

2-1942

Statutory Notice in Indiana

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>

 Part of the [Legislation Commons](#)

Recommended Citation

(1942) "Statutory Notice in Indiana," *Indiana Law Journal*: Vol. 17: Iss. 3, Article 3.
Available at: <http://www.repository.law.indiana.edu/ilj/vol17/iss3/3>

This Note is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

NOTES AND COMMENTS

STATUTORY NOTICE IN INDIANA

Memory is insufficient and research seems needless for everyday compliance with the Indiana statutory notice provisions. In the accretion of nearly a century, there is neither plan nor reason for the variations of time and method for giving notice of legal action. But the haphazard consequences of a century of experiment remain to plague the careful lawyer. In the hope that his burden may be partially relieved and that clarifying legislation may be encouraged, the INDIANA LAW JOURNAL publishes this table of notice provisions.

Although the Burns' code was examined page by page, it is inevitable in a compilation of this kind that some notice provisions, particularly the more general ones, will be omitted. Likewise it is obvious that although this collection has been corrected down through the 1941 legislation, it must be revised with each succeeding legislative session. Furthermore in an attempt to reduce the requirements into a short and workable table, the classification becomes necessarily inadequate. Many notice requirements apply to several actions. Their location in a single class is unavoidably arbitrary.

In the following table, four items have been included: The character of the action, the Burns' section number, the notice requirement, and the limitations conditioning the notice.

Space limitations implicit in tabular presentation have prevented the inclusion of the serving party and the party upon whom the notice is to be served. The customs and practice in some circuit courts further limit the statutory provisions of notice and of these matters, of course, this table cannot take account. Obviously this table cannot supplant the use of the statute itself, and the practitioner is admonished to systematically check the provisions in the code. This table can only facilitate ready discovery.

Any careful perusal of the unlogical differences between the notice requirements in closely associated actions indicates the need for remedial legislation or judicial rule to clarify and simplify what are essentially mechanical requirements of the law. The purpose of requiring notice is clear—to insure fair hearing, to prevent fraud, surprise, and unfair advantage.

The variations that the statutes disclose are unnecessary to achieve this purpose. The methods of notice are not significant. Only the probability that notice will ripen into knowledge is important. Perhaps from this collection of diversities, a new approach to the notice problem in Indiana can be undertaken.

Action	Burns' Section	Notice Requirement	Condition
ADDITION OF PARTIES			
Interpleader	2-223	Due Notice	Before answer, in action on contract or for specific real or personal property
New Party	2-228	<i>Summons</i> : 10 days <i>Publication</i> : 3 successive weeks 30 days before party is to appear	When introduced as representative or successor or former party
Substitution of landlord in ejection v. tenant	3-1309	Reasonable	To plaintiff
APPEALS			
Appeal after term in which judgment is rendered	2-3206	<i>Summons</i> : 10 days <i>Publication</i> : 3 successive weeks, 30 days before party is to appear, if <i>or</i> Reasonable, if	by filing transcript with clerk of Supreme Court by written notice to adverse party and clerk of court in which the judgment was had
Against non-resident in appeal after close of term	2-3207	3 weeks successively	When appellee non-resident and atty below cannot be served
Vacation appeal by part of co-parties	2-3213	Written: reasonable; <i>Publication</i> : 3 weeks successively	To all co-parties
City and town appeals during term	2-4717	No further notice	If taken within 90 days
Appeal from criminal judgment by state or defendant	9-2310	Written notice, if <i>or</i> 3 weeks posting in clerk's office, if	defendant can be found defendant can not be found
Consolidation of appeals from action of city board of public works, park commissioners, or common council	48-4501	Merely notice	To all parties

