

IC 4-6-3

Chapter 3. Duties in Civil Actions

IC 4-6-3-1

Definitions

Sec. 1. As used in this chapter:

"Documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, chart, or other document.

"Local agency" means an administration, agency, authority, board, bureau, commission, committee, council, department division, institution, office, officer, service, or other similar body of a political subdivision created or established pursuant to law.

"Person" means a human being, an incorporated or unincorporated organization, or association, a trustee or legal representative, the state of Indiana, a political subdivision, a state or local agency, or a group of such persons acting in concert.

"Political subdivision" means a county, township, city, town, municipal corporation as defined in IC 36-1-2-10, or a special taxing district.

"State agency" means an administration, agency, authority, board, bureau, commission, committee, council, department, division, institution, office, officer, service, or other similar body of state government created or established pursuant to law.

(Formerly: Acts 1899, c.133, s.1.) As amended by Acts 1982, P.L.20, SEC.1.

IC 4-6-3-2

Direction of prosecutions brought in the name of the state

Sec. 2. (a) The attorney general shall have charge of and direct the prosecution of all civil actions that are brought in the name of the state of Indiana or any state agency.

(b) In no instance under this section shall the state or a state agency be required to file a bond.

(c) This section does not affect the authority of prosecuting attorneys to prosecute civil actions.

(d) This section does not affect the authority of the inspector general to prosecute a civil action under IC 4-2-7-6 for the recovery of funds misappropriated, diverted, missing, or unlawfully gained.

(e) The attorney general may bring an action to collect unpaid registration fees owed by a commercial dog broker or a commercial dog breeder under IC 15-21.

As added by Acts 1982, P.L.20, SEC.2. Amended by P.L.222-2005, SEC.15; P.L.111-2009, SEC.1.

IC 4-6-3-2.5

Contingency fee contracts

Sec. 2.5. (a) As used in this section, "agency" means a state agency or a body corporate and politic.

(b) An agency may not enter into a contingency fee contract with

a private attorney unless the agency makes a written determination before entering into the contract that contingency fee representation is cost effective and in the public interest. The written determination must include the specific findings described in subsection (c).

(c) The written determination described in subsection (b) must include a consideration of the following factors:

- (1) Whether the agency has sufficient and appropriate legal and financial resources to handle the matter.
- (2) The time and labor required to conduct the litigation.
- (3) The novelty, complexity, and difficulty of the questions involved in the litigation.
- (4) The expertise and experience required to perform the attorney services properly.
- (5) The geographic area where the attorney services are to be provided.

(d) If the agency makes the determination described in subsection (b), the attorney general shall request proposals from private attorneys wishing to provide services on a contingency fee basis, unless the agency determines in writing that requesting proposals is not feasible under the circumstances.

(e) After the agency has made the determination in subsection (b) and selected a private attorney, but before the agency and the attorney enter into a contract to provide services on a contingency fee basis, the inspector general shall make a determination in writing that entering into the contract would not violate the code of ethics or violate any statute or agency rule concerning conflict of interest. An agency may not enter into a contingency fee contract with a private attorney unless the inspector general has made a written determination under this subsection.

(f) A private attorney who enters into a contingency fee contract with the agency shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of not greater than one-tenth (1/10) of an hour and shall, upon request, promptly provide these records to the attorney general.

(g) The agency may not enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee that exceeds the sum of the following:

- (1) Twenty-five percent (25%) of any recovery that exceeds two million dollars (\$2,000,000) and that is not more than ten million dollars (\$10,000,000).
- (2) Twenty percent (20%) of any part of a recovery of more than ten million dollars (\$10,000,000) and not more than fifteen million dollars (\$15,000,000).
- (3) Fifteen percent (15%) of any part of a recovery of more than fifteen million dollars (\$15,000,000) and not more than twenty million dollars (\$20,000,000).
- (4) Ten percent (10%) of any part of a recovery of more than twenty million dollars (\$20,000,000) and not more than twenty-five million dollars (\$25,000,000).
- (5) Five percent (5%) of any part of a recovery of more than

twenty-five million dollars (\$25,000,000).

An aggregate contingency fee may not exceed fifty million dollars (\$50,000,000), excluding reasonable costs and expenses, regardless of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

(h) Copies of any executed contingency fee contract, the inspector general's written determination, and the agency's written determination to enter into a contingency fee contract with the private attorney shall be provided to the attorney general and, unless the attorney general determines that disclosing the contingency fee contract while the action is pending is not in the best interests of the state, the contract shall be posted on the attorney general's web site for public inspection not later than five (5) business days after the date the contract is executed and must remain posted on the web site for the duration of the contingency fee contract, including any extensions to the original contract. Any payment of contingency fees shall be posted on the attorney general's web site not later than fifteen (15) days after the payment of the contingency fees to the private attorney, and must remain posted on the web site for at least one (1) year. If the attorney general determines that disclosing the contingency fee contract is not in the best interests of the state under this subsection, the contract shall be posted on the attorney general's web site not later than fifteen (15) days after the action is concluded.

(i) Every agency that has hired or employed a private attorney on a contingency fee basis in the calendar year shall submit a report describing the use of contingency fee contracts with private attorneys to the attorney general before October 1 of each year. The report must include the following:

(1) A description of all new contingency fee contracts entered into during the year and all previously executed contingency fee contracts that remain current during any part of the year. The report must include, for each contract:

- (A) the name of the private attorney with whom the department has contracted, including the name of the attorney's law firm;
- (B) the nature and status of the legal matter;
- (C) the name of the parties to the legal matter;
- (D) the amount of any recovery; and
- (E) the amount of any contingency fee paid.

(2) A copy of all written determinations made under this section during the year.

