CHAPTER 6

USE OF RECORDS
FILING COMPLAINTS PROCEDURAL INSTRUCTIONS - DISPOSITION OF PAPERS

This chapter offers a general discussion of recommended methods of procedure. The accomplishment of proficiency must come from experience, reading the statutes, self-application to duty and by accepting advice and instructions from those who are well informed in the legal requirements of procedure.

CIVIL ENTRY DOCKET: FILING COMPLAINT - ENDORSEMENT

The clerk shall endorse the time of filing on each writing required to be filed in the office of the clerk. [IC 33-32-3-1] This means that the clerk will affix his or her file stamp to all copies of complaints or papers. The stamp will at least contain the word "filed," the date of filing with the official title of the office.

NUMBERING

After the complaint is marked "filed" it will be assigned the next consecutive case number after the last case entered in the entry docket. The case number will be noted on all papers.

ENTERING

The complaint will then be entered numerically in the entry docket on the next succeeding blank page. The entry shall include such information as is shown on the complaint, for example, case number, date of filing, kind of action, name of plaintiff's attorney, and the names of all plaintiffs and defendants to the action.

ISSUING PROCESS

The clerk will then issue a summons or notice by publication in accordance with the attorney's endorsement on the complaint. The summons will be issued to the sheriff of the county of residence of the defendant or notice will be given by publication as required by law. The attorney will endorse the complaint for service and specify the return date. The clerk will issue such notice accordingly. The summons or notice will be issued by the clerk with the clerk's signature and title affixed thereto and under the seal of the court.

ATTORNEY GENERAL TO BE SERVED WHEN ACTIONS ARE BROUGHT AGAINST THE STATE

When the State of Indiana is a party to an action, a copy of the complaint, petition, bill, or pleading shall be served on the Attorney General. The action shall not be deemed to have commenced until such service. A copy of all motions, demurrers, petitions, and pleadings filed thereafter are to be served on the Attorney General by the filing party when he has appeared in any such suit. [IC 4-6-4-1]

Service on the Attorney General, when required by this chapter, shall by personal delivery to the Attorney General or any Deputy Attorney General or by registered mail with return receipt. This service is in addition to the service of summons or process required by other laws. [IC 4-6-4-2 and IC 4-6-4-3] The clerk will make a notation of the issuance of service in the space of the entry docket designated for that purpose.

INDEXING

After the case is properly entered the next step is to index, in the names of both plaintiff and defendant, in the index section of the entry docket. The index reference should show the case number, names of parties, and page where entered;

e.g., 12345 Roe, Robert vs. John Doe 223
12345 Doe, John ads Robert Roe
223

Many clerks do not index records in the names of both parties. Generally records are indexed to include only the name of the first party plaintiff where more than one plaintiff is bringing the action. It will, however, afford convenience in the future if clerks will index records so as to include all names of the parties to the action. The clerk must always remember that indexing is a very important matter. Great care should be exercised in indexing all records accurately.

FILING PAPERS

The case is now filed, entered of record, summons or notice issued, and properly indexed. All papers are now in the custody of the clerk. The original and duplicate hard copy filings are to be separated and the clerk will file them in folders designed for that purpose. On the outside the clerk will write the same information that was entered in the entry docket, the cause number, title of cause, attorney's name and entry docket number and page where recorded. The duplicate papers should be filed in the office of the clerk and original copies of the papers are to be filed in the files of the court. Electronic filings are made in accordance with the rule and policies of the court.

BENCH OR ISSUE DOCKET

It is the accepted procedure for the clerk or deputy assigned to the court to prepare a docket sheet for the issue docket or judge's bench docket. The docket sheet will show the actions of the clerk thus far. The docket sheet should show the case number, date filed, kind of action, title of the case, and plaintiff's attorney. The minutes to be entered by the clerk for the judge should be substantially in the following term:

"Complaint filed, endorsed for service to the Sheriff _____ County, (or notice by publication) returnable _____. Summons (or notice) issued accordingly."

FILING DOCKET SHEET

The docket sheet is to be filed numerically in the bench or issue docket. An index should be prepared and inserted in the front of the docket. The index should be listed in alphabetical order as to the names of the plaintiffs, followed by the case number of each action.

The bench or issue docket will be used to record all subsequent proceedings of the court until the case is finally disposed of: The clerk will write all formal entries that are to be recorded in the order book from the minutes of the docket sheet.

After the case has been duly entered of record and subsequent filings, pleadings, petitions, orders, or any other proceedings will be filed with the court in term time and with the clerk in vacation. Such filings will be noted by entry on the docket sheet of the bench docket.

APPEARANCE BY ATTORNEY

If an attorney enters his appearance in behalf of the defendant, the clerk should enter the name of the attorney in the space designated for that purpose in the entry docket where the action was filed.

RETURN OF SUMMONS

When the summons is returned to the clerk by the sheriff who received it, or when the party or attorney for the party returns the proof of publication of the legal notice, the clerk shall make such notation of the return in the entry docket and record the printer's fees for the publication.

FILING SUMMONS

The summons will then be filed in the jacket with the other papers of corresponding number, either in the clerk's office or in the court files, according to custom in your county. The summons or proof of publication must be carefully preserved so that proof of service may be made to the court.

ENTERING A CHANGE OF VENUE CASE

If a case is received on a change of venue, the clerk will enter the filing of such case in the same manner as heretofore explained. In addition thereto, the clerk shall make a notation showing that the case was received on change of venue, the name of the county and the case number in the county of origin. The notation should be in a conspicuous place, preferably under the title of the case, and substantially in the following form:

> "Change of Venue (C/V) from _____ County, Its No _____." The costs that have accrued in the county of origin as shown by the transcript or statement attached, shall be entered in the cost section of the entry docket under "Trust Items." The costs should be entered "in total" as the amount due the county of origin. The entry should be:
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> "Costs due _____ County $ _____," and extend the total amount to the cost column to be included with other costs that will be taxed in your county."

MINUTES IN ENTRY DOCKET

A procedure most neglected by clerks is the failure to enter a brief minute of each proceeding or issue in the space designated for that purpose. The entry docket should reveal, at all times, the progress or status of a case in litigation. References to the order book number and page where such proceedings are entered by formal entry, should be noted in the column of the entry docket designated for that purpose.

ORDER BOOK - ENTRIES TO BE MADE

From the time a complaint is filed to the final disposition of the case in litigation, the clerk is required to enter in the order book of the court a record of all proceedings, orders, findings, judgments or any other record made by the court. These entries are made from the minutes as shown by the bench docket sheet and are entered in the order book by the order of the court or judge thereof. The entries must be entered as of the judicial or calendar date when such record is made. The entries will include all pertinent information that will make a complete record of the entire proceedings, orders or judgments for the court. The requirements of all statutory provisions will be incorporated therein.

FORM OF ENTRY

Order book entries are usually written in a manner that follows a general form pertaining to various matters as recommended by recognized legal authorities; or they are written by attorneys who desire to furnish their own entries that will fully cover the subject matter. Such prepared entries are usually submitted to the judge for his approval and signature, and then submitted to the clerk to be copied

in the order book of the court.

WHO TO FURNISH

It is the responsibility of the interested attorney to prepare and furnish the order book entry for the clerk. It is possible for the clerk to write many of the entries. This will be especially true when the minutes of the court are complete. If there is some doubt in the mind of the clerk of the ability to write an entry in compliance with all legal requirements, the clerk should not hesitate to ask the attorney to furnish the entry.

Each entry must be properly indexed in the index action of the order book. If a brief minute of the proceedings has been entered in the entry docket, a reference to the order book number and page should be entered therein.

PREPARE FOR FINAL FILING

When the minutes of the court show a final disposition of the case, and after the final entry has been recorded in the order book, the clerk is ready to complete all final transactions by proper entry in every record. The clerk will tax all costs in the proper entry docket, enter judgments in the judgment docket, index for final filings, and place on file all papers incidental to the case -- there to be permanently preserved as records of the court.

It is very important to complete all records by indexing, noting cross reference to other records, and indicating where the papers may be found in the place provided for final filing. The future may bring many requests to refer to papers in a completed case.

DOCKET SHEET REMOVED

After the minutes of final disposition have been written by formal entry in the order books and indexed, and reference to the order book has been noted on the docket sheet, the clerk should remove the sheet from the active docket.

PERMANENT FILES

All papers incidental to the cause in litigation must be filed in a permanent and convenient place easily accessible for ready reference.

The clerk will arrange for a place or establish a system whereby all such papers relating to the case are assembled and orderly placed in a permanent file. The place of filing should be noted on the docket sheet.

Some clerks still follow an established precedent of folding all papers, assembling them under the case number and inserting them in a scabbard or jacket. The jacket or scabbard is then filed in the file boxes or document files. Each case should be identified on the outside of the jacket by number, title, file box or other pertinent information necessary to identify the case and place of filing in case of removal from the permanent file.

Some clerks have changed from the file box to a flat filing system. This consists of assembling all papers and clamping them in a legal size folder. The folder is filed numerically in a legal size document file.

ENTERING JUDGMENT

The clerk of the circuit court of each county shall keep a judgment docket in which the clerk shall, upon the filing in the office of a statement docket or transcript of any judgment for the recovery of money or costs, as hereinafter provided, enter and index in alphabetical order a statement of such judgment showing:

1. The names, of all the parties, the name of the court, the number of the case, the book and page of the record wherein the judgment is recorded, the date the judgment is entered and indexed, the date of its rendition; and the amount of the judgment and the amount of costs.

2. If the judgment is against several persons, the statement shall be repeated under the name of each judgment debtor in alphabetical order. Any person interested in any judgment for money or costs which shall have been rendered by any state or federal court of general original jurisdiction, sitting in the state of Indiana, may have the judgment entered upon the circuit court judgment docket by filing in the office of the clerk of the circuit court of any county in this state, a statement thereof setting forth the above facts, or a transcript of said judgment, certified, under the hand and seal of the court rendering said judgment: and such clerk shall enter the judgment upon the judgment docket in manner and form as aforesaid. [IC 33-32-3-2]

A clerk shall enter a judgment or recognizance within fifteen (15) days after its rendition or cause a release of judgment to be entered on the judgment docket, not more than fifteen (15) days after satisfaction of the judgment. [IC 33-32-3-4]

MINUTES RECORDED IN ENTRY DOCKET

After the judgment has been entered in the judgment docket from the docket sheet, a brief minute of the final disposition of the case should then be entered in the entry docket.

