

## CHAPTER 8

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

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

DETERMINE PURPOSE

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

ENTERING RECEIPTS IN DOCKET

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

TRUST ITEMS

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

DISTRIBUTION OF ESTATE MONEY

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

TRANSFER AMOUNTS TO INDIVIDUALS IN REGISTER OF TRUST

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

### ENTERING MONEY IN PAYMENT OF JUDGMENTS

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

In addition to any other duties, a clerk shall do the following related to judgments:

(1) Collect and transfer additional judgments to a county auditor, fund number 1198, under IC 9-18-2-41 for additional excise tax.

(2) Deposit funds collected as judgments in the state highway fund under, IC 9-20-18-12 for overweight vehicles by depositing with the county auditor into fund 7103.

(3) Deposit funds in the conservation officer's fish and wildlife fund under IC 14-22-38-4, IC 14-22-38-5, and IC 14-22-40-8 for unlawful taking of a deer, wild turkey, other wild animal or unlawful shooting of a law enforcement decoy by semiannual remittance to the State Auditor.

(4) Deposit funds collected as judgments in the state general fund under IC 34-28-5-4 for infraction judgments by depositing with the county auditor into fund 7102. [IC 33-37-5-16]

### DISBURSING

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

### RELEASES

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

### TRANSCRIPTS TO BIND REAL ESTATE

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

### DEPARTMENT OF REVENUE AND DEPARTMENT OF WORKFORCE DEVELOPMENT WARRANTS

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

### WRITING OFFICIAL RECEIPT

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

### VALUE AND USE OF RECEIPT

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

### DISBURSEMENT ENTRIES

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

### POSTING TABLES OF FEES

A clerk shall post in a conspicuous place in their office, a table of their fees, or on failure to do so, shall have no right to demand or receive any fees for services rendered by them. [IC 33-32-2-7]

### TAXING COSTS

The clerk should use every precaution to tax, charge and collect the proper amount of fees chargeable in any court action. (See O.A.G. 16, 1964 - Fees and Costs Not Charged to State) State Court Administration has published a Case Type Quick Reference Guide on their website to assist clerks with specific case codes.

STATUTORY COURT COST FEES TO BE CHARGED CIRCUIT, SUPERIOR,  
PROBATE AND MUNICIPAL COURTS

<u>Case Type</u>	<u>Total Cost</u> <u>100%</u>	<u>Due State</u> <u>Semi-annually</u> <u>70%</u>	<u>Due County</u> <u>Monthly</u> <u>27%</u>	<u>Due City/Town</u> <u>Monthly</u> <u>3%</u>
Criminal Actions [IC 33-37-4-1] (Note 1):	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60
Infractions and Ordinance Violations [IC 33-37-4-2] (Note 2):	\$ 70.00	\$ 49.00	\$ 18.90	\$ 2.10
Juvenile Proceedings [IC 33-37-4-4] (Note 3):	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60
Civil Actions [IC 33-37-4-4]:	\$ 100.00	\$ 70.00	\$ 27.00	\$ 3.00
Small Claims [IC 33-37-4-5 and IC 33-37-4-6]:	\$ 35.00	\$ 24.50	\$ 9.45	\$ 1.05
Probate and Related Proceedings [IC 33-37-4-7]:	\$ 120.00	\$ 84.00	\$ 32.40	\$ 3.60

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

In addition, IC 33-37-5-17 requires the defendant to pay court costs of one hundred twenty dollars (\$120.00) where the court defers prosecution under IC 33-39-1-8.

The one hundred twenty dollars (\$120.00) would be distributed as follows:

<u>Total Cost</u> <u>100%</u>	<u>Due State</u> <u>Semiannually</u> <u>70%</u>	<u>Due County</u> <u>Monthly</u> <u>27%</u>	<u>Due City/Town</u> <u>Monthly</u> <u>3%</u>
<u>\$ 120.00</u>	<u>\$ 84.00</u>	<u>\$ 32.40</u>	<u>\$ 3.60</u>

Note 2. Instead of the infraction or ordinance violation costs prescribed by IC 33-37-4-2 (a), except for the automated record keeping-deferral/diversion fee, the clerk shall collect a deferral program fee if an agreement between a prosecuting attorney or an attorney for a municipal corporation and the person charged with a violation entered into under IC 34-28-5-1 (or IC 34-4-32-1 before its repeal) requires payment of those fees by the person charged with the violation. The deferral program fee is an initial user's fee of not to exceed fifty-two dollars (\$52.00) and a monthly user's fee of not to exceed ten dollars (\$10.00) for each month the person remains in the deferral program. [IC 33-37-4-2(e)]

In addition, IC 34-28-5-1 requires the defendant in the action to agree to pay court costs of seventy dollars (\$70.00) to the clerk of the court if the action involves a moving traffic offense (as defined in IC 9-13-2-110).

