

IC 33-38

ARTICLE 38. JUDGES

IC 33-38-1

Chapter 1. Certain Judgeship's Eligibility; Term of Office; Travel Expenses

IC 33-38-1-1

Admission to the practice of law

Sec. 1. A person is not eligible to hold the office of judge of any probate or superior court unless, in addition to other prerequisites to eligibility provided by Indiana law, the person is admitted to the practice of law in Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-1-2

Multiple county judicial circuits and superior court district; traveling expenses

Sec. 2. Each judge of each:

(1) judicial circuit containing more than one (1) county;
(2) county court serving more than one (1) county; and
(3) superior court district containing more than one (1) county;
shall be paid two thousand dollars (\$2,000) per year to reimburse the judge for traveling and other necessary expenses. Two thousand dollars (\$2,000) for each judge is appropriated annually from the state general fund not otherwise appropriated.

As added by P.L.98-2004, SEC.17.

IC 33-38-1-3

Beginning date; expiration date

Sec. 3. The term of office of a person:

(1) elected judge of the court of appeals or of any circuit, superior, probate, criminal, or juvenile court begins on the first day of January after the person's election; and
(2) elected or appointed to any judgeship expires on December 31 after the election of the respective successors.

As added by P.L.98-2004, SEC.17.

IC 33-38-2

Chapter 2. Appointment of Bailiffs in Certain Counties

IC 33-38-2-1

Judge to appoint bailiff and riding bailiff

Sec. 1. The judge of the circuit, superior, criminal, probate, and juvenile courts in each county having a population of at least thirty-five thousand (35,000) shall appoint a bailiff and may appoint a riding bailiff for the judge's court, whose per diem shall be fixed by the court to be paid from the county treasury.

As added by P.L.98-2004, SEC.17.

IC 33-38-2-2

Bailiff or sheriff; county with population less than 35,000

Sec. 2. In counties having a population of less than thirty-five thousand (35,000), the judge of the circuit court may appoint a bailiff. However, if a bailiff is not appointed, the sheriff of the county shall perform the duties of the bailiff.

As added by P.L.98-2004, SEC.17.

IC 33-38-3

Chapter 3. Copy of Appointment of a City or Municipal Judge to the Clerk of Circuit Court

IC 33-38-3-1

Certified copy; clerk of circuit court

Sec. 1. When a person is appointed as judge of a city or municipal court, a certified copy of the appointment shall be sent by the appointing authority to the clerk of the circuit court of the county in which the city is located.

As added by P.L.98-2004, SEC.17.

IC 33-38-3-2

Certified copy; recorded

Sec. 2. The appointment described in section 1 of this chapter shall be recorded in the order book of the circuit court, and the record authorizes the clerk to certify that the judge is the:

- (1) appointed;
- (2) qualified; and
- (3) acting;

judge of the city or municipal court for which the judge was appointed.

As added by P.L.98-2004, SEC.17.

IC 33-38-4

Chapter 4. Chief Clerk in Marion and Lake Counties

IC 33-38-4-1

Appointment

Sec. 1. The judge of the circuit court in a county having a population of at least four hundred thousand (400,000) may appoint a chief clerk for the court.

As added by P.L.98-2004, SEC.17.

IC 33-38-4-2

Salary

Sec. 2. The salary for the chief clerk:

- (1) shall be fixed by the judge of the court;
- (2) may not be more than four thousand eight hundred dollars (\$4,800) per year; and
- (3) shall be paid in monthly installments from the county treasury of the county in which the court is located.

As added by P.L.98-2004, SEC.17.

IC 33-38-4-3

Powers

Sec. 3. The chief clerk may administer oaths that are convenient or necessary to be administered in the discharge of the clerk's duties, for which there is no charge or expense incurred.

As added by P.L.98-2004, SEC.17.

IC 33-38-4-4

Qualifications

Sec. 4. The chief clerk must be:

- (1) a graduate of an approved law school; and
- (2) admitted to the practice of law in Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-4-5

Appropriation

Sec. 5. The county council of the county shall appropriate the money requested by the presiding judge of the circuit court for payment of the salary of the chief clerk, not exceeding the maximum amount of salary provided for by this section.

As added by P.L.98-2004, SEC.17.

IC 33-38-5

Chapter 5. Salaries

IC 33-38-5-1

Appropriation; state general fund contributions

Sec. 1. There is appropriated from the state general fund a sufficient amount to pay the state general fund contributions under this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-5-2

Appropriation; county salaries

Sec. 2. The county councils of the counties of the state shall appropriate annually a sufficient amount to pay the county salaries under this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-5-3

Multiple county judicial circuits

Sec. 3. (a) This section applies to a judicial circuit that is composed of more than one (1) county.

(b) The counties comprising a circuit to which this section applies are considered one (1) county for purposes of this chapter. Each county in the circuit shall pay part of the county salary in the same proportion as the county's individual classification factor bears to the classification factor of the judicial circuit.

As added by P.L.98-2004, SEC.17.

IC 33-38-5-4

Grading of counties

Sec. 4. For purposes of this chapter, each county is:

- (1) graded on the basis of population and gross assessed valuation; and
- (2) set up on the percentage ratio it bears to the state, the whole state being considered as one hundred percent (100%).

As added by P.L.98-2004, SEC.17.

IC 33-38-5-5

Classes of counties; population; gross assessed valuation

Sec. 5. (a) The nine (9) classes of the several counties of the state as set out in this chapter are based on a unit factor system. The factors are determined by the relation of the county to the state as established and certified to each county auditor by the state board of accounts not later than July 1 of each year. They are as follows:

- (1) Population.
- (2) Gross assessed valuation as shown by the last preceding gross assessed valuation as certified by the various counties to the auditor of the state in the calendar year in which the calculation is made.
- (b) The factors for each of the nine (9) classes set out in this

chapter shall be obtained as follows:

- (1) The population of each county shall be divided by the population of the entire state.
- (2) The gross assessed valuation of each county shall be divided by the gross assessed valuation of the entire state.
- (3) The results obtained under subdivision (1) and (2) shall be added together and the sum obtained for each county shall be divided by two (2).
- (4) The result obtained under subdivision (3), multiplied by one hundred (100), determines the classification of each county according to the following schedule:

Classification Factors			
	High	Low	Class
No limit		8.00	1
All under	8.00	2.25	2
All under	2.25	1.25	3
All under	1.25	.85	4
All under	.85	.70	5
All under	.70	.60	6
All under	.60	.50	7
All under	.50	.35	8
All under	.35	no limit	9

As added by P.L.98-2004, SEC.17.

IC 33-38-5-6

Total annual salary for full-time judges

Sec. 6. (a) The annual salary of each full-time judge of a circuit, superior, municipal, county, or probate court is one hundred ten thousand five hundred dollars (\$110,500), as adjusted after June 30, 2006, under section 8.1 of this chapter, paid by the state. In addition, a judge under this section may receive any additional salary provided by the county under IC 36-2-5-14 or IC 36-3-6-3(c). The state shall deposit quarterly the money received from the counties under subsection (c) for additional salary in the state general fund.

(b) Before November 2 of each year, the county auditor of each county shall certify to the division of state court administration the amounts, if any, to be provided by the county during the ensuing calendar year for judges' salaries under IC 36-2-5-14 or IC 36-3-6-3(c).

(c) When making each payment under subsection (a), the county shall determine for each judge whether the total of:

- (1) the payment made on behalf of that judge;
 - (2) previous payments made on behalf of that judge in the same calendar year; and
 - (3) the state share of the judge's salary under subsection (a);
- exceeds the Social Security wage base established by the federal government for that year. If the total does not exceed the Social Security wage base, the payment on behalf of that judge must also be accompanied by an amount equal to the employer's share of Social Security taxes and Medicare taxes. If the total exceeds the Social

Security wage base, the part of the payment on behalf of the judge that is below the Social Security wage base must be accompanied by an amount equal to the employer's share of Social Security taxes and Medicare taxes, and the part of the payment on behalf of the judge that exceeds the Social Security wage base must be accompanied by an amount equal to the employer's share of Medicare taxes. Payments made under this subsection shall be deposited in the state general fund under subsection (a).

(d) For purposes of determining the amount of life insurance premiums to be paid by a judge who participates in a life insurance program that:

- (1) is established by the state;
- (2) applies to a judge who is covered by this section; and
- (3) bases the amount of premiums to be paid by the judge on the amount of the judge's salary;

the judge's salary does not include any amounts paid to the state by a county under subsection (a).

As added by P.L.98-2004, SEC.17. Amended by P.L.159-2005, SEC.1.

IC 33-38-5-7

Juvenile court magistrate; source of salary

Sec. 7. Of the annual salary of a juvenile court magistrate, the county served by the magistrate shall pay forty-one thousand three hundred ninety-three dollars (\$41,393). The balance of the annual salary shall be paid by the state from the state general fund.

As added by P.L.98-2004, SEC.17.

IC 33-38-5-8

Total annual salary; supreme court justices; appellate court judges

Sec. 8. (a) The annual salary for each justice of the supreme court is one hundred thirty-three thousand six hundred dollars (\$133,600), as adjusted after June 30, 2006, under section 8.1 of this chapter.

(b) The annual salary for each judge of the court of appeals is one hundred twenty-nine thousand eight hundred dollars (\$129,800), as adjusted after June 30, 2006, under section 8.1 of this chapter.

(c) The state shall pay the annual salaries prescribed in subsections (a) through (b) from the state general fund.

(d) In addition to salary, the state shall pay to a justice or judge, in equal monthly payments on the first day of each month from money in the state general fund not otherwise appropriated, the following annual subsistence allowances to assist in defraying expenses relating to or resulting from the discharge of the justice's or judge's official duties:

- (1) Five thousand five hundred dollars (\$5,500) to the chief justice of the supreme court.
- (2) Five thousand five hundred dollars (\$5,500) to the chief judge of the court of appeals.
- (3) Three thousand dollars (\$3,000) to each justice of the supreme court who is not the chief justice.

(4) Three thousand dollars (\$3,000) to each judge of the court of appeals who is not the chief judge.

A justice or judge is not required to make an accounting for an allowance received under this subsection.

(e) The state may not furnish automobiles for the use of justices or judges compensated under this section.

As added by P.L.98-2004, SEC.17. Amended by P.L.159-2005, SEC.2.

IC 33-38-5-8.1

Salary increases for judges and justices in certain state fiscal years

Sec. 8.1. (a) Beginning July 1, 2006, the part of the total salary of an official:

(1) paid by the state; and

(2) set under section 6 or 8 of this chapter;

is increased in each state fiscal year in which the general assembly does not amend the section of law under which the salary is determined to provide a salary increase for the state fiscal year.

(b) The percentage by which salaries are increased in a state fiscal year under this section is equal to the statewide average percentage, as determined by the budget director, by which the salaries of state employees in the executive branch who are in the same or a similar salary bracket exceed, for the state fiscal year, the salaries of executive branch state employees in the same or a similar salary bracket that were in effect on July 1 of the immediately preceding state fiscal year.

(c) The amount of a salary increase under this section is equal to the amount determined by applying the percentage increase for the particular state fiscal year to the salary payable by the state, as previously adjusted under this section, that is in effect on June 30 of the immediately preceding state fiscal year.

(d) An official is not entitled to receive a salary increase under this section in a state fiscal year in which state employees described in subsection (b) do not receive a statewide average salary increase.

(e) If a salary increase is required under this section, the budget director shall augment judicial appropriations, including the line items for personal services for the supreme court, local judges' salaries, and county prosecutors' salaries, in the state biennial budget in an amount sufficient to pay for the salary increase from the sources of funds determined by the budget director.

As added by P.L.159-2005, SEC.3.

IC 33-38-5-8.2

Health care adjustment for employees of judicial branch; judicial branch insurance adjustment account

Sec. 8.2. (a) As used in this section, "account" refers to the judicial branch insurance adjustment account established by subsection (d).

(b) As used in this section, "employees of the judicial branch" includes the following:

(1) Each judge described in section 6 of this chapter.

(2) Each magistrate:

(A) described in section 7 of this chapter; and

(B) receiving a salary under IC 33-23-5-10.

(3) Each justice and judge described in section 8 of this chapter.

(4) The judge described in IC 33-26.

(5) A prosecuting attorney whose entire salary is paid by the state.

(c) Employees of the judicial branch are entitled to a health care adjustment in any year that the governor provides a health care adjustment to employees of the executive branch.

(d) The judicial branch insurance adjustment account within the state general fund is established for the purpose of providing health care adjustments under subsection (c). The account shall be administered by the supreme court.

(e) The expenses of administering the account shall be paid from money in the account.

(f) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.

(g) Money in the account at the end of a state fiscal year does not revert to the state general fund.

(h) Money in the account is annually appropriated to the supreme court for the purpose of this section.

(i) If the funds appropriated for compliance with this section are insufficient, there is annually appropriated from the state general fund sufficient funds to carry out the purpose of this section.

As added by P.L.95-2004, SEC.16. Amended by P.L.2-2005, SEC.110.

IC 33-38-5-9

Schedule of working hours for courts

Sec. 9. (a) A judge described in section 6 of this chapter, the justices of the supreme court, and the judges of the court of appeals shall:

(1) formulate;

(2) post in a prominent place; and

(3) make available to the public;

a schedule of the working hours during which the court will be open and during which each judge or justice will be present.

(b) A judge or justice shall hold the court open and be available in the court during:

(1) regular business hours; or

(2) the hours specified on the schedule, if the business of the court requires evening or weekend sessions.

(c) A judge or justice may be absent from the court due to official business, matters relating to the judge's or justice's judicial office, illness, serious personal matters, or regular vacation.

As added by P.L.98-2004, SEC.17.

IC 33-38-5-10**Lowering of classification; limitation**

Sec. 10. The classification of salary schedules for judges may not be lowered below the classification first fixed by the state board of accounts under this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-6

Chapter 6. Judges' Retirement System

IC 33-38-6-1

"Americans with Disabilities Act" defined

Sec. 1. As used in this chapter, "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the act.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-2

"Board" defined

Sec. 2. As used in this chapter, "board" refers to the board of trustees of the public employees' retirement fund.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-3

"Employer" defined

Sec. 3. As used in this chapter, "employer" means the state of Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-4

"Fiscal year" defined

Sec. 4. As used in this chapter, "fiscal year" means the period beginning July 1, in any year, and ending June 30 of the succeeding year.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-5

"Fund" defined

Sec. 5. As used in this chapter, "fund" refers to the Indiana judges' retirement fund established by section 12 of this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-6

"Internal Revenue Code" defined

Sec. 6. As used in this chapter, "Internal Revenue Code":

(1) means the Internal Revenue Code of 1954, as in effect September 1, 1974, if permitted with respect to governmental plans; or

(2) to the extent not inconsistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-7

"Judge" defined

Sec. 7. As used in this chapter, "judge" means a person who serves or has served as a regular judge or justice of one (1) or more of the following courts:

- (1) Supreme court.
- (2) Court of appeals.
- (3) Indiana tax court.
- (4) Circuit court of a judicial circuit.
- (5) Superior court of a county.
- (6) Criminal court of a county having a separate criminal court.
- (7) Probate court of a county having a separate probate court.
- (8) Juvenile court of a county having a separate juvenile court.
- (9) Municipal court of a county.
- (10) County court of a county.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-8

"Judge pro tempore service" defined

Sec. 8. As used in this chapter, "judge pro tempore service" means service in Indiana as a full-time judge pro tempore appointed under Trial Rule 63(B) that:

- (1) is not covered by IC 33-38-7 or IC 33-38-8; and
- (2) is served by a person who has other service that is covered by IC 33-38-7 or IC 33-38-8.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-9

"Participant" defined

Sec. 9. As used in this chapter, "participant" means a judge who participates in the fund. After December 31, 2010, "participant" means a judge or full-time magistrate who participates in the fund.