The entry docket should also show the date of disposition; the order book number and page wherein the final entry is recorded; amount of judgment; name of judgment debtor; and reference to the judgment docket and page where it is recorded. Reference should also be made to the place of filing all the papers in the permanent or final file.

These references are to be entered in the space of the entry docket designated for that purpose. A cross reference to the entry docket number and page should be entered on the docket sheet.

TAXING COSTS

While the entry docket is open, the clerk should tax all costs that have been created because of the litigation. Items of costs shall be taxed in the proper spaces and columns designated for that purpose and in amounts as required by IC 33-37.

ASSEMBLE PAPERS FOR FINAL FILING

If all transactions have been completed thus far, the clerk will assemble all papers that have been filed in connection with the case. The papers should be placed in a jacket or folder that was prepared when the case was filed. Enter the number of the file box or designated place of filing on the outside of the jacket or folder in the place designated for that purpose. File all assembled papers in the place designated as a permanent final file.

GENERAL INDEXING FINAL FILES

If all record references and file box numbers have been noted on the docket sheet, it is an easy matter to enter in "the general index of disposed matters," from the docket sheet, a complete record of the case. The general index should be kept by all clerks. It should be indexed under the proper title of the case, showing the case number, entry docket and page, judgment docket and page, order book number and page of final entry, and file box number or designated place wherein all papers are finally titled.

FILING DOCKET SHEET

The docket sheet should be filed numerically in either a transfer binder designated as "Docket-Disposed of Cases." The docket sheet will be filed as a permanent record of the court. It will remain in such transfer docket until such time as it may be referred to or ordered reinstated to the active docket.

ISSUING EXECUTIONS

If the clerk is requested by praecipe to issue an execution or decree and order of sale to the sheriff, the clerk shall so issue and record his or her doings in the entry docket where the case was filed. The clerk shall also make such entries as are required in the proper execution docket. When the sheriff returns the execution, the return shall be copied in the proper execution docket.
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DIRECTIVE DUTIES

Thus we have attempted in a general way to process a case from beginning to end. There are many duties that the clerk must perform by directives. Such directive duties are performed by statutory authority. It is the usual custom for the attorney to prepare such papers as are necessary and to instruct the clerk in the correct legal procedure.

VALUE OF ENTRY DOCKET

The clerk must realize that the entry docket is a valuable record if properly kept. It is the source of all information.

THE CRIMINAL ENTRY DOCKET
USE OF RECORDS - GENERAL INSTRUCTIONS

Criminal actions must be entered in the same manner as in civil matters. The procedure is fundamentally the same except as it is necessary to conform to the requirements in criminal matters.

FILING

A criminal action is begun by the filing of an approved affidavit by the prosecuting attorney or by an indictment or true bill returned by the grand jury.

ENTERING

Upon receipt of the affidavit or indictment the clerk will affix his or her file stamp thereto, number the case as in civil matters, and enter it in the criminal entry docket or docket where like matters are entered. The caption will be "State of Indiana versus the defendant." The clerk will show the nature of the charge or charges and whether the charge is by affidavit or by indictment.

WARRANT ISSUED

The clerk will issue a warrant for the arrest of the defendant upon the direction of the court or judge thereof. The warrant will be signed by the clerk and attested by the seal of the court. The warrant will be issued to the sheriff of the county where the affidavit or indictment is filed unless directed otherwise by the prosecuting attorney. The warrant may be issued to the sheriff of any other county or to any police officer.

DOCKET SHEET

After the case is entered, indexed and warrant issued, the clerk will prepare a docket sheet for the bench docket. The caption will be the same as that entered in the entry docket. The minute on the docket sheet will read substantially:

"Approved affidavit filed, (or indictment filed) warrant ordered, issued accordingly."

COPY AFFIDAVIT OR INDICTMENT

The clerk will copy the affidavit in the Affidavit Record or the indictment in the Indictment Record. These records will be indexed in the name of the defendant.

WARRANT RETURNED

The sheriff's return on the warrant will be entered in the same manner as a return of a summons and the fee will be taxed accordingly.

COPY BOND

If the sheriff accepts a bail bond or recognizance he shall return it to the clerk forthwith and the clerk shall copy such bond in the proper bond record. [IC 35-33-8.5-2]

FILING

After the bond is copied it should be filed in the jacket with the other papers in the case.

COMMITMENT

If sentence is imposed at the final hearing or trial and the defendant is ordered committed to the custody of the warden or superintendent of a penal institution, the clerk will issue a commitment to the sheriff. The commitment will be directed to the warden or superintendent of the institution. It will recite the conviction and sentence in accordance with the terms of such conviction imposed.

CERTIFIED COPY

The commitment will be issued under the seal of the court or through electronic means. A certified copy of the judgment of the court must accompany the commitment if the defendant is sentenced to imprisonment. [IC 35-38-3-2]

ENTRIES IN ORDER BOOK

The clerk will enter all proceedings from time to time in the order book and entry docket as in civil matters.

FINAL FILES

After final disposition of the case the clerk will make all necessary entries in the proper records and complete all transactions otherwise required for filing in the final files.

JUVENILE RECORDS
USE OF RECORDS - GENERAL INSTRUCTIONS

It is apparent from the statutes that the judge has great authority in juvenile matters. The clerk is required to keep records and proceedings as directed by the judge. Whether actions are complaints, affidavits, or petitions depends upon the statutes. The entering of such must be in conformance with the wishes of the court. The clerk should keep an entry docket and other records as the court may direct. However, the clerk must always be mindful that statutory provisions make the clerk the scribe of the court and the clerk is required to keep the proceedings of the court in accordance therewith.

Regardless of the type of books that may be used the clerk must follow the same procedure in juvenile matters as in civil matters. All procedural and ministerial duties will be in the same general manner and in accordance with the statutes in juvenile matters and the order of the court.

PROBATE
OPENING ESTATES
USE OF RECORDS - GENERAL INSTRUCTIONS

THE PROBATE CODE

This article shall be known and may be cited as the "Probate Code." [IC 29-1-1-1]

If any situation arises in any probate proceeding not provided by the code or any statute or rule of procedure, the court has authority to formulate and declare a rule of procedure for that particular case. The only limitation is that such rules and forms are not inconsistent with the provisions of the code of the rules and forms promulgated by the Supreme Court. [IC 29-1-1-7]

OPENING OF ESTATE

Every application to the court, unless otherwise provided shall be by petition signed and verified by or on behalf of the petitioner. No defect of form or substance in any petition, nor the absence of a petition, shall invalidate any proceedings. Interests to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests, or another appropriate manner. [IC 29-1-1-9]

PETITION FOR PROBATE OF WILL AND APPOINTMENT OF PERSONAL REPRESENTATIVE

Any interested person or a personal representative named in the will may petition the court having jurisdiction of the administration of the decedent's estate:

1. To have the will probated;

2. For the issuance of letters testamentary to the execution named in the will;

3. For the appointment of an administrator with the will annexed if no executor is designated in the will or if the person so designated is not qualified, dead or refuses to serve;

4. For the appointment of an administrator for the estate of any person dying intestate.

A petition for probate may be combined with a petition for the issuance of letters testamentary, or as administrator with the will annexed, and a person interested in the probate of a will and in the administration of the estate may petition for both.

No notice that a will is to be offered for probate or that it has been probated shall be required.

No notice of the filing of, and hearing on, the petition described in this section shall be given to, or served, upon any person. If the petition described herein is filed in term time, it shall be heard forthwith by the court, and if filed in vacation it shall be heard by the judge of said court if present, or in his absence by the clerk of said court. [IC 29-1-7-4]

The venue for the probate of a will and for the administration of an estate shall be:

1. In the county in this state where the decedent had his or her domicile at the time of death.

2. When not domiciled in this state, in any county in the state where he or she left any property at the time of his or her decease; or into which county any property belonging to his or her estate may have come after his or her decease.

If proceedings are commenced in more than one county, they shall be stayed except in the county where first commenced until final determination of the venue by the court in the county where first commenced. Where jurisdiction has been finally determined, all proceedings in the other counties shall be dismissed.

If the venue is finally determined to be in another county, the court, after making and retaining a true copy of the entire file, shall transmit the original to the proper county. The proceeding shall be deemed commenced by the filing of a petition. The proceeding first legally commenced shall extend to all of the property of the estate in this state.

If it appears to the court before the decree of final distribution in any proceedings that the proceeding was commenced in the wrong county or it would be for the best interests of the estate, the court may order the proceeding with all papers, files, and a certified copy of all orders transferred to another court having probate jurisdiction, which other court shall proceed to complete the administration proceedings as if originally commenced therein.

WHEN LETTERS TO BE ISSUED

Letters testamentary, of administration, of administration with the will annexed, de bonis non, and all other letters special or otherwise, shall be issued to the person entitled to receive the same when:

1. The person, if an individual, has taken and subscribed an oath or affirmation that he or she will faithfully discharge the duties of his or her trust and furnishes bond as may be required and such bond has been approved by the court.