The seventy dollars (\$70.00) would be distributed as follows:

Total Cost	Due State Semiannually	Due County Monthly	Due City/Town Monthly
100%	70%	27%	3%
\$ 70.00	\$ 49.00	\$ 18.90	\$ 2.10

Note 3. Instead of the court costs fees prescribed by IC 33-37-4-3, the juvenile court may order each child who participates in a program of informal adjustment or the child's parents to pay an informal adjustment program fee of at least five dollars (\$5.00) but not more than fifteen dollars (\$15.00) for each month that the child participates in the program. [IC 31-37-9-9]

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

DOCUMENT FEES

For preparing a transcript or copy of any record, legal size or letter size page including a page only partially covered with writing the legislative body of a county may pass an ordinance reducing this fee. This does not apply to the use of enhanced access, an electronic device or fax transmission [IC 33-37-5-1]	\$ 1.00
For each certificate under seal attached in authentication of a copy of any record, paper or transcript [IC 33-37-5-3]	\$ 1.00
For preparing or recording a transcript of a judgment to become a lien on real estate [IC 33-37-5-4]	\$ 3.00

LICENSES

Marriage License (One or both individuals are residents of Indiana)	
For Family Violence and Victim Assistance [IC 33-32-5-1(a)]	\$ 10.00
For County General Fund [IC 33-32-5-1(b)]	<u>8.00</u>
Total	<u>\$ 18.00</u>

Marriage License (If neither of the individuals is a resident of Indiana)	
For Family Violence and Victim Assistance [IC 33-32-5-1(a)]	\$ 10.00
For County General Fund [IC 33-32-5-1(b)]	<u>50.00</u>

Total \$ 60.00

Distress Sale Under IC 25-18-1-6	
Based Upon Value of Inventory [IC 33-32-5-2]	
\$0 - \$25,000	\$ 40.00
\$25,000 - \$50,000	\$ 65.00
\$50,000 - \$75,000	\$ 100.00
\$75,000 and Over	\$ 150.00

### MISCELLANEOUS FEES

Tax Warrant Fees; For entering in the judgment docket, each warrant  
[IC 6-8.1-8-2] \$ 3.00

Department of Workforce Development Warrants [IC 22-4-29-8]:  
for Recording each Warrant \$ 3.00

Recognizance Bonds - Recording and Releasing:  
    When Recorded in a County Other Than Where Prosecution is Pending \$ 1.00  
    For Recording any Such Release [IC 35-33-8.5-9] \$ 0.50

Support and Maintenance Fee - Applies to an action in which the final court order  
requires a person to pay support or maintenance payments through the clerk. The fee  
is due at the time of the first support or maintenance payment each calendar year.  
[IC 33-37-5-6] \$ 55.00

Alcohol Abuse Deterrent Program Fee - Applies to criminal actions defined under  
[IC 9-30-9-8] - May not exceed \$ 400.00

Alcohol Abuse Deterrent Program Medical Fee - Applies to criminal actions, defined  
under [IC 9-30-9-8] - May not exceed \$ 150.00

The clerk shall collect the alcohol abuse deterrent program fee, or a medical fee, or both  
in a county that has established a Circuit Court Alcohol Abuse Deterrent Program Under  
IC 9-30-9, unless the court determines the defendant is indigent. [IC 33-37-5-11]

Document Storage Fee \$ 2.00  
Applies to all civil, criminal, infraction, and ordinance violation actions.

Document storage fees are remitted monthly to the County Auditor for deposit to the  
Clerk's Record Perpetuation Fund. [IC 33-37-5-20]

### Late Payment Fees

Applies to each action where a defendant is found, in a court that has a local court rule  
imposing a late payment fee, to have: committed a crime; violated a statute defining  
an infraction; violated an ordinance; or committed a delinquent act. The defendant is  
required to pay court costs, a fine, or civil penalty. The defendant is not indigent and  
fails to pay the costs, fine, or penalty in full before the later of the following: the end of  
the business day on which the court enters conviction or judgment; or the end of the  
period specified in a payment schedule set under rules adopted for the operation of

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Tax Warrant Fees; For entering in the judgment docket, each warrant  
the court.

\$ 25.00

A court may suspend this fee if it finds the defendant had good cause for failure to make timely payment.

The clerk of the circuit court shall monthly distribute 100% of late payment fees collected to the county auditor. If so directed by ordinance, the county auditor shall deposit 40% of the late payment fees in the Clerk's Record Perpetuation Fund and 60% into the County General Fund. If the county council has not adopted an ordinance, late payment fees are deposited in the County General Fund.  
[IC 33-37-5-22]

#### Sexual Assault Victims Assistance Fee

The court shall assess the sexual assault victim's assistance fee in certain sexual assault cases.

Until June 30, 2014

At Least \$500  
and Not More  
Than \$5,000

As of July 1, 2014

At Least \$250  
and Not More  
Than \$1,000

The clerk semiannually distributes 100% of the sexual assault victims assistance fee to the Auditor of State for deposit to the Sexual Assault Victim's Assistance Fund.  
[IC 33-37-5-23]

#### Small Claims Service Fee

For each Defendant Named or Added

#### Small Claims Garnishee Service Fee

\$ 10.00

The clerk for each garnishee defendant named or added that exceeds three distributes monthly to the County Auditor for deposit in the County General Fund. [IC 33-37-4-6]

#### Alternative Dispute Resolution Fee

\$ 20.00

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

The clerk distributes these fees each month to the county auditor for deposit into the alternative dispute resolution fund. [IC 33-23-6-1]

#### Sheriff Service of Process Fee

\$ 15.00

A party requesting service of a writ, an order, a process, a notice, a tax warrant, or any other paper completed by the sheriff shall pay a sheriff service of process fee. [IC 33-37-5-15(a)]

The statute states that the sheriff shall collect this fee one time per case. Sheriff's departments do not have case management systems so we have asked clerks to collect, account for, and remit this fee using their case management systems and will not take exception during an audit if the clerk does the collection and accounting for this fee.

It is our audit position that the fee be collected by the clerk of the court hearing the case and remitted to the county auditor for benefit of the sheriff's pension trust fund in the county where the case is heard regardless of which county or counties may be serving papers. This should not be construed to be a legal position but is the position we would take during an audit of the county.