Action	Burns' Section	Notice Requirement	Condition
Appeal from order removing pauper	52-166	Reasonable	After J.P. orders removal
BAIL			
Objection for insufficiency of bail in civil arrest	3-311	3 days	Must be made before final judgment
Notice of surrender of principal after final judgment	3-322	Service within 10 days after surrender, if <i>or</i> Ten days posting in clerk's office, if	plaintiff or atty. is resident plaintiff and atty. non-resident
COMMENCEMENT OF ACTION			
Civil actions, including divorce suits	2-801 & 2-1905	<i>Summons</i> : 10 days or <i>Publication</i> : 3 successive weeks 30 days before party is to appear	Upon filing complaint
Against sheriff delinquent on an execution	2-4108	10 days	Immediately upon default of sheriff
Arbitration	3-204	10 days: written	As soon as arbitration bond is delivered
Application to change name	3-803	3 successive weeks 30 days before term of court	Upon filing petition
Non-resident defendant in divorce suit	3-1206	<i>Publication</i> : 3 successive times 1 week apart, <i>or</i>	Clerk to mail copy if address of defendant is known
	3-1206b	<i>Summons</i> in foreign state	Proved by affidavit
Changing name of woman in divorce suit	3-1225	<i>Summons</i> : 10 days or <i>Publication</i> : 3 successive weeks 30 days before party is to appear	Included as part of divorce petition
Order directing seizure under ejectment suit	3-1305	Forthwith	If defendant can't be found, copy posted on the premises
Quieting title against non-resident or unheard from defendant	3-1403	5 Wks, concluding 30 days before hearing	Publication in county where real estate lies and county of defendant's last known residence
Quieting defect in title	3-1405	3 successive wks. <i>Publication</i> plus 30 days after last publication	Upon filing complaint and affidavit

Action	Burns' Section	Notice Requirement	Condition
For injunction	3-2104	Reasonable	Except temporary restraining order may be had without notice
Partition of different estates in same property	3-2427	<i>Summons</i> : 10 days or <i>Publication</i> : 3 successive weeks 30 days before party is to appear	On application of any party in interest
Striking jury for civil cases	4-3313	4 days	To both parties; by clerk
Order to cut Canada thistles	15-902	3 days	Registered mail
Sterilization of insane inmate	22-1602	30 days	Upon filing petition by superintendent of institution
Adoption of children from Soldiers and Sailors Home without consent of parent or guardian	22-2330	<i>Summons</i> : 10 days <i>Publication</i> : 3 successive wks. 30 days before hearing	If verified consent is not filed with petition
For support of wife and children	38-117	<i>Summons</i> : 10 days <i>Publication</i> : 3 successive weeks 30 days before party is to appear	Upon filing complaint v. husband and his debtors
Abandonment of family by husband or wife	38-124	<i>Summons</i> : 10 days or <i>Publication</i> : 3 successive wks. 30 days before hearing	Upon filing complaint
Workman's occupational disease claim	40-2225	As soon as practicable after disablement	Within 1 year after disablement
Proceedings to determine legitimacy	44-109	<i>Summons</i> : 10 days <i>Publications</i> 3 successive weeks 30 days before party is to appear	Upon filing petition
Against sanitary district for injury to real estate	48-1115	60 days	Written
Claims against cities and towns	48-8001	Written; served personally or by registered mail with return card	Within 60 days after injury or if due to ice or snow, 30 days
Action to vacate or injoin Indiana Pub. Ser. Com. order	54-431	Immediately upon service of summons	Written: to all parties who appeared in original hearing

CONTRACTORS, LABORERS AND MATERIALMEN

Acceptance of final payments while indebted to another for materials, etc.	10-2112	Written: to creditor	Upon receiving payment
--	---------	----------------------	------------------------

Action	Burns' Section	Notice Requirement	Condition
Notice to holder of mechanics lien to commence suit	43-710	Written	Suit must be commenced in 30 days or lien is void
Laborer or materialmen against surety on public works contract	53-202	30 days	After filing duplicate statement of amount due

CRIMINAL PROCEEDINGS AND OFFENSES

Offering alibi in evidence	9-1631	10 days before trial	Other than before J.P.
Traffic violation	47-2308	Written and in duplicate	At least 5 days before appearance

DECEDENT'S ESTATES

Notice of appointment of ex'r. or adm'r.	6-311	<i>Publication: 3 successive wks.</i>	Within 30 days after appointment
Appointment of adm'r. of presumed deceased absentee's estate	6-401	30 days publication	Property wasting for want of care, etc.
Application for removal of non-resident ex'r	6-603	<i>Publication: 3 successive weeks</i>	After filing of application
Selling of personal property	6-803	Discretion of court	
Public sale of land purchase contract	6-811	Discretion of court	
Claim against decedent's estate	6-1009		Entry of claim on clerk's claim docket of estate sufficient notice
Preventing sale of real estate liable for debts	6-1102	<i>Publication: 3 successive weeks</i>	Upon filing petition
Selling real estate to pay debts	6-1117	<i>Summons 10 days or Publication: 3 successive wks. 30 days before return date</i>	Upon filing petition
Private sale of real estate	6-1126	Discretion of court	
Public sale of real estate	6-1129	4 wks. publication posting in 5 places	If appraised value less than \$1,000, no notice necessary
Creditor's petition to require sale of real estate	6-1144	5 days; written	To ex'r. or adm'r.
Filing account for final settlement of solvent estate at end of one year of administration	6-1405	2 successive wks.	Publication and posting on court house door

