

IC 33-31

ARTICLE 31. PROBATE COURTS

IC 33-31-1

Chapter 1. St. Joseph County Probate Court

IC 33-31-1-1

Establishment of court

Sec. 1. There is established a probate court in St. Joseph County known as the St. Joseph Probate Court. The court shall be presided over by one (1) judge to be chosen as provided in this chapter.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-2

Court of record; seal

Sec. 2. The court:

- (1) is a court of record; and
- (2) shall have a seal and device, as the judge may choose, with the name of the county on its face. A description and impression of the seal and device shall be spread on the order book of the court.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-3

Judge; election; vacancies; appointment

Sec. 3. (a) The court consists of one (1) judge, to be elected by the legal voters of the county for a term of six (6) years:

- (1) beginning on the first day of January following the election of the judge; and
- (2) continuing until the successor of the judge is elected and qualified.

The election must occur at the time of the general election every six (6) years.

(b) The judge shall be commissioned by the governor in the same manner as judges of the circuit court. Vacancies occurring in the office of judge of the probate court shall be filled by appointment by the governor, in the same manner as vacancies in the office of judge of the circuit court.

(c) To be eligible to hold office as judge of the court, a person must be a resident of St. Joseph County.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-4

Clerk; sheriff

Sec. 4. The clerk of the circuit court and the sheriff of the county where the court is organized shall be the clerk and sheriff of the probate court. The clerk and the sheriff are each entitled to fees for their services as are allowed in the circuit court for similar services.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-5

Clerk and sheriff; duties and liability; application of laws

Sec. 5. (a) The sheriff shall attend the court. The clerk and the sheriff shall discharge all the duties pertaining to their respective offices required by law in the circuit court.

(b) All laws:

- (1) prescribing the duties and liability of the officers;
- (2) prescribing the mode of proceeding against either or both of the officers for any neglect of official duty; and
- (3) allowing fees and providing for the collection of the fees;

in the circuit court, extend to the probate court, as applicable.

As added by P.L.98-2004, SEC.10. Amended by P.L.78-2014, SEC.5.

IC 33-31-1-6

Sessions of court

Sec. 6. The probate court shall hold sessions at the courthouse of the county, or at any other convenient place as the court designates in the county. The county commissioners shall provide suitable quarters for the sessions.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-7

Adjournment of court

Sec. 7. The judge of the court may adjourn the same on any day previous to the expiration of the time for which it may be held, and also from any one (1) day in the term over to any other day in the same term, if in the opinion of the judge, the business of the court will allow.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-8

Trial extending beyond term of court

Sec. 8. When a trial is begun and in progress at the time when by law, the term of the court would expire, the term shall be extended until the close of the trial.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-9

Jurisdiction

Sec. 9. All probate courts have:

- (1) original and concurrent jurisdiction in all civil cases and in all criminal cases;
- (2) de novo appellate jurisdiction of appeals from city and town courts; and
- (3) in Marion County, de novo appellate jurisdiction of appeals from township small claims courts established under IC 33-34.

As added by P.L.98-2004, SEC.10. Amended by P.L.201-2011, SEC.28.

IC 33-31-1-10

Repealed

(Repealed by P.L.201-2011, SEC.115.)

IC 33-31-1-11

Judge acting as circuit court or superior court judge

Sec. 11. A judge of the probate court may act as judge of any circuit court or superior court upon the trial of any cause or proceeding, when:

- (1) the judge of the circuit or superior court may be incompetent to try the cause; or
- (2) a change of venue is granted for objection to the judge.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-12

Appointment of temporary judge

Sec. 12. (a) If the judge of the probate court is unable to attend and preside at any term of the court, or during any part of a term, the judge may appoint, in writing, an attorney eligible to the office of the judge, at the term or part of the term.

(b) A written appointment shall be entered of record in the court.

(c) If the appointee is not a judge of a court of record, the appointee shall take the same oath required by law of judges of the probate court.

(d) The appointee has the same power and authority during the continuance of the appointment of the judge as a regularly elected judge of the court.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-13

Compensation of judge pro tem

Sec. 13. (a) When a person is appointed judge pro tem under this chapter, the appointee is entitled to ten dollars (\$10) for each day the appointee serves as the judge to be paid:

- (1) out of the county treasury of the county where the probate court is held;
- (2) upon the warrant of the county auditor; and
- (3) based upon the filing of a claim approved by the judge of the court.