2. The same is true if a bank or trust company has filed an acceptance of the appointment. If a bond is required, such bond must also be approved by the court. The oath and, if a bank or trust company, also the acceptance shall be filed and recorded as a part of the proceedings of the estate. [IC 29-1-10-3]

PERSONS ENTITLED TO DOMICILIARY LETTERS

Domiciliary letters testamentary or of general administration may be granted to one or more persons in the following order;

1. To the executor or executors designated in the will;

2. To the surviving spouse, or to the person or persons nominated by the surviving spouse or the surviving spouse and the person or persons nominated by the surviving spouse;

3. To the next of kin, or persons nominated by them, or any of them or to the next of kin, or any of them, and the person or persons nominated by the next of kin or any of them;

4. If no executor is named in the will, or if the executor named does not qualify, or if there is no surviving spouse or next of kind, or if no such person files a petition for letters within thirty days after the date of death of the decedent, then to any other qualified person. [IC 29-1-10-1]

PERSONS NOT QUALIFIED TO SERVE

No person is qualified to serve as a domiciliary personal representative who is:

1. Under eighteen years of age;

2. Of unsound mind;

3. A convicted felon;

4. A resident corporation not authorized to act as a fiduciary in this state;

5. A person whom the court finds unsuitable. [IC 29-1-10-1]

APPOINTMENT OF SUCCESSOR PERSONAL REPRESENTATIVE

When a personal representative dies, is removed by the court, or resigns and such resignation is accepted by the court, the court may, and if he or she was the sole or last surviving personal representative and administration is not completed, the court shall appoint another personal representative in his place. [IC 29-1-10-7]

When a successor personal representative or an administrator with the will annexed is appointed, he or she shall have all the rights and powers of the predecessor or of the executor designated in the will, except that he or she shall not exercise powers given in the will which by its terms are personal to the executor therein designated. [IC 29-1-10-8]

SPECIAL ADMINISTRATORS

Special administrators may be appointed if:

1. From any cause delay is necessarily occasioned in granting letters; or

2. Before the expiration of the time allowed by law for issuing letters, any competent person shall file his affidavit with the clerk that anyone is intermeddling with the estate or that there is no one having authority to take care of the same; or

3. If any person shall have died testate and objections to the probate of the will shall have been filed as provided by law.

The appointment of a special administrator may be for a specified time to perform duties respecting specific property, or to perform particular acts shall be stated in the order of appointment. The fact that a person has been designated as executor in a decedent's will shall not disqualify him or her for being appointed special administrator of such decedent's estate or any portion thereof.

The special administrator shall make such reports as the court shall direct, and shall account to the court upon the termination of his authority. Otherwise, and except as the provisions of this code by terms apply to general personal representatives, and except as ordered by the court, the law and procedure relating to personal representatives in this code shall apply to special administrators. The order appointing a special administrator shall not be appealable. [IC 29-1-10-15]

PERSONAL REPRESENTATIVE BOND

A personal representative is not required to execute and file a bond relating to the duties of the office unless:

1. The will provides for the execution and filing of such a bond; or

2. The court finds, on its own motion or on petition by an interested person, that a bond is necessary to protect creditors, heirs, legatees, or devisees. [IC 29-1-11-1]

APPROVAL OF BONDS

No bond of a personal representative shall be deemed sufficient unless it shall have been examined and approved and the approval endorsed thereon in writing. The approving authority may require evidence as to the value and character of the assets of personal sureties, including an abstract, certificate or other satisfactory evidence of title of every tract of real property which is offered as security. If the bond is not approved, the personal representative shall, within such time as may be directed, secure a bond with satisfactory surety or sureties. [IC 29-1-11-6]

FAILURE TO FILE BOND - LETTERS REVOKED

If a personal representative fails to give a bond as required by the court, within the time fixed by the court, some other person shall be appointed in his or her stead. If letters have been issued, they shall be revoked. [IC 29-1-11-7]

WILL TO BE PROVED

Before a will shall be admitted to probate it shall be proved by one or more subscribing witnesses, or if all of them are dead, out of the state or have become incapacitated for any reason since attesting the will, then the will shall be admitted to probate upon proof of the handwriting of the testator or of two of the subscribing witnesses. [IC 29-1-7-9]

PROOF BEFORE EVIDENCE OF HANDWRITING ADMITTED

If none of the subscribing witnesses to a will can be found, or if all are dead, absent from the state or incapacitated, one or more of these situations shall be proved to the satisfaction of the court before evidence of the handwriting of the testator or of the subscribing witnesses provided for in IC 29-1-7-9 shall be admitted in evidence. [IC 29-1-7-10]

PROOF REQUIRED FOR PROBATE AND GRANT OF LETTERS

When a will is offered for probate, if the court finds that the testator is dead and that the will was executed in all respects according to law, it shall be admitted to probate as the last will of the deceased, unless objections are filed as provided in IC 29-1-7-16.

On a petition for the qualification of an executor or for the appointment of an administrator the court shall grant letters accordingly or, on proper grounds, may deny the petition.

If the will is self-proved, compliance with signature requirements for execution and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and verifications annexed or attached to the will, unless there is proof of fraud or forgery affecting the acknowledgment or verification. [IC 29-1-7-13]

CERTIFICATE OF PROBATE

When proved as herein provided, every written will, if in the custody of the court, shall have endorsed thereon or annexed thereto a certificate by the court of such order of probate, which certificate shall give the number and page of the will record where it is recorded. If for any reason a written will is not in the custody of the court, or if the will is oral, the court shall find the contents thereof, and the order admitting the will to probate shall state the contents and a certificate shall be annexed as above provided. Every will certified as herein provided, or the record thereof, or a duly certified transcript of the record, may be read in evidence in all the courts within this state without further proof. [IC 29-1-7-14]

FOREIGN WILLS

A will that has been proved or allowed in any other state or in any foreign country according to the laws of that state or country, may be received and recorded in this state before the deadlines in IC 29-1-7-15.1(d), unless the will is probated for a purpose listen in IC 29-1-7-15.1(e), in the manner and for the purposes stated below.

Such will shall be certified under the seal of the court or officer taking such proof; or a copy of such will and the probate thereof shall be duly certified under the seal of the court or office by the proper officer or clerk who has the custody of probate thereof. Such certificate shall be attested to be authentic by the presiding or sole judge.

Such will and the probate thereof may be produced in the court of the county where there is an estate on which the will may operate. If the court is satisfied the instrument ought to be allowed as the last will of the deceased, such court shall order the same to be filed and recorded by the clerk. [IC 29-1-7-25; 29-1-7-26; 29-1-7-27]

ENTERING IN RECORDS

A foreign will should be given a number and entered in the estate entry docket as any other estate. A brief minute should be made that the transcript of the will was entered for record only. The transcript of the will and probate thereof should be recorded in the will record and indexed.

FEE

The cost of filing and recording a foreign will is the same amount as is charged for probating and recording a will proved in the local court. [IC 33-37-4-7]

ELECTION TO TAKE AGAINST WILL

When a married individual dies testate as to any part of the individual's estate, the surviving spouse is entitled to take against the will under the limitations and conditions set forth in IC 29-1-3.

The election shall be recorded by the clerk in the record of wills, marginal reference being made from such record to the book and page in which such will is recorded, and from the record of such will to the book and page where such election is recorded. [IC 29-1-3-1 to 29-1-3-3]

REVOCATION OF PROBATE OF WILL - CLERK'S DUTY

Whenever the probate of any will is revoked, the clerk of the court shall record such revocation in the record of wills and attest the same. [IC 29-1-7-22]

WILL CONTEST - BOND APPROVED BY CLERK

The plaintiff in an action to contest a will shall file a bond with sufficient sureties and amount to be approved by the clerk. The bond is conditioned for the due prosecution of the proceedings and for the payment of all costs therein in case judgment is rendered against the plaintiff. [IC 29-1-7-19]

WHEN TO ENTER PROCEEDINGS

After all preliminary proceedings have been held before the court, or judge or clerk in vacation, the will has been duly probated, the applicant has qualified by furnishing bond and taking the oath, all such proceedings are to be entered in the proper probate records.

PROBATE RECORDS

The Probate Code requires the clerk to maintain the following records in addition to such other records as the judge having probate jurisdiction shall provide for:

1. An index in which estates of deceased persons shall be indexed under the name of the decedent, and those pertaining to guardianships under the name of the protected person. After the name of each shall be shown the docket number and page wherein entries

pertaining to such decedent's or ward's estate appear.

2. Decedent's and guardianship estate dockets, in which shall be listed in chronological order under the name of the decedent or protected person, all documents filed or issued and all orders, judgments, and decrees made pertaining to the estate, the date, and a reference to the volume and page of any other book in which any record shall have been made of such document.

3. A record of wills, properly indexed, in which shall be recorded all wills admitted to probate and a record of the testimony of a witness examined, subscribed by the witness and attested by the clerk with the clerk's signature and seal of office. The will with the testimony and attestation to be certified by the clerk to be a complete record.

4. An order book, in which shall be entered all proceedings with respect to the estate in conformity with the law pertaining to order books of circuit courts of this state and with the rules of the court. [IC 29-1-1-23]

ESTATE ENTRY - CLAIM AND ALLOWANCE DOCKET - FEE BOOK (Form No. 42)

The Probate Code of 1953 and later amendments did not change the form of this record. It is described in detail at IC 29-1-1-23. We will refer to the docket as the "probate entry docket."

On the left hand page shall be kept the general entry docket of all proceedings and transactions, and the taxing of costs and fees incurred in the administration of the estate. On the corresponding right hand side will be the claim and allowance docket wherein all claims against the estate will be entered and the disposition thereof will be noted.

ENTERING IN DOCKET

As soon as letters are issued the clerk shall enter the opening of the estate in the probate entry docket. The information will be taken from the application for letters. The estate will be numbered consecutively, the name of the decedent, date of death, name of executor or administrator, address, date letters issued, amount of bonds and sureties thereon will be entered in the proper spaces. All proceedings with respect to the estate shall be entered on the same page. [IC 29-1-1-23]

For convenience the mailing address and name of the attorney representing the estate should also be entered.

ENDORSEMENT OF PROBATE

The clerk will affix their file stamp to all papers and number each paper to agree with that of the entry docket.

ADMINISTRATION OF OATHS

The clerk will administer all oaths to the person qualifying, as are required, and will attest the oaths by signature and seal.

ISSUE LETTERS

Letters will be issued to the executor or the administrator under the signature of the clerk and seal of the court. The letters shall be conclusive authority of the person to whom granted to perform all acts in

the administering of the estate.

NOTICE OF ADMINISTRATION [IC 29-1-7-7]

As soon as letters testamentary or of administration, general or special, supervised or unsupervised, have been issued, the clerk of the court shall publish notice of the estate administration.

The notice shall be published in a newspaper of general circulation, printed in the English language and published in the county where the court is located, once each week for two (2) consecutive weeks. A copy of the notice, with proof of publication, shall be filed with the clerk of the court as a part of the administration of the estate within thirty (30) days after the publication. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county.

