

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 528

Judiciary I/Constitution Committee Substitute Adopted 5/9/95

Short Title: Mediated Settlement Conferences.

(Public)

Sponsors:

Referred to:

March 30, 1995

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE MEDIATED SETTLEMENT CONFERENCES IN CIVIL ACTIONS IN SUPERIOR COURT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding the following new sections to read:

"§ 7A-38.1. Mediated settlement conferences in superior court civil actions.

(a) Purpose. The General Assembly finds that a system of court-ordered mediated settlement conferences should be established to facilitate the settlement of superior court civil actions and to make civil litigation more economical, efficient, and satisfactory to litigants and the State. Therefore, this section is enacted to require parties to superior court civil actions and their representatives to attend a pretrial, mediated settlement conference conducted pursuant to this section and pursuant to rules of the Supreme Court adopted to implement this section.

(b) Definitions. As used in this section:

(1) 'Mediated settlement conference' means a pretrial, court-ordered conference of the parties to a civil action and their representatives conducted by a mediator.

1 (2) 'Mediation' means an informal process conducted by a mediator with the
2 objective of helping parties voluntarily settle their dispute.

3 (3) 'Mediator' means a neutral person who acts to encourage and facilitate a
4 resolution of a pending civil action. A mediator does not make an
5 award or render a judgment as to the merits of the action.

6 (c) Rules of procedure. The Supreme Court may adopt rules to implement this
7 section.

8 (d) Statewide implementation. Mediated settlement conferences authorized by this
9 section shall be implemented in all judicial districts as soon as practicable, as determined
10 by the Director of the Administrative Office of the Courts.

11 (e) Cases selected for mediated settlement conferences. The senior resident
12 superior court judge of any participating district may order a mediated settlement
13 conference for any superior court civil action pending in the district. The senior resident
14 superior court judge may by local rule order all cases, not otherwise exempted by the
15 Supreme Court rule, to mediated settlement conference.

16 (f) Attendance of parties. The parties to a superior court civil action in which a
17 mediated settlement conference is ordered, their attorneys and other persons or entities
18 with authority, by law or by contract, to settle the parties' claims shall attend the mediated
19 settlement conference unless excused by rules of the Supreme Court or by order of the
20 senior resident superior court judge. Nothing in this section shall require any party or
21 other participant in the conference to make a settlement offer or demand which it deems
22 is contrary to its best interests.

23 (g) Sanctions. Any person required to attend a mediated settlement conference
24 who, without good cause, fails to attend in compliance with this section and the rules
25 adopted under this section, shall be subject to any appropriate monetary sanction imposed
26 by a resident or presiding superior court judge, including the payment of attorneys' fees,
27 mediator fees, and expenses incurred in attending the conference. If the court imposes
28 sanctions, it shall do so, after notice and a hearing, in a written order, making findings of
29 fact and conclusions of law. An order imposing sanctions shall be reviewable upon
30 appeal where the entire record as submitted shall be reviewed to determine whether the
31 order is supported by substantial evidence.

32 (h) Selection of mediator. The parties to a superior court civil action in which a
33 mediated settlement conference is to be held pursuant to this section shall have the right
34 to designate a mediator. Upon failure of the parties to designate a mediator within the
35 time established by the rules of the Supreme Court, a mediator shall be appointed by the
36 senior resident superior court judge.

37 (i) Promotion of other settlement procedures. Nothing in this section is intended
38 to preclude the use of other dispute resolution methods within the superior court. Parties
39 to a superior court civil action are encouraged to select other available dispute resolution
40 methods. Upon the request of a party, the senior resident superior court judge may order
41 the use of other appropriate dispute resolution methods in lieu of a mediated settlement
42 conference. The senior resident superior court judge, at the request of and with the
43 consent of the parties, may order the parties to attend and participate in any other

1 settlement procedure authorized by rules of the Supreme Court or by the local superior
2 court rules, in lieu of attending a mediated settlement conference. Neutral third-parties
3 acting pursuant to this section shall be selected and compensated in accordance with such
4 rules or pursuant to agreement of the parties. Nothing in this section shall prohibit the
5 parties from participating in, or the court from ordering, other dispute resolution
6 procedures, including arbitration to the extent authorized under State or federal law.

7 (j) Immunity. Mediator and other neutrals acting pursuant to this section shall
8 have judicial immunity in the same manner and to the same extent as a judge of the
9 General Court of Justice, except that mediators and other neutrals may be disciplined in
10 accordance with enforcement procedures adopted by the Supreme Court pursuant to
11 subsection (j) of this section.