This miscellaneous fee is separate from other monies the sheriff's pension trust fund may receive from the service of papers under IC 33-37-5-15(b) and IC 33-37-7-11, which are not the responsibility of the clerk to remit for deposit into the pension trust fund.

Public Defense Administration Fee	\$ 5.00
Applies to all proceedings in circuit, superior, probate, municipal, and small claims courts, except criminal, infractions, and ordinance violations unless a person is convicted of an offense; required to pay a Pretrial diversion fee; found to have committed an infraction; or found to have violated an ordinance. This fee does not apply to deferral program participants. [IC 33-37-5-21.2]	
Judicial Insurance Adjustment Fee	\$ 1.00
Applies to all proceedings in circuit, superior, probate, municipal, and small claims courts, except criminal, infractions, and ordinance violations unless a person is convicted of an offense; required to pay a Pretrial diversion fee; found to have committed an infraction; or found to have violated an ordinance. This fee does not apply to deferral program participants. [IC 33-37-5-25]	
Judicial Salaries Fee	\$20.00
Applies to all proceedings in circuit, superior, probate, and municipal courts, except criminal, infractions, ordinance violations and small claims unless a person is convicted of an offense; required to pay a Pretrial diversion fee; found to have committed an infraction; or found to have violated an ordinance. This fee does not apply to deferral program participants.	
Small Claims Proceedings [IC 33-37-5-26]	\$15.00
DNA Sample Processing Fee	\$ 2.00
Applies to each action in which a person is: convicted of an offense; required to pay a pretrial diversion fee; found to have committed an infraction; or found to have violated an ordinance. [IC 33-37-5-26.2]	
Court Administration Fee	\$ 5.00
Applies to all proceedings in circuit, superior, probate, municipal, and small claims courts, except criminal, infractions, and ordinance violations unless a person is convicted of an offense; required to pay a Pretrial diversion fee; found to have committed an infraction; or found to have violated an ordinance. This fee does not apply to deferral program participants. [IC 33-37-5-27]	
Civil Service Fee	\$10.00 each
For each additional defendant that is not a garnishee defendant named other than the first named defendant, whether included in the original action filed or added.	
This fee is not applicable to an action in which service is made by publication in accordance with Indiana Trial Rule 4.13. [IC 33-37-5-28]	
Civil Garnishee Service Fee	\$10.00 each
For each garnishee or garnishee defendant named or added after three (3).	
This fee is not applicable to an action in which service is made by publication in accordance with Indiana Trial Rule 4.13. [IC 33-37-5-28]	
Pro Bono Legal Services Fee	\$ 1.00

Applies to civil, small claims and probate cases. [IC 33-37-5-31]

Mortgage Foreclosure Counseling and Education Fee \$50.00  
 Applies to a party filing an action to foreclose a mortgage. This fee expires January 1, 2015. [IC 33-37-5-32]

### COUNTY USER FEES

Informal Adjustment Program Fee At Least \$5 but Not More Than \$15 Per Month.  
 The juvenile court may order each child who participates in a program of informal adjustment or the child's parents to pay this fee for each month that the child participates in the program in lieu of court cost fees prescribed by IC 33-37-4-3. This is the same fee discussed on page 7-5. [IC 31-37-9-9]

Marijuana Eradication Program Fee - Applies only to Criminal Actions Not more than \$ 300.00  
 The clerk shall collect the marijuana eradication program fee set by the court under IC 15-16-7-8 if: (1) a weed control board has been established under IC 15-16-7-3, and (2) the person has been convicted of an offense under IC 35-48-4 in a case prosecuted in that county. [IC 33-37-5-7]

Alcohol and Drug Services Program Fee – Applies to criminal, infraction and ordinance violations, except cases excluded under IC 33-37-4-2(d) May not exceed \$ 400.00

The clerk shall collect the alcohol and drug services program fee set by the court under IC 12-23-14-16 in a county that has established an alcohol and drug services program. [IC 33-37-5-8]

Law Enforcement Continuing Education - Applies to any action in which a defendant is found to have committed a crime, violated a statute defining an infraction, or violated an ordinance of a city or town. \$ 4.00

The clerk shall collect a law enforcement continuing education program fee of four dollars (\$4.00) [IC 33-37-5-8]

Pretrial Diversion Program Fee - Applies to criminal actions

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

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

Deferral Program Fee - Applies to infractions or ordinance violations

The clerk shall collect a deferral program fee if an agreement between a prosecuting attorney and the person charged with a violation under IC 34-28-5-1 requires payment of those fees by the person charged with the violation.

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

Informal Adjustment Program Fee

The juvenile court may order each child who participates in a program of informal adjustment or the child's parents to pay this fee for each month that the child participates in the program in lieu of court cost fees prescribed by IC 33-37-4-3. This is the same fee discussed on page 7-5. [IC 31-37-9-9]

At Least \$5 but  
Not More Than  
\$15 Per Month.

Jury Fee  
Applies to each action in which a defendant is found to have committed a crime, infraction or violated an ordinance. This program fund and its uses are discussed on page 7-25. [IC 33-37-5-19] \$ 2.00

Problem Solving Court Fee Local Court Rule  
The problem solving court fees are charged as ordered by the court in accordance with the schedule adopted by local court rule only after the problem solving court has been properly established by the local court and approved by the Indiana Judicial Center under IC 33-23-16. [IC 33-37-5-24]

### STATE USER FEES

Alcohol and Drug Countermeasures Fee \$ 200.00  
Applies to actions in which a person is found to have committed an offense under IC 9-30-5, violated a statute defining an infraction under IC 9-30-5, or been adjudicated a delinquent that would be an offense under IC 9-30-5, if committed by an adult, and the person's driving privileges are suspended as a result of the finding.

