

HOUSE BILL No. 1593

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-43.5.

Synopsis: Attorney discipline. Requires that before a malpractice or disciplinary action against an attorney may proceed, the complaint by the client against the attorney must be submitted to mediation.

Effective: Upon passage.

Pelath

January 23, 2017, read first time and referred to Committee on Judiciary.



First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1593

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-43.5 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **ARTICLE 43.5. MEDIATION REQUIRED IN ATTORNEY**
5 **DISCIPLINARY OR MALPRACTICE ACTION**

6 **Chapter 1. General Provisions**

7 **Sec. 1. The general assembly emphasizes, to the parties, the**
8 **courts, and the attorneys, that adhering to the timelines set forth**
9 **in this article is of extreme importance in ensuring the fairness to**
10 **previously state licensed attorneys admitted to practice law in**
11 **Indiana. Absent an allegation of criminal activity by a prosecuting**
12 **attorney or the issuance of a justified interim suspension by the**
13 **supreme court, contracts for employment between any and all**
14 **attorneys may not result in an investigation or a request for**
15 **investigation filed with the Indiana supreme court disciplinary**
16 **commission by and between the parties, attorneys, or interested**
17 **parties without allowing for a thirty (30) day continuance and**



1 requisite prefiling mediation, all parties subject to this article, and
2 all persons charged with implementing this article, including courts
3 and the Indiana supreme court disciplinary commission, shall
4 carefully follow the timelines in this article. No party may be
5 dilatory in the selection of a mediator, the exchange of discoverable
6 evidence, or in any other matter necessary to bring a case to
7 finality, and the supreme court and the Indiana supreme court
8 disciplinary commission shall enforce the timelines set forth in this
9 article so as to carry out the intent of the general assembly and to
10 provide for minimal mandatory alternative dispute resolution at
11 the expense of the parties, before engaging extensive state
12 resources pursuing needless or excess investigations that could
13 have been resolved with communications or two (2) hours of
14 mediation.

15 Sec. 2. The purpose of this article is to reduce disputes due to
16 communication breakdowns, including refusal to communicate at
17 all and misunderstandings that if addressed amicably could reduce
18 the number of complaints requiring investigation and free up
19 practicing attorneys to better serve their remaining clients, who
20 are often the victims of unnecessary or avoidable investigations or
21 so-called DI cases before the supreme court or hearing officers
22 under the Indiana Rules of Professional Conduct and entrusted to
23 the supreme court.

24 Chapter 2. Definitions

25 Sec. 1. The definitions in this chapter apply throughout this
26 article.

27 Sec. 2. "Agreement", "Contract", "engagement", or "letter of
28 retention" refer to the written scope of employment for which a
29 client hires or has hired an attorney.

30 Sec. 3. "Attorney" has the meaning set forth in IC 1-1-4-5(2).

31 Sec. 4. "Client", "complainant", or "grieving client" have their
32 plain meanings and include any person or entity that contacts the
33 ISCDC, the commissioner of the ISCDC, or the commissioner's
34 designee, the supreme court, or any other person that engages in
35 attorney conduct review, in the absence of criminal charges being
36 filed by a proper authority.

37 Sec. 5. "ISCDC" refers to the Indiana supreme court
38 disciplinary commission.

39 Sec. 6. "Mediator" means an individual agreed to by the parties
40 or appointed by the ISCDC.

41 Sec. 7. "Party" or "parties" refers to the grieving client and the
42 attorney.



1 **Sec. 8. "Requisite mediation" means the requirement for one (1)**
2 **mediation for every party to be paid for by each party equally. For**
3 **instance, if two (2) parties have a dispute, each is required to pay**
4 **for one (1) hour of the mediator's time, before any investigation**
5 **can be requested, in the absence of the filing of criminal charges**
6 **against an attorney.**

7 **Chapter 3. Limit on Seeking Attorney Discipline**

8 **Sec. 1. The constitutional directive is altered by a legislative**
9 **contract term imputed to all contracts between an attorney and the**
10 **attorney's client, other than for small claims matters, or where**
11 **criminal activity is involved, and thus only delays this directive**
12 **until the parties can have a reasonable chance to communicate,**
13 **work out issues, understand each other's positions, and do so with**
14 **the assistance of an independent mediator, who should be a lawyer,**
15 **former lawyer, or former judge, but may be an individual agreed**
16 **to by the parties or appointed by the supreme court or the supreme**
17 **court's designee, to facilitate a quicker and amicable resolution.**
18 **The presumption is that the public is better served by**
19 **communicating before initiating court actions with the attorney or**
20 **law firm that the parties selected previously.**

21 **Sec. 2. All parties to a contract to employ a lawyer or law firm**
22 **by statute and by conduct agree to submit their grievances or**
23 **allegations of attorney misconduct, absent the allegations of crimes**
24 **and charging of crimes by an authorized prosecuting attorney, to**
25 **a requisite mediation.**

26 **Sec. 3. A party who refuses to participate in the mediation will**
27 **be denied the right to file grievances, or a request for investigation**
28 **or if the attorney refuses to participate, then the attorney may be**
29 **considered to be determined uncooperative by the ISCDC.**

30 **Sec. 4. A requisite mediation must occur within thirty (30) days**
31 **of the initial grievance or request for investigation being**
32 **documented to the ISCDC.**

33 **Sec. 5. With the exception of the final report, the mediation shall**
34 **remain confidential and if pending litigation is ongoing is not**
35 **discoverable or used by a third party to prejudice pending**
36 **litigation.**

37 **Sec. 6. The appointed or selected mediator shall file a report**
38 **within fourteen (14) days after the requisite mediation to each of**
39 **the parties by regular mail and to the ISCDC by fax, electronic**
40 **mail, or regular United States mail.**

41 **Sec. 7. The purpose of a requisite mediation is not to obtain a**
42 **refund for attorney services rendered, or the mediator may assess**



1 the full cost of the mediation upon the grieving client.

2 Sec. 8. If a mediation fee is unpaid by either party forty-eight
3 (48) hours before the scheduled mediation, the mediator may
4 cancel the mediation, dismiss the grievance due to violation of this
5 statutory addendum to any attorney employment contract, or refer
6 the grievance by filing a report with the ISCDC if neither party
7 participates or pays for the requisite mediation timely, and the
8 supreme court should weigh such facts, participation, or lack
9 thereof, and the mediator's report if a disposition is not
10 accomplished, in carrying out its mandate under Article 7, Section
11 4 of the Constitution of the State of Indiana.

12 Chapter 4. Limitation on Actions for Legal Malpractice

13 Sec. 1. The requisite mediation requirements are part of every
14 contract with an attorney licensed in Indiana and apply equally to
15 the filing of an action for legal malpractice.

16 Sec. 2. No action for legal malpractice may be heard if filed until
17 such time as a mediation is conducted for at least two (2) hours, a
18 report filed, and an effort is made to resolve the dispute, in absence
19 of criminal charges having been filed against the attorney.

20 Sec. 3. The trial court judge or magistrate must perfect
21 compliance before an action for malpractice may proceed against
22 an attorney.

23 Sec. 4. This chapter does not apply to small claims cases.

24 SECTION 2. An emergency is declared for this act.