Action	Burns' Section	Notice Requirement	Condition
Filing account for final settlement of solvent estate after end of one year of administration	6-1406	Same as above	Same as above
Correcting errors in accounts of ex'r. or adm'r.	6-1409	Notice to opposite party	If ct. had previously determined the matter in dispute between the parties
Setting aside final settlement	6-1424	<i>Summons</i> : 10 days <i>Publication</i> : 3 successive wks. 30 days before return date	Within 3 years after final settlement
Proof of heirship in funds delivered to state	6-1510	10 days	To atty. general, before funds escheat to State
Escheating to state unclaimed estates	6-1513	60 days by 8 weekly publications	Estate unclaimed for 5 years
Vesting estates under \$500 in widow	6-1702	3 successive weeks publication or 4 public postings (1 at court house)	Published in week following the filing of inventory
Settling insolvent estates	6-1803	2 successive weeks publication and 4 public postings (1 at court house)	Upon filing petition
Selling real estate to pay debts of insolvent estate	6-1804	Same as above	Same as above
Filing account for final settlement of insolvent estate	6-1818	2 successive weeks	Publication and posting on court house door
Transfer of assets or opening safety deposit box	6-2419	10 days	To St. Bd. Tax Com. and county assessor
Probate of will of person presumed dead	7-419	<i>Publication</i> : 30 days	When resident has been in parts unknown for 5 years
Contesting or resisting probate of will	7-505	14 days—service of citation or 3 successive wks. publication 30 days before hearing	After filing affidavit
Action	Burns' Section	Notice Requirement	Condition

DUTIES OF COURT OFFICERS

Attachment or levy on real estate	2-815	Written	By sheriff to clerk after attachment
-----------------------------------	-------	---------	--------------------------------------

Action	Burns' Section	Notice Requirement	Condition
Determination of appeal by Supreme Court	2-3236	Within 60 days after determination	By clerk of Sup. Ct. to clerk of court below
Pros. atty. to defend divorce action	3-1313	After time of return fixed in summons	By judge to pros. atty.
Complaint against boy of 16 or girl of 18	9-2814	At once	By court to probation officer
Notice to atty. gen. of cases to be prosecuted or defended	49-1902	10 days, if or Reasonable, and in writing, if	Given by clerk of court Required by governor
EMINENT DOMAIN			
Against resident	3-1703	<i>Summons</i> : 10 days <i>Publication</i> : 3 successive wks., the last 5 days before hearing	Upon filing of complaint
Against non-resident	3-1703	Same as above	Clerk must mail copy to non-resident
State appropriating land	3-1722	<i>Summons</i> : 10 days <i>Publication</i> : 3 successive wks. 30 days before party is to appear	Upon filing of petition
Petition to county comms. for levy to purchase park lands	26-1509	<i>Publication</i> : 2 successive wks. 30 days before hearing	In 2 newspapers of the county
To obtain land for county buildings	26-2102	<i>Summons</i> : 10 days <i>Publication</i> : 3 successive wks., 30 days before party is to appear	Upon filing of petition
GUARDIANSHIP			
Change of investment on application of one not a guardian	8-112	Merely notice	To guardian
Sale of real estate of minor	8-118	Reasonable	If appraisal value exceeds \$1000 (if not, may have private sale without notice)
Removal of guardian	8-132	<i>Summons</i> : 10 days <i>Publication</i> : 3 successive wks. 10 days before hearing	Upon written application of wards or persons in their behalf
Appointment for old persons and spend-thrifts	8-301	<i>Summons</i> : 10 days	Upon complaint that person is incapable of managing his property
Appointment for drunkard	8-401	10 days	After filing complaint
Appointment for veteran	8-507	As required by law	Upon filing petition