The notice shall be served by first class postage prepaid mail on each heir, devisee, legatee, and known creditor whose name and address is set forth in the petition for probate or letters except as otherwise ordered by the court. The personal representative shall furnish sufficient copies of the notice, prepared for mailing, and the clerk of the court shall mail the notice upon the issuance of letters.

The personal representative or the personal representative's agent shall serve notice on each creditor of the decedent:

1. whose name is not set forth in the petition for probate or letters

2. who is known or reasonably ascertainable within one (1) month after the first publication of notice and

3. whose claim has not been paid or settled by the personal representative.

The notice may be served by mail or any other means reasonably calculated to ensure actual receipt of the notice by a creditor.

Notice shall be served within one (1) month after the first publication of notice or as soon as possible after the elapse of one (1) month. If the personal representative or the personal representative's agent fails to give notice to a known or reasonably ascertainable creditor of the decedent within one (1) month, the period during which the creditor may submit a claim against the estate includes an additional period ending two (2) months after the date notice is given to the creditor. However, a claim filed under IC 29-1-14-1(a) more than nine (9) months after the death of the decedent is barred.

A schedule of creditors that received notice shall be delivered to the clerk of the court as soon as possible after notice is given.

The giving of notice to a creditor or the listing of a creditor on the schedule delivered to the clerk of the court does not constitute an admission by the personal representative that the creditor has an allowable claim against the estate.

If any person entitled to receive notice is under a legal disability, the notice may be served upon or waived by the person's natural or legal guardian or by the person who has care and custody of the person.

The notice shall read as follows:

NOTICE OF ADMINISTRATION

In the _____ Court of _____County, Indiana. Notice is hereby given that_____ was, on the ___ day of ____, 20___, appointed personal representative of the estate of _____, deceased, who died on the ___ day of ____, 20___.

All persons who have claims against this estate, whether or not now due, must file the claim in the office of the clerk of this court within three (3) months from the date of the first publication of this notice, or within nine (9) months after the decedent's death, whichever is earlier, or the claims will be forever barred.

Dated at _____, Indiana, this ___ day of ____, 20___.

_____

CLERK OF THE _____ COURT

FOR _____ COUNTY, INDIANA

SERVICE OF NOTICE

Unless waived and except as otherwise provided by law, all notices required by this article to be served upon any person shall be served as the court shall direct by rule or in a particular case, by:

(a) delivering a copy of the notice to the person or by leaving a copy of the notice at the person's last and usual place of residence, at least ten (10) days before the hearing, if the person is a resident of the state of Indiana;

(b) publication, if the person is a nonresident of the state of Indiana or if the residence is unknown, once each week for three (3) weeks consecutively in a newspaper printed and circulating in the county where the court is held, the first day of publication to be at least thirty (30) days prior to the date set for hearing; or in case there be no newspaper printed in the county, then in a newspaper circulating in the county where the proceeding is pending, and designated by the judge or clerk;

(c) first class postage prepaid mail, addressed to the person located in the United States, at the person's address stated in the petition for the hearing, to be posted by depositing in any United States post office in this state at least fourteen (14) days prior to the date set for hearing in such notice;

(d) personal service on nonresidents to be served by any officer authorized to serve process in the county of the nonresident, which notice shall be served at least fourteen (14) days prior to the date set for hearing in such notice; or

(e) any combination of two (2) or more of the above.

In all cases where service by publication is ordered but personal service or service by registered mail is not ordered, all persons directed by the provisions of this article, or by order of the court, to be notified, whose names and addresses are known or can by reasonable diligence be ascertained by the party charged with the duty of giving notice, shall in addition to the published notice be served by a written notice by United States first class postage prepaid mail at least fourteen (14) days prior to the date set for

hearing in the notice.

The personal representative or party charged with the duty of giving notice shall furnish the clerk with sufficient copies of the notice, prepared for mailing, and the clerk shall mail the notice. [IC 29-1-1-12]

NOTICE - BY WHOM SERVED - PROOF OF SERVICE

Service by publication and by mail shall be made by the clerk at the instance of the party requiring the service to be made. [IC 29-1-1-13]

Proof of service, whether by publication, mailing or otherwise, shall be filed before the hearing. Service made by the clerk or other official shall be proved by certificate or return of service. [IC 29-1-1-16]

PREPARE PAPERS FOR FILING

When all papers have been filed and entered in the proper records, the clerk will assemble them and prepare a jacket or folder, as in civil matters, to be deposited in the probate files. All subsequent filings, petitions, or any other papers, after being recorded in the proper books, should be filed in the jacket or folder with the other papers.

DOCKET SHEET

After the estate is properly entered in the probate entry docket, the clerk should prepare a probate docket sheet in the same manner as in civil matters. The caption of the docket sheet will be the same as was entered in the entry docket.

ENTRY

The entry to be entered in the entry docket at the time of issuance of letters, and the entry on the docket sheet, should be substantially in the following form:

> "Application for letters filed, examined and approved, bond filed, examined and approved, letters ordered and issued accordingly."
>
> If letters are issued by the clerk in vacation, the entry should be substantially in this form:
>
> "Application for letters filed. Bond filed in the amount of $_____. Letters issued by clerk in vacation."

FILING

The docket sheet will be filed in the bench docket used for probate proceedings. It will be filed in numerical order. An index to estates will be made and kept to date as in civil matters.

ENTERING PROCEEDINGS

All proceedings in the estate will be entered from time to time in the entry docket as they occur. The proceedings of the court will be written in the order book in term time and in vacation in proper entry form.

ORDER BOOK ENTRIES

Entries to be made in the order book and the entry docket will be taken from the minutes of the court as shown by the docket sheet. The formal entry to be entered in the order book will be written so as to include all the information shown by the minutes of the court or judge or clerk in vacation. If the entry is furnished by the attorney representing the estates, the clerk will copy the entry as prepared. The page of the order book where each entry is recorded should be noted in the index section of the order book following the name of the estate and at the time the entry is recorded.

ESTATE OPENED FOR FILING OF AN INHERITANCE TAX RETURN ONLY - NO COSTS TO BE TAXED

If an estate is opened for the purpose of filing an inheritance tax return only, such estate will be numbered and entered in the entry docket as other estates but no letters shall be issued and no costs shall be taxed. Inheritance tax is not imposed for property interests transferred by a decedent whose death occurs after December 31, 2012. [IC 6-4.1-2-0.5]

FILING CLAIMS AGAINST ESTATES

Claims against a decedent or his estate may be filed with the clerk of the court in which the estate is pending. The clerk shall send an exact copy of the claim to the personal representative by United States mail or by personal services.

The claim may be filed without complaint and summons against the personal representative.

If any claim against the decedent be founded upon a written instrument alleged to be executed by him or her, the original, or a copy thereof, shall be filed with the statement. If the original written instrument is lost or destroyed, such fact must be stated in the claim.

The claim shall be accompanied by an affidavit that the amount is owing and justly due after all credits, deductions and set-offs have been taken.

If the claim is secured by a lien on any real or personal property, such lien must be set forth in the statement and a reference given to where the lien, if of record, will be found.

When claims are paid by the personal representative within five months after date of the first published notice to creditors, no such paid claim need be filed.

This gives the personal representative the right to pay claims such as taxes, funeral expenses, etc., within the time limit without requiring such type of claims to be filed with the clerk. [IC 29-1-14-2]

LIMITATION ON FILING CLAIMS

All claims, except the expense of administration, claims of the United States, and State of Indiana or any subdivision thereof, shall be forever barred unless filed within three (3) months after the date of the first published notice to creditors. [IC 29-1-14-1]

ENTERING AND NUMBERING

The clerk shall enter the claims in the claims and allowance docket which is the right side of the probate entry docket. The claim shall be numbered from one (1) upwards; the name of the claimant, date filed, amount, date of allowance and amount, and remarks will be entered therein. The claim shall bear

the same number in all subsequent proceedings. [IC 29-1-1-23]

In numbering the claim on the regular claim blank for filing purposes, it is best to show both the claim number and the estate number: e.g., Claim No. 1/2345. The claims should be kept with other papers filed in the estate or a separate file designated for claims only.

DUTY OF PERSONAL REPRESENTATIVE

Each claim filed within three (3) months and fifteen days after the date of the first published notice to creditors shall be allowed or disallowed by the personal representative. Such action shall be noted in writing on the margin of the docket opposite each claim. The allowance or disallowance shall be on or before three (3) months and fifteen days after the date of the first published notice to creditors. [IC 29-1-14-10]

DUTY OF CLERK TO TRANSFER CLAIM

If the personal representative disallows any claim or fails or refuses to allow or disallow any claim within said period of three (3) months and fifteen days, the clerk shall transfer such claim to the issue docket for trial. [IC 29-1-14-10]

ATTORNEY GENERAL TO BE NOTIFIED

Whenever any claim is filed for and on behalf of the state of Indiana or of any board, bureau, commission, department, division, agency, officer or institution thereof, and such claim is transferred to the trial docket, due notice of the trial date shall be served on the Attorney General or any Deputy Attorney General. Such notice shall be at least ten days prior to the date set for trial. [IC 4-6-4-1]

DISTRIBUTION OF MONEY UPON FINAL SETTLEMENT

One of the practices by attorneys representing estates is paying money remaining in the estate to the clerk for distribution to heirs. It is the duty of the personal representative to make the distribution in accordance with the laws of the state in force at the time of settlement. It is a common practice by many attorneys to prepare the final report of the personal representative and, if there is money for distribution, to pay the amount to the clerk for the clerk to pay to the parties entitled to receive it and in the amount as determined by the court. There are times when the attorney pays the total amount to the clerk without specifying the names of the distributees or the amount due each distributee. This is not a required duty for the clerk to perform.

It is a part of the duty of the personal representative delegated him or her by the authority of the issuance of letters, and by his or her oath for the faithful discharge and performance of duty.

COURT DECISIONS

There have been many court decisions wherein the courts have held that a balance for distribution should not be paid to the clerk without an order of the court. Dufour v. Dufour, 28 Ind. 421; Mefford v. Lamkin, 38 App. 33.