The clerk shall also collect an alcohol and drug countermeasures fee in each action in which:

- (1) a person is charged with an offense under IC 9-30-5; and
- (2) by a plea agreement or an agreement of the parties that is approved by the court:
  - (A) judgment is entered for an offense under:
    - (i) IC 9-21-8-50;
    - (ii) IC 9-21-8-52;
    - (iii) IC 7.1-5-1-3; or
    - (iv) IC 7.1-5-1-6; and
  - (B) the defendant agrees to pay the alcohol and drug counter measures fee. [IC 33-37-5-10]

Drug Abuse, Prosecution, Interdiction and Corrections Fee At Least \$200 and Not More Than \$1,000  
Applies to persons convicted of offenses under IC 35-48-4 (offenses relating to controlled substances). [IC 33-37-5-9]

Child Abuse Prevention Fee \$ 100.00  
In each criminal action in which a person is found to have committed the offense of murder; causing suicide; voluntary manslaughter, reckless homicide; battery; rape, criminal deviate conduct; child molesting; child exploitation; various sexual gratification; child solicitation; incest; neglect of a dependent; child selling; or child seduction, and the victim of the offense is less than eighteen (18) years of age. [IC 33-37-5-12]

Domestic Violence Prevention and Treatment Fee \$ \$50.00  
In each criminal action in which a person is found to have committed the offense of murder, causing suicide; voluntary manslaughter; reckless homicide; battery; or rape, and the victim: is a spouse or former spouse of the person who committed the offense; is or was living as if a spouse of the person who committed the offense of domestic battery under subdivision (1)(F); or has a child in common with the person who committed the offense of domestic battery under subdivision (1)(F). [IC 33-37-5-13]

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Alcohol and Drug Countermeasures Fee

\$ 200.00

**Highway Worksite Zone Fee**

Applies to criminal, infraction or ordinance violation actions that are traffic offenses (as defined in IC 9-13-2-183). \$ 0.50

If the criminal action infraction or infraction is exceeding a worksite speed limit (as provided in IC 9-21-5-2 and authorized by IC 9-21-5-3) or failure to merge (as provided in IC 9-21-8-7.5) and the judge orders the clerk to collect the fee for exceeding a worksite speed limit. [IC 33-37-5-14] \$ 25.50

**Safe Schools Fee**

In each criminal action in which a person is convicted of an offense in which the possession or use of a firearm was an element of the offense, the court shall assess a safe schools fee. [IC 33-37-5-18] At Least \$200 and Not More Than \$1,000

**Automated Record Keeping Fee**

Applies to all civil, criminal, infraction, and ordinance violation actions.

Automated Record Keeping Fee \$ 7.00

Automated Record Keeping Deferral/Diversion Fee \$ 5.00

The clerk shall collect an automated record keeping fee of:

- (1) seven dollars (\$7) in all actions except actions described in subdivision (2);
- (2) five dollars (\$5) with respect to actions resulting in the accused person entering into a:
  - (A) pretrial diversion program agreement under IC 33-39-1-8; or
  - (B) deferral program agreement under IC 34-28-5-1; and
- (3) five dollars (\$5) after June 30, 2015.

We will refer to the five dollar (\$5) fee in number (2) above as the automated record keeping deferral/diversion fee. The accounting for this fee can be different than the accounting and remittance of the automated record keeping fee in subdivision (1) above. Therefore, we will ask that these fees be kept separate from each other.

IC 33-37-7-2 requires the clerk to semiannually distribute 25% of the drug abuse, prosecution, interdiction, corrections, and alcohol and drug countermeasures fees collected to the Auditor of State for deposit in the state user fee fund. The remaining 75% of these fees shall be distributed to the county auditor monthly for deposit into the county's drug free community fund, number 1148. 100% of the child abuse prevention fees, domestic violence prevention and treatment fees, safe schools fees, and the highway work zone fees are to be distributed semiannually to the Auditor of State, for deposit into the state user fee fund.

For a county operating under the state's automated judicial system, one hundred percent (100%) of the automated record keeping fee; not the automated record keeping deferral/diversion fee is to be remitted semiannually to the State Auditor for the state user fee fund. Before July 1, 2015, in a county not operating under the state's automated judicial system, five dollars (\$5) of the automated record keeping fee is to be deposited to the state user fee fund by semiannual remittance to the State Auditor's office. The remaining \$2 of the automated record keeping fee prior collected prior to July 1, 2015, in a county that does not use Odyssey is to be deposited with the county auditor monthly into the clerk's record perpetuation fund, number 1119.

The clerk of a circuit court shall distribute semiannually to the auditor of state as the state share for deposit in the homeowner protection unit account established by IC 4-6-12-9 one hundred percent (100%) of the automated record keeping deferral/diversion fees collected under IC 33-37-5-21 with respect to actions resulting in the accused person entering into a pretrial diversion program agreement under IC 33-39-1-8 or a deferral program agreement under IC 34-28-5-1.