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.6.

IC 33-38-6-10

"Salary" defined

Sec. 10. As used in this chapter, "salary" means the total salary paid to a participant by the state and by a county or counties, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-11

"Services" defined

Sec. 11. As used in this chapter, "services" means the period beginning on the first day a person first becomes a judge or, after December 31, 2010, a judge or full-time magistrate, and ending on the date under consideration and includes all intervening employment as a judge or, after December 31, 2010, a judge or full-time magistrate.

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.7.

IC 33-38-6-12

Indiana judges' retirement fund

Sec. 12. The Indiana judges' retirement fund is established and consists of:

- (1) each participant's contribution to the fund;
- (2) gifts, grants, devises, and bequests in money, property, or other forms made to the fund;
- (3) interest on investments or on deposits of the funds; and
- (4) contributions or payments to the fund made in the manner provided by the general assembly, including appropriations from the state general fund as provided by this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-13

Qualification of fund under Internal Revenue Code

Sec. 13. The fund must satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to the fund. In order to meet those requirements, the fund is subject to the following provisions, notwithstanding any other provision of this chapter IC 33-38-7, or IC 33-38-8:

- (1) The board shall distribute the corpus and income of the fund to participants and their beneficiaries in accordance with this chapter, IC 33-38-7, and IC 33-38-8.
- (2) A part of the corpus or income of the fund may not be used or diverted to a purpose other than the exclusive benefit of the participants and their beneficiaries.
- (3) Forfeitures arising from severance of employment, death, or for any other reason may not be applied to increase the benefits a participant would otherwise receive under the fund.
- (4) If the fund is terminated or if all contributions to the fund are completely discontinued, the rights of each affected participant to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.
- (5) All benefits paid from the fund shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, the fund is subject to the following provisions:

- (A) The life expectancy of a participant, the participant's spouse, or the participant's beneficiary shall not be recalculated after the initial determination, for purposes of determining benefits.
 - (B) If a participant dies before the distribution of the participant's benefits has begun, distributions to beneficiaries must begin not later than December 31 of the calendar year immediately following the calendar year in which the participant died.
- (6) The board may not:
- (A) determine eligibility for benefits;
 - (B) compute rates of contribution; or
 - (C) compute benefits of participants or beneficiaries;

in a manner that discriminates in favor of participants who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) The salary taken into account under this chapter, IC 33-38-7, or IC 33-38-8 may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-14

Administration of fund

Sec. 14. The board shall administer the fund in a manner that is consistent with the Americans with Disabilities Act, to the extent required by the act.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-15

Law governing participation, contributions, withdrawals, and benefits; Family and Medical Leave Act; Uniformed Services Employment and Reemployment Act

Sec. 15. (a) Conditions for participation in the fund, contributions to the fund, withdrawal from the fund, and eligibility for and computation of benefits for participants and their survivors are governed by IC 33-38-7 and IC 33-38-8.

(b) Notwithstanding any provision of this chapter, IC 33-38-7, or IC 33-38-8, the fund must be administered in a manner consistent with the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). A participant on a leave of absence that qualifies for the benefits and protections afforded by the Family and Medical Leave Act is entitled to receive credit for vesting and eligibility purposes to the extent required by the Family and Medical Leave Act but is not entitled to receive credit for service for benefit purposes.

(c) Notwithstanding any provision of this chapter, IC 33-38-7, and IC 33-38-8, a participant is entitled to service credit and benefits in the amount and to the extent required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.).

As added by P.L.98-2004, SEC.17.

IC 33-38-6-16

Referendum of judges concerning federal Social Security agreement

Sec. 16. (a) The governor may conduct, or cause to be conducted, a referendum for the judges who are covered by the provisions of the judges' retirement fund to determine whether the judges covered by the retirement fund shall be excluded from or included in the agreement negotiated under the provisions of Section 218 of the federal Social Security Act (as defined in IC 5-10.1-1-9). The referendum must be conducted in full compliance with all the requirements of Section 218(d) of the federal Social Security Act. The governor shall designate the board as the agency to conduct and

supervise the referendum, and the expense of conducting the referendum shall be paid from funds appropriated to the fund.

(b) If the majority of the judges who are eligible to vote in the referendum described in subsection (a) vote in the negative, the board may request that a subsequent referendum be conducted in the same manner and with the same effect described in subsection (a). However, a subsequent referendum may not be conducted within one (1) year after the date of the prior referendum.

(c) If a majority of the judges who are eligible to vote in the referendum described in subsection (a) vote in the affirmative, both the:

(1) judges covered by the retirement fund; and

(2) judges who waived their right to be covered by the provisions of the retirement fund;

shall be included in the agreement negotiated by the state with the Secretary of the United States Department of Health and Human Services in the same manner provided in IC 5-10.1-4 for the inclusion of services covered by the retirement systems specified in IC 5-10.1-4-1 in the agreement.

(d) Each judge whose services are covered by Social Security is required to pay during the period of the judge's service the employee contributions required by the agreement. The contributions shall begin on the effective date of the judge's coverage and are subject to the terms and conditions of IC 5-10.1.

(e) The auditor of state shall pay the employer contributions required under the agreement wholly from funds appropriated to the fund, and the contributions begin on the effective date of the modification that adds the judges of the fund to the federal-state agreement. The employer contributions shall be paid in the manner provided in the agreement.

(f) The modification of the federal-state agreement to effectuate the participation of the judges in the agreement must be effective for services performed on a date fixed and determined by the board.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-17

Appropriation from state general fund

Sec. 17. (a) For purposes of this chapter, there is appropriated for each biennium a sum of money, computed on an actuarially funded basis, as follows:

(1) From the state general fund for participants' retirement benefits, the amount determined by the board, on recommendation of an actuary, which, when added to the part of the fund held for benefits at the date of the appropriation, is equal to the total liability of the fund for benefits to the end of the biennium.

(2) From the earnings on the fund, for administration purposes, the amount required during the biennium, as determined by the board on the basis of experience. The amount required for administration shall be paid out as the operating expenses of

other state departments are paid.

(b) The biennial appropriation provided in this section shall be credited to the board annually in equal installments in July of each year of the biennium.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-18

Use of appropriated funds

Sec. 18. The amount appropriated under section 17 of this chapter for participants' retirement benefits shall be used for retirement benefits under IC 33-38-7 and IC 33-38-8.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-19

Fund construed as a trust

Sec. 19. The fund shall be construed to be a trust, separate and distinct from all other entities, maintained to secure payment of benefits to the participants and their beneficiaries, as prescribed in IC 33-38-7 and IC 33-38-8.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-20

Use of fund for administrative costs

Sec. 20. In addition to the purpose set forth in section 19 of this chapter, the fund may be used for the payment of the costs of administering this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-21

Warrants to participants

Sec. 21. (a) When drawing a salary warrant for a participant, the auditor of state and the county auditor shall deduct from the amount of the warrant the participant's contribution, if any, to the fund in the amount certified in the vouchers or an order issued by the director.

(b) The auditor of state and the county auditor shall draw a warrant to the fund for the total contributions withheld from the participants each month. The warrant drawn to the fund together with a list of participants and the amount withheld from each participant shall be transmitted immediately to the director.

(c) The auditor of state shall draw warrants upon the treasurer of state, payable from the fund, for purposes provided for in this chapter, upon the presentation of vouchers or an order signed by the director of the board in accordance with resolutions of the board.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-22

Salary warrants indicating deductions of contributions

Sec. 22. The auditor of state and the county auditor in the preparation of salary warrants to participants shall indicate on the payroll voucher the following information, in addition to other

things:

- (1) The amount of the participant's contribution to the fund deducted from the salary of the participant.
- (2) The net amount payable to the participant, after the deduction of the participant's contribution.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-23

Administration of fund; confidentiality of fund records

Sec. 23. (a) The board of trustees of the public employees' retirement fund shall administer the fund, which may be commingled with the public employees' retirement fund for investment purposes.

(b) The board shall do the following:

- (1) Determine eligibility for and make payments of benefits under IC 33-38-7 and IC 33-38-8.
- (2) In accordance with the powers and duties granted it in IC 5-10.3-3-7, IC 5-10.3-3-7.1, IC 5-10.3-3-8, and IC 5-10.3-5-3 through IC 5-10.3-5-6, administer the fund.
- (3) Provide by rule for the implementation of this chapter and IC 33-38-7 and IC 33-38-8.
- (4) Authorize deposits.

(c) A determination by the board may be appealed under the procedures in IC 4-21.5.

(d) The powers and duties of:

- (1) the director and the actuary of the board;
- (2) the attorney general; and
- (3) the auditor of state;

with respect to the fund are those specified in IC 5-10.3-3 and IC 5-10.3-4.

(e) The board may hire additional personnel, including hearing officers, to assist it in the implementation of this chapter.

(f) Fund records of individual participants and participants' information are confidential, except for the name and years of service of a fund participant.

As added by P.L.98-2004, SEC.17. Amended by P.L.94-2004, SEC.6; P.L.99-2010, SEC.9.

IC 33-38-6-24

Rollover to eligible retirement plan

Sec. 24. Notwithstanding any other provision of this chapter, IC 33-38-7, or IC 33-38-8, to the extent required by Internal Revenue Code Section 401(a)(31) of the Internal Revenue Code, as added by the Unemployment Compensation Amendments of 1992 (P.L. 102-318), and any amendments and regulations related to Section 401(a)(31) of the Internal Revenue Code, the fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-25

Service credit; contributions for service as judge or full-time magistrate

Sec. 25. (a) A judge or, after December 31, 2010, a judge or full-time magistrate, is entitled to a month of service credit for services performed in any fraction of a calendar month. However, a judge or, after December 31, 2010, a judge or full-time magistrate, is not entitled to more than one (1) month of credit for services performed in a calendar month.

(b) Except as otherwise provided in this chapter, if a judge is elected or appointed and serves one (1) or more terms or part of a term, then retires from office but at a later period or periods is appointed or elected and serves as judge, the judge shall pay into the fund during all the periods served as judge, whether the periods are served consecutively or not.

(c) Except as otherwise provided in this chapter, a judge is not required to pay into the fund:

- (1) at any time when the judge is not serving as judge; or
- (2) during any period of service as a senior judge under IC 33-23-3.

(d) Except as otherwise provided in this chapter, after December 31, 2010, a full-time magistrate:

- (1) shall pay into the fund during all periods served as a full-time magistrate, whether the periods are served consecutively or not; and
- (2) is not required to pay into the fund at any time when the magistrate is not serving as a full-time magistrate.

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.8.

IC 33-38-6-26

Judge pro tempore service credit; conditions

Sec. 26. (a) A participant may purchase judge pro tempore service credit if:

- (1) the participant has at least one (1) year of service in the fund;
- (2) before the participant retires, the participant makes contributions to the fund:

(A) that are equal to the product of:

- (i) the participant's salary at the time the participant actually makes a contribution for the service credit; multiplied by
- (ii) a percentage rate, as determined by the actuary of the fund, that is based on the age of the participant at the time the participant makes a contribution for service credit and computed to result in a contribution amount that approximates the actuarial present value of the benefit attributable to the service credit purchased; multiplied by
- (iii) the number of years of judge pro tempore service the participant intends to purchase; and

(B) for any accrued interest, at a rate determined by the

actuary of the fund, for the period from the participant's initial membership in the fund to the date payment is made by the participant; and

(3) the fund receives verification from the applicable court that the judge pro tempore service occurred.

(b) A participant may not receive service credit under this section if the judge pro tempore service for which the participant requests credit also qualifies the participant for a benefit in another retirement system.

(c) A participant who:

(1) terminates service before satisfying the requirements for eligibility to receive a retirement benefit from the fund; or

(2) receives a retirement benefit for the same service from another retirement system, other than under the federal Social Security Act;

may withdraw the participant's contributions made under this section plus accumulated interest after submitting to the fund a properly completed application for a refund.

(d) The following apply to the purchase of service credit under this section:

(1) The board may allow a participant to make periodic payments of the contributions required for the purchase of the service credit. The board shall determine the length of the period during which the payments are to be made.

(2) The board may deny an application for the purchase of service credit if the purchase would exceed the limitations set forth in Section 415 of the Internal Revenue Code.

(3) A participant may not claim the service credit for purposes of determining eligibility or computing benefits unless the participant has made all payments required for the purchase of the service credit.

(e) To the extent permitted by the Internal Revenue Code and applicable regulations, the fund may accept, on behalf of a participant who is purchasing service credit under this section, a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(f) To the extent permitted by the Internal Revenue Code and the applicable regulations, the fund may accept, on behalf of a participant who is purchasing service credit under this section, a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b)

of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-27

Reference to judges' retirement system

Sec. 27. A reference to the judges' retirement system under this chapter is considered a reference to the judges' retirement fund under this article.

As added by P.L.98-2004, SEC.17.

IC 33-38-7

Chapter 7. 1977 Retirement, Disability, and Death System

IC 33-38-7-1

Application of chapter

Sec. 1. This chapter applies only to an individual who begins service as a judge before September 1, 1985.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-2

"Americans with Disabilities Act" defined

Sec. 2. As used in this chapter, "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the Act.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-3

"Board" defined

Sec. 3. As used in this chapter, "board" refers to the board of trustees of the public employees' retirement fund.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-4

"Employer" defined

Sec. 4. As used in this chapter, "employer" means the state of Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-5

"Fund" defined

Sec. 5. As used in this chapter, "fund" refers to the Indiana judges' retirement fund established by IC 33-38-6-12.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-6

"Internal Revenue Code" defined

Sec. 6. As used in this chapter, "Internal Revenue Code":

(1) means the Internal Revenue Code of 1954, as in effect on September 1, 1974, if permitted with respect to governmental plans; or

(2) to the extent consistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-7

"Participant" defined

Sec. 7. As used in this chapter, "participant" means a judge who participates in the fund.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-8

"Salary" defined

Sec. 8. As used in this chapter, "salary" means the total salary paid to a participant by the state and by a county or counties, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-9

"Services" defined

Sec. 9. As used in this chapter, "services" means the period beginning on the first day a person first becomes a judge, whether the date is before, on, or after March 11, 1953, and ending on the date under consideration and includes all intervening employment as a judge.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-10

Participants; contributions

Sec. 10. (a) A person who completed at least eight (8) years of service as a judge before July 1, 1953, may become a participant in the fund and be subject to this chapter if the person qualifies for benefits under section 11 of this chapter. A person who is a judge on July 1, 1953, shall become a participant in the fund and be subject to this chapter, beginning on July 1, 1953, unless twenty (20) days before July 1, 1953, the judge files with the board a written notice of election not to participate in the fund.

(b) A person who:

(1) becomes a judge after July 1, 1953, and before September 1, 1985; and

(2) is not a participant in the fund;

becomes a participant in the fund and is subject to this chapter, beginning on the date the person becomes a judge, unless within twenty (20) days after that date the judge files with the board a written notice of election not to participate in the fund. An election filed under this subsection is irrevocable.

(c) A person who irrevocably:

(1) elects not to participate in the fund; or

(2) withdraws from the fund under section 13 of this chapter; is ineligible to participate and to receive benefits under this chapter.