PETITION FOR ORDER TO PAY TO CLERK

If there is some reason that prohibits the personal representative from making the distribution, or the whereabouts of the distributee is unknown, or there are unknown parties, or there is some legal complication that otherwise prevents the personal representative from making the distribution, the attorney should petition the court praying for an order directing the personal representative to pay the balance for distribution to the clerk. The petition should set out the reason for the inability to make the distribution. If the order of the court directs the clerk to receive the money for distribution, the clerk is bound to accept the money and hold it in trust until such time as proof of heirship is made or ordered by the court to disburse it in accordance with the terms of the order.

HOW TO DOCKET DISALLOWED CLAIMS

A disallowed claim transferred to the issue docket for trial is a civil proceeding in the administration of the estate.

Whether such action is entered in the civil entry docket and given a civil cause number or whether it is carried as a probate proceeding in the probate entry docket is a matter to be determined by the judge and clerk.

When it is entered in the civil entry docket under a civil cause number and the adjudication is against the estate, the costs, if not paid upon final adjudication, must be transferred to the probate entry docket as additional costs of the administration to be paid from the assets of the estate.

Many judges having probate jurisdiction insist upon the clerk maintaining a contested claim section in the branch or issue docket. A docket sheet is prepared for each claim, showing the name of the claimant versus the estate, numbered and filed in numerical sequence.

In numbering the contested claim, both the claim number and the estate number should be shown.

If the claim number six (6) in estate number 6749 has been disallowed, the docket sheet number should be 6/6749 or 6749-6 according to the wishes of the court. The estate number should be used to determine numerical sequence for filing.

When this preferable system is used, such proceeding is not segregated from the other proceedings in the estate and is always carried under the same probate number.

If the jurisdiction is in favor of the estate against the claimant, and the costs are not paid, a judgment is rendered against the claimant and entered in the judgment docket.

CLAIMS OF PERSONAL REPRESENTATIVES - NO FILING FEE

Personal representatives cannot act on their own claims which occurred before the death of the decedent, unless all interested persons who would be affected by the allowance of the claim consent in writing to it.

If all interested persons do not consent to the payment of that claim, the judge shall appoint a special personal representative who shall examine the nature of the claim. If the special personal representative determines that the claim is just, the special personal representative shall allow the claim. If the special personal representative believes it is in the best interest of the estate to oppose the claim, the special personal representative may;

(1) employ counsel to represent the special personal representative;

(2) disallow the claim; and

(3) ask the court to set the claim for trial.

The special personal representative and the special personal representative's counsel shall be paid out of the estate fees for services that the court determines reasonable and appropriate. [IC 29-1-14-17(a)]

Such claims shall not be deemed civil actions or proceedings for the purpose of determining court costs unless the court arranges for active opposition. [IC 29-1-14-17(b)]

It is the intent of this portion of the statute not to require the prepayment of the advance filing fee as a civil action unless the court arranges for active opposition, thereby making it contested as an adversary proceeding.

PREPAYMENT OF FILING FEE - CONTESTED CLAIMS

When a claim is transferred for trial, it becomes an adversary proceeding and, therefore, is a civil action as interpreted by the Attorney General in Official Opinion No. 30, May 3, 1949. The opinion held that the claimant actually instituted the action which is subject to the docket fee and payable by the claimant as provided by IC 33-37-4-4.

We do not believe the clerk must refuse to transfer a claim for trial if the filing fee is not prepaid. It is a rare exception when administration costs are not paid at the time of final settlement.

The usual procedure is for the clerk to tax the applicable fees upon adjudication and let the payment thereof abide the judgment.

If the judgment is against the estate, the clerk will tax the costs to be paid as additional costs in the administration.

If the judgment is for the estate, the costs will be taxed against the claimant and would have the same force and effect as a money judgment, a lien upon his or her properties and subject to collection by fee bill, if not otherwise paid.

There are other reasons that seem to justify not collecting the filing fee in advance. At the time of filing the claim, neither the clerk nor the claimant know whether the claim will be allowed or disallowed. If not allowed or disallowed within the period of five months and fifteen days, the clerk is required by law to certify such claim to the issue docket for trial.

There are also times when a personal representative may have a just claim against an estate but is prohibited by law from allowing his own claim.

NO EXECUTION

The clerk is not to issue an execution or other final process on a judgment rendered upon a claim against a decedent's estate. All such claims shall be paid by the personal representative in due course of the administration. [IC 29-1-14-15]

UNKNOWN HEIRS - PAYMENT OF ASSETS TO STATE TREASURER

If reasonable search, satisfactory to the court, reveals no known heir of a decedent, all of his or her net estate not disposed of by will shall be ordered paid to the state treasurer by the personal representative to become a part of the common school fund, subject to the provisions of IC 29-1-17-12(d).

PAYMENT OF ASSETS TO CLERK

When reasonable effort has been made to find an heir, missing distributee, or claimant and he or she cannot be found, the personal representative shall, pursuant to an order of court first obtained, sell the share of the estate to which such person is entitled. The proceeds of such sale shall be paid to the clerk of the court for the use and benefit of the person or persons thereafter determined to be entitled thereto according to law. [IC 29-1-17-12(b)]

Under the general rules of descent set out at IC 29-1-2-1(d)(8) if there is no person entitled to receive a share of the distributable estate, such distribution shall descent to and be distributed to the state of Indiana.

COLLECTION OF SMALL ESTATES BY WIDOW OR DISTRIBUTES - NOT MORE THAN $15,000

Forty-five (45) days after the death of a decedent and upon being presented an affidavit that complies with subsection IC 29-1-8-1(b), as described below, a person:

(1) indebted to the decedent; or

(2) having possession of personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action belonging to the decedent;

shall make payment of the indebtedness or deliver the personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action to a person claiming to be entitled to payment or delivery of property of the decedent.

The affidavit must be an affidavit made by or on behalf of the claimant stating that:

(1) the value of the gross probate estate, wherever located (less liens and encumbrances) does not exceed fifty thousand dollars ($50,000);

(2) forty-five (45) days have elapsed since the death of the decedent;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(4) the name and address of each other person that is entitled to a share of the property and the part of the property to which each person is entitled.

(5) that the claimant has notified each person identified in the affidavit of the claimant's intention to present an affidavit under this section.

(6) The claimant is entitled to payment or delivery of the property on behalf of each person identified in the affidavit.

If a motor vehicle or watercraft (as defined in IC 9-13-2-198.5) is part of the estate, nothing in this section shall prohibit a transfer of the certificate of title to the motor vehicle if five (5) days have elapsed since the death of the decedent and no appointment of a personal representative is contemplated. A transfer under this subsection shall be made by the bureau of motor vehicles upon receipt of an affidavit containing a statement of the conditions required by items (1) through (6). The affidavit must be duly executed by the distributees of the estate.

A transfer agent of the security shall change the registered ownership on the books of a corporation from the decedent to a claimant upon the presentation of an affidavit as provided above.

An insurance company that, by reason of the death of the decedent, becomes obligated to pay a death benefit to the estate of the decedent is considered a person indebted to the decedent.

Property in a safe deposit box rented by a dececent from a financial institution is considered personal property belonging to the decedent in the possession of the financial institution. [IC 29-1-8-1]

CLOSING OF ESTATE

Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative or a person acting on behalf of the distributees may close an estate administered under the summary procedures of IC 29-1-8-3 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) to the best knowledge of the personal representative or person acting on behalf of the distributees the value of the gross probate estate, less liens and encumbrances, did not exceed the sum of:

    (A) twenty-five thousand dollars ($25,000), for the estate of an individual who dies before July 1, 2007, and fifty thousand dollars ($50,000), for the estate of an individual who dies after June 30, 2007;

    (B) the costs and expenses of administration; and

    (C) reasonable funeral expenses;

(2) the personal representative or person acting on behalf of the distributees has fully administered the estate by disbursing and distributing it to the persons entitled to it; and

(3) the personal representative or person acting on behalf of the distributees has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he or she is aware and has furnished a full account in writing of the administration to the distributees whose interests are affected.

If no actions, claims, objections, or proceedings involving the personal representative or person acting on behalf of the distributees are filed in the court within three (3) months after the closing statement is filed, the appointment of the personal representative or the duties of the person acting on behalf of the distributees terminate.

A closing statement filed under this section has the same effect as one filed under IC 29-1-7.5-4.

A copy of any affidavit recorded under IC 29-1-8-3(b) must be attached to the closing statement filed under this section. [IC 29-1-8-4]

PROCEEDINGS FOR ADJUDICATED COMPROMISE OF CONTROVERSIES

IC 29-1-9-1 to 29-1-9-3 is a proceeding within a probate matter whereby differences may be compromised in a decedent's estate or testamentary trust. It provides a legal procedure for agreements to be made and judicially provided by order of court.

PETITION FOR DETERMINATION OF HEIRSHIP

A petition may be filed to determine the heirs of a decedent and their respective interests in the estate whenever any person has died having property or interest therein and no administration has been commenced in this state, nor any will offered for probate in this state, within five (5) months after the decedent's death.

The procedure for filing the petition, its contents, notices by publication and registered mail, and the recording of a certified copy of the decree will be found at IC 29-1-17-15.1.

ENTERING IN RECORDS

The petition should be given a probate cause number and entered in the probate entry docket. The court's decree determining the heirs and their respective interests should be entered of record in the probate order book.

ACCOUNTING BY SURVIVING PARTNERS

In case of the death of one (1) partner, the surviving partner or partners shall proceed to settle and close up, as speedily as may be practicable, the partnership affairs, in accordance with the law in force and the provisions of IC 23-4-3.