(b) Any amount more than five hundred dollars (\$500) allowed to a judge pro tem during any year shall be deducted by the board of county commissioners from the regular annual salary of the judge of the probate court making the appointment unless the judge pro tem is appointed on account of change of venue, relationship, interest as former counsel, or absence of judge in case of serious sickness of the judge or a family member of the judge.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-14

Process of court

Sec. 14. The process of the court must:

- (1) have the seal affixed;
- (2) be attested, directed, served, and returned; and
- (3) be in form as is or may be provided for process issuing from the circuit court.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-15

Court of record; force and effect of judgment, orders, and proceedings

Sec. 15. (a) The probate court is a court of record and of general jurisdiction.

(b) The court's judgments, decrees, orders, and proceedings:

- (1) have the same force and effect as those of the circuit court; and
- (2) shall be enforced in the same manner.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-16

Judicial powers

Sec. 16. (a) The judge of the court:

- (1) may make and adopt rules and regulations for conducting the business of the court, not repugnant to Indiana law; and
- (2) has all the power incident to a court of record and of general original jurisdiction, in relation to the attendance of witnesses, the punishment of contempts, and enforcing its orders.

(b) The judge of the court may:

- (1) administer oaths;
- (2) take and certify acknowledgments of deeds; and
- (3) give all necessary certificates for the authentication of the records and proceedings in the court.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-17

Dockets; books and records

Sec. 17. Under the direction of the judge, the clerk shall provide for court order books, judgment dockets, execution dockets, fee books, and other books, records, and supplies as may be necessary. All books, papers, and proceedings of the court shall be kept distinct and separate from those of other courts.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-18

Power of judge same as circuit court

Sec. 18. The judge of the court has the same power as the judge of the circuit court of the county to:

- (1) grant restraining orders and injunctions;
- (2) issue writs of habeas corpus, and of mandate and prohibition; and
- (3) appoint receivers, master commissioners for the examination of witnesses, and other officers necessary to facilitate and

transact the business of the court.
As added by P.L.98-2004, SEC.10.

IC 33-31-1-19

Appeals

Sec. 19. A party may appeal to the supreme court or the court of appeals from the order or judgment of the probate court in any case in which an appeal may be had from an order or judgment of the circuit court. The appeal shall be regulated by the law regulating appeals from the circuit court to the court of appeals and the supreme court, so far as applicable. An appeal may also be taken to the court of appeals and the supreme court in the same manner and in like cases as from circuit courts.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-20

Docket fees

Sec. 20. (a) The same docket fees shall be taxed in the court as are provided by law to be taxed in the circuit court.

(b) The fees, when collected, shall be paid by the clerk to the treasurer of the county to be applied in reimbursing the county for expenses of the court.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-21

Judge's salary

Sec. 21. (a) The salary of the judge of the probate court shall be the same as that of the judge of the circuit court of the county. The salary of the judge and the compensation of a judge pro tempore shall be paid in the same manner and from the same sources as the judge of the circuit court or judges pro tempore of the court.

(b) A full-time judge of a probate court may not be paid compensation for serving as a special judge, except for reasonable expenses for meals, lodging, travel, and other incidental expenses approved by the executive director of the division of state court administration.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-22

Appointment of clerk and other employees

Sec. 22. The probate court may appoint a chief clerk and other employees as the judge considers necessary whose salaries shall be fixed by the judge and be paid out of the county treasury.

As added by P.L.98-2004, SEC.10.

IC 33-31-1-23

Repealed

(Repealed by P.L.201-2011, SEC.115.)

IC 33-31-1-24

Magistrates

Sec. 24. The judge of the St. Joseph probate court may appoint three (3) full-time magistrates under IC 33-23-5. The magistrates continue in office until removed by the judge.

As added by P.L.98-2004, SEC.10. Amended by P.L.127-2008, SEC.8; P.L.201-2011, SEC.29.

IC 33-31-2

Chapter 2. Small Claims and Misdemeanor Division

IC 33-31-2-1

Application

Sec. 1. This chapter applies to each probate court that has a standard small claims and misdemeanor division.

