

The Indiana State Bar Association has established a statewide pre-suit mediation program as a public service to facilitate the resolution of disputes more quickly and efficiently. The program includes guidelines and forms for resolving disputes by mediation without first filing a lawsuit.

This brochure describes basic facts about the program that may be of interest to the general public. For the complete guidelines and copies of the forms, please contact your lawyer or the Indiana State Bar Association.

What Is Pre-Suit Mediation?

In 1992, Indiana adopted rules encouraging parties in litigation to resolve their differences by means other than trial, including mediation. Mediation is a process where a neutral person (the mediator), trained in the art of dispute resolution, assists opposing parties in negotiating a voluntary settlement. Pre-suit mediation is just what it sounds like: an attempt to mediate and resolve a dispute before a lawsuit is filed.

What Are The Benefits?

Lower Costs

Litigation can be expensive. Pre-suit mediation can often produce satisfactory results to the parties at a fraction of the cost.

Faster Results

As we all know, litigation is not built for speed. This process gives us the opportunity to resolve our disputes more quickly.

Relieve Overloaded Court Dockets

The litigation process is often slowed because courts dockets are congested. This process will help to free up our courts to hear those disputes which are unresolvable without trial.

Satisfaction

Participants in pre-suit mediation usually find the process more satisfying because they have an opportunity to tell their story, to be heard by a neutral third party, and yet retain control of the outcome of their disputes.

When Is Pre-Suit Mediation Appropriate?

Pre-suit mediation works best in those cases where the facts and law are reasonably clear at an early stage. It is also appropriate in commercial disputes where the parties have an interest in maintaining their business relationship. It can also be effective in large, complex cases where adequate information is available, and the costs of litigation weigh in favor of discussing settlement at an early stage.

Pre-suit mediation is usually not appropriate if the parties are dead set against resolving their differences by mutual agreement. Nor is it appropriate if either party does not have enough information to evaluate the case.

While pre-suit mediation is not appropriate in every case, it is an option that should be routinely considered before filing any lawsuit.

How Does It Work?

Under the guidelines of the ISBA Pre-Suit Mediation Program, there are five easy steps:

1. Request It.

A simple letter requesting pre-suit mediation is sent by one party to the other.

2. Select A Mediator.

The parties will usually agree on a particular mediator from among the several hundred Indiana lawyers who have completed the required training.

3. Execute An Agreement.

Form agreements have been drafted by the Indiana State Bar Association and are available for use.

4. Conduct the Mediation.

The mediation session will be held at a mutually agreeable time and place.

5. Report Results.

The Indiana State Bar Association has provided a form for reporting the outcome so the State Bar can track the program.

Other Common Questions About Pre-Suit Mediation

Is pre-suit mediation mandatory?

Answer: No. A party's participation in pre-suit mediation is wholly voluntary.

Will pre-suit mediation affect my right to a jury trial?

Answer: No. Participation in pre-suit mediation does not affect your right to have your dispute resolved by a jury trial unless you voluntarily agree during the mediation to settle the dispute. If the mediation results in a settlement, the agreement will be binding on both parties and there will be no need for a trial.

Does it delay the running of any statute of limitation applicable to your case?

Answer: No. A claimant should consult a lawyer to make sure the deadline for filing a lawsuit, if necessary, is met.

Do I need a lawyer to represent me?

Answer: The mediator cannot give legal advice to the parties. Thus, under the guidelines of the ISBA Pre-Suit Mediation Program, individual claimants must be represented by their own lawyer. Also, no request for pre-suit mediation may be made to an unrepresented individual party.

How is the mediator paid?

Answer: Usually, the mediator's fee will be split equally among the parties. However, the parties are free to agree to divide costs in any other manner that they choose.

If you have further questions about this process, you are encouraged to discuss it with an attorney of your choice or contact the Indiana State Bar Association:

Indiana State Bar Association
230 E. Ohio St.
Indianapolis, IN 46204
(317) 639-5465



This pamphlet is not designed to cover and does not cover every aspect of pre-suit mediation. You should consult an attorney to cover your specific problems and personal situation.



Pre-Suit Mediation: A New Alternative To Litigation

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