Such surviving partner or partners, within sixty (60) days after such death, shall proceed to make a full, true, and complete inventory of the estate, goods, chattels, rights, credits, moneys, and effects within the knowledge of the partner or partners, and shall cause the same to be appraised by:

(1) One (1) disinterested freeholder of the county; and

(2) One (1) disinterested appraiser licensed under IC 25-34.1;

who are residents of Indiana, one (1) of whom shall be selected by the surviving partner or partners and the other by the clerk of the court having probate jurisdiction, making a full and complete schedule thereof; which said schedule and appraisement shall be sworn to by said appraisers before the clerk of such court, specifying that the property described in said schedule is appraised at its true cash value; which schedule shall, by said appraisers, be filed in the office of the clerk of the court having probate jurisdiction, immediately after the completion thereof. [IC 23-4-3-2]

It shall be the duty of such surviving partner or partners, immediately upon the filing of such schedule of appraisement, to file with the clerk of the court having probate jurisdiction, his or their affidavit that the schedule filed by said appraisers contains a full, true and complete list of all property, rights, credits, moneys and effects belonging to said firm; and, at the same time, shall file a full, true and complete list of all the liabilities of said firm at the time of the death of said deceased partner , to which said list of liabilities said surviving partner or partners shall also append his or their affidavits testifying to the correctness thereof. [IC 23-4-3-3]

BOND

Upon filing the inventory, appraisement and list of liabilities, the surviving partner or partners shall

execute a bond payable to the state of Indiana in an amount double the interest of the decedent, conditioned for the faithful performance of the trust and to be approved by the clerk. [IC 23-4-3-4]

TRANSFER OF PROCEEDINGS

If it appears to the court at any time before the decree of final distribution in any proceedings that the proceeding was commenced in the wrong county or that it would be for the best interests of the estate, the court, in its discretion, may order the proceeding with all papers, files and a certified copy of all orders therein transferred to another court having probate jurisdiction, which other court shall thereupon proceed to complete the administration proceedings as if originally commenced therein. [IC 29-1-7-1(c)]

TRANSFER OF PROCEEDINGS - COSTS

Upon such transfer it appears costs should be taxed in the court to which it is transferred and not in the court where the estate was erroneously opened.

FILING SUPPLEMENTAL REPORTS AFTER ESTATE
HAS BEEN SETTLED - ASSETS NOT ADMINISTERED

If, after an estate has been settled and the personal representative discharged, other property of the estate shall be discovered, or if it shall appear that any necessary act remains unperformed on the part of the personal representative, or for any other proper cause, the court, upon the petition of the discharged personal representative or any person interested in the estate and, without notice or upon such notice as it may direct, may order that said estate be reopened. It may reappoint the personal representative or appoint another personal representative to administer such property or perform such act as may be deemed necessary. Unless the court shall otherwise order, the provisions of this article as to an original administration shall apply to the proceedings had in the reopened administration so far as may be, but no claim which is already barred can be asserted in the reopened administration.

Whenever any solvent estate has been closed, and it thereafter appears that any assets thereof have not been fully administered upon, the court may, if it appears practicable, order such assets distributed to, or title vested in, the persons entitled thereto after compliance with requirements as to inheritance tax, in lieu of reopening the estate as provided in the preceding subsection. No additional notice of such proceedings shall be necessary unless so ordered by the court. [IC 29-1-17-14]

EXERCISE OF POWERS BY DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE

A domiciliary foreign personal representative may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally. [IC 29-2-1-6]

PRIORITY OF LOCAL PERSONAL REPRESENTATIVE POWERS - LIMITED POWERS -
PREJUDICE - SUBSTITUTION OF REPRESENTATIVE

The powers of a domiciliary foreign personal representative shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his or her position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him or her in any action or proceedings in this estate. [IC 29-2-1-7]

APPLICABLE COURT PROCEDURE

In respect to a nonresident decedent, the provisions of Indiana Probate Code govern (a) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and (b) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration. [IC 29-2-1-8]

DECREE OF FINAL DISTRIBUTION - RECORDING CERTIFIED COPY

Whenever the decree of final distribution includes real property, a certified copy thereof shall be recorded by the personal representative in every county of this state in which any real property distributed by the decree is situated, except the county in which the estate is administered. The cost of recording such decree shall be charged to the estate. [IC 29-1-17-2(e)]

ADOPTIONS
USE OF RECORDS - GENERAL INSTRUCTIONS

ADOPTIONS - JURISDICTION OF COURTS

Petitions for adoptions of minors are filed with the clerk of the court having probate jurisdiction in the county in which:

(1) the petitioner for adoption resides;

(2) a licensed child placing agency or government agency having custody of the child is located;

(3) the child resides.

The county in which the petition for adoption is filed is a matter of venue and not jurisdiction.

Subject to IC 31-19-9-3, if an individual who files a petition for adoption of a child:

(1) decides not to adopt the child; or

(2) is unable to adopt the child;

the petition for adoption may be amended or a second petition may be filed in the same action to substitute another individual who intends to adopt the child as petitioner for adoption. The amended petition or second petition under this section relates back to the date of the original petition. [IC 31-19-2-2]

ADOPTIONS - DUTY OF CLERK

Upon filing a petition of adoption and as soon as such petition is found to be in proper form by the court, the clerk shall forward one copy of the petition to a licensed child placing agency, described in IC 31-9-2-17.5, with preference to be given to the agency, if any, sponsoring the adoption. [IC 31-19-2-12]

ADOPTION RECORDS CONFIDENTIAL

All files and records of the court pertaining to adoption proceedings shall be in the custody of the

clerk and are not open to inspection, except as provided in IC 31-19-13-2-(2). [IC 31-19-19-1]

DUTY OF CLERK - ADOPTION RECORD - REVOCATION OF DECREE - BIRTH CERTIFICATE

The clerk shall prepare a record for each adoption and for each annulment or revocation of adoption. The record shall include all facts necessary to locate and identify the certificate of birth of the person adopted and establish the new certificate of birth of the person adopted; and official notice from the court of the fact of adoption, including identification of the court action and proceedings. The record and information shall be prepared on a form prescribed and furnished by the State Department of Health. [IC 31-19-12-1]

The official decree of such adoption, annulment or revocation of adoption which is provided to the clerk for the official order book record shall set forth all such pertinent information as is necessary to make possible the establishment of the birth records herein provided. The completion of such record shall be a prerequisite to the issuance of a certificate of final adoption by such court. [IC 31-19-12-2]

The clerk shall forward to the State Department of Health records of decrees of adoption, annulment, revocation or amendments entered in the preceding month. Such report shall be made not later than the tenth day of each calendar month. The clerk shall also furnish such related reports as the State Department of Health shall require. [IC 31-19-12-3]

The record of adoption, annulment or revocation of adoption or amendment thereof certified by the clerk to the State Department of Health, for an individual born in Indiana, is the basis to establish a new certificate of birth. [IC 31-19-13-1]

ADOPTION OF MINORS - COSTS

The costs on a petition for the adoption of a minor are one hundred dollars ($100.00) payable to clerk of the circuit court [IC 33-37-4-4], plus the adoption history fee of twenty dollars ($20.00) and a putative father registry fee of fifty dollars ($50.00) which are payable to the State Department of Health. [IC 31-19-2-8]

ADOPTION OF ADULT

The cost on a petition for the adoption of an adult for one hundred dollars ($100.00), payable to the clerk of the circuit court. [IC 33-37-4-4]

GUARDIANSHIP
USE OF RECORDS - GENERAL INSTRUCTIONS

The clerk is required to keep separate records for all guardianship matters.

The entry docket, bond and inventory records are to be different from the estate records.

In some counties the volume of guardianship matters is so small that a separate order book may not be required. This, however, is a matter for the judge having probate jurisdiction to decide.

The clerk will enter all proceedings in the proper books designated for guardianship matters as required by law and on order of the court.

Receiving the filing of reports and petitions will be the same as in estate matters and under the supervision and direction of the probate court.

The appointment of a guardian, the issuance of letters and the approval of bonds is a probate

procedure within the jurisdiction of the court or by the judge or clerk in vacation.

The procedure of entering all guardianship matters in the proper record books is substantially the same as in estate matters but with due observance of the guardianship statutes beginning with IC 29-3-1-1.

WHEN LETTERS OF GUARDIANSHIP ARE ISSUED [IC 29-3-7-3]

Letters of guardianship, temporary or otherwise, shall be issued to the person entitled to receive them when:

(1) the guardian, if an individual, has filed bond if required and taken and subscribed before the clerk or any other officer authorized to administer oaths, an oath or affirmation that the guardian will faithfully discharge the duties of the guardian's trust according to law; or

(2) the guardian, if other than an individual, has filed bond if required and has:

(a) taken and subscribed before the clerk or any other officer authorized to administer oaths an oath or affirmation that it will faithfully discharge the duties of its trust according to law; and

(b) filed an acceptance of the appointment, duly executed and acknowledged by one (1) of its officers.

The oath, and if other than an individual also the acceptance, shall be filed and recorded as a part of the proceedings of the guardianship.

If the court limits of restricts the authority of the guardian or creates a limited guardianship, the letters must so state under IC 29-3-8.

TEMPORARY GUARDIAN

If:

(1) a guardian has not been appointed for an incapacitated person or minor;

(2) an emergency exists;

(3) the welfare of the incapacitated person or minor requires immediate action; and

(4) no other person appears to have authority to act in the circumstances;

the court, on petition by any person or on its own motion, may appoint a temporary guardian for the incapacitated person or minor for a specified period not to exceed ninety (90) days. No such appointment shall be made except after notice and hearing unless it is alleged and found by the court that immediate and irreparable injury to the person or injury, loss, or damage to the property of the alleged incapacitated person or minor may result before the alleged incapacitated person or minor can be heard in response to the petition. If a temporary guardian is appointed without advance notice and the alleged incapacitated person or minor files a petition that the guardianship be terminated or the court order modified, the court shall hear and determine the petition at the earliest possible time.

If:

(1) a petition is filed under this section for the appointment of a temporary guardian; and

(2) each person required to receive notice under IC 29-3-6-1(a) has not:

(A) received a complete copy of the petition and notice required by IC 29-3-6-2 before the court considers and acts on the petition; or

(B) received actual notice of the filing of the petition and specifically waived in writing the necessity for service of the notice required under IC 29-3-6-2 before the court considers and acts on the petition;

the petitioner shall, on the earlier of the date the court enters an order scheduling a hearing on the petition or the date the court enters an order appointing a temporary guarding, serve complete copies of the petition, the court's order, and the notice required by IC 29-3-6-2 on every person entitled to receive notice under IC 29-3-6-1(a) and on each additional person to whom the court directs that notice be given. The requirements of this subsection are in addition to the petitioner's obligations under Rule 65 of the Indiana Rules of Trial Procedure to make a specific showing of the petitioner's efforts to provide advance notice to all interested persons or the reasons why advance notice cannot or should not be given.