(d) Participation of a judge in the fund continues until the date on which the judge:

(1) becomes an annuitant;

(2) dies; or

(3) accepts a refund;

but a person is not required to pay into the fund during any period that the person is not serving as a judge, except as otherwise provided in this chapter.

(e) A participant is considered to have made a one (1) time irrevocable salary reduction agreement of six percent (6%) of each

payment of salary that a participant would otherwise have received for services as a judge.

(f) The auditor of state and the county auditor shall pay and credit to the fund the amounts described in subsection (e) as provided in IC 33-38-6-21 and IC 33-38-6-22. However, no amounts shall be paid on behalf of a participant for more than twenty-two (22) years.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-11

Retirement annuities; termination of employment; requirements; computation of amount

Sec. 11. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 16 of this chapter.

(b) A participant whose employment as judge is terminated, regardless of cause, is entitled to a retirement annuity beginning on the date specified by the participant in a written application, if the following conditions are met:

(1) The date the annuity begins is not:

(A) before the date of final termination of employment by the participant; or

(B) the date thirty (30) days before the receipt of the participant's written application by the board.

(2) The participant:

(A) is at least sixty-two (62) years of age and has at least eight (8) years of service credit;

(B) is at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85); or

(C) has become permanently disabled.

(3) The participant is not receiving a salary from the state for services currently performed as:

(A) a judge (as defined in IC 33-38-6-7); or

(B) a magistrate under IC 33-23-5.

(c) A participant:

(1) who:

(A) elects to accept retirement after June 30, 1977; and

(B) is at least sixty-five (65) years of age; or

(2) who:

(A) elects to accept retirement after June 30, 1999;

(B) is at least fifty-five (55) years of age; and

(C) meets the requirements under subsection (b)(2)(B);

is entitled to an annual retirement benefit as calculated in subsection (d).

(d) The annual retirement benefit for a participant who meets the requirements of subsection (c) equals the product of:

(1) the salary being paid for the office that the participant held at the time of the participant's separation from service; multiplied by

(2) the percentage prescribed in the following table:

TABLE A

Participant's Years of Service	Percentage
8	24%
9	27%
10	30%
11	33%
12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service. A participant who elects to accept retirement before July 1, 1977, is entitled to an annual retirement benefit that equals the average of the benefit computed under this subsection and the benefit the participant would have received under IC 33-38-6 as in effect on June 30, 1977.

(e) If the annual retirement benefit of a participant who began service as a judge before July 1, 1977, as computed under subsection (d), is less than the amount the participant would have received under IC 33-38-6 as in effect on June 30, 1977, the participant is entitled to receive the greater amount as the participant's annual retirement benefit instead of the benefit computed under subsection (d).

(f) Except as provided in subsections (b)(2)(B) and (d), if a participant who elects to accept retirement after June 30, 1977, has not attained sixty-five (65) years of age, the participant is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were sixty-five (65) years of age reduced by one-tenth percent (0.1%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday. This reduction does not apply to:

- (1) participants who are separated from service because of permanent disability;
- (2) survivors of participants who die while in service after August 1, 1992; or
- (3) survivors of participants who die while not in service but while entitled to a future benefit.

(g) A participant who is permanently disabled is entitled to an annual benefit equal to the product of:

- (1) the salary being paid for the office that the participant held at the time of separation from service; multiplied by
- (2) the percentage prescribed in the following table:

TABLE B

Participant's Years of Service	Percentage
0-12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service.

(h) The surviving spouse or surviving child or children, as designated by the participant, of a participant who has qualified before July 1, 1977, to receive the retirement annuity under the provisions of this chapter, either by length of service or by being permanently disabled, shall, upon the death of such participant, be entitled to an annuity in an amount equal to the greater of:

(1) the sum of:

(A) two thousand dollars (\$2,000); plus

(B) fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of the participant's death, or to that which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits prior to the participant's death; or

(2) the amount determined under the following table:

TABLE C

Year	Amount
July 1, 1995, to June 30, 1996	\$10,000
July 1, 1996, to June 30, 1997	\$11,000
July 1, 1997, and thereafter	\$12,000

(i) If a participant who qualifies after June 30, 1977, and before July 1, 1983, to receive a retirement annuity under the provisions of this chapter, either by length of service or by being permanently disabled, dies, the participant's surviving spouse or surviving child or children, as designated by the participant, is or are entitled to an annuity in an amount equal to the greater of:

(1) fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of death, or to that which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits before

death; or

(2) the amount determined under TABLE C in subsection (h)(2).

(j) If a participant:

(1) dies after June 30, 1983; and

(2) on the date of the participant's death:

(A) was receiving benefits under this chapter;

(B) had completed at least eight (8) years of service and was in service as a judge;

(C) was permanently disabled; or

(D) had completed at least eight (8) years of service, was not still in service as a judge, and was entitled to a future benefit;

the participant's surviving spouse or surviving child or children, as designated by the participant, is or are entitled, regardless of the participant's age, to an annuity in an amount equal to the greater of the amount determined under TABLE C in subsection (h)(2) or fifty percent (50%) of the amount of retirement annuity the participant was drawing at the time of death, or to that which the participant would have been entitled had the participant retired and begun receiving retirement annuity benefits on the participant's date of death, with reductions as necessary under subsection (f).

(k) Notwithstanding subsection (j), if a participant:

(1) died after June 30, 1983, and before July 1, 1985; and

(2) was serving as a judge at the time of death;

the surviving spouse is entitled to the same retirement annuity as the surviving spouse of a permanently disabled participant entitled to benefits under subsection (i).

(l) The annuity payable to a surviving child or children under subsection (h), (i), or (j), is subject to the following:

(1) The total monthly benefit payable to a surviving child or children is equal to the same monthly annuity that was to have been payable to the surviving spouse.

(2) If there is more than one (1) child designated by the participant, then the children are entitled to share the annuity in equal monthly amounts.

(3) Each child entitled to an annuity shall receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.

(4) Upon the cessation of payments to one (1) designated child, if there is at least one (1) other child then surviving and still entitled to payments, the remaining child or children shall share equally the annuity. If the surviving spouse of the participant is surviving upon the cessation of payments to all designated children, the surviving spouse will then receive the annuity for the remainder of the surviving spouse's life.

(5) The annuity shall be payable to the participant's surviving spouse if any of the following occur:

(A) No child named as a beneficiary by a participant

survives the participant.

(B) No children designated by the participant are entitled to an annuity due to their age at the time of death of the participant.

(C) A designation is not made.

(6) An annuity payable to a surviving child or children may be paid to a trust or a custodian account under IC 30-2-8.5, established for the surviving child or children as designated by the participant.

As added by P.L.98-2004, SEC.17. Amended by P.L.28-2005, SEC.1.

IC 33-38-7-12

Permanent disability of participants; transcripts, records, and other materials

Sec. 12. (a) Benefits provided under this section are subject to IC 33-38-6-13.

(b) A participant is considered permanently disabled if the board has received a written certificate by at least two (2) licensed and practicing physicians, appointed by the board, indicating that:

- (1) the participant is totally incapacitated, by reason of physical or mental infirmities, from earning a livelihood; and
- (2) the condition is likely to be permanent.

(c) The participant shall be reexamined by at least two (2) physicians appointed by the board at the times as the board designates but at intervals not to exceed one (1) year. If, in the opinion of these physicians, the participant has recovered from the participant's disability, then benefits cease to be payable as of the date of the examination unless, on that date, the participant is:

- (1) at least sixty-five (65) years of age; or
- (2) at least fifty-five (55) years of age and meets the requirements under section 11(b)(2)(B) of this chapter.

(d) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated by the initial and periodic examinations and reviews to determine eligibility for disability benefits under this section shall be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-13

Withdrawal of participant from fund

Sec. 13. (a) Except as otherwise provided in this chapter, a participant:

- (1) whose employment as a judge is terminated regardless of cause; and
- (2) who has less than twelve (12) years service;

is entitled to withdraw from the fund, beginning on the date specified by the participant in a written application. However, the date on which the withdrawal begins may not be before the date of final termination of employment of the participant, or the date thirty (30)

days before the receipt of the application by the board.

(b) Upon the withdrawal, a participant is entitled to receive out of the fund an amount equal to the total sum contributed to the fund on behalf of the participant, payable within sixty (60) days after date of the withdrawal application or in monthly installments as the participant may elect.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-14

Payments to participant's surviving spouse, dependents, or estate

Sec. 14. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 16 of this chapter.

(b) If annuities are not payable to the survivors of a participant who dies after July 1, 1983, the surviving spouse or child or children of the participant, if any, as determined by the participant, and if none survive, then any dependent or dependents surviving shall draw from the fund the amount that the participant paid into the fund plus interest as determined by the board. If no spouse, child or children, or other dependents survive, then the amount plus interest minus any payments made to the participant shall be paid to the executor or administrator of the participant's estate.

(c) The amount owed a spouse, child or children, or other dependent, or estate under this section is payable within sixty (60) days after date of the withdrawal application or in the monthly installments as the recipient may elect.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-15

Annuities; payment to dependent children

Sec. 15. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 16 of this chapter.

(b) If a participant's spouse does not survive the participant, and a child is not designated and entitled to receive an annuity under section 11 of this chapter, any surviving dependent child of a participant is, upon the death of the participant, entitled to an annuity in an amount equal to the annuity the participant's spouse would have received under section 11 of this chapter.

(c) If a surviving spouse of a decedent participant dies and a dependent child of the surviving spouse and the decedent participant survives them, then that dependent child is entitled to receive an annuity in an amount equal to the annuity the spouse was receiving or would have received under section 11 of this chapter.

(d) If there is more than one (1) dependent child, the dependent children are entitled to share the annuity equally.

(e) Each dependent child is entitled to receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-16

Benefits limitations under Internal Revenue Code

Sec. 16. Notwithstanding any other provision of this chapter, and solely for the purposes of the benefits provided under this chapter, the benefit limitations of Section 415 of the Internal Revenue Code shall be determined by applying the provisions of Section 415(b)(10) of the Internal Revenue Code, as amended by the Technical and Miscellaneous Revenue Act of 1988 (P.L.100-647). This section constitutes an election under Section 415(b)(10)(C) of the Internal Revenue Code to have Section 415(b) of the Internal Revenue Code (other than Section 415(b)(2)(G)) applied without regard to Section 415(b)(2)(F) to anyone who did not first become a participant before January 1, 1990.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-17

Service credit; contributions after retirement for subsequent service as judge

Sec. 17. (a) A judge is entitled to a month of service credit for services performed in any fraction of a calendar month. However, a judge is not entitled to more than one (1) month of credit for services performed in a calendar month.

(b) Except as otherwise provided in this chapter, if a judge is elected or appointed and serves one (1) or more terms or part of a term then retires from office but at a later period or periods is appointed or elected and serves as judge, the judge shall pay into the fund during all the periods served as judge, whether the periods are served consecutively or not.

(c) Except as otherwise provided in this chapter, a judge is not required to pay into the fund:

- (1) at any time when the judge is not serving as judge; or
- (2) during any period of service as a senior judge under IC 33-23-3.

As added by P.L.98-2004, SEC.17.

IC 33-38-7-18

Credit for prior service; rollover distributions; trustee to trustee transfers

Sec. 18. (a) This section applies to a person who:

- (1) is a judge participating under this chapter;
- (2) was appointed by a court to serve as a full-time referee, full-time commissioner, or full-time magistrate either:
 - (A) before becoming a judge; or
 - (B) after leaving an elected term on the bench;
- (3) was a member of the public employees' retirement fund during the employment described in subdivision (2); and
- (4) received credited service under the public employees' retirement fund for the employment described in subdivision (2).

(b) If a person becomes a participant in the judges' 1977 benefit

system under section 1 of this chapter, credit for prior or subsequent service by the judge as a full-time referee, full-time commissioner, or full-time magistrate shall be granted under this chapter by the board if:

(1) the service was credited under the public employees' retirement fund;

(2) the state contributes to the judges' 1977 benefit system the amount the board determines necessary to amortize the service liability over a period determined by the board, but not more than ten (10) years; and

(3) the judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount the judge would have contributed if the judge had been a member of the judges' 1977 benefit system during the service.

(c) If the requirements of subsection (b)(2) and (b)(3) are not satisfied, a participant is entitled to credit only for years of service earned as a judge in the 1977 benefit system.

(d) An amortization schedule for contributions paid under subsection (b)(2) or (b)(3) must include interest at a rate determined by the board.

(e) The following provisions apply to a person described in subsection (a):

(1) A minimum benefit applies to participants receiving credit in the judges' 1977 benefit system from service covered by the public employees' retirement fund. The minimum benefit is payable at sixty-five (65) years of age and equals the actuarial equivalent of the vested retirement benefit that is:

(A) payable to the member at normal retirement under IC 5-10.2-4-1 as of the day before the transfer; and

(B) based solely on:

(i) creditable service;

(ii) the average of the annual compensation; and

(iii) the amount credited under IC 5-10.2 and IC 5-10.3 to the annuity savings account of the transferring member as of the day before the transfer.

(2) If the requirements of subsection (b)(2) and (b)(3) are satisfied, the board shall transfer from the public employees' retirement fund to the judges' 1977 benefit system the amount credited to the annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(3) The amount the state and the participant must contribute to the judges' 1977 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1977 benefit system by the board under subdivision (2).

(4) If the requirements of subsection (b)(2) and (b)(3) are satisfied, credit for service in the public employees' retirement fund as a full-time referee, full-time commissioner, or full-time magistrate is waived. Any credit for the service under the

judges' 1977 benefit system may be granted only under subsection (b).

(5) Credit in the public employees' retirement fund for service other than as a full-time referee, full-time commissioner, or full-time magistrate remains under the public employees' retirement fund and may not be credited under the judges' 1977 benefit system.

(f) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1977 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(g) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1977 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17. Amended by P.L.68-2007, SEC.1; P.L.180-2007, SEC.8.

IC 33-38-7-19

Credit for prior service; rollover distributions; trustee to trustee transfers

Sec. 19. (a) This section applies only to a person who:

(1) is a judge participating under this chapter;

(2) before becoming a judge was a member of an Indiana public employees' retirement fund;

(3) received credited service under an Indiana public employees' retirement fund for the employment described in subdivision (2), and the credited service is not eligible for service credit under section 18 of this chapter;

(4) has not attained vested status under a public employees' retirement fund for the employment described in subdivision (2); and

(5) has at least eight (8) years of service credit in the judges' retirement system.

(b) If a person becomes a participant in the judges' 1977 benefit system under this chapter, credit for service described in subsection (a) shall be granted under this chapter by the board if:

(1) the prior service was credited under an Indiana public employees' retirement fund; and

(2) the judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount determined by the actuary for the 1977 benefit system as the total actual cost of the service.

(c) If the requirements of subsection (b) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1977 benefit system.

(d) An amortization schedule for contributions paid under this section must include interest at a rate determined by the board.

(e) If the requirements of subsection (b) are satisfied, the appropriate board shall transfer from the retirement fund described in subsection (a)(2) to the judges' 1977 benefit system the amount credited to the judge's annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(f) The amount a participant must contribute to the judges' 1977 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1977 benefit system by the appropriate board under subsection (e).

(g) If the requirements of subsection (b) are satisfied, credit for prior service in a public employees' retirement fund is waived.

(h) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1977 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(i) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1977 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.9.