After June 30, 2015, a county not operating under the states automated judicial system, will distribute eighty percent (80%) of the automated record keeping fee; not including the automated record keeping deferral/diversion fees to the state user fee fund by semiannual remittance to the State Auditor. Twenty percent (20%) will be deposited at the county auditor's office into the clerk's record perpetuation fund for these counties. Counties using Odyssey will continue to deposit one hundred (100%) of the automated record keeping fees to the state user fee fund semiannually.

#### SUPPLEMENTAL PUBLIC DEFENDER SERVICES FUND

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

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

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

#### BAIL (10% CASH BONDS) - ADMINISTRATIVE FEE

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

#### COSTS AND FEES

For your convenience we have included quick reference guides at the back of this chapter for:  
 7A-Costs and fees by case type; and  
 7B-Distribution of costs and fees.

#### APPEAL FROM CITY COURT AND TOWN COURT

An appeal from a judgment of a city court may be taken to the circuit or superior court of the county and tried de novo.

An appeal from a judgment of a town court may be taken to the superior or circuit court of the county within thirty (30) days from the rendition of the judgment. [IC 33-35-5-9]

**NOTE:** TRIAL DE NOVO RULES 1, 2, and 3, require city and town courts receiving such appeals to vacate judgments within 15 days of the entry of the judgment. All court costs collected by a city or town court in a trial de novo case shall be retained. Any judgments or fines collected shall be sent to the clerk of the circuit court.

### APPEAL BY PRISONER

A prisoner against whom punishment is adjudged by a city court may appeal to the circuit court of the county, within thirty (30) days after the judgment. If the prisoner, within the thirty (30) days, enters into recognizance for his appearance in court and causes to be filed in the court, with forty-five (45) days, all other papers, documents, and transcripts necessary to complete his appeal, then the appeal stays all further proceedings on the judgment in the court below. However, the prisoner may remain in jail on the prisoner's sentence instead of furnishing a recognizance and an appeal without recognizance does not stay the execution of the court below. [IC 33-35-5-9]

### BAIL AND BAIL PROCEDURES

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

- (1) Require the defendant to execute a bail bond with sufficient solvent sureties or to deposit cash or securities in an amount equal to the bail, or to execute a bond secured by real estate in the county where thirty-three hundredths (.033) of the true tax value less encumbrances is at least equal to the amount of the bail, post a real estate bond or perform any combination of these.

If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes a deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees and restitution that the court may order the defendant to pay if convicted. The defendant must also pay the special death benefit fee.

- (2) Require the defendant to execute a bail bond by depositing cash or securities with the clerk of the circuit court, in an amount not less than ten percent (10%) of the bail; if the defendant is convicted and an agreement that allows the court to retain all or part of the cash or securities to pay fines, costs, fees and restitution that the court may order the defendant to pay if convicted. If the defendant is convicted, the court may retain all or part of the cash or securities to pay fines, costs, fees, and restitution, if ordered by the court, publicly paid costs of representation and the special death benefit fee. A portion of this deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as and administrative fee.
- (3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.
- (4) Require the defendant to refrain from any direct or indirect contact with an individual and if the defendant is charged with an offense under IC 35-46-3, any animal belonging to the individual.
- (5) Place the defendant under reasonable supervision of a probation officer, pretrial services agency or other appropriate public official. If the court places the defendant under supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under IC 35-33-8-3.3.
- (6) Release the defendant into the care of some qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court.

(7) Release the defendant on personal recognizance.

- (8) Require a defendant charged with an offense under IC 35-46-3 to refrain from owning harboring, or training an animal.
- (9) Impose any other reasonable restrictions designed to assure the defendant's appearance in court or the physical safety of another person or the community. [IC 35-33-8-3.2]

Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining from a 10% cash deposit to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3. Disposition occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

The clerk of the court shall: (1) collect a fee of five dollars (\$5) from each bond or deposit that is the full amount of the bail as required under IC 35-33-8-3.2(a)(1); and (2) retain a fee of five dollars (\$5) from each 10% cash deposit allowed by IC 35-33-8-3.2(a)(2). The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the Indiana public retirement system for deposit in the special death benefit fund. This is done by monthly deposit with the county auditor into fund 7104, Special Death Benefit Fee Fund. The fee required by subdivision (2) is in addition to the administrative fee that may be retained by the clerk. With the approval of the clerk of the court, the county sheriff may collect the bail posted. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

When a court imposes a condition of bail described in IC 35-33-8-3.2(a)(4), where the defendant is to refrain from contact with an individual or animal belonging to the individual: the clerk of the court shall comply with IC 5-2-9 regarding protective order depositories; and the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

#### PRETRIAL SERVICES FEE

If a defendant who has a prior unrelated conviction for any offense is charged with a new offense and placed under the supervision of a probation officer or pretrial services agency, the court may order the defendant to pay the pretrial services fee if:

- (1) the defendant has the financial ability to pay the fee; and
- (2) the court finds by clear and convincing evidence that supervision by a probation officer or pretrial services agency is necessary to ensure the:
  - (A) defendant's appearance in court; or
  - (B) physical safety of the community or of another person.

If a clerk of a court collects a pretrial services fee, the clerk may retain not more than three percent (3%) of the fee to defray the administrative costs of collecting the fee. The clerk shall deposit amounts retained under this subsection in the clerk's record perpetuation fund established under IC 33-37-5-2.

If a clerk of a court collects a pretrial services fee from a defendant, upon request of the county auditor, the clerk shall transfer not more than three percent (3%) of the fee to the county auditor for deposit in the county general fund.