12 (k) Costs of mediated settlement conference. Costs of mediated settlement
13 conferences shall be borne by the parties. Unless otherwise ordered by the court or
14 agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties.
15 For purposes of this section, multiple parties shall be considered one party when they are
16 represented by the same counsel. The rules adopted by the Supreme Court implementing
17 this section shall set out a method whereby parties found by the court to be unable to pay
18 the costs of the mediated settlement conference are afforded an opportunity to participate
19 without cost.

20 (l) Inadmissibility of negotiations. Evidence of statements made and conduct
21 occurring in a mediated settlement conference shall not be subject to discovery and shall
22 be inadmissible in any proceeding in the action or other actions on the same claim.
23 However, no evidence otherwise discoverable shall be inadmissible merely because it is
24 presented or discussed in a mediated settlement conference.

25 No mediator shall be compelled to testify or produce evidence concerning statements
26 made and conduct occurring in a mediated settlement conference in any civil proceeding
27 for any purpose, except proceedings for sanctions under this section, disciplinary
28 hearings before the State Bar or any agency established to enforce standards of conduct
29 for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.

30 (m) Right to jury trial. Nothing in this section or the rules adopted by the Supreme
31 Court implementing this section shall restrict the right to jury trial.

32 **"§ 7A-38.2. Regulation of mediators.**

33 (a) The Supreme Court is authorized to adopt standards for the certification and
34 conduct of mediators who participate in the mediated settlement conference program
35 established pursuant to G.S. 7A-38.1. The standards may also regulate mediator training
36 programs. The Supreme Court may adopt procedures for the enforcement of those
37 standards.

38 (b) The administration of mediator certification, regulation of mediator conduct,
39 and decertification shall be conducted through the Dispute Resolution Commission,
40 established under the Judicial Department. The rules and regulations governing the
41 operation of the Commission shall be adopted by the Supreme Court. The Commission
42 shall be administered under the direction and supervision of the Director of the
43 Administrative Office of the Courts. The Commission shall exercise all of its duties

1 independently of the Director, except all management functions shall be performed under
2 the direction and supervision of the Director.

3 (c) The Dispute Resolution Commission shall consist of nine members: two
4 judges appointed by the Chief Justice of the Supreme Court; two mediators certified to
5 conduct mediated settlement conferences appointed by the Chief Justice of the Supreme
6 Court; two practicing attorneys who are not certified as mediators appointed by the
7 President of the North Carolina State Bar; and three citizens knowledgeable about
8 mediation, one of whom shall be appointed by the Governor, one by the Speaker of the
9 House of Representatives, and one by the President Pro Tempore of the Senate.
10 Members shall serve four-year terms, except that one judge, one mediator, one attorney,
11 and the citizen member appointed by the Governor, shall be appointed for an initial term
12 of two years. Members may serve no more than two consecutive terms. The Chief
13 Justice shall designate one of the judge members to serve as chair for a two-year term.

14 (d) An administrative fee may be charged by the Administrative Office of the
15 Courts to applicants for certification and annual renewal of certification for mediators and
16 mediation training programs operation under this Article. The fees collected may be used
17 by the Director of the Administrative Office of the Courts to establish and maintain the
18 operations of the Commission and its staff."

19 Sec. 2. G.S. 7A-38(o) reads as rewritten:

20 "(o) ~~Report on pilot program. The Administrative Office of the Courts shall file a~~
21 ~~written report with the General Assembly on the evaluation of the pilot program on or~~
22 ~~before May 1, 1995. The pilot program shall terminate on June 30, 1995. Continuation~~
23 ~~and funding of the pilot program. Notwithstanding the above, the termination date of the~~
24 ~~pilot program is extended to October 1, 1995. The Administrative Office of the Courts is~~
25 ~~authorized to use funds available to the Judicial Department from July 1, 1995, to~~
26 ~~October 1, 1995, for the purpose of operating the program."~~

27 Sec. 3. Effective October 1, 1995, G.S. 7A-38 is repealed.

28 Sec. 4. There is appropriated from the General Fund to the Judicial Division,
29 Administrative Office of the Courts, the sum of eighty thousand twenty-two dollars
30 (\$80,022) for the 1995-96 fiscal year to support the operation of the Dispute Resolution
31 Commission.

32 Sec. 5. Section 2 of this act is effective upon ratification. Section 4 of this act
33 becomes effective July 1, 1995. The remainder of this act becomes effective October 1,
34 1995, and shall apply, after the Supreme Court has adopted rules implementing this act,
35 to all superior court civil actions filed in any county after the date this program is
36 implemented in that county. This act also applies to all previously filed actions which are
37 or have been specifically ordered to a mediated settlement conference by a senior resident
38 superior court judge under G.S. 7A-38 prior to its repeal.