IC 33-38-8

Chapter 8. 1985 Retirement, Disability, and Death System

IC 33-38-8-1

Application of chapter

Sec. 1. This chapter applies only to an individual who:

- (1) begins service as a judge after August 31, 1985;
- (2) is serving as a full-time magistrate on July 1, 2010, and makes an election under section 10.5 of this chapter; or
- (3) begins service as a full-time magistrate after July 1, 2010.

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.10.

IC 33-38-8-2

"Americans with Disabilities Act" defined

Sec. 2. As used in this chapter, "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the act.

As added by P.L.98-2004, SEC.17.

IC 33-38-8-3

"Board" defined

Sec. 3. As used in this chapter, "board" refers to the board of trustees of the public employees' retirement fund.

As added by P.L.98-2004, SEC.17.

IC 33-38-8-4

"Employer" defined

Sec. 4. As used in this chapter, "employer" means the state of Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-8-5

"Fund" defined

Sec. 5. As used in this chapter, "fund" refers to the Indiana judges' retirement fund established by IC 33-38-6-12.

As added by P.L.98-2004, SEC.17.

IC 33-38-8-6

"Internal Revenue Code" defined

Sec. 6. (a) As used in this chapter, "Internal Revenue Code":

- (1) means the Internal Revenue Code of 1954, as in effect on September 1, 1974, if permitted with respect to governmental plans; or
- (2) to the extent consistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

As added by P.L.98-2004, SEC.17.

IC 33-38-8-7

"Participant" defined

Sec. 7. As used in this chapter, "participant" means a judge who participates in the fund. After December 31, 2010, "participant" means a judge or full-time magistrate who participates in the fund. *As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.11.*

IC 33-38-8-8

"Salary" defined

Sec. 8. As used in this chapter, "salary" means the total salary paid to a participant by the state and by a county or counties, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17.

IC 33-38-8-9

"Services" defined

Sec. 9. As used in this chapter, "services" means the period beginning on the first day a person first becomes a judge or, after December 31, 2010, a judge or full-time magistrate, and ending on the date under consideration and includes all intervening employment as a judge or, after December 31, 2010, a judge or full-time magistrate.

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.12.

IC 33-38-8-10

Participants

Sec. 10. (a) A person who:

- (1) begins service as a judge after August 31, 1985; and
- (2) is not a participant in the fund;

shall become a participant in the fund.

(b) A person who is serving as a full-time magistrate on July 1, 2010, and makes an election under section 10.5 of this chapter is, beginning January 1, 2011, a participant in the judges' 1985 benefit system under this chapter.

(c) A person who begins serving as a full-time magistrate after July 1, 2010, is a participant in the judges' 1985 benefit system under this chapter beginning on the later of the following:

- (1) January 1, 2011.

- (2) The date the person begins service as a full-time magistrate.

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.13.

IC 33-38-8-10.5

Magistrate election to participate in benefit system

Sec. 10.5. A person who is serving as a full-time magistrate on July 1, 2010, may elect to become a member of the judges' 1985 benefit system under this chapter. An election under this section:

- (1) must be made in writing;
- (2) must be filed with the board, on a form prescribed by the

board, before October 1, 2010; and

(3) is irrevocable.

As added by P.L.122-2008, SEC.14.

IC 33-38-8-11

Contributions

Sec. 11. (a) A participant shall make contributions to this fund of six percent (6%) of each payment of salary received for services as judge or, after December 31, 2010, as a judge or full-time magistrate. However, the employer may elect to pay the contribution for the participant as a pickup under Section 414(h) of the Internal Revenue Code.

(b) Participants' contributions, other than participants' contributions paid by the employer, shall be deducted from the monthly salary of each participant by the auditor of state and by the county auditor and credited to the fund as provided in IC 33-38-6-21 and IC 33-38-6-22. However, a contribution is not required:

(1) because of any salary received after the participant has contributed to the fund for twenty-two (22) years; or

(2) during any period that the participant is not serving as judge or, after December 31, 2010, as a judge or full-time magistrate.

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.15.

IC 33-38-8-12

Withdrawal of participant from fund

Sec. 12. (a) A participant who:

(1) ceases service:

(A) as a judge; or

(B) after December 31, 2010, as a judge or full-time magistrate;

other than by death or disability; and

(2) is not eligible for a retirement benefit under this chapter;

is entitled to withdraw from the fund, beginning on the date specified by the participant in a written application. The date on which the withdrawal begins may not be before the date of final termination of employment or the date thirty (30) days before the receipt of the application by the board.

(b) Upon the withdrawal, the participant is entitled to receive the total sum contributed, payable within sixty (60) days from the date of the withdrawal application or in monthly installments as the participant may elect.

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.16.

IC 33-38-8-13

Retirement benefits; termination of employment; conditions

Sec. 13. A participant whose employment as a judge or, after December 31, 2010, as a judge or full-time magistrate, is terminated is entitled to a retirement benefit computed under section 14 of this

chapter, beginning on the date specified by the participant in a written application, if the following conditions are met:

- (1) The date on which the benefit begins is not:
 - (A) before the date of final termination of employment of the participant; or
 - (B) the date thirty (30) days before the receipt of the application by the board.
- (2) The participant:
 - (A) is at least sixty-two (62) years of age and has at least eight (8) years of service credit;
 - (B) is at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85); or
 - (C) has become permanently disabled.
- (3) The participant is not receiving a salary from the state for services currently performed as:
 - (A) a judge (as defined in IC 33-38-6-7); or
 - (B) a magistrate under IC 33-23-5.

As added by P.L.98-2004, SEC.17. Amended by P.L.28-2005, SEC.2; P.L.122-2008, SEC.17.

IC 33-38-8-14

Retirement benefits; computation of amount

Sec. 14. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 20 of this chapter.

- (b) A participant who:
 - (1) applies for a retirement benefit; and
 - (2) is at least:
 - (A) sixty-five (65) years of age; or
 - (B) fifty-five (55) years of age and meets the requirements under section 13(2)(B) of this chapter;

is entitled to an annual retirement benefit as calculated in subsection (c).

(c) The annual retirement benefit for a participant who meets the requirements of subsection (b) equals the product of:

- (1) the applicable salary determined under subsection (e); multiplied by
- (2) the percentage prescribed in the following table:

Participant's Years of Service	Percentage
8	24%
9	27%
10	30%
11	33%
12	50%
13	51%
14	52%
15	53%
16	54%
17	55%

18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service.

(d) Except as provided in section 13(2)(B) of this chapter and subsection (b)(2)(B), if a participant who applies for a retirement benefit has not attained sixty-five (65) years of age, the participant is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were sixty-five (65) years of age reduced by one-tenth percent (0.1%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday. This reduction does not apply to:

- (1) participants who are separated from service because of permanent disability;
- (2) survivors of participants who die while in service after August 1, 1992; or
- (3) survivors of participants who die while not in service but while entitled to a future benefit.

(e) The applicable salary is one (1) of the following:

- (1) The salary that was being paid to the participant at the time of the participant's separation from service for:
 - (A) a participant who applies to receive a retirement benefit from the fund before January 1, 2010; or
 - (B) a participant who:
 - (i) before January 1, 2010, separates from service;
 - (ii) is entitled to receive a retirement benefit from the fund, but does not apply before January 1, 2010, to receive a retirement benefit; and
 - (iii) does not earn any service credit in the fund after December 31, 2009.
- (2) The salary being paid for the office that the participant held at the time of the participant's separation from service for a participant who:
 - (A) applies to receive a benefit after December 31, 2009; and
 - (B) is not a participant described in subdivision (1)(B).

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.18.

IC 33-38-8-15

Permanent disability of participants; certification; recovery; transcripts, reports, records, and other materials

Sec. 15. (a) A participant is considered to have a permanent

disability if the board has received a written certification by at least two (2) licensed and practicing physicians, appointed by the board, that:

- (1) the participant is totally incapacitated, by reason of physical or mental infirmities, from earning a livelihood; and
- (2) the condition is likely to be permanent.

(b) The participant shall be reexamined by at least two (2) physicians appointed by the board, at the times the board designates but at intervals not to exceed one (1) year. If, in the opinion of these physicians, the participant has recovered from the participant's disability, then benefits shall cease to be payable as of the date of the examination unless, on that date, the participant is at least:

- (1) sixty-five (65) years of age; or
- (2) fifty-five (55) years of age and meets the requirements under section 13(2)(B) of this chapter.

(c) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated by the initial and periodic examinations and reviews to determine eligibility for disability benefits under this section shall be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

As added by P.L.98-2004, SEC.17. Amended by P.L.99-2007, SEC.198.

IC 33-38-8-16

Permanent disability of participants; amount of benefits

Sec. 16. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 20 of this chapter.

(b) A participant who becomes permanently disabled is entitled to an annual benefit that equals the product of:

- (1) the salary that was paid to the participant at the time of separation from service; multiplied by
- (2) the percentage prescribed in the following table:

Participant's Years of Service	Percentage
0-12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on

the number of months in the partial year of service.
As added by P.L.98-2004, SEC.17.

IC 33-38-8-17

Death of participant; benefits of surviving spouse or children

Sec. 17. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 20 of this chapter.

(b) The surviving spouse or child or children, as designated by the participant, of a participant who:

- (1) dies; and
- (2) on the date of death:
 - (A) was receiving benefits under this chapter;
 - (B) had completed at least eight (8) years of service and was in service as a judge or, after December 31, 2010, as a judge or full-time magistrate;
 - (C) had a permanent disability; or
 - (D) had completed at least eight (8) years of service, was not still in service as a judge or, after December 31, 2010, as a judge or full-time magistrate, and was entitled to a future benefit;

are entitled, regardless of the participant's ages, to the benefit prescribed by subsection (c).

(c) The surviving spouse or child or children, as designated under subsection (b), are entitled to a benefit equal to the greater of:

- (1) fifty percent (50%) of the amount of the retirement benefit the participant was drawing at the time of death, or to which the participant would have been entitled had the participant retired and begun receiving retirement benefits on the date of death, with reductions as necessary under section 14(d) of this chapter; or
- (2) the amount determined under the following table:

Year	Amount
July 1, 1995, to June 30, 1996	\$10,000
July 1, 1996, to June 30, 1997	\$11,000
July 1, 1997, and thereafter	\$12,000

(d) The benefit payable to a surviving spouse or surviving child or children under subsection (c) is subject to the following:

- (1) A surviving spouse is entitled to receive the benefit for life.
- (2) The total monthly benefit payable to a surviving child or children is equal to the same monthly benefit that was to have been payable to the surviving spouse.
- (3) If there is more than one (1) child designated by the participant, then the children are entitled to share the benefit in equal monthly amounts.
- (4) A child entitled to a benefit shall receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability,

whichever period is longer.

(5) Upon the cessation of benefits to one (1) designated child, if there are one (1) or more other children then surviving and still entitled to benefits, the remaining children shall share equally the benefit. If the surviving spouse of the participant is surviving upon the cessation of benefits to all designated children, the surviving spouse shall then receive the benefit for the remainder of the spouse's life.

(6) The benefit shall be payable to the participant's surviving spouse if any of the following occur:

(A) No child or children named as a beneficiary by a participant survives the participant.

(B) No child or children designated by the participant is or are entitled to a benefit due to the age of the child or children at the time of death of the participant.

(C) A designation is not made.

(7) A benefit payable to a surviving child or children may be paid to a trust or a custodian account under IC 30-2-8.5, established for the surviving child or children as designated by the participant.

As added by P.L.98-2004, SEC.17. Amended by P.L.99-2007, SEC.199; P.L.122-2008, SEC.19.

IC 33-38-8-18

Death of participant; benefits of dependent children

Sec. 18. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 20 of this chapter.

(b) If a participant's spouse does not survive the participant, and there is no child designated and entitled to receive a benefit under section 17 of this chapter, any surviving dependent child of a participant is, upon the death of the participant, entitled to a benefit equal to the benefit the participant's spouse would have received under section 17 of this chapter.

(c) If a surviving spouse of a decedent participant dies and a dependent child of the surviving spouse and the decedent participant survives them, the dependent child is entitled to receive a benefit equal to the benefit the spouse was receiving or would have received under section 17 of this chapter.

(d) If there is more than one (1) dependent child, then the dependent children are entitled to share the benefit equally.

(e) A dependent child is entitled to receive the child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.

As added by P.L.98-2004, SEC.17.

IC 33-38-8-19

Death of participant; payments when no benefits payable to survivors

Sec. 19. (a) Benefits provided under this section are subject to

IC 33-38-6-13.

(b) If benefits are not payable to the survivors of a participant who dies, and if a withdrawal application is filed with the board, the total of the participant's contributions plus interest (as determined by the board) minus any payments made to the participant shall be paid to:

- (1) the surviving spouse of the participant or a child or children of the participant, as designated by the participant;
- (2) any other dependent or dependents of the participant, if a spouse or designated child or children does or do not survive; or
- (3) the participant's estate, if a spouse, designated child or children, or other dependent does or do not survive.

(c) The amount owed a spouse, designated child or children, or other dependent or dependents, or estate under subsection (b) is payable within sixty (60) days from the date of receipt of the withdrawal application or in the monthly installments as the recipient elects.

As added by P.L.98-2004, SEC.17.

IC 33-38-8-20

Maximum annual benefit under Internal Revenue Code

Sec. 20. Notwithstanding any other provision of this chapter, benefits paid under this chapter may not exceed the maximum annual benefit specified by Section 415 of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17.

IC 33-38-8-21

Service credit; contributions for service as judge or full-time magistrate

Sec. 21. (a) A judge or, after December 31, 2010, a judge or full-time magistrate, is entitled to a month of service credit for services performed in any fraction of a calendar month. However, a judge or, after December 31, 2010, a judge or full-time magistrate, is not entitled to more than one (1) month of credit for services performed in a calendar month.

(b) Except as otherwise provided in this chapter, if a judge is elected or appointed and serves one (1) or more terms or part of a term then retires from office but at a later period or periods is appointed or elected and serves as judge, the judge shall pay into the fund during all the periods served as judge, whether the periods are served consecutively or not.

(c) Except as otherwise provided in this chapter, a judge is not required to pay into the fund:

- (1) at any time when the judge is not serving as judge; or
- (2) during any period of service as a senior judge under IC 33-23-3.

(d) Except as otherwise provided in this chapter, after December 31, 2010, a full-time magistrate:

- (1) shall pay into the fund during all periods served as a full-time magistrate, whether the periods are served

consecutively or not; and

(2) is not required to pay into the fund at any time when the magistrate is not serving as a full-time magistrate.

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.20.

IC 33-38-8-22

Judge's credit for service as full-time referee or commissioner; credit for pre-2011 service as full-time magistrate; rollover distributions; trustee to trustee transfers

Sec. 22. (a) This section applies to a person who:

- (1) is a judge participating under this chapter;
- (2) was appointed by a court to serve as a full-time referee, full-time commissioner, or, before January 1, 2011, full-time magistrate, either:
 - (A) before becoming a judge; or
 - (B) after leaving an elected term on the bench;
- (3) was a member of the public employees' retirement fund during the employment described in subdivision (2); and
- (4) received credited service under the public employees' retirement fund for the employment described in subdivision (2).

(b) If a person becomes a participant as a judge in the judges' 1985 benefit system under section 1 of this chapter, credit for service by the judge as a full-time referee, full-time commissioner, or, before January 1, 2011, full-time magistrate shall be granted under this chapter by the board if:

- (1) the service was credited under the public employees' retirement fund;
- (2) the state contributes to the judges' 1985 benefit system the amount the board determines necessary to amortize the service liability over a period determined by the board, but not more than ten (10) years; and
- (3) the judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount the judge would have contributed if the judge had been a member of the judges' 1985 benefit system during the service.