The court may order a defendant who is supervised by a probation officer or pretrial services agency and charged with an offense to pay:

- (1) an initial pretrial services fee of at least twenty-five dollars (\$25) and not more than one hundred dollars (\$100);
- (2) a monthly pretrial services fee of at least fifteen dollars (\$15) and not more than thirty dollars (\$30) for each month the defendant remains on bail and under the supervision of a probation officer or pretrial services agency; and
- (3) an administrative fee of one hundred dollars (\$100); to the probation department, pretrial services agency, or clerk of the court if the defendant meets the conditions set forth above to be subject to a pretrial services fee.

The probation department, pretrial services agency, or clerk of the court shall collect the administrative fee before collecting any other pretrial services fees. Except for the 3% shares that may be retained for the clerk's record perpetuation fund and the county general fund, all money collected by the probation department, pretrial services agency, or clerk of the court under this section shall be transferred to the county treasurer, who shall deposit fifty percent (50%) of the money into the county supplemental adult probation services fund and fifty percent (50%) of the money into the county supplemental public defender services fund (IC 33-40-3-1).

A defendant who is charged with more than one (1) offense and who is supervised by the probation department or pretrial services agency as a condition of bail may not be required to pay more than: one (1) initial pretrial services fee; and one (1) monthly pretrial services fee per month.

A probation department or pretrial services agency may petition a court to: impose a pretrial services fee on a defendant; or increase a defendant's pretrial services fee; if the financial ability of the defendant to pay a pretrial services fee changes while the defendant is on bail and supervised by a probation officer or pretrial services agency. An order to pay a pretrial services fee under this section:

- (1) is a judgment lien that, upon the defendant's conviction:
  - (A) attaches to the property of the defendant;
  - (B) may be perfected;
  - (C) may be enforced to satisfy any payment that is delinquent under this section; and
  - (D) expires; in the same manner as a judgment lien created in a civil proceeding;
- (2) is not discharged by the disposition of charges against the defendant or by the completion of a sentence, if any, imposed on the defendant;
- (3) is not discharged by the liquidation of a defendant's estate by a receiver under IC 32-30-5; and
- (4) is immediately terminated if a defendant is acquitted or if charges against the defendant are dropped.

If a court orders a defendant to pay a pretrial services fee, the court may, upon the defendant's conviction, enforce the order by garnishing the wages, salary, and other income earned by the defendant.

If a defendant is delinquent in paying the defendant's pretrial services fee and has never been issued a driver's license or permit, upon the defendant's conviction, the court may order the bureau of motor vehicles to not issue a driver's license or permit to the defendant until the defendant has paid the defendant's delinquent pretrial services fee. If a defendant is delinquent in paying the defendant's pretrial services fee and the defendant's driver's license or permit has been suspended or revoked, the court may order the bureau of motor vehicles to not reinstate the defendant's driver's license or permit until the defendant has paid the defendant's delinquent pretrial services fee.

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

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

An undertaking is valid if it states: the court where the defendant is to appear; the amount of the bail; and that it was made before an official legally authorized to take the bond.

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

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

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

If a defendant does not appear as provided in the bond, the court shall issue a warrant for the defendant's arrest and order the bail agent and the surety to surrender the defendant to the court immediately and the clerk shall less than 30 days after the defendant's failure to appear mail notice of the order to both the bail agent and the surety at each of the addresses indicated in the bonds. The bail agent must produce the defendant or prove that the appearance of the defendant was prevented by the defendant's illness or death, because the defendant was at the scheduled time of appearance or currently is in the custody of the United States, a state, or a political subdivision thereof, or because the required notice was not given, and the defendant's absence was not with the consent or connivance of the sureties.

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

- (1) If compliance occurs more than one hundred twenty (120) days but not more than one hundred eighty (180) days after the mailing of notice, the late surrender fee is twenty percent (20%) of the face value of the bond.

- (2) If compliance occurs more than one hundred eighty (180) days but not more than two hundred ten (210) days after the mailing of notice, the late surrender fee is thirty percent (30%) of the face value of the bond.

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

All late surrender fees are due as of the date of compliance or three hundred sixty-five (365) days after the mailing of notice, whichever is earlier, and shall be paid by the surety when due. If the surety fails to pay, then the late surrender fees shall be paid by the commissioner of the Department of Insurance as provided in IC 27-10-2-12(f).

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

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

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

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

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

- (1) The date on which the defendant originally failed to appear as provided in the bond.

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

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

Fifty percent (50%) of the late surrender fees collected shall be deposited in the police pension trust fund established under IC 36-8-10-12, county fund 5501, and fifty percent (50%) shall be deposited in the county extradition fund established under IC 35-33-14, county fund 1155. [IC 27-10-2-12(j)]

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

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

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

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

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

It shall be the duty of the clerk to provide upon request, without charge or fee, one (1) certified copy of any record if it is shown that the certified copy is necessary to secure benefits to members of the military service, honorably discharged veterans, or their surviving spouses or dependents under any federal or state law. [IC 10-17-3-2]

Honorably discharged veterans includes persons placed on inactive duty under honorable conditions but not discharged from military service. [IC 10-17-3-21]

### CERTIFIED COPY FEES

All fees for certified copies of record in any action or of any filing belong to and are the property of the county. They shall be deposited daily and remitted to the county general fund, number 1000, at least monthly.

