

## **IC 33-23-5**

### **Chapter 5. Magistrates**

#### **IC 33-23-5-1**

##### **Application of chapter**

Sec. 1. This chapter applies to a court expressly authorized by statute to appoint a full-time magistrate.

*As added by P.L.98-2004, SEC.2.*

#### **IC 33-23-5-2**

##### **Qualifications**

Sec. 2. A magistrate must be admitted to the practice of law in Indiana.

*As added by P.L.98-2004, SEC.2.*

#### **IC 33-23-5-3**

##### **Restriction on practice of law**

Sec. 3. A magistrate may not engage in the practice of law while holding the office of magistrate.

*As added by P.L.98-2004, SEC.2.*

#### **IC 33-23-5-4**

##### **Confidentiality of applicant files**

Sec. 4. The files of applicants for appointment as a magistrate, including the names of applicants, are confidential as provided in IC 5-14-3-4(b)(8).

*As added by P.L.98-2004, SEC.2.*

#### **IC 33-23-5-5**

##### **Powers of magistrate**

Sec. 5. A magistrate may do any of the following:

- (1) Administer an oath or affirmation required by law.
- (2) Solemnize a marriage.
- (3) Take and certify an affidavit or deposition.
- (4) Order that a subpoena be issued in a matter pending before the court.
- (5) Compel the attendance of a witness.
- (6) Punish contempt.
- (7) Issue a warrant.
- (8) Set bail.
- (9) Enforce court rules.
- (10) Conduct a preliminary, an initial, an omnibus, or other pretrial hearing.
- (11) Conduct an evidentiary hearing or trial.
- (12) Receive a jury's verdict.
- (13) Verify a certificate for the authentication of records of a proceeding conducted by the magistrate.
- (14) Enter a final order, conduct a sentencing hearing, and

impose a sentence on a person convicted of a criminal offense as described in section 9 of this chapter.

(15) Enter a final order or judgment in any proceeding involving matters specified in IC 33-29-2-4 (jurisdiction of small claims docket) or IC 34-26-5 (protective orders to prevent domestic or family violence).

(16) Approve and accept criminal plea agreements.

(17) Approve agreed settlements concerning civil matters.

(18) Approve:

(A) decrees of dissolution;

(B) settlement agreements; and

(C) any other agreements;

of the parties in domestic relations actions or paternity actions.

*As added by P.L.98-2004, SEC.2. Amended by P.L.127-2008, SEC.3; P.L.173-2015, SEC.4.*

### **IC 33-23-5-6**

#### **Service as judge pro tempore or special judge**

Sec. 6. A magistrate may serve as a judge pro tempore or as a special judge of the court. A magistrate is not entitled to additional compensation for service under this section.

*As added by P.L.98-2004, SEC.2.*

### **IC 33-23-5-7**

#### **Administrative duties**

Sec. 7. The court may assign a magistrate administrative duties that are consistent with this chapter.

*As added by P.L.98-2004, SEC.2.*

### **IC 33-23-5-8**

#### **Judicial mandate; final appealable order**

Sec. 8. Except as provided under sections 5(14) and 9(b) of this chapter, a magistrate:

(1) does not have the power of judicial mandate; and

(2) may not enter a final appealable order unless sitting as a judge pro tempore or a special judge.

*As added by P.L.98-2004, SEC.2. Amended by P.L.127-2008, SEC.4.*

### **IC 33-23-5-9**

#### **Findings; final orders; sentencing hearing; sentencing**

Sec. 9. (a) Except as provided under subsection (b), a magistrate shall report findings in an evidentiary hearing, a trial, or a jury's verdict to the court. The court shall enter the final order.

(b) If a magistrate presides at a criminal trial or a guilty plea hearing, the magistrate may do the following:

(1) Enter a final order.

(2) Conduct a sentencing hearing.

(3) Impose a sentence on a person convicted of a criminal

offense.

(c) This subsection does not apply to a consolidated city. Unless the defendant consents, a magistrate who did not preside at the criminal trial may not preside at the sentencing hearing. However, this subsection does not prohibit a magistrate from presiding at a sentencing hearing if there was no trial.

*As added by P.L.98-2004, SEC.2. Amended by P.L.108-2015, SEC.2; P.L.173-2015, SEC.5.*

### **IC 33-23-5-10**

#### **Salary**

Sec. 10. A magistrate is entitled to an annual salary equal to eighty percent (80%) of the salary of a judge under IC 33-38-5-6.

*As added by P.L.98-2004, SEC.2.*

### **IC 33-23-5-11**

#### **Source of salary**

Sec. 11. Except as provided in section 12 of this chapter, the state shall pay the salary of a magistrate. A county located in the circuit that the magistrate serves may supplement the magistrate's salary.

*As added by P.L.98-2004, SEC.2.*

### **IC 33-23-5-12**

#### **Juvenile court magistrate salary**

Sec. 12. The salary of a magistrate appointed under IC 31-31-3-2 shall be paid in accordance with IC 33-38-5-7.

*As added by P.L.98-2004, SEC.2.*

### **IC 33-23-5-13**

#### **Participation in retirement systems**

Sec. 13. (a) Except as provided in subsection (b), a magistrate may:

- (1) participate in the public employees' retirement fund as provided in IC 5-10.3; or
- (2) elect to remain in the judges' retirement system under IC 33-38 if the magistrate had previously participated in the system.

(b) A person who:

- (1) is serving as a full-time magistrate on July 1, 2010, and makes an election under IC 33-38-8-10.5; or
- (2) begins serving as a full-time magistrate after July 1, 2010; shall, beginning January 1, 2011, participate in the judges' 1985 benefit system under IC 33-38-8.

*As added by P.L.98-2004, SEC.2. Amended by P.L.122-2008, SEC.1.*