(c) If the requirements of subsection (b)(2) and (b)(3) are not satisfied, a participant is entitled to credit only for years of service earned as a participant in the judges' 1985 benefit system.

(d) An amortization schedule for contributions paid under subsection (b)(2) or (b)(3) must include interest at a rate determined by the board.

(e) The following provisions apply to a person described in subsection (a):

- (1) A minimum benefit applies to participants receiving credit in the judges' 1985 benefit system from service covered by the public employees' retirement fund. The minimum benefit is payable at sixty-five (65) years of age or when the participant

is at least fifty-five (55) years of age and meets the requirements under section 13(2)(B) of this chapter and equals the actuarial equivalent of the vested retirement benefit that is:

(A) payable to the member at normal retirement under IC 5-10.2-4-1 as of the day before the transfer; and

(B) based solely on:

(i) creditable service;

(ii) the average of the annual compensation; and

(iii) the amount credited under IC 5-10.2 and IC 5-10.3 to the annuity savings account of the transferring member as of the day before the transfer.

(2) If the requirements of subsection (b)(2) and (b)(3) are satisfied, the board shall transfer from the public employees' retirement fund to the judges' 1985 benefit system the amount credited to the annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age or at least fifty-five (55) years of age under section 13(2)(B) of this chapter that is attributable to the transferring participant.

(3) The amount the state and the participant must contribute to the judges' 1985 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1985 benefit system by the board under subdivision (2).

(4) If the requirements of subsection (b)(2) and (b)(3) are satisfied, credit for service in the public employees' retirement fund as a full-time referee, full-time commissioner, or, before January 1, 2011, full-time magistrate is waived. Any credit for the service under the judges' 1985 benefit system may be granted only under subsection (b).

(f) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(g) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.21.

IC 33-38-8-22.5

Magistrate's credit for service as full-time referee or commissioner; credit for pre-2011 service as full-time magistrate; rollover distributions; trustee to trustee transfers

Sec. 22.5. (a) This section applies after December 31, 2010, only to a person who:

- (1) is a full-time magistrate participating under this chapter;
- (2) was appointed by a court to serve as:
 - (A) a full-time referee or full-time commissioner; or
 - (B) before January 1, 2011, a full-time magistrate;
- (3) was a member of the public employees' retirement fund during the employment described in subdivision (2); and
- (4) received credited service under the public employees' retirement fund for the employment described in subdivision (2).

(b) If a person becomes a participant as a full-time magistrate in the judges' 1985 benefit system under section 1 of this chapter, credit for service by the magistrate as a full-time referee, full-time commissioner, or, before January 1, 2011, full-time magistrate shall be granted under this chapter by the board if:

- (1) the service was credited under the public employees' retirement fund; and
- (2) the magistrate pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount determined by the actuary for the judges' 1985 benefit system as the total cost of the service.

(c) If the requirements of subsection (b) are not satisfied, a participant is entitled to credit only for years of service earned as a participant in the judges' 1985 benefit system.

(d) An amortization schedule for contributions paid under this section must include interest at a rate determined by the board.

(e) The following provisions apply to a person described in subsection (a):

- (1) A minimum benefit applies to participants receiving credit in the judges' 1985 benefit system from service covered by the public employees' retirement fund. The minimum benefit is payable at sixty-five (65) years of age or when the participant is at least fifty-five (55) years of age and meets the requirements under section 13(2)(B) of this chapter and equals the actuarial equivalent of the vested retirement benefit that is:
 - (A) payable to the member at normal retirement under IC 5-10.2-4-1 as of the day before the transfer; and
 - (B) based solely on:
 - (i) creditable service;
 - (ii) the average of the annual compensation; and

(iii) the amount credited under IC 5-10.2 and IC 5-10.3 to the annuity savings account of the transferring member as of the day before the transfer.

(2) If the requirements of subsection (b) are satisfied, the board shall transfer from the public employees' retirement fund to the judges' 1985 benefit system the amount credited to the annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age or at least fifty-five (55) years of age under section 13(2)(B) of this chapter that is attributable to the transferring participant.

(3) The amount the participant must contribute to the judges' 1985 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1985 benefit system by the board under subdivision (2).

(4) If the requirements of subsection (b) are satisfied, credit for service in the public employees' retirement fund as a full-time referee, full-time commissioner, or before July 1, 2010, full-time magistrate is waived. Any credit for the service under the judges' 1985 benefit system may be granted only under subsection (b).

(f) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(g) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

As added by P.L.122-2008, SEC.22.

IC 33-38-8-23

Credit for prior service as member of Indiana public employees' retirement fund; rollover distributions; trustee to trustee transfers

Sec. 23. (a) This section applies only to a person who:

(1) is:

(A) a judge; or

(B) after December 31, 2010, a judge or full-time magistrate; participating under this chapter;

(2) before becoming:

(A) a judge; or

(B) after December 31, 2010, a judge or full-time magistrate; was a member of a public employees' retirement fund;

(3) received credited service under a public employees' retirement fund for the employment described in subdivision (2), and the credited service is not eligible for service credit under section 22 or 22.5 of this chapter;

(4) has not attained vested status under a public employees' retirement fund for the employment described in subdivision (2); and

(5) has at least eight (8) years of service credit in the judges' retirement system.

(b) If a person becomes a participant in the judges' 1985 benefit system under this chapter, credit for service described in subsection (a) shall be granted under this chapter by the board if:

(1) the prior service was credited under a public employees' retirement fund; and

(2) the judge or full-time magistrate pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount determined by the actuary for the judges' 1985 benefit system as the total cost of the service.

(c) If the requirements of subsection (b) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the judges' 1985 benefit system.

(d) An amortization schedule for contributions paid under this section must include interest at a rate determined by the board.

(e) If the requirements of subsection (b) are satisfied, the appropriate board shall transfer from the retirement fund described in subsection (a)(2) to the judges' 1985 benefit system the amount credited to the judge's or full-time magistrate's annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(f) The amount a participant must contribute to the judges' 1985 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1985 benefit system by the appropriate board under subsection (e).

(g) If the requirements of subsection (b) are satisfied, credit for prior service in a public employees' retirement fund is waived.

(h) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section

403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(i) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17. Amended by P.L.122-2008, SEC.23.

IC 33-38-8-24

Cost of living adjustments payable after December 31, 2007, and December 31, 2008

Sec. 24. (a) This subsection applies to participants, survivors, and beneficiaries receiving benefits as of December 31, 2007. The amount of the monthly benefit received by a participant, survivor, or beneficiary as of December 31, 2007, shall be increased by two percent (2%). The increase under this subsection applies to monthly benefits paid after December 31, 2007.

(b) This subsection applies to participants, survivors, and beneficiaries receiving benefits as of December 31, 2008. The amount of the monthly benefit received by a participant, survivor, or beneficiary as of December 31, 2008, shall be increased by two percent (2%). The increase under this subsection applies to monthly benefits paid after December 31, 2008.

As added by P.L.68-2007, SEC.2.

IC 33-38-8-25

Cost of living adjustments for certain participants

Sec. 25. (a) This section applies:

(1) only to a participant:

(A) who applies to receive a retirement benefit from the fund before January 1, 2010; or

(B) who:

(i) before January 1, 2010, separates from service;

(ii) is entitled to receive a retirement benefit from the fund but does not apply before January 1, 2010, to receive a retirement benefit; and

(iii) does not earn any service credit in the fund after

December 31, 2009; and

(2) only in state fiscal years beginning after June 30, 2010.

(b) If a salary increase is provided in a particular state fiscal year under IC 33-38-5-8.1, the monthly benefit payable under this chapter to a participant described in subsection (a) shall be increased by the same percentage by which salaries are increased under IC 33-38-5-8.1(b) in that state fiscal year. The percentage increase shall be applied to the monthly benefit (including any previous increases to the monthly benefit received under this section or under any other provision) received by the participant as of June 30 of the immediately preceding state fiscal year. The percentage increase to the monthly benefit takes effect at the same time that the salary increase under IC 33-38-5-8.1 takes effect.

(c) This subsection applies only if:

(1) a salary increase is not provided in a particular state fiscal year under IC 33-38-5-8.1; and

(2) the salary of a judge is increased under IC 33-38-5-6, IC 33-38-5-8, or any other provision enacted by the general assembly in the state fiscal year.

The monthly benefit payable under this chapter to a participant described in subsection (a) shall be increased by the same percentage by which the salary being paid for the office that the participant held at the time of the participant's separation from service is increased under IC 33-38-5-6, IC 33-38-5-8, or any other provision enacted by the general assembly. The percentage increase shall be applied to the monthly benefit (including any previous increases to the monthly benefit received under this section or under any other provision) received by the participant as of June 30 of the immediately preceding state fiscal year. The percentage increase to the monthly benefit takes effect at the same time that the salary increase under IC 33-38-5-6, IC 33-38-5-8, or any other provision enacted by the general assembly takes effect.

(d) An increase payable under this section may not include any amount based on the percentage by which any salary provided by a county or counties under IC 36-2-5-14 or IC 36-3-6-3(c) is increased.
As added by P.L.122-2008, SEC.24.

IC 33-38-9

Chapter 9. Judicial Conference of Indiana and the Indiana Judicial Center

IC 33-38-9-1

"Judicial conference" defined

Sec. 1. As used in this chapter, "judicial conference" refers to the judicial conference of Indiana established by section 3 of this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-9-2

"Trial court judges" defined

Sec. 2. As used in section 4 of this chapter, "trial court judges" refers only to those trial court judges who are members of the judicial conference under section 3 of this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-9-3

Judicial conference; membership

Sec. 3. (a) The judicial conference of Indiana is established.

(b) The membership of the judicial conference consists of the following:

- (1) All justices of the supreme court.
- (2) All judges of the court of appeals.
- (3) The judge of the tax court.
- (4) All circuit, superior, probate, and county court judges.
- (5) All municipal court judges who are serving on a full-time basis.
- (6) Any retired judge who serves as a special judge and notifies the conference of the service.

(c) A full-time magistrate under IC 33-23-5 is a nonvoting member of the conference.

As added by P.L.98-2004, SEC.17.

IC 33-38-9-4

Board of directors; members; chairperson; judicial center, executive director, and staff personnel

Sec. 4. (a) The activities of the judicial conference shall be directed by a board of directors having the following members:

- (1) The chief justice of Indiana.
- (2) The chief judge of the court of appeals.
- (3) The president of the Indiana judges association.
- (4) The president of the Indiana council of juvenile court judges.
- (5) One (1) judge from each of the trial court districts established by the supreme court, elected for a term of two (2) years by the trial court judges of the district.
- (6) Five (5) trial court judges appointed for terms of one (1) year by the chief justice of Indiana.

(b) The chief justice of Indiana shall serve as chairperson of the board of directors. The judicial conference, through the board of directors:

- (1) shall establish a staff agency to be designated the Indiana judicial center; and
- (2) may establish positions for an executive director, staff personnel, and other necessary personnel.

All personnel of the Indiana judicial center shall be appointed by the chief justice of Indiana, and their salaries shall be fixed by the supreme court, subject to appropriation by the general assembly.

As added by P.L.98-2004, SEC.17.

IC 33-38-9-5

Meetings of membership; committees; hearings; proposed legislation; review

Sec. 5. (a) The entire membership of the judicial conference shall meet:

- (1) at least once a year at a time and place to be fixed by the board of directors; and
- (2) at other times as may be designated by the board of directors.

(b) The judicial conference may create committees either upon action of the board of directors or by majority vote of the members attending a meeting of the judicial conference. The judicial conference, the board of directors, or any committee of the judicial conference may hold hearings on any question related to the duties set out in section 6 of this chapter. A proposal for legislation relating to courts that is made by the judicial conference shall be presented to the division of state court administration for study and recommendation by the division before being presented to the general assembly.

As added by P.L.98-2004, SEC.17.

IC 33-38-9-6

Duties of conference

Sec. 6. The judicial conference shall do the following:

- (1) Promote an exchange of experience and suggestions regarding the operation of Indiana's judicial system.
- (2) Promote the continuing education of judges.
- (3) Seek to promote a better understanding of the judiciary.
- (4) Act as administrator for probationers participating in the interstate compact for the supervision of parolees and probationers under IC 11-13-4-3.
- (5) Act as compact administrator for probationers participating in the interstate compact on juveniles under IC 11-13-4-3.

As added by P.L.98-2004, SEC.17.

IC 33-38-9-7

Attendance at meetings; per diem and travel allowances

Sec. 7. All members, including full-time magistrates, shall attend

and those invited to participate may attend the meetings of the judicial conference. Per diem and travel allowances authorized by law shall be paid to the members and full-time magistrates attending from the annual appropriation to the judicial conference.

As added by P.L.98-2004, SEC.17.

IC 33-38-9-8

Roster of in-state facilities providing child services in residential settings

Sec. 8. (a) The Indiana judicial center shall maintain a roster of in-state facilities that have the expertise to provide child services (as defined in IC 31-9-2-17.8) in a residential setting to:

- (1) children in need of services (as described in IC 31-34-1); or
- (2) delinquent children (as described in IC 31-37-1 and IC 31-37-2).

(b) The roster under subsection (a) must include the information necessary to allow a court having juvenile jurisdiction to select an in-state placement of a child instead of placing the child in an out-of-state facility under IC 31-34 or IC 31-37. The roster must include at least the following information:

- (1) Name, address, and telephone number of each facility.
- (2) Owner and contact person for each facility.
- (3) Description of the child services that each facility provides and any limitations that the facility imposes on acceptance of a child placed by a juvenile court.
- (4) Number of children that each facility can serve on a residential basis.
- (5) Number of residential openings at each facility.

(c) The Indiana judicial center shall revise the information in the roster at least monthly.

(d) The Indiana judicial center shall make the information in the roster readily available to courts with juvenile jurisdiction.

As added by P.L.98-2004, SEC.17. Amended by P.L.146-2008, SEC.677.

IC 33-38-9-9

Administration of alcohol and drug services programs; certification of problem solving courts

Sec. 9. The Indiana judicial center shall administer the following:

- (1) The alcohol and drug services program under IC 12-23-14.
- (2) The certification of problem solving courts under IC 33-23-16.

As added by P.L.98-2004, SEC.17. Amended by P.L.60-2006, SEC.7; P.L.108-2010, SEC.6.

IC 33-38-9-10

Reports

Sec. 10. (a) Beginning in 2011, the Indiana judicial center shall submit a report to the commission on courts established by IC 33-23-10-1 by July 1 of each year concerning the status of

problem solving courts. Each report must contain the following information:

- (1) The number of problem solving courts certified by the Indiana judicial center.
- (2) The number of courts that have notified the Indiana judicial center of their intention to establish a problem solving court.
- (3) The number of each type of problem solving court, as set forth in IC 33-23-16-11, that have been established, including courts certified under IC 33-23-16-11(8).
- (4) The success rates of problem solving courts with specific examples of successes and failures.
- (5) Legislative suggestions to improve the certification or operation of problem solving courts.

(b) The first report required by this section must be submitted not later than July 1, 2011.

(c) This section expires June 30, 2014.

As added by P.L.108-2010, SEC.7.

