on the amount of the judgment at the same rate imposed on other judgments.

The treasurer shall file a praecipe for the issuance of an execution with the clerk after notifying the taxpayer at least ten (10) days prior thereto, if the treasurer determines that execution on the judgment will be used to pursue collection. [IC 6-1.1-23-10] [IC 6-1.1-23-9]

Provision is made in IC 6-1.1-23-11 of said act for the treasurer to file a certificate of judgment with treasurers of other counties where additional property may be located. The receiving treasurer shall cause the judgment to be indexed by the clerk in the judgment docket in the same manner as if entered originally and shall proceed to cause execution to be issued.

#### SETTING ASIDE TAX JUDGMENT - GROUNDS

Any judgment entered as provided in IC 6-1.1-23-9 or IC 6-1.1-23-11 shall be set aside only for one (1) of the following reasons:

- (1) The person against whom the judgment was entered was not liable for the delinquent taxes, penalties, and collection expenses for which the judgment was entered.
- (2) The delinquent taxes, penalties, and collection expenses have been paid either in whole or in part.
- (3) The required written demand was not given in the manner prescribed in section 1 of this chapter.
- (4) The person against whom the judgment was entered is deceased, as evidenced by a certificate of death.
- (5) The corporation against whom the judgment was entered has been formally dissolved or is no longer in business.
- (6) The judgment is uncollectible as a result of bankruptcy.
- (7) The county treasurer has exhausted all reasonable efforts to collect the delinquent taxes, penalties, and collection expenses for the period specified in IC 6-8.1-8-2(f) without success.

For purposes of subdivision (2), if only part of the items have been paid, the judgment may be set aside only in the amount of the payment.

A judgment may be set aside under this section only under a finding entered or record by a court which has jurisdiction. [IC 6-1.1-23-12]

#### SATISFACTION OF TAX JUDGMENT

Payment of delinquent tax judgments and interest shall be made to the county treasurer. The county treasurer shall on a daily basis enter a satisfaction of all judgments paid in the record of delinquent tax judgments maintained in the office of the clerk of the circuit court. Such treasurer shall apply the amount so paid to the delinquent taxes, penalties and costs for which the judgment was entered. [IC 6-1.1-23-13]

#### TITLE IV-D INCENTIVE PAYMENTS

1. These funds must be used to supplement other funds used for Title IV-D program activities.
2. Incentive Distributions which will carryover to the next year and may continue to be spent without appropriation.
3. Claims should be filed, advertised and allowed in the same manner as other county claims.
4. Incentive funds may not, without approval of the county fiscal body, be used to increase or supplement the salary of an elected official. [IC 31-25-4-23]

#### JURY FEES

Jurors of circuit, superior, county, probate courts, 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, except for counties where the county fiscal body has adopted an ordinance to pay parking fees in lieu of mileage. Additionally, each juror receives 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. They may also, by ordinance, provide for payment of parking fees incurred by jurors instead of paying mileage.

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]

#### JURY 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]