Action	Burns' Section	Notice Requirement	Condition
Annual account of Veteran's Guardian	8-509	10 days	By court to U.S. Veteran's Bureau and to guardian
Notice of trustee appointment in assignment for benefit of creditors	17-106	<i>Publication</i> : 3 successive weeks	After trustee has filed copy of the assignment, been sworn and supplied surety
HABEAS CORPUS			
Discharge of prisoner	3-1920	Merely notice	To person interested in detention
JOINT BANK ACCOUNTS			
Notice of adverse claim	18-2001	3 days written	To bank or trust company
LANDLORD AND TENANT			
Determination of estates at will	3-1614	One month	Written; to tenant
Termination of year to year tenancies	3-1616	3 months prior to expiration of year	Written; to tenant
Termination of periodic tenancies	3-1616	Interval between periods	When period is less than 3 months
Termination of lease for non-payment of rent	3-1618	10 days	Unless otherwise agreed by parties
MORTGAGE FORECLOSURE			
Mortgage executed after June, 1931	3-1801	<i>Publication</i> : 3 successive wks. 1st to be at least 30 days before sale	1st publication to be one year after filing complaint
Realty securing school fund loans	28-242	<i>Publication</i> : 3 successive wks. and three public postings at court house	Upon failure to pay interest when due
Realty securing Indiana University endowment fund loans	28-5522	Continuous publication for 60 days	Upon failure to pay interest or principal
NEGOTIABLE INSTRUMENTS			
Notice of dishonor when person giving and person receiving reside in same place	19-715	Before close of business on day following, if	Given at place of business of one receiving
		<i>or</i>	
		Before usual hours of rest on day following, if	Given at residence of one receiving
		<i>or</i>	
		Must reach one receiving in usual course on day following, if	Sent by mail

Action	Burns' Section	Notice Requirement	Condition
Notice of dishonor when person giving and person receiving reside in different places	19-716	Must go the day following, if	Sent by mail
		<i>or</i> Must reach one receiving within same time mail would, if	Not sent by mail

PRINCIPAL AND SURETY

Surety requiring creditor to proceed against principal	3-2501	Forthwith	In writing, after right of action has accrued but before judgment against surety
Application of executor's surety for release	6-504	10 days	After filing request with clerk of court which approved bond

PROCEEDINGS ON JUDGMENTS

Relief from default judgments	2-1068	<i>Summons</i> : 10 days <i>Publication</i> : 3 successive wks. 30 days before party is to appear	After filing of complaint
Opening judgments	2-2602	As required by court	Before making application
Review of judgments	2-2608	Reasonable	After filing complaint
Execution after 10 years from entry of judgment	2-3306	<i>Summons</i> : 10 days <i>Publication</i> : 3 successive wks. 30 days, or as court may direct before party is to appear	After court has granted permission to seek the execution
Sale of realty on execution	2-3903	20 days successively in 3 public places, at court house and 3 weeks successively in newspapers	Written or printed notice put up by sheriff in twp. where land lies
Execution v. body of debtor	2-4302	To next term of court	Upon filing affidavit charging concealment, etc., of property
Oath of execution debtor that he has no concealed property	2-4317	Personal service or 5 days posting	Posting if neither creditor nor his atty. resides in the county
Further relief on declaratory judgment	3-1108	Reasonable	After application to court, which it deems sufficient
Opening divorce judgment granted upon notice by publication	3-1224	As court in term or judge in vacation shall require	Within 2 years after the judgment
Sale of personal property on execution	5-1123	10 days written notice	Posting in 3 public places

Action	Burns' Section	Notice Requirement	Condition
Notice to assert claim to possible owner other than attachment defendant	5-1217	20 days before sale if within state; 40 days if without	By officer
Sale of husband's realty to satisfy alimony	38-120	<i>Publication</i> : 3 successive times one week apart	If husband has left state or absconded to parts unknown
Motion to attach railroad money to satisfy judgment for livestock injury	55-1606	10 days	Before 1st day of term at which motion is to be heard

PUBLIC PROPERTY

Conveyance of township cemetery to cemetery corporation	21-705	3 wks. publication	After petition has been filed with twp. trustee
Condemnation of schoolhouse	28-3003	1 publication not more than 10 days before hearing	Upon filing petition with county auditor
Conveyance by civil twp. to school twp.	28-3304	2 successive wkly. publications	Upon filing petition in office of county auditor

RECEIVERS

Notice of application for receiver	3-2602	Reasonable	Unless adverse party shall have appeared
Receiver's partial and final reports	3-2616	Publication once each week for 3 consecutive weeks	Upon filing of receiver's account within time set by court
Petition for partnership receiver after one partner dies	50-306	10 days	To surviving partner or partners

TESTIMONY

Depositions	2-1502	Reasonable time to travel to place of taking	When parties have not agreed on time and place of taking
Foreign deposition	2-1518	What court shall determine reasonable	When taken in a foreign country
Perpetuating testimony	2-1524	What court shall determine reasonable	After making affidavits to court or clerk
Examination of adverse party before trial	2-1729	5 days before examination	To party to be examined and any other adverse party

VENUE

Change of venue in vacation	2-1405	10 days	When acted on during vacation
-----------------------------	--------	---------	-------------------------------