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

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

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

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

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

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

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

### CERTIFIED COPY FEES - PRAECIPE

Form 138, "Record of Instruments Copied or Proofed" was prescribed to account for certified fees. There must be a signed praecipe each time there is a request for a certified copy of any record or instrument. This is also true when a prepared copy of any record is submitted for proofing and certification. The praecipe record prescribed requires all necessary information to be entered therein both by the requester and by the clerk. There is also a place for the entry of the receipt number and date of payment. If a certified copy is prepared by the clerk or prepared by some other person and submitted for proofing and certification, an official receipt for the payment thereof is to be written with a cross reference listed on the praecipe. This is for the specific purpose of auditing such receipts.

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

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

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

docket number and page and a cross reference in the docket or other record to the identification number and date of the praecipe.

### CONSOLIDATION CAUSES

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

### COSTS

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

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

### COSTS CANNOT BE REMITTED

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

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

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

## GENERAL COURT COST PROVISIONS CRIMINAL ACTIONS

### CRIMINAL ACTIONS - COSTS

A person who is convicted of an offense is liable for costs. Costs are not a part of the sentence and may be suspended only after the court has conducted a hearing and determined that the convicted person is indigent.

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

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

### HEARING TO DETERMINE INDIGENCY

Except as stated below, when the court imposes costs, it shall conduct a hearing to determine whether the convicted person is indigent. If the person is not indigent, the court shall order that the person pay: the entire amount at the time sentence is pronounced; the entire amount at some later date; or specified parts at designated intervals.

A court may impose costs and suspend payment of all or part of the costs until the convicted person has completed all or part of the sentence. If the court suspends payment of the costs, the court shall conduct a hearing at the time the costs are due to determine whether the convicted person is indigent. If the convicted person is not indigent, the court shall order the convicted person to pay the costs: at the time the costs are due; at some later date; or at designated intervals.

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

If, after a hearing, the court determines that a convicted person is able to pay part of the costs of representation, the court shall order the person to pay an amount of not more than the cost of the defense services rendered on behalf of the person. The clerk shall deposit the amount paid by a convicted person under this subsection in the county's supplemental public defender services fund established under IC 33-40-3-1, county fund number 1200. A person ordered to pay part of the costs of representation has the same rights and protections as those of other judgment debtors under the Constitution of the State of Indiana and Indiana law. [IC 33-37-2-3]

### DEFAULT IN PAYMENT OF COSTS

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

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

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

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

### FINES OR PENALTY IN ADDITION TO COSTS

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

### COSTS - OTHER - WHEN REQUIRED

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

### FEE BILLS - COLLECTION OF COSTS

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

### FEE BILLS - ISSUANCE AND COLLECTION

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

The sheriff shall:

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

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

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

### FEE - WHEN PAYABLE

The docket or filing fee is payable when such civil action or proceeding is filed and made a matter of record by a docket, except in those cases specifically exempt by the act or in actions not included within the legal definition thereof.

### FILING FEE NOT REQUIRED FOR PETITION FOR REINSTATEMENT

A filing fee will not be required upon redocketing a case.

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

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

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

## FINES AND FORFEITURES - REMISSION OF

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

Article 5, Section 17, of the State Constitution provides in part that the Governor "shall have power to remit fines and forfeitures under such regulations as may be prescribed by law; . . ." Attention is also directed to IC 11-9-2-1, whereupon it is apparent that the Governor has authority to remit fines and forfeitures upon proper application.

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

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

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

Fines and forfeitures are remitted to the state common school fund through deposit by the clerk with the county treasurer. The report of collections to the county auditor for these remittances should be to the state fines and forfeitures fund, number 7101 on a monthly basis.

## GENERAL COURT COST PROVISIONS CIVIL ACTIONS

### CIVIL ACTIONS - COSTS WHEN NOT REQUIRED

#### Actions Brought by or on Behalf of the State or any Political Subdivision

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

#### Exemption Because of Poverty

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

If a person brings a civil action or petition for the appointment of a guardian under IC 29-3-5, a clerk shall waive the payment of required fees or other court costs by the person without court approval if:

- (1) the person is represented by an attorney:
  - (A) who: is employed by Indiana Legal Services or another civil legal aid program; or
  - (B) who: is serving as a pro bono attorney; and obtained the person as a client through a direct referral from a pro bono district associated with one (1) of the fourteen (14) administrative districts in Indiana established by the Indiana Rules of Court Administrative Rule 3(a); and
- (2) the attorney files a statement with the clerk that:
  - (A) seeks relief from paying the required fees or other court costs;
  - (B) declares that the person believes that the person is entitled to the redress sought in the action;
  - (C) sets forth briefly the nature of the action;
  - (D) is accompanied by an approved affidavit of indigency ; and
  - (E) is signed by the attorney.

This section does not prohibit a court from reviewing and modifying a finding of indigency by the court or a clerk if a person who received relief from the payment of required fees or other court costs ceases to qualify for the relief. [IC 33-37-3-2]

#### PARTY ENTITLED TO RECOVER COSTS

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

#### PREPAYMENT NOT REQUIRED IN APPEALS

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

#### COURT COSTS INCLUDE SERVICE OF PROCESS BY CERTIFIED MAIL

Court cost fees under this chapter include service of process by certified mail, unless service by sheriff is requested by the person who institutes the action. The sheriff service of process fee is included in the miscellaneous fees discussed earlier in this chapter and in IC 33-37-5-15.