IC 33-38-10

Chapter 10. Private Judges

IC 33-38-10-1

"Private judge" defined

Sec. 1. As used in this chapter, "private judge" means a person who is qualified to act as judge of a case under this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-10-2

Persons who may act as private judge

Sec. 2. (a) A person who:

- (1) has been but is not currently a judge of a circuit, superior, criminal, probate, municipal, or county court and has served in the capacity of judge for at least four (4) consecutive years;
- (2) is admitted to the practice of law in Indiana; and
- (3) is a resident of Indiana;

may act as judge for certain cases under this chapter.

(b) A person may act as a judge of a case under this chapter only if:

- (1) all parties to the action file a written petition with the executive director of the division of state court administration consenting to the case being heard by a private judge, and naming the person whom the parties wish to have as private judge;
- (2) the case is one over which the court in which the former judge served would have had subject matter and monetary jurisdiction;
- (3) the case is founded exclusively on contract, tort, or a combination of contract and tort; and
- (4) the case is one in which a utility (as defined in IC 8-1-2-1) is not a party.

As added by P.L.98-2004, SEC.17.

IC 33-38-10-3

Registration of former judges; list; petition to have case heard by private judge; appointment

Sec. 3. (a) A former judge qualified under section 2(a) of this chapter who wishes to serve as a private judge must register with the executive director of the division of state court administration. The executive director shall:

- (1) compile;
- (2) periodically update; and
- (3) make available to the public;

a list of registered former judges.

(b) If the parties to an action wish to have the action heard before a private judge, the parties shall submit to the executive director of the division of state court administration a written petition as described in section 2(b)(1) of this chapter. After verifying that the former judge is qualified under section 2(a) of this chapter and is

registered under subsection (a), the executive director shall forward the petition to the former judge named on the petition.

(c) The regular or presiding judge of the court in which the action is filed shall appoint the private judge to hear the action if the written petition of the parties to the action and the written consent of the private judge to hear the action is presented to the regular or presiding judge:

- (1) contemporaneously with the filing of the action; or
- (2) after the action has been filed.

As added by P.L.98-2004, SEC.17.

IC 33-38-10-4

Conduct of trial without jury; powers of judge; records; applicability of rules of civil procedure; appeals

Sec. 4. (a) A trial conducted by a private judge shall be conducted without a jury.

(b) A person who serves as a private judge has, for each case the private judge hears, the same powers as the judge of a circuit court in relation to:

- (1) court procedure;
- (2) deciding the outcome of the case;
- (3) attendance of witnesses;
- (4) punishment of contempts;
- (5) enforcement of orders;
- (6) administering oaths; and
- (7) giving all necessary certificates for the authentication of the records and proceedings.

(c) All proceedings in an action heard by a private judge are of record and must be:

- (1) filed with the clerk of the circuit court in the county of proper venue under the Indiana Rules of Trial Procedure; and
- (2) made available to the public in the same manner as circuit court records.

(d) The Indiana Rules of Trial Procedure apply for all actions brought before a private judge. An appeal from an action or a judgment of a private judge may be taken in the same manner as an appeal from the circuit court of the county where the case is filed.

As added by P.L.98-2004, SEC.17.

IC 33-38-10-5

Costs

Sec. 5. Costs in an action brought before a private judge shall be taxed and distributed in the same manner as costs in the circuit court of the county in which the case is filed.

As added by P.L.98-2004, SEC.17.

IC 33-38-10-6

Clerk of court; sheriff; duties

Sec. 6. (a) The clerk of the circuit court of the county in which the case is filed serves as the clerk of the court for a case heard by a

private judge, and the sheriff of that county serves as the sheriff of the court for the case. The clerk and the sheriff shall attend the proceedings and perform the same duties relating to their offices as are required for the circuit court of the county in which the case is filed.

(b) The clerk of the circuit court of the county in which the case is filed shall provide to a private judge for each case all books, dockets, papers, and printed blanks necessary to discharge the duties of the court.

As added by P.L.98-2004, SEC.17.

IC 33-38-10-7

Time and place of hearing; notice of proceeding

Sec. 7. (a) A case heard by a private judge may be heard:

- (1) at any time; and
- (2) at any place in Indiana;

that is mutually agreeable to all parties and the judge.

(b) There shall be posted in the office of the clerk of the circuit court of the county in which the case is filed, in a place accessible to the public, a notice of the date, time, and place of any proceeding, including:

- (1) a hearing on a motion for judgment by default;
- (2) a hearing for judgment on the pleadings;
- (3) a hearing for summary judgment; and
- (4) a trial upon the merits;

that could result in a judgment. The notice shall be posted at least three (3) days before the proceeding is conducted.

As added by P.L.98-2004, SEC.17.

IC 33-38-10-8

Compensation and costs

Sec. 8. Notwithstanding the rules of trial procedure, a private judge may receive compensation for hearing a case in an amount and subject to the terms and conditions agreed to by the judge and the parties to the case. A contract for the services of a private judge must provide for the payment of the judge's compensation by the parties. In addition, the contract must include terms and conditions relating to:

- (1) the compensation of all personnel; and
- (2) the costs of all facilities and materials;

as determined by the clerk of the court that are used in relation to the case and not otherwise covered.

As added by P.L.98-2004, SEC.17.

IC 33-38-10-9

Adoption of rules by supreme court

Sec. 9. The supreme court shall adopt rules to carry out this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-11

Chapter 11. Temporary Judges

IC 33-38-11-1

Appointment; residence; term; juvenile law judge

Sec. 1. (a) The judge of a circuit, superior, or county court may appoint temporary judges. Each temporary judge must be:

- (1) a competent attorney admitted to the practice of law in Indiana; and
- (2) a resident of the judicial district of the court after the temporary judge's appointment.

The temporary judge's appointment must be in writing. The temporary judge continues in office until removed by the judge.

(b) A temporary juvenile law judge may be appointed under this subsection for the exclusive purpose of hearing cases arising under IC 31-30 through IC 31-40. The appointment shall be made under an agreement between at least two (2) judges of courts located:

- (1) in the same county; or
 - (2) in counties that are adjacent to each other.
- (c) An agreement under subsection (b) must:
- (1) be filed with the circuit court clerk of each county in which a court subject to the agreement is located;
 - (2) specify the duration of the agreement, which may not exceed one (1) year; and
 - (3) permit a judge to end the participation of a court in the agreement.

As added by P.L.98-2004, SEC.17.

IC 33-38-11-2

Powers; administration of oaths; certifying affidavits and depositions; subpoenas; preliminary hearings; warrants

Sec. 2. A temporary judge:

- (1) may:
 - (A) administer all oaths and affirmations required by law;
 - (B) take and certify affidavits and depositions; and
 - (C) issue subpoenas for witnesses whose testimony is to be taken before the temporary judge;
- (2) has the same power to compel the attendance of witnesses and to punish contempts as the judge of the court;
- (3) may:
 - (A) conduct preliminary hearings in criminal matters;
 - (B) issue search warrants and arrest warrants; and
 - (C) fix bond; and
- (4) may enforce court rules.

As added by P.L.98-2004, SEC.17.

IC 33-38-11-3

Powers; hearing evidence; findings

Sec. 3. (a) Except as provided in subsection (b), a temporary judge may hear evidence upon and report findings to the judge of the court

for each probate, civil, criminal, and other case referred to the temporary judge by that judge. The temporary judge may:

- (1) make the final judgment in these cases; and
- (2) in a criminal case tried by the court, conduct all sentencing hearings in the case.

(b) If a defendant is being tried for a felony, the judge of the court shall conduct all sentencing hearings and make the final judgment in the case.

As added by P.L.98-2004, SEC.17.

IC 33-38-11-4

Powers; civil jury trial

Sec. 4. A temporary judge may:

- (1) conduct a jury trial;
- (2) receive the verdict of the jury; and
- (3) make and enter the judgment on the jury verdict;

in a civil case referred to the temporary judge by the judge of the court.

As added by P.L.98-2004, SEC.17.

IC 33-38-11-5

Powers; criminal jury trial

Sec. 5. In a criminal jury trial referred to a temporary judge by the judge of the court, the temporary judge may conduct the trial, receive the verdict of the jury, conduct all sentencing hearings, and make all final judgments. However, if the criminal case is a case in which the defendant is being tried for a felony, the judge of the court shall:

- (1) make the final judgment in the case; and
- (2) conduct all sentencing hearings in the case.

As added by P.L.98-2004, SEC.17.

IC 33-38-11-6

Limitation of rights and powers

Sec. 6. The judge of the court may:

- (1) limit any of the rights or powers of the temporary judge specified in this chapter; and
- (2) specifically determine the duties of the temporary judge within the limits established in this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-11-7

Service as judge pro tempore or special judge

Sec. 7. A temporary judge may serve as a judge pro tempore or a special judge of the court but is not entitled to additional compensation for that service.

As added by P.L.98-2004, SEC.17.

IC 33-38-11-8

Judicial mandate

Sec. 8. A temporary judge has no power of judicial mandate.

As added by P.L.98-2004, SEC.17.

IC 33-38-11-9

Compensation

Sec. 9. A temporary judge is entitled to twenty-five dollars (\$25), paid by the county, for each day of service as a temporary judge.

As added by P.L.98-2004, SEC.17.

IC 33-38-11-10

Limitation on service; exceptions

Sec. 10. Except for:

(1) a temporary juvenile law judge appointed under section 1(b) of this chapter for the exclusive purpose of hearing cases arising under IC 31-30 through IC 31-40; or

(2) a temporary judge appointed by a court located in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000);

a temporary judge appointed under this chapter may not serve for more than sixty (60) calendar days in all during a calendar year.

As added by P.L.98-2004, SEC.17.

IC 33-38-11-11

Scope of service

Sec. 11. A temporary judge appointed under this chapter may serve even though the judge of the court is present and presiding in the court.

As added by P.L.98-2004, SEC.17.

IC 33-38-12

Chapter 12. Defense and Indemnification of Judges for Civil Damages

IC 33-38-12-1

Application of chapter

Sec. 1. This chapter does not apply to a threatened, pending, or completed action or proceeding that:

- (1) results in the criminal conviction of; or
- (2) is a disciplinary action or proceeding against;
a judge.

As added by P.L.98-2004, SEC.17.

IC 33-38-12-2

"Expenses" defined

Sec. 2. As used in this chapter, "expenses" includes the following:

- (1) Reasonable attorney's fees, if the attorney general has authorized the executive director of the division of state court administration to hire private counsel to provide the defense.
- (2) A judgment.
- (3) A settlement.
- (4) Court costs.
- (5) Discovery costs.
- (6) Expert witness fees.
- (7) Any other expense incurred as a result of an action or a proceeding.

As added by P.L.98-2004, SEC.17.

IC 33-38-12-3

"Judge" defined

Sec. 3. As used in this chapter, "judge" means an individual who holds or formerly held one (1) of the following offices or appointments:

- (1) Justice of the supreme court.
- (2) Judge of the court of appeals.
- (3) Judge of the tax court.
- (4) Judge of a circuit court.
- (5) Judge of a superior court.
- (6) Judge of a probate court.
- (7) Judge of a municipal court.
- (8) Judge of a county court.
- (9) Judge of a city court.
- (10) Judge of a town court.
- (11) Judge of a small claims court.
- (12) A judge pro tempore, senior judge, temporary judge, or any other individual serving as judge in an action or a proceeding in an Indiana court.
- (13) Bail commissioner.
- (14) Magistrate.
- (15) Master commissioner.

(16) Probate commissioner.

(17) Referee.

As added by P.L.98-2004, SEC.17.

IC 33-38-12-4

Payment of expenses

Sec. 4. The state shall pay the expenses incurred by a judge from a threatened, pending, or completed action or proceeding that arises from:

(1) making;

(2) performing; or

(3) failing to make or perform;

a decision, a duty, an obligation, a privilege, or a responsibility of the judge's office.

As added by P.L.98-2004, SEC.17.

IC 33-38-13

Chapter 13. The Commission on Judicial Qualifications and the Retirement, Discipline, and Removal of Justices and Judges

IC 33-38-13-1

Scope of law

Sec. 1. This chapter applies to all proceedings before the commission on judicial qualifications and masters involving the censure, retirement, or removal of justices of the supreme court and judges of the court of appeals, as provided by Article 7, Section 11 of the Constitution of the State of Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-2

"Commission" defined

Sec. 2. As used in this chapter, "commission" means the commission on judicial qualifications described in Article 7, Section 9 of the Constitution of the State of Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-3

"Counsel" defined

Sec. 3. As used in this chapter, "counsel" means the lawyer designated by the commission to:

- (1) gather and present evidence before the masters or commission with respect to the charges against a judge; and
- (2) represent the commission before the supreme court in connection with any proceedings before the court.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-4

"Judge" defined

Sec. 4. As used in this chapter, "judge" means a judge of the court of appeals.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-5

"Mail" defined

Sec. 5. As used in this chapter, "mail" includes ordinary mail or personal delivery.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-6

"Masters" defined

Sec. 6. As used in this chapter, "masters" means the special masters appointed by the chief justice upon request of the commission.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-7

"Presiding master" defined

Sec. 7. As used in this chapter, "presiding master" means the master so designated by the chief justice or, in the absence of a designation, the justice or judge named in the order appointing masters.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-8

Age; temporary judicial duties

Sec. 8. (a) Every justice of the supreme court and judge of the court of appeals shall retire at seventy-five (75) years of age.

(b) Notwithstanding subsection (a), the supreme court may authorize retired justices and judges to perform temporary judicial duties in any state court.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-9

Meeting of commissioners

Sec. 9. (a) The commission shall meet as necessary to discharge its statutory and constitutional responsibilities. Meetings of the commission shall be called in the same manner as prescribed for the judicial nominating commission. Four (4) members of the commission constitute a quorum for the transaction of business.

(b) Meetings of the commission shall be held in Indiana as the chairman of the commission arranges.

(c) The commission may act only at a meeting. The commission may adopt rules and regulations to conduct meetings and discharge its duties.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-10

Papers filed before and after institution of formal proceedings; confidentiality; public inspection

Sec. 10. (a) All papers filed with the commission before the institution of formal proceedings under section 14 of this chapter are confidential unless:

- (1) the justice or judge against whom a recommendation has been filed elects to have the information divulged; or
- (2) the commission elects to answer publicly disseminated statements issued by any complainant.

(b) All papers filed with the commission during and after the institution of formal proceedings are open for public inspection at all reasonable times. Records of commission proceedings are open for public inspection at all reasonable times. After the institution of formal proceedings, all hearings and proceedings before the commission or before the masters appointed under this chapter are open to the public.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-11

Privileged information

Sec. 11. Filing papers with and giving testimony before the commission or the masters appointed by the supreme court under this chapter are privileged.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-12

Complaint

Sec. 12. (a) A complaint filed with the commission must be in writing and directed to the commission or to any member of the commission.

(b) A specified form of complaint may not be required.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-13

Complaint; investigation

Sec. 13. (a) Any Indiana citizen may complain to the commission about the activities, fitness, or qualifications of a judge or justice. Upon receiving a complaint, the commission shall determine if the complaint is founded and not frivolous. If the commission determines that the complaint is frivolous or malicious, the commission shall file with the proper court charges against the complainant. The commission, without receiving a complaint, may conduct an initial inquiry on its own motion.