As added by P.L.201-2011, SEC.30.

IC 33-31-2-2

Dockets

Sec. 2. The small claims and misdemeanor division of the court has the following dockets:

- (1) A small claims docket.
- (2) A minor offenses and violations docket.

As added by P.L.201-2011, SEC.30.

IC 33-31-2-3

Small claims docket; jurisdiction

Sec. 3. The small claims docket has jurisdiction over the following:

- (1) Civil actions in which the amount sought or value of the property sought to be recovered is not more than six thousand dollars (\$6,000). The plaintiff in a statement of claim or the defendant in a counterclaim may waive the excess of any claim that exceeds six thousand dollars (\$6,000) in order to bring it within the jurisdiction of the small claims docket.
- (2) Possessory actions between landlord and tenant in which the rent due at the time the action is filed does not exceed six thousand dollars (\$6,000).
- (3) Emergency possessory actions between a landlord and tenant under IC 32-31-6.

As added by P.L.201-2011, SEC.30.

IC 33-31-2-4

Exceptions to formal practice and procedure

Sec. 4. (a) The exceptions provided in this section to formal practice and procedure apply to all cases on the small claims docket.

(b) A defendant is considered to have complied with the statute and rule requiring the filing of an answer upon entering an appearance personally or by attorney. The appearance constitutes a general denial and preserves all defenses and compulsory counterclaims, which may then be presented at the trial of the case.

(c) If, at the trial of the case, the court determines:

- (1) that the complaint is so vague or ambiguous that the defendant was unable to determine the nature of the plaintiff's claim; or
- (2) that the plaintiff is surprised by a defense or compulsory counterclaim raised by the defendant that the plaintiff could not reasonably have anticipated;

the court shall grant a continuance.

(d) The trial shall be conducted informally, with the objective of dispensing speedy justice between the parties according to the rules of substantive law. The trial is not bound by the statutes or rules governing practice, procedure, pleadings, or evidence except for provisions relating to privileged communications and offers of compromise.

As added by P.L.201-2011, SEC.30.

IC 33-31-2-5

Change of venue

Sec. 5. There is no change of venue from the county as of right in cases on the small claims docket. However, a change of venue from the judge shall be granted as provided by statute and by rules of the supreme court.

As added by P.L.201-2011, SEC.30.

IC 33-31-2-6

Trial by jury

Sec. 6. (a) The filing of a claim on the small claims docket is considered a waiver of trial by jury.

(b) The defendant may, not later than ten (10) days following service of the complaint in a small claims case, demand a trial by jury by filing an affidavit that:

- (1) states that there are questions of fact requiring a trial by jury;
- (2) specifies those questions of fact; and
- (3) states that the demand is in good faith.

(c) Notice of the defendant's right to a jury trial, and the ten (10) day period in which to file for a jury trial, must be clearly stated on the notice of claim or on an additional sheet to be served with the notice of claim on the defendant.

(d) Upon the deposit of seventy dollars (\$70) in the small claims docket by the defendant, the court shall transfer the claim to the plenary docket. Upon transfer, the claim then loses its status as a small claim.

As added by P.L.201-2011, SEC.30.

IC 33-31-2-7

Minor offenses and violations docket; jurisdiction

Sec. 7. (a) The minor offenses and violations docket has jurisdiction over the following:

- (1) All Level 6 felony cases.
- (2) All misdemeanor cases.
- (3) All infraction cases.
- (4) All ordinance violation cases.

(b) The court shall establish a traffic violations bureau in the manner prescribed by IC 34-28-5-7 through IC 34-28-5-9.

As added by P.L.201-2011, SEC.30. Amended by P.L.158-2013, SEC.339.

IC 33-31-2-8

Court sessions

Sec. 8. (a) The court shall provide by rule for an evening session to be held once each week.

(b) The court shall hold additional sessions in the evening and on holidays as necessary to ensure the just, speedy, and inexpensive determination of every action.

As added by P.L.201-2011, SEC.30.

IC 33-31-2-9

Division of state court administration requests

Sec. 9. The court shall comply with all requests made under IC 33-24-6-3 by the executive director of the division of state court administration concerning the small claims and misdemeanor division.

As added by P.L.201-2011, SEC.30.