If the court finds that a previously appointed guardian is not effectively performing fiduciary duties and that the welfare of the protected person requires immediate action, the court may suspend the authority of the previously appointed guardian and appoint a temporary guardian for the protected person for any period fixed by the court. The authority of the previously appointed guardian is suspended as long as a temporary guardian appointed under this subsection has authority to act.

A temporary guardian appointed under this section has only the responsibilities and powers that are orders by the court. The court shall order only the powers that are necessary to prevent immediate and substantial injury or loss to the person or property of the alleged incapacitated person or minor in an appointment made under this section.

Proceedings under this section are not subject to the provisions of IC 29-3-4.

A proceeding under the section may be joined with a proceeding under IC 29-3-4 or IC 29-3-5. [IC 29-3-3-4]

CONSIDERATIONS FOR APPOINTMENT OF GUARDIAN

The court shall appoint as guardian a qualified person or persons most suitable and willing to serve, having due regard to the following:

(1) Any request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under IC 30-5-3-4(a).

(2) Any request contained in a will or other written instrument.

(3) Any request made by a minor who is at least fourteen (14) years of age.

(4) Any request made by the spouse of the alleged incapacitated person.

(5) The relationship of the proposed guardian to the individual for whom guardianship is sought.

(6) Any person acting for the incapacitated person under a durable power of attorney.

(7) The best interest of the incapacitated person or minor and the property of the incapacitated person or minor. [IC 29-3-5-4)

PROPERTY OF INCAPACITATED PERSON NOT IN EXCESS OF $10,000

When the entire property of an incapacitated person does not exceed the value of ten thousand dollars ($10,000), the court may, without the appointment of a guardian, giving of bond, or other order of court, authorize:

(1) the deposit of the property in a depository authorized to receive fiduciary funds in the name of a suitable person by the court; or

(2) if the property does not consist of money, the delivery of the property to a suitable person designated by the court.

The person receiving the property shall hold and dispose of the property in the manner the court directs and is entitled to reasonable compensation and to reimbursement for reasonable expenses incurred in good faith on behalf of the incapacitated person and approved by the court. [IC 29-3-3-2]

TRANSFER OF GUARDIANSHIP

The venue for the appointment of a guardian or for protective proceedings is as follows:

(1) If the alleged incapacitated person or minor resides in Indiana, venue is:

(a) in the county where the alleged incapacitated person or minor resides; or

(b) if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person or minor who is in need of medical care, in the county where a facility is located that is providing or attempting to provide medical care to the alleged incapacitated person or minor.

(2) If the alleged incapacitated person or minor does not reside in Indiana, then venue is in any county where any property of the alleged incapacitated person or minor is located. However, if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person or minor who is in need of medical care, venue is in the county where the facility providing or attempting to provide medical care is located.

(3) If the alleged incapacitated person is an adult (as defined in IC 29-3.5-1-2(1)), venue is determined under the laws of the state or county having jurisdiction under IC 29-3.5-2. However, if a court in Indiana has jurisdiction under IC 29-3.5-2, the rules for determining venue in IC 29-3-2-2 apply.

If proceedings are commenced in more than one (1) county, they shall be stayed except in the county where first commenced until final determination of the proper venue by the court in the county where first commenced. After proper venue has been determined, all proceedings in any county other than the county where jurisdiction has been finally determined to exist shall be dismissed. If the proper venue is finally determined to be in another county, the court shall transmit the original file to the proper county. The proceedings shall be commenced by the filing of a petition with the court, and the proceedings first commenced extends to all of the property of the minor or the incapacitated person unless otherwise ordered by the court.

If it appears to the court at any time that:

(1) the proceeding was commenced in the wrong county;

(2) the residence of the incapacitated person or the minor has been changed to another county;

(3) the proper venue is determined to be otherwise under the Indiana Rules of Trial Procedure; or

(4) it would be in the best interest of the incapacitated person or the minor and the property of the minor or the incapacitated person;

the county may order the proceeding, together with all papers, files, and a certified copy of all orders, transferred to another court in Indiana. That court shall complete the proceedings as if originally commenced in that court. The court may in like manner transfer a guardianship or protective proceeding in Indiana to a court outside Indiana if the other court assumes jurisdiction to complete the proceedings as if originally commenced in that court. Before any transfer is made under this subsection, a hearing pursuant to notice shall be held in the same manner as provided with respect to the appointment of a guardian.

Where a guardian has been appointed by a court that does not have probate jurisdiction, the matter shall be transferred in accordance with the proper venue to a court having probate jurisdiction for qualification of the guardian and for further proceedings in the guardianship. [IC 29-3-2-2]

COSTS UPON TRANSFER

The clerk of the court where the guardianship was first commenced should tax, charge and collect all costs caused by such guardianship up to the time the transfer is ordered.

INVENTORY OF GUARDIANSHIP PROPERTY

Within ninety (90) days after appointment, a guardian (other than a temporary guardian) shall file with the court a complete inventory of the property subject to the guardian's control together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. A temporary guardian shall file the inventory and oath or affirmation with the court within thirty (30) days after appointment. The inventory must conform to the requirements of IC 29-1-12-1. The guardian shall provide a copy of the inventory to the protected person if the protected person is at least fourteen (14) years of age. A copy also shall be provided to any guardian, parent, or person with whom the protected person resides and any person ordered by the court. In addition, the guardian shall provide notice of the filing of the inventory to each person that was required to be notified of the hearing on the petition to establish guardianship. The notice must be provided in the same manner as the notice of the hearing to establish a guardianship. The notice must include all of the following:

(1) The cause number.

(2) A statement that Indiana Law requires a guardian to file with the court a written verified account of the guardians' administration:

(a) at least biennially, not more than thirty (30) days after the anniversary date of the guardian's appointment; and

(b) not more than thirty (30) days after the termination of the appointment.

(3) A statement that the inventory and the written verified accounts may be inspected at the court's address.

The guardian shall keep suitable records of the guardian's administration and exhibit the records as ordered by the court. [IC 29-3-9-5]

CLAIM AGAINST GUARDIANSHIP

Any person indebted to a minor or having possession of property belonging to a minor in an amount not exceeding ten thousand dollars ($10,000) may pay the debt or deliver the property without the appointment of a guardian, giving of bond, or other order of court directly to any person having the care and custody of the minor with whom the minor resides.

Persons receiving property for a minor under this section are obligated to apply the property to the support, use, and benefit of the minor.

This section does not apply if the person paying or delivering the property knows that a guardian has been appointed for the minor or that proceedings for appointment of a guardian for the minor are pending.

A person who pays or delivers property in accordance with this section in good faith is not responsible for the proper application of the property. [IC 29-3-3-1]

PETITION TO COMPROMISE OR SETTLE CLAIM

Whenever it is proposed to compromise any claim by or against a protected person or the protected person's property, the court, on petition of the guardian, may enter an order authorizing the compromise to be made if satisfied that the compromise will be in the best interest of the protected person.

Whenever a minor has a disputed claim against another person, whether arising in contract, tort, or otherwise, and a guardian for the minor and the minor's property has not been appointed, the parents of the minor may compromise the claim. However, before the compromise is valid, it must be approved by the court upon filing of a petition requesting the court's approval. If the court approves the compromise, it may direct that the settlement be paid in accordance with IC 29-3-3-1. If IC 29-3-3-1 is not applicable, the court shall require that a guardian be appointed and that the settlement be delivered to the guardian upon the terms that the court directs. [IC 29-3-9-7]

FOREIGN GUARDIANS - PROPERTY LOCATED IN INDIANA - POWERS

If no guardian has been appointed, and no petition in a guardianship proceeding is pending in Indiana, a guardian appointed by a court of another state in which the minor is domiciled may file, with an Indiana court in a county in which property belonging to the minor is located, an authenticated copy of the guardian's appointment and a bond that meets the requirements of IC 29-3-7-1 with respect to that part of the property of the minor that is located in that county. After filing the copy of the bond, the foreign guardian may exercise as to the property of the minor in that county in Indiana all powers of a guardian in Indiana and may maintain actions and proceedings in Indiana.

In the case of an incapacitated person who is an adult (as defined in IC 29-33.5-1-2(1)), a foreign guardian may register certified copies of the guardian’s letters of office and order of appointment under IC 29-3.5-4. [IC 29-3-13-2]

NOTICE OF PETITION AND HEARING

When a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given first call postage prepaid mail as follows:

(1) If the petition is for the appointment of a successor guardian, notice shall be given

unless the court, for good cause shown, orders that notice is not necessary.

(2) If the petition is for the appointment of a temporary guardian, notice shall be given as required by IC 29-3-3-4.

(3) If the subject of the petition is a minor, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(a) The minor, if at least fourteen (14) years of age, unless the minor has signed the petition.

(b) Any living parent of the minor, unless parental rights have been terminated by a court order.

(c) Any person alleged to have had the principal care and custody of the minor during the sixty (60) days preceding the filing of the petition.

(d) Any other person that the court directs.

(4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(a) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.

(b) Any person who is serving as a guardian for, or who has the care and custody of, the alleged incapacitated person.

(c) In case no person other than the incapacitated person is notified under clause (a), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(d) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(e) Any other person that the court directs.

Notice is not required if the person to be notified waives notice or appears at the hearing on the petition.

Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to the following persons, unless they appear or waive notice:

(1) The guardian

(2) Any other persons that the court directs, including the following:

(a) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards compensation, pension, insurance, or other allowance for the benefit of an alleged incapacitated person.

(b) Any department, bureau, agency, or political subdivision of this state that may be charged with the supervision, control, or custody of an alleged incapacitated person. [IC 29-3-6-1]

WHERE TO ENTER

If it can be determined that the party will be adjudged incapacitated and is incapable of managing his or her estate, and that a guardian will be appointed, it is permissive for the clerk to enter the action in the guardianship docket. It may be numbered as a guardianship case with the proper entries written in the docket showing the proceedings thus far.