(b) If the commission determines it is necessary to investigate a justice or judge, the commission shall notify the justice or judge by prepaid registered or certified mail addressed to the justice or judge at the justice's or judge's chambers and last known residence. The notice must contain information concerning the following:

- (1) The investigation.
- (2) The nature of the complaint.
- (3) The origin of the complaint, including the name of the complainant or that the investigation is on the commission's motion.
- (4) The opportunity to present matters as the justice or judge may choose.

If the investigation does not disclose sufficient cause to warrant further proceedings the justice or judge shall be so notified.

(c) The commission may do the following:

- (1) Make investigations or employ special investigators.
- (2) Hold confidential hearings with the complainant or the complainant's agents or attorneys.
- (3) Hold confidential hearings with the judge or justice involved in the complaint.

(d) If:

- (1) the commission's initial inquiry or investigation does not disclose sufficient cause to warrant further proceedings; and
- (2) the complainant issues a public statement relating to the activities or actions of the commission;

the commission may answer the statement by referring to the record

of its proceedings or the results of its investigation.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-14

Notice of formal proceedings

Sec. 14. (a) If the commission concludes, after investigation, to institute formal proceedings against a justice or judge, the commission shall give written notice of the proceedings to the justice or judge by registered or certified mail addressed to the judge at the judge's chambers and last known residence. The proceedings must be entitled:

"BEFORE THE INDIANA JUDICIAL
QUALIFICATIONS COMMISSION
Inquiry Concerning a (Justice) Judge, No. _____".

(b) The notice must:

- (1) be issued in the name of the commission;
- (2) specify in ordinary and concise language the charges against the justice or judge and the alleged facts upon which the charges are based; and
- (3) advise the justice or judge of the justice's or judge's right to file a written answer to the charges not more than twenty (20) days after service of the notice.

A charge is not sufficient if it merely recites the general language of the original complaint, but must specify the facts relied upon to support a particular charge.

(c) A copy of the notice shall be filed in the office of the commission.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-15

Answer

Sec. 15. Not more than twenty (20) days after service of the notice of formal proceedings, the justice or judge:

- (1) may file with the commission a signed original and one (1) copy of an answer; and
- (2) shall mail a copy of the answer to the counsel.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-16

Setting for hearing before commission or masters

Sec. 16. (a) Upon the filing of or the expiration of time for filing an answer, the commission shall:

- (1) hold a hearing concerning the discipline, retirement, or removal of the justice or judge; or
- (2) request the supreme court to appoint three (3) active or retired justices or judges of courts of record as special masters to hear and take evidence and report to the commission.

(b) The commission shall:

- (1) set a date, time, and place for a hearing under subsection (a); and

- (2) give notice of the hearing by registered or certified mail to the justice or judge, the masters, and the counsel not less than twenty (20) days before the date of the hearing.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-17

Hearing

Sec. 17. (a) The commission or a master may proceed with a scheduled hearing whether or not the judge files an answer or appears at the hearing.

(b) The failure of a justice or judge to answer or appear at the hearing may not be taken as evidence of the truth of the facts alleged to constitute grounds for censure, retirement, or removal. In a proceeding for involuntary retirement for disability, the failure of a justice or judge to testify in the justice's or judge's behalf or to submit to a medical examination requested by the commission or the masters may be considered, unless the failure was due to circumstances beyond the justice's or judge's control.

(c) The hearing shall be reported verbatim.

(d) At least four (4) commission members must be present when evidence is produced at a hearing before the commission.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-18

Evidence

Sec. 18. The Indiana Rules of Evidence apply at a hearing before the commission or the masters.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-19

Rights of judge; proceedings; notice; incapacity

Sec. 19. (a) In formal proceedings involving a justice's or judge's discipline, retirement, or removal, the justice or judge may do the following:

- (1) Defend against the charges by introducing evidence.
- (2) Be represented by counsel.
- (3) Examine and cross-examine witnesses.
- (4) Issue subpoenas for attendance of witnesses to testify or produce evidentiary matter under section 31 of this chapter.

(b) The commission shall transcribe the testimony and provide a copy at no cost to the justice or judge. The justice or judge is entitled to have any part of the testimony transcribed at the justice's or judge's expense.

(c) Except as otherwise provided in this chapter, notice or any other matter shall be sent to a justice or judge by registered or certified mail to the justice or judge at the justice's or judge's office and residence unless the justice or judge requests otherwise in writing. A copy of the notice or other matter must be mailed to the justice's or judge's attorney of record.

(d) If a justice or judge has been adjudged incapacitated under

IC 29-3, the justice's or judge's guardian may claim and exercise any right and privilege and make any defense for the justice or judge with the same force and effect as if claimed, exercised, or made by the justice or judge if competent. If the rules provide for serving or giving notice or sending any matter to the justice or judge, a copy of any notice or other matter sent to the justice or judge also shall be served, given, or sent to the justice's or judge's guardian.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-20

Amendments to notice or answer

Sec. 20. The masters, at any time before the conclusion of the hearing, or the commission, at any time before its determination:

- (1) may allow or require amendments to the notice of formal proceedings; and
- (2) may allow amendments to the answer.

The notice may be amended to conform to proof or to set forth additional facts whether occurring before or after the commencement of the hearing. If an amendment is made, the justice or judge shall be given reasonable time both to answer the amendment and to prepare and present a defense.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-21

Report of masters

Sec. 21. (a) After a hearing, the masters shall promptly prepare and transmit to the commission an original and four (4) copies of a transcript of the hearing and an original and four (4) copies of a report that contains a brief statement of the proceedings and the masters' recommended findings of fact. The recommended findings of facts are not binding upon the commission.

(b) Upon receiving the report of the masters, the commission shall mail a copy of the report and transcript to the justice or judge and the counsel.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-22

Objections to report of masters

Sec. 22. Not more than fifteen (15) days after the commission mails a copy of the report of the masters to the justice or judge, the counsel or the justice or judge may file with the commission an original and one (1) copy of objections to the report of masters. If the counsel files objections, the counsel shall mail a copy of the objections to the justice or judge. If the justice or judge files objections, the justice or judge shall send a copy of the objections by registered or certified mail to the counsel.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-23

Appearance before commission

Sec. 23. If objections to a report of the masters under section 21 of this chapter are not timely filed, the commission may adopt the recommended findings of the masters without a hearing. If objections are timely filed, or if objections are not timely filed and the commission proposes to modify or reject the recommended findings of the masters, the commission shall give the justice or judge and the counsel an opportunity to be heard before the commission in the county in which the justice or judge resides. The commission shall mail written notice of the time and place of the hearing to the justice or judge and the counsel not less than ten (10) days before the hearing.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-24

Extension of time

Sec. 24. (a) The chairman of the commission may extend the time for:

- (1) filing an answer;
- (2) conducting a hearing before the commission; and
- (3) filing objections to the report of the masters.

(b) The presiding master may, with the approval of the chairman of the commission, extend the time for conducting a hearing before the masters.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-25

Hearings; additional evidence

Sec. 25. The commission may order a hearing to take additional evidence at any time while a matter is pending before it. The hearing must be in the county in which the justice or judge resides. The order must set the time and place of the hearing and shall indicate the matters on which evidence will be taken. The commission shall send a copy of the order to the judge and the counsel not less than ten (10) days before the hearing. If masters have been appointed, the hearing shall be before the masters, and the hearing must conform with sections 18 through 24 of this chapter and this section.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-26

Vote or recommendation for censure, retirement, or removal

Sec. 26. If the commission finds good cause, it shall recommend to the supreme court the censure, retirement, or removal of a justice or judge. If a hearing is before the masters, the affirmative vote of four (4) members of the commission is required to recommend censure, retirement, or removal of a justice or judge. If a hearing is before the commission, the affirmative vote of four (4) members of the commission, including a majority of the members who were present at the hearing, is required to recommend censure, retirement, or removal of a justice or judge.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-27

Record of commission proceedings

Sec. 27. The commission shall keep a record of all formal proceedings concerning a judge. The commission shall record its determination and mail notice of the determination to the justice or judge and the counsel. If the commission recommends censure, retirement, or removal, the commission shall prepare a transcript of the evidence and proceedings and shall make written findings of fact and conclusions of law.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-28

Certification of commission recommendation to supreme court

Sec. 28. Upon recommending the censure, retirement, or removal of a justice or judge, the commission shall promptly file the following with the clerk of the supreme court:

- (1) A copy of the recommendation certified by the chairman or secretary of the commission.
- (2) A transcript of the evidence.
- (3) Findings of fact and conclusions of law.

The commission shall promptly mail to the justice or judge and the counsel notice of the filing and copies of the filed documents.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-29

Petition for modification or rejection of commission's recommendation

Sec. 29. (a) Not more than thirty (30) days after a certified copy of the commission's recommendation is filed with the clerk of the supreme court, a justice or judge may petition the supreme court to modify or reject the commission's recommendation.

(b) The justice or judge shall verify the petition. The petition must be based on the record. The petition must specify the grounds relied on and must be accompanied by the petitioner's brief and proof of service of two (2) copies of the petition and brief on the commission and one (1) copy of the petition and brief on the counsel.

(c) Not more than twenty (20) days after service of the petitioner's brief, the commission shall file a respondent's brief and serve a copy on the justice or judge. Not more than twenty (20) days after service of respondent's brief, the petitioner may file a reply brief and shall serve two (2) copies on the commission and one (1) copy on the counsel.

(d) Failure to timely file a petition is considered consent to the determination on the merits based upon the record filed by the commission.

(e) To the extent necessary and not inconsistent with this section, the Indiana Rules of Appellate Procedure apply to reviews by the supreme court of commission proceedings.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-30

Jurisdiction and powers

Sec. 30. The commission has jurisdiction and powers necessary to conduct the proper and speedy disposition of any investigation or hearing, including the powers to depose witnesses and to order the production of documentary evidence. A member of the commission or a master may administer oaths to witnesses in a matter under the commission's jurisdiction.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-31

Subpoenas

Sec. 31. (a) A master may issue a subpoena for:

- (1) the attendance of witnesses;
- (2) the production of documentary evidence; or
- (3) discovery;

in a proceeding before the masters. The master shall serve the subpoena in the manner provided by law.

(b) The chairman of the commission may issue a subpoena for:

- (1) the attendance of witnesses;
- (2) the production of documentary evidence; or
- (3) discovery;

in a proceeding before the commission in which masters have not been appointed. The chairman shall serve the subpoena in the manner provided by law.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-32

Enforcement of subpoena

Sec. 32. If a witness in a commission proceeding:

- (1) fails or refuses to attend upon subpoena; or
- (2) refuses to testify or produce documentary evidence demanded by subpoena;

a circuit court may enforce the subpoena.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-33

Filing papers and pleadings

Sec. 33. All papers and pleadings filed with the office of the chairman of the commission are considered to have been filed with the commission.

As added by P.L.98-2004, SEC.17. Amended by P.L.2-2005, SEC.111.

IC 33-38-13-34

Discovery; admissibility of evidence; demand for formal proceeding or finding

Sec. 34. (a) In all formal proceedings, discovery is available to the commission and the judge or justice under the Indiana Rules of Civil Procedure. A motion requesting a discovery order must be made to

the circuit court judge in the county in which the commission hearing is held.

(b) In all formal proceedings, the counsel shall provide the following to the judge or justice at least twenty (20) days before the hearing:

(1) The names and addresses of all witnesses whose testimony the counsel expects to offer at the hearing.

(2) Copies of all written statements and transcripts of testimony of witnesses described in subdivision (1) that:

(A) are in the possession of the counsel or the commission;

(B) are relevant to the hearing; and

(C) have not previously been provided to the justice or judge.

(3) Copies of all documentary evidence that the counsel expects to offer in evidence at the hearing.

(c) Upon objection of the justice or judge, the following are not admissible in a hearing:

(1) The testimony of a witness whose name and address have not been furnished to the judge or justice under subsection (b).

(2) Documentary evidence that has not been furnished to the judge or justice under subsection (b).

(d) After formal proceedings have been instituted, the justice or judge may request in writing that the counsel furnish to the justice or judge the names and addresses of all witnesses known at any time to the counsel who have information that may be relevant to a charge against or a defense of the justice or judge. The counsel shall provide to the justice or judge copies of documentary evidence that:

(1) are known at any time to the counsel or in the possession at any time of the counsel or the commission;

(2) are relevant to a charge against or defense of the justice or judge; and

(3) have not previously been provided to the justice or judge.

The counsel shall comply with a request under this subsection not more than ten (10) days after receiving the request and not more than ten (10) days after the counsel becomes aware of the information or evidence.

(e) During the course of an investigation by the commission, the justice or judge whose conduct is being investigated may demand in writing that the commission:

(1) institute formal proceedings against the justice or judge; or

(2) enter a formal finding that there is not probable cause to believe that the justice or judge is guilty of any misconduct.

The commission shall comply with a request under this subsection not more than sixty (60) days after receiving the request. A copy of the request shall be filed with the supreme court. If the commission finds that there is not probable cause, the commission shall file the finding with the supreme court. A document filed with the supreme court under this subsection is a matter of public record.

As added by P.L.98-2004, SEC.17.

IC 33-38-13-35

Exclusion

Sec. 35. This chapter does not encroach upon or impair the vested rights of a justice or judge or the surviving spouse of a justice or judge under any constitutional or statutory retirement program.

As added by P.L.98-2004, SEC.17.

IC 33-38-14

Chapter 14. The Commission on Judicial Qualifications and the Discipline of Judges of Superior, Probate, Juvenile, and Criminal Courts

IC 33-38-14-1

Purpose

Sec. 1. It is the purpose of this chapter to provide that judges of superior, probate, juvenile, or criminal courts in counties described in section 9 of this chapter are subject to disciplinary action on the grounds and in the manner set forth in this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-2

"Commission" defined

Sec. 2. As used in this chapter, "commission" means the commission on judicial qualifications described in Article 7, Section 9 of the Constitution of the State of Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-3

"Counsel" defined

Sec. 3. As used in this chapter, "counsel" means the lawyer designated by the commission to:

- (1) gather and present evidence before the masters or the commission with respect to the charges against a judge; and
- (2) represent the commission before the supreme court in connection with any proceedings before the court.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-4

"Judge" defined

Sec. 4. As used in this chapter, "judge" means a judge of a superior or probate court.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-5

"Mail" defined

Sec. 5. As used in this chapter, "mail" includes ordinary mail or personal delivery.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-6

"Masters" defined

Sec. 6. As used in this chapter, "masters" means the special masters appointed by the chief justice upon request of the commission.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-7

"Presiding master" defined

Sec. 7. As used in this chapter, "presiding master" means the master so designated by the chief justice or, in the absence of a designation, the justice or judge named in the order appointing masters.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-8

Commission on judicial qualifications

Sec. 8. Subject to section 9 of this chapter, the commission is the commission on judicial qualifications for judges of trial courts. The members of the commission on judicial qualifications for the court of appeals and the supreme court are the members of the commission on judicial qualifications for judges of the trial courts.

As added by P.L.98-2004, SEC.17. Amended by P.L.65-2004, SEC.17.

IC 33-38-14-9

Disciplinary jurisdiction over judges

Sec. 9. (a) The commission shall exercise disciplinary jurisdiction over judges of trial courts.

(b) In a county in which a commission on judicial qualifications operated by virtue of law before July 26, 1973, the county commission on judicial qualifications ceases to exercise disciplinary jurisdiction over the county courts and the commission shall exercise disciplinary jurisdiction. However, if the law creating a county commission on judicial qualifications in a county before July 26, 1973, precluded judges subject to its disciplinary jurisdiction from participating in political activities because the judges are selected by a merit system, the judges are precluded from participating in political activities.