The attorney general shall compile the reports and submit a comprehensive report to the legislative council before November 1 of each year. The report must be in an electronic format under IC 5-14-6.

As added by P.L.101-2011, SEC.1.

IC 4-6-3-3

Investigative demand; issuance

Sec. 3. If the attorney general has reasonable cause to believe that

a person may be in possession, custody, or control of documentary material, or may have knowledge of a fact that is relevant to an investigation conducted to determine if a person is or has been engaged in a violation of IC 4-6-9, IC 4-6-10, IC 13-14-10, IC 13-14-12, IC 13-24-2, IC 13-30-4, IC 13-30-5, IC 13-30-8, IC 23-7-8, IC 24-1-2, IC 24-5-0.5, IC 24-5-7, IC 24-5-8, IC 24-9, IC 25-1-7, IC 32-34-1, or any other statute enforced by the attorney general or is or has been engaged in a criminal violation of IC 13, only the attorney general may issue in writing, and cause to be served upon the person or the person's representative or agent, an investigative demand that requires that the person served do any combination of the following:

- (1) Produce the documentary material for inspection and copying or reproduction.
- (2) Answer under oath and in writing written interrogatories.
- (3) Appear and testify under oath before the attorney general or the attorney general's duly authorized representative.

As added by Acts 1982, P.L.20, SEC.3. Amended by P.L.27-1983, SEC.1; P.L.12-1986, SEC.1; P.L.31-1995, SEC.1; P.L.1-1996, SEC.23; P.L.2-2002, SEC.24; P.L.73-2004, SEC.3; P.L.137-2007, SEC.1.

IC 4-6-3-4

Investigative demand; required provisions

Sec. 4. An investigative demand shall contain the following:

- (1) A general description of the subject matter being investigated and a statement of the applicable provisions of law.
- (2) The date, time, and place at which the person is to appear, answer written interrogatories, or produce documentary material or other tangible items. The date shall not be less than ten (10) days from the date of service of the demand.
- (3) Where the production of documents or other tangible items is required, a description of those documents or items by class with sufficient clarity so that they might be reasonably identified.

As added by Acts 1982, P.L.20, SEC.4.

IC 4-6-3-5

Investigative demand; prohibited provisions

Sec. 5. An investigative demand may not:

- (1) contain a requirement that would be unreasonable if contained in a subpoena or subpoena duces tecum issued by a court in a grand jury investigation; or
- (2) require the giving of oral testimony, the production of written answers to interrogatories, or the production of documentary material that would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court in aid of a grand jury investigation.

As added by Acts 1982, P.L.20, SEC.5.

IC 4-6-3-6

Application to enforce investigative demand; procedure; order

Sec. 6. If a person objects or otherwise fails to obey a written demand issued under section 3 of this chapter, the attorney general may file in the circuit or superior court of the county in which that person resides or maintains a principal place of business within the state an application for an order to enforce the demand. If the person does not reside or maintain a principal place of business in Indiana, the application for the order to enforce the demand may be filed in the Marion County circuit or superior court. Notice of hearing and a copy of the application shall be served upon that person, who may appear in opposition to the application. The attorney general must demonstrate to the court that the demand is proper. If the court finds that the demand is proper, it shall order that person to comply with the demand, subject to such modification as the court may prescribe. Upon motion by that person and for good cause shown, the court may make any further order in the proceedings which justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, expense, or to protect privileged information, trade secrets or information which is confidential under any other provision of law. If the court finds that either party has acted in bad faith in seeking or resisting the demand, it may order that person to pay the other parties reasonable expenses including attorneys' fees. *As added by Acts 1982, P.L.20, SEC.6. Amended by P.L.136-2007, SEC.1.*

IC 4-6-3-7

Certain evidence; admissibility in criminal prosecutions

Sec. 7. Evidence obtained from a human person pursuant to the provisions of this chapter may not be introduced in a subsequent criminal prosecution of that person unless it was obtained by a means independent of this chapter. *As added by Acts 1982, P.L.20, SEC.7.*

IC 4-6-3-8

Abridgment of limitations on self-incrimination prohibited

Sec. 8. This chapter shall not be construed to limit or abridge any limitation on self-incrimination established by law. *As added by Acts 1982, P.L.20, SEC.8.*

IC 4-6-3-9

Materials obtained under investigative demand; confidentiality

Sec. 9. All documentary material, answers to written interrogatories, and transcripts of oral testimony that are provided pursuant to an investigative demand shall be kept confidential by the attorney general until an action is filed against a person for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced documentary material, or unless disclosure is authorized by the court for the purposes of interstate

cooperation in law enforcement of state or federal laws.
As added by Acts 1982, P.L.20, SEC.9.

IC 4-6-3-10

Documentary material; custody, use, and preservation

Sec. 10. The attorney general is responsible for the custody, use, and necessary preservation of the documentary material made available pursuant to an investigative demand and for its return as provided by this chapter.

As added by Acts 1982, P.L.20, SEC.10.

IC 4-6-3-11

Documentary material; return

Sec. 11. When original documentary material made available pursuant to an investigative demand is no longer required for use in a pending proceeding, or, absent any pending proceeding, is no longer required in connection with the investigation for which it was demanded, or at the end of the twenty-four (24) months following the date when the material was made available, whichever is sooner, it shall be returned, unless a request to extend the period beyond twenty-four (24) months has been filed in a court in which a request for an order compelling compliance pursuant to section 6 of this chapter be filed. This section does not require the return of documentary material that has passed into the control of a court or grand jury.

As added by Acts 1982, P.L.20, SEC.11.

IC 4-6-3-12

Repealed

(Repealed by P.L.190-2006, SEC.10.)