TAXING COSTS

If the person is adjudged incapacitated and a guardian is appointed by the court, the clerk will tax the costs of this action. Since the action is tried as a civil action, the costs will be taxed accordingly.

If the guardian is appointed for any incapacitated person, he or she shall pay out of the estate the expense of the proceedings. When the court or jury finds such person is not incapacitated, the court shall enter judgment for costs against the person filing the petition.

ENTRIES IN GUARDIAN DOCKET

At the time of rendering judgment by the court a guardian will be appointed. Upon qualifying and giving bond, the clerk will make the proper entries in the guardian entry docket in the same manner as if an application had been filed. The proceedings thereafter will be entered as in any other guardianship in the same records and under the same case number that was assigned when the action was originally docketed.

Thus, the docket will reveal a complete record of all proceedings from the time the action was brought until the final termination of the trust.

FILING AND ENTERING AS A CIVIL MATTER

Actually, the proceedings to adjudge a person incapacitated and the subsequent appointment of a guardian is a civil action. The commencement of such should be entered in the civil entry docket. If the court is satisfied the requirements for the appointment of a guardian as set forth in the code are proved, the court will appoint a guardian of the person or of the estate or both.

TRANSFERRING TO GUARDIAN DOCKET

The clerk will enter the guardianship in the guardian docket and assign a case number as a guardianship. The proceedings thereafter will be entered under the guardianship number and not the number of the original action.

TRANSFERRING COSTS FROM CIVIL TO GUARDIAN DOCKET

If the costs in the preliminary hearing are not paid at the time of judgment and are to follow in the guardianship, the clerk should make a notation in the civil entry docket showing that the costs are transferred to guardian docket. The notation should be substantially, "costs transferred to guardian docket number ___, page ____." The costs would then be entered in the guardian docket to be in addition to other costs in the guardianship. In transferring the costs from the civil docket to the guardian docket, the clerk should separate the items in order to have the proper classification for posting to the cash book upon payment by the guardian.

COSTS - PROCEEDINGS FOR ADJUDICATION OF COMPETENCY

In the case of State ex rel Burkheimer etc. v. Noble Circuit Court, 234 Ind. 139, "such proceeding is adversary in character, and that the guardian is a party to a petition to determine the guardianship by reason of the ward regaining his competency."

Upon institution of the action, a filing fee will be required and applied to the taxable items of cost.

In discussing the use of probate records and the procedure to be followed by the clerk, we have not presumed to cover every step to be followed, to explain every law and to tell you how to perform all the duties. We have attempted to touch upon the more important matters that confront the clerk.

The performance of the clerk will best be accomplished by familiarizing himself or herself with the requirements of the statutes, studying the various forms and records to be used, and his or her ability to organize the procedural steps to be followed that will result in all records being so kept that any one may know exactly what has been done.

The clerk must remember that he or she will not be the permanent custodian of records. In the due course of time there will be a successor. All records, indexing of records, and filing in the final files should be kept in a manner that may be conveniently found by any interested party -- at the present or any future time.

The routine procedure of processing all actions from the time of filing and until final disposition should be followed in the same manner as outlined in the discussion of the civil entry docket.

SUPPORT

SUPPORT DEFINED

Money received by the clerk in payment of support results from a court order included as part of the judgment in a divorce action where a minor child or children are involved; or it may be an order for the support of a needy parent or parents by able-bodied adult children. The order may also be a part of a criminal action for child neglect or failure to provide. Nevertheless, support is an order of the court and when such order is made for the defendant to pay money to the clerk in compliance with the order, the clerk is duty bound to receive and to disburse a like amount to the party entitled to receive it and in the manner as directed by the court. The money is for maintenance and support or to provide otherwise all things needed for the best interest and welfare of the child, children or needy parent or parents.

DIFFERENT FROM OTHER TRUST ITEMS

Support is an item of trust but it is to be handled separate from other trust items. All support records are maintained in Indiana Support Enforcement Tracking System (ISETS) as directed by the Department of Child Services.

CLERK TO COMPLY WITH COURT ORDER

There may be some extreme cases, where at the discretion of the court, it appears that it will not be to the best interest of the child for the clerk to disburse the full amount received in one check and at the same time. Such cases are few and infrequent; but the clerk will be bound by such order of the court. These are unfortunate circumstances and impose more work on the clerk. However, there would be nothing to prevent the clerk from writing as many checks as would be necessary to divide the total payment received in accordance with the order of the court. The delivery of the checks could be held until the time specified in the order to be released.

ACCEPTING PERSONAL CHECKS

The clerk will receive many remittances for fines and costs through the mail. It is possible that the payor will reside outside the county, and as a matter of convenience will remit by personal check. In the event the clerk accepts a personal check, and later the check is returned by the bank marked "insufficient funds," it is the responsibility of the clerk to attempt to recover it from the payor. If the clerk is unable to obtain payment of a dishonored check, not later than ninety (90) days after the check was initially received, the matter shall be reported to the Prosecuting Attorney for the county. Clerks are not personally liable for dishonored checks if the required collection attempts and reporting are performed.

If the dishonored check is related to support payments, IC 33-32-4-6 authorizes clerks to reimburse support accounts from support fees for funds improperly disbursed through an error or because a check or money order was dishonored by a financial institution. The clerk is required to notify the prosecutor and pursue collection of these support fees.

DELIVERING CHECKS

The checks may be delivered to the payee in person when called for or may be mailed by the clerk to the person. Postage may be provided from the postage appropriation or the recipient may furnish the clerk with self-addressed, stamped envelopes ready for mailing.

LIABILITY FOR SUPPORT OF PARENTS

The general assembly of 1947 extended the liability for support to needy parents and provided a civil procedure to endorse support of such parents by able-bodied adult children with sufficient means to contribute when they refuse to do so.

An action for support of a parent or parents may be instituted against a child or children by filing a verified complaint in a circuit or superior court. The complaint shall be filed by the parent or parents, the prosecuting attorney, or the director of the division of family and children of the county where the parent resides, or the township trustee of the township where the parent resides, or the Family and Social Services Administration. The complaint shall allege definite and specific facts to establish the duty to support and the violation thereof.

Such civil action may be prosecuted by the parent or parents, the township trustee, the director of the division of family and children, the secretary of Family and Social Services Administration, or the prosecuting attorney. No costs shall be taxed against any prosecutor, the director of the division of family and children, the township trustee, or Family and Social Services Administration.

If a finding is in favor of the plaintiff and against the defendant, costs should be taxed to the defendant and the court shall enter judgment against the defendant and make an order which shall make adequate provision for the support of the parent or parents.

Notice shall be served on the defendant and issues shall be made upon the verified complaint as in any other civil action.

The order of the court shall be a continuing one, and the court shall have jurisdiction to modify it with respect to its continuation, the amount of support, and the method of payment at any time during the need of the parent or parents or during the financial ability of the child or children. [IC 31-16-17-11]

Execution may issue on such judgment whenever any amount is due thereon. If any defendant be in default for failure to comply with the order and judgment of the court, he may be proceeded against for contempt in the manner provided for in divorce proceedings. [IC 31-16-17-12]

Support orders in the case of parents should be handled in the same manner and entered in the

same support records as in the case of orders made for the support of children.

CHILDREN BORN OUT OF WEDLOCK - VOLUNTARY PETITION
TO ESTABLISH PATERNITY - PROVISION FOR SUPPORT

Paternity actions are civil proceedings, H.W.K. v M.A.G., App. 1981, 426, N.E. 2d 129. Civil filing fees should, therefore, be collected.

The court shall order the father to pay at least fifty percent (50%) reasonable and necessary expenses of the mother's pregnancy and child birth, including the cost of prenatal care, delivery, hospitalization, and postnatal care. [IC 31-14-17-1]

The court may tax as costs the reasonable expenses of any medical tests authorized under IC 31-14-6, and the reasonable attorney's fees incurred in maintaining any proceeding under this chapter. [IC 31-14-18-1 and IC 31-14-18-2]

MAINTENANCE AND SUPPORT ORDERS – CLERK'S FEE

Whenever in any court proceeding an order is in force for the support and maintenance of the other party to the proceeding, the person required to pay the support shall pay the support. The clerk, if the payment is in cash, or the state central collection unit, for all other forms of payment, shall collect from the individual, in addition to the payments, the fee specified in IC 33-37-5-6. [IC 31-16-21-1]

The clerk or state central collection unit shall collect a fee in addition to support and maintenance payments. The fee is fifty-five dollars ($55.00) for each calendar year.

The fee is due at the time that the first support or maintenance payment for the calendar year in which the fee must be paid is due. The clerk may not deduct the fee from a support or maintenance payment. Except as provided in IC 33-32-4-6 and IC 33-37-7-2(f), if a fee is collected under this section by the clerk, the clerk shall forward the fee to the county auditor in accordance with IC 33-37-7-12(a). [IC 33-37-5-6]

The clerk may collect any unpaid fee in a proceeding for contempt. [IC 31-16-21-1(c)]

TRANSFER OF PROCEEDINGS OF SUPPORT ORDER

IC 31-16-20 provides a statutory method for a transfer of the proceedings and orders for support of children. The order to transfer can be made only after a notice issued to the parent not having custody and a hearing is had on a petition setting out such facts: That the parent or other person having custody of such children resides in a different county than that in which the order was granted; that the other parent no longer resides or is not regularly found in such county; that it would be for the best interest of the children to order the proceedings with all papers and files pertaining to the order of support and certified copies of all such orders transferred to the court having jurisdiction over such matters in the county where the parent or other person having custody of those children resides.

The hearing shall be advanced on the docket and held promptly by the court or judge thereof in vacation. The court to which such proceedings are transferred shall accept the same and thereafter have jurisdiction over such children and matters relating to their support.

The proceedings that are transferred shall be docketed as other civil matters, and a civil costs fee as provided in IC 33-37-4-4 shall be collected. [IC 31-16-20-4]

APPLICATION OF ACT

Transfer of proceedings is applicable to cases pending in the court where the divorce was obtained or in any other to which such proceedings have been transferred. Any number of transfers may

be made, as the best interests of the said children require. [IC 31-16-20-7]