(c) The operation and function of a judicial nominating commission operating in a county by virtue of law before July 26, 1973, is not affected by this chapter.

As added by P.L.98-2004, SEC.17. Amended by P.L.65-2004, SEC.18.

IC 33-38-14-10

Disqualification; suspension; retirement; censure; removal

Sec. 10. (a) A judge is disqualified from acting as a judicial officer, without loss of salary, while there is pending:

- (1) an indictment or information charging the judge in a United States court with a crime punishable as a felony under Indiana or federal law; or
- (2) a recommendation to the supreme court by the commission for the judge's removal or retirement.

(b) On recommendation of the commission or on its own motion, the supreme court may suspend a judge from office without salary if in a United States court the judge pleads guilty or no contest or is found guilty of a crime that:

- (1) is punishable as a felony under Indiana or federal law; or
- (2) involves moral turpitude under the law.

If the judge's conviction is reversed, the suspension terminates and the judge shall be paid the judge's salary for the period of suspension. If the judge's conviction becomes final, the supreme court shall remove the judge from office.

(c) On recommendation of the commission, the supreme court may:

- (1) retire a judge for a disability that:
 - (A) seriously interferes with the performance of the judge's duties; and
 - (B) is or is likely to become permanent; and
- (2) censure or remove a judge for an action that:
 - (A) occurs not more than six (6) years before the beginning of the judge's current term; and
 - (B) constitutes at least one (1) of the following:
 - (i) Willful misconduct in office.
 - (ii) Willful or persistent failure to perform the judge's duties.
 - (iii) Habitual intemperance.
 - (iv) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

A judge retired under this subsection is considered to have retired voluntarily. A judge removed under this subsection is ineligible for judicial office and, pending further order of the supreme court, is suspended from the practice of law in Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-11

Meetings of commissioners

Sec. 11. (a) The commission shall meet as necessary to discharge its statutory responsibilities. Meetings of the commission shall be called in the same manner as prescribed for the judicial nominating commission. Four (4) members of the commission constitute a quorum.

(b) Commission meetings are to be held in Indiana on the call of the chairman.

(c) The commission may act only at a meeting. The commission may adopt rules and regulations to conduct its meetings and discharge its duties.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-12

Confidentiality of proceedings; public inspection

Sec. 12. (a) Papers filed with and proceedings before the commission before the institution of formal proceedings are confidential unless:

- (1) the judge against whom a recommendation is filed elects to have the information divulged; or
- (2) the commission elects to answer public statements by a

complainant.

(b) Papers filed with the commission during or after the institution of formal proceedings are open for public inspection at all reasonable times. Records of commission proceedings are open for public inspection at all reasonable times. All hearings and proceedings before the commission, after the institution of formal proceedings, are open to the public.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-13

Privilege

Sec. 13. Filing papers with or giving testimony before the commission or the masters under this chapter is privileged.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-14

Commission; complaint

Sec. 14. (a) Any citizen of Indiana may file with the commission a written and verified complaint on the judicial fitness of a judge of a superior, criminal, juvenile, or probate court of Indiana.

(b) A specified form of complaint may not be required.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-15

Request of justice or judge to retire; complaint by citizen or on commission's own motion; investigation

Sec. 15. (a) A judge may request retirement due to disability.

(b) A citizen of Indiana may complain to the commission about the activities, fitness, or qualifications of a judge. Upon receipt of a complaint, the commission shall determine if the complaint is frivolous. The commission may, on its own motion, inquire into the activities, fitness, or qualifications of a judge.

(c) If the commission determines it is necessary to investigate a judge, the commission shall notify the judge by prepaid registered or certified mail addressed to the judge at the judge's chambers and last known residence of the following:

- (1) The investigation.
- (2) The nature of the complaint.
- (3) The origin of the complaint, including the name of the complainant or that the investigation is on the commission's motion.
- (4) The opportunity to present in the court of the investigation matters as the judge chooses.

(d) The commission may do the following:

- (1) Conduct investigations.
- (2) Employ special investigators.
- (3) Hold confidential hearings with the judge's or commission's agents or attorneys.
- (4) Hold confidential hearings with any judge involved.

(e) If:

(1) the commission's initial inquiry or investigation does not disclose sufficient cause to warrant further proceedings; and
(2) the complainant subsequently issues any public statement relating to the activities or actions of the commission;
the commission may answer the statement by referring to the record of proceedings or the results of the investigations.
As added by P.L.98-2004, SEC.17.

IC 33-38-14-16

Notice of formal proceedings

Sec. 16. (a) If the commission decides to institute formal proceedings, the commission shall give written notice to the judge advising the judge of the institution of formal proceedings to inquire into the charges against judge. The proceedings must be entitled:

"BEFORE THE INDIANA JUDICIAL QUALIFICATIONS COMMISSION

Inquiry Concerning a Judge, No. _____".

(b) The notice must:

(1) specify in ordinary and concise language the charges against the judge and the alleged facts upon which the charges are based; and

(2) advise the judge of the judge's right to file a written answer not more than twenty (20) days after service of notice.

A charge is not sufficient if it recites the general language of the original complaint.

(c) The notice shall be made upon the judge by registered or certified mail addressed to the judge at the judge's chambers and last known residence.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-17

Answer

Sec. 17. Not more than twenty (20) days after service of the notice of formal proceedings, the judge:

(1) may file with the commission a signed original and one (1) copy of an answer; and

(2) shall serve by mail a copy of the answer on the counsel.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-18

Setting for hearing before commission or masters

Sec. 18. (a) Upon the filing of or the expiration of the time for filing an answer, the commission shall:

(1) order a hearing before the commission on the discipline, retirement, or removal of the judge; or

(2) request the supreme court to appoint three (3) active or retired judges of courts of record as special masters to hear and take evidence on the matter and to report to the commission.

(b) The commission shall:

(1) set a time and place in the state in which the judge involved

resides for a hearing; and

(2) mail notice of the hearing to the judge, the masters, and the counsel at least twenty (20) days before the hearing date.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-19

Hearing

Sec. 19. (a) The commission, or the masters when the hearing is before the masters, may proceed with the hearing whether or not the judge files an answer or appears at the hearing.

(b) The failure of a judge to answer or to appear at the hearing by itself is not evidence of the facts alleged and does not constitute grounds for censure, retirement, or removal. In a proceeding for involuntary retirement for disability, the failure of a judge to testify in the judge's own behalf or to submit to a medical examination requested by the commission or the masters may be considered, unless the failure was due to circumstances beyond the judge's control.

(c) The hearing shall be reported verbatim.

(d) At a hearing before the commission, not less than four (4) members must be present when the evidence is produced.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-20

Evidence

Sec. 20. The Indiana Rules of Evidence apply at a hearing before the commission or the masters.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-21

Rights of a judge; notice; incapacitation

Sec. 21. (a) In formal proceedings involving the discipline, retirement, or removal of a judge, the judge may:

(1) defend against the charges by introducing evidence;

(2) be represented by counsel;

(3) examine and cross-examine witnesses; and

(4) issue subpoenas for attendance of witnesses to testify or produce evidentiary matter.

(b) If testimony is transcribed at the expense of the commission, a copy shall be provided to the judge at no cost. The judge is entitled to have testimony transcribed at the judge's expense.

(c) Except as otherwise provided in this chapter, any notice or matter sent to the judge shall be mailed by registered or certified mail to the judge at the judge's office and residence unless the judge requests otherwise in writing. A copy of the notice or matter shall be mailed to the judge's counsel.

(d) If a judge has been adjudicated incapacitated under IC 29-3, the judge's guardian may exercise any right or privilege and make any defense for the judge as if exercised or made by the judge. If any notice or matter is sent to the judge, a copy of the notice or matter

also shall be sent to the judge's guardian.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-22

Amendments to notice or answer

Sec. 22. The masters, before the conclusion of the hearing, or the commission, before its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts. If an amendment is made, the judge shall be given reasonable time to answer the amendment and to prepare and present a defense.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-23

Report of masters

Sec. 23. (a) After a hearing before the masters, the masters shall promptly transmit to the commission an original and four (4) copies of:

- (1) a transcript of the hearing; and
- (2) a report that contains a brief statement of the proceedings and recommended findings of fact.

The recommended findings of facts are not binding on the commission.

(b) Upon receiving the report of the masters, the commission shall promptly mail a copy of the report and transcript to the judge and the judge's counsel.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-24

Objections to report of masters

Sec. 24. Not more than fifteen (15) days after a copy of the report of the masters is mailed to the judge, the counsel or the judge may file with the commission an original and one (1) copy of objections to the report of the masters. If the counsel files objections, the counsel shall mail a copy of the objections to the judge. If the judge files objections, the judge shall mail a copy of the objections to the counsel.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-25

Appearance before commission

Sec. 25. If objections to the report of the masters are not timely filed, the commission may adopt the recommended findings of the masters without a hearing. If objections are timely filed, or if objections are not timely filed and the commission proposes to modify or reject the recommended findings of the masters, the commission shall give the judge and the counsel an opportunity to be heard in the county where the judge resides. The commission shall mail to the judge and the counsel written notice of the time and place

of the hearing not less than ten (10) days before the hearing.
As added by P.L.98-2004, SEC.17.

IC 33-38-14-26

Extension of time

Sec. 26. (a) The chairman of the commission may extend the time for:

- (1) filing an answer;
- (2) commencing a hearing before the commission; or
- (3) filing objections to the report of the masters.

(b) The presiding master, with the approval of the chairman of the commission, may extend the time for commencing a hearing before the masters.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-27

Hearing additional evidence

Sec. 27. (a) The commission may order a hearing to take additional evidence at any time while the matter is pending before the commission. The order must set the time and place of the hearing in the county in which the judge resides and must indicate the matters on which evidence will be taken. A copy of the order shall be mailed to the judge and the counsel at least ten (10) days before the hearing.

(b) If masters have been appointed, the hearing of additional evidence is before the masters in accordance with this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-28

Vote or recommendation for discipline, retirement, or removal

Sec. 28. If the commission finds good cause, it shall recommend to the supreme court the discipline, retirement, or removal of a judge. If a hearing is before the masters, the affirmative vote of four (4) commission members is required to recommend the discipline, retirement, or removal of a judge. If a hearing is before the commission, the affirmative vote of four (4) commission members, including a majority of the members present at the hearing, is required to recommend the discipline, retirement, or removal of a judge.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-29

Record of commission proceedings

Sec. 29. The commission shall keep a record of all formal proceedings concerning a judge. The commission shall enter its determination in the record and mail notice to the judge and the counsel. If the commission recommends the discipline, retirement, or removal of a judge to the supreme court, the commission shall prepare a transcript of the evidence and proceedings and shall make written findings of fact and conclusions of law.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-30

Certification of commission recommendation to supreme court

Sec. 30. Upon recommending the discipline, retirement, or removal of a judge, the commission shall file a copy of each of the following with the clerk of the supreme court:

- (1) The recommendation certified by the chairman or secretary of the commission.
- (2) The transcript.
- (3) The findings of fact and conclusions of law.

The commission shall mail to the judge and the counsel notice of the filing and copies of the filed documents.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-31

Petition for modification or rejection of commission's recommendation

Sec. 31. (a) A judge may petition the supreme court to modify or reject the recommendation of the commission for discipline, retirement, or removal of the judge not more than thirty (30) days after the certified copy of the commission's recommendation is filed with the clerk of the supreme court.

(b) A petition described in subsection (a) must:

- (1) be verified;
- (2) be based on the record;
- (3) specify the grounds relied on; and
- (4) be accompanied by the petitioner's brief and proof of service of two (2) copies of the petition and brief on the commission and one (1) copy of the petition and brief on the counsel.

(c) Not more than twenty (20) days after service of the petitioner's brief, the commission shall file a respondent's brief and serve a copy of the brief on the judge.

(d) Not more than twenty (20) days after service of the respondent's brief, the judge may file a reply brief. The judge shall serve two (2) copies of the reply brief on the commission and one (1) copy of the reply brief on the counsel.

(e) Failure to timely file a petition is considered consent to the determination on the merits based on the record filed by the commission.

(f) To the extent necessary and not inconsistent with this section, the Indiana Rules of Appellate Procedure apply to reviews by the supreme court of commission proceedings.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-32

Jurisdiction and powers

Sec. 32. The commission has jurisdiction and powers to dispose of any investigation or hearing, including the following:

- (1) The power to compel the attendance of witnesses.

(2) The power to depose witnesses.

(3) The power to order the production of documentary evidence.

Any commission member or any master may administer oaths and affirmations to witnesses in a matter under the jurisdiction of the commission.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-33

Subpoenas

Sec. 33. (a) A master may issue a subpoena for:

- (1) the attendance of witnesses;
- (2) the production of documentary evidence; or
- (3) discovery;

in a proceeding before the masters. The master shall serve the subpoena in the manner provided by law.

(b) The chairman of the commission may issue a subpoena for:

- (1) the attendance of witnesses;
- (2) the production of documentary evidence; or
- (3) discovery;

in a proceeding before the commission or in which masters have not been appointed. The chairman shall serve the subpoena in the manner provided by law.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-34

Enforcement of subpoena

Sec. 34. If a witness in a commission proceeding:

- (1) fails or refuses to attend upon subpoena; or
- (2) refuses to testify or produce documentary evidence demanded by subpoena;

a circuit court may enforce the subpoena.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-35

Filing

Sec. 35. All papers and pleadings filed with the office of the chairman of the commission are considered filed with the commission.

As added by P.L.98-2004, SEC.17.

IC 33-38-14-36

Discovery; admissibility of evidence; demand for formal proceeding or finding

Sec. 36. (a) In all formal proceedings, discovery is available to the commission and the judge under the Indiana Rules of Civil Procedure. A motion requesting a discovery order must be made to the circuit court in the county in which the commission hearing is held.

(b) In all formal proceedings, the counsel shall provide the following to the judge at least twenty (20) days before a hearing:

(1) The names and addresses of all witnesses whose testimony the counsel expects to offer at the hearing.

(2) Copies of all written statements and transcripts of testimony of witnesses described in subdivision (1) that:

(A) are in the possession of the counsel or the commission;

(B) are relevant to the hearing; and

(C) have not been provided to the judge.

(3) Copies of all documentary evidence that the counsel expects to introduce at the hearing.

(c) On objection by a judge, the testimony of a witness whose name and address have not been furnished to the judge and documentary evidence that has not been furnished to the judge, are not admissible at a hearing.

(d) After formal proceedings have been instituted, a judge may request in writing that the counsel provide the judge the names and addresses of all witnesses known at any time to the counsel who have information that may be relevant to any charge against or any defense of the judge. The counsel shall provide copies of written statements, transcripts of testimony, and documentary evidence that:

(1) are in the commission counsel's possession at any time;

(2) are relevant to a charge against or defense of the judge; and

(3) have not been furnished to the judge.

The counsel shall comply with the request not more than ten (10) days after receiving the request or not more than ten (10) days after any information or evidence becomes known to the counsel.

(e) During an investigation by the commission, a judge whose conduct is being investigated may demand in writing that the commission institute formal proceedings against the judge or enter a formal finding that there is not probable cause to believe the judge is guilty of misconduct. Not more than sixty (60) days after receiving a written demand, the commission shall comply with the demand. A copy of the demand shall be filed in the supreme court and is a matter of public record. If the commission finds there is not probable cause, the finding shall be filed in the supreme court and is a matter of public record.

As added by P.L.98-2004, SEC.17.