#### PARTY ENTITLED TO RECOVER PRIVATE SERVICE OF PROCESS FEE

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

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

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



## MISCELLANEOUS GENERAL COURT COST PROVISIONS

### PREPAYMENT WHEN NOT REQUIRED

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

### COURT COST FEES - INFRACTIONS

The fees prescribed by IC 33-37-4-1 are costs for purposes of IC 34-28-5-4 and may be collected from a defendant against whom conviction is entered. A fine or penalty imposed is in addition to costs. [IC 33-37-2-5]

### CHANGE OF VENUE COURT COST FEE

The clerk of the court from which the action is transferred shall collect from the party seeking a change of venue a fee equal to that required by: IC 33-37-4-4 for civil actions; IC 33-37-4-6 for small claims cases; or IC 33-37-4-7 for probate cases. The clerk of the transferring court shall forward the fee to the clerk of the court to which the action is transferred. [IC 33-37-4-8]

### PUBLICATION REQUIREMENTS

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

### JUVENILE COURT - PREGNANT MINORS

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

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

When service of process is required of a nonresident operator of a motor vehicle growing out of an accident or collision on Indiana streets or highways or any other place within this state, such service must be upon the Secretary of State. The Secretary of State is deemed to be the appointed attorney of the nonresident for purposes of service of process. Such appointment of the Secretary of State shall be irrevocable and binding upon the executor or administrator of the nonresident. Service of such process shall be made by leaving a copy thereof, with the fee of \$10.00, for such defendant to be served, with the Secretary of State or in that office. [IC 23-1-18-3 and IC 34-33-3-1]

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

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

PATERNITY

If proceedings are brought pursuant to IC 31-14, the court may tax as costs the reasonable expenses of any medical tests. Such proceedings are civil actions and not criminal. Therefore, the costs to be taxed are the same as are required to be charged and collected at any other civil action.

Upon the filing of a petition to establish paternity, the clerk of the court shall prepare a notice of the filing on a form prescribed and furnished by the State Department of Health. This notice must be forwarded to the State Department of Health not later than five (5) days after a petition to establish paternity has been filed.

Upon a finding that a man is a child's biological father, the clerk of the court shall prepare a record of the paternity determination on a form prescribed and furnished by the State Department of Health. Not later than the tenth day of each month, the clerk of the court shall forward to the State Department of Health the following:

- (1) Each record of a paternity determination entered during the preceding month.
- (2) Each order entered during the preceding month indicating that a court has set aside a paternity determination.
- (3) Any other related reports that the state department of health requires. [IC 31-14-9]

STATEMENT WITH REMITTANCE - CHANGE OF VENUE

The clerk remitting the costs is required to furnish a statement with the remittance showing the case number of the county of origin, the title of the case and the items of costs paid. A copy of the Change of Venue Claim, County Form 40A, is sufficient for this remittance statement. [IC 34-35-6-2]

TRUSTS - PUBLIC AND BENEVOLENT

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

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

VEHICLE LICENSE - ADDITIONAL EXCISE TAX JUDGMENTS

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

The State Board of Accounts has prescribed General Form 367 (1984), Clerk's Report to Auditor

of Additional Judgments For Excise Tax. We recommend monthly filing to eliminate the necessity of carrying these items in trust.

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

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

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

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

## HIGHWAY WORKSITE ZONE JUDGMENTS

Notwithstanding IC 34-28-5-4(b), a judgment for the infraction of violating a speed limit set out in IC 9-21-5-11 must be entered as follows:

1. If the person has not previously committed the infraction of violating a speed limit in a worksite zone, a judgment of at least three hundred dollars (\$300).
2. If the person has committed one (1) infraction of violating a speed limit in a worksite zone in the previous three (3) years, a judgment of at least five hundred dollars (\$500).
3. If the person has committed two (2) or more infractions of violating a speed limit in a worksite zone in the previous three (3) years, a judgment of one thousand dollars (\$1,000).

IC 9-21-8-56 sets out misdemeanor penalties for cases involving reckless and aggressive driving in a work zone.

Notwithstanding IC 34-28-5-5(c), the funds collected as judgments for the aforementioned infractions shall be transferred to the Indiana Department of Transportation to pay the costs of hiring off duty police officers to perform the duties described in IC 8-23-2-15(b). These judgments are different than the highway worksite zone fee which is a state user fee. The judgments are remitted to the State semi-annually by the clerk.

## WITNESS FEES

### Criminal Actions

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

Other Actions

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

Clerk to Forward Claims

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

Payment by County Auditor or City or Town Fiscal Officer

The county auditor or city or town fiscal officer shall disburse juror or witness fees. The county auditor shall forward the fee to the person within forty-five (45) days after receiving a claim for the fee. [IC 33-37-10-4 and IC 33-37-7-12]

JURY FEES

Jurors of circuit, superior, county, probate, and members of a grand jury are entitled to fees equal to the mileage rate paid to state officers for each mile necessarily traveled to and from the court unless the county has adopted an ordinance providing for the payment of parking fees incurred by jurors. Once the ordinance is adopted, the county may pay parking fees in lieu of juror mileage. The juror is also paid at the rate of fifteen dollars (\$15) for each day the juror is in actual attendance in court until the jury is impaneled, and forty dollars (\$40) for each day the juror is in actual attendance after impaneling and until the jury is discharged.

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

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

Clerk to Forward Claims

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

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

PUNITIVE DAMAGE AWARDS

Except as provided in IC 13-25-4-10, when a finder of fact announces a verdict that includes a punitive damage award entered in a civil action, the party against whom the judgment was entered shall notify the office of the Attorney General of the punitive damages and pay the punitive damage award to the clerk of the circuit court where the action is pending.

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

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

The office of the Attorney General may negotiate and compromise the State's share of the punitive damage award. The State's interest in the award is effective when a finder of fact announces a verdict that includes punitive damages.