

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 924\*  
Committee Substitute Favorable 4/19/99  
Senate Judiciary I Committee Substitute Adopted 6/15/99

Short Title: Community Mediation Centers.

(Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED  
AN ACT TO AUTHORIZE COMMUNITY MEDIATION CENTERS.  
The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

**"§ 7A-38.5. Community mediation centers.**

(a) The General Assembly finds that it is in the public interest to encourage the establishment of community mediation centers, also known as dispute settlement centers or dispute resolution centers, to support the work of these centers in facilitating communication, understanding, reconciliation, and settlement of conflicts in communities, courts, and schools, and to promote the widest possible use of these centers by the courts and law enforcement officials across the State.

(b) Community mediation centers, functioning as or within nonprofit organizations and local governmental entities, may receive referrals from courts, law enforcement agencies, and other public entities for the purpose of facilitating communication, understanding, reconciliation, and settlement of conflicts.

1 (c) Each chief district court judge and district attorney shall encourage mediation  
2 for any criminal district court action pending in the district when the judge and district  
3 attorney determine that mediation is an appropriate alternative.

4 (d) Each chief district court judge shall encourage mediation for any civil district  
5 court action pending in the district when the judge determines that mediation is an  
6 appropriate alternative."

7 Section 2. G.S. 84-2.1 reads as rewritten:

8 **"§ 84-2.1. "Practice law" defined.**

9 The phrase "practice law" as used in this Chapter is defined to be performing any legal  
10 service for any other person, firm or corporation, with or without compensation,  
11 specifically including the preparation or aiding in the preparation of deeds, mortgages,  
12 wills, trust instruments, inventories, accounts or reports of guardians, trustees,  
13 administrators or executors, or preparing or aiding in the preparation of any petitions or  
14 orders in any probate or court proceeding; abstracting or passing upon titles, the  
15 preparation and filing of petitions for use in any court, including administrative tribunals  
16 and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in  
17 any legal work; and to advise or give opinion upon the legal rights of any person, firm or  
18 corporation: Provided, that the above reference to particular acts which are specifically  
19 included within the definition of the phrase "practice law" shall not be construed to limit  
20 the foregoing general definition of the term, but shall be construed to include the  
21 foregoing particular acts, as well as all other acts within the general definition. The  
22 phrase "practice law" does not encompass the writing of memoranda of understanding or  
23 other mediation summaries by mediators at community mediation centers authorized by  
24 G.S. 7A-38.5."

25 Section 3. G.S. 90-330 reads as rewritten:

26 **"§ 90-330. Definitions; practice of marriage and family therapy.**

27 (a) Definitions. – As used in this Article certain terms are defined as follows:

28 (1) Repealed by Session Laws 1993, c. 514, s. 1.

29 (1a) The "Board" means the Board of Licensed Professional Counselors.

30 (2) A "licensed professional counselor" is a person engaged in the practice  
31 of counseling who holds a license as a licensed professional counselor  
32 issued under the provisions of this Article.

33 (3) The "practice of counseling" means holding oneself out to the public as a  
34 professional counselor offering counseling services that include, but are  
35 not limited to, the following:

36 a. Counseling. – Assisting individuals, groups, and families through  
37 the counseling relationship by treating mental disorders and other  
38 conditions through the use of a combination of clinical mental  
39 health and human development principles, methods, diagnostic  
40 procedures, treatment plans, and other psychotherapeutic  
41 techniques, to develop an understanding of personal problems, to  
42 define goals, and to plan action reflecting the client's interests,  
43 abilities, aptitudes, and mental health needs as these are related to

1 personal-social-emotional concerns, educational progress, and  
2 occupations and careers.

3 b. Appraisal Activities. – Administering and interpreting tests for  
4 assessment of personal characteristics.

5 c. Consulting. – Interpreting scientific data and providing guidance  
6 and personnel services to individuals, groups, or organizations.

7 d. Referral Activities. – Identifying problems requiring referral to  
8 other specialists.

9 e. Research Activities. – Designing, conducting, and interpreting  
10 research with human subjects.

11 The "practice of counseling" does not include the facilitation of  
12 communication, understanding, reconciliation, and settlement of  
13 conflicts by mediators at community mediation centers authorized by  
14 G.S. 7A-38.5.

15 (4) A "supervisor" means any licensed professional counselor or, when one  
16 is inaccessible, an equivalently credentialed mental health professional,  
17 as determined by the Board, with a minimum of five years of counseling  
18 experience who meets the qualifications established by the Board.

19 (b) Repealed by Session Laws 1993, c. 514, s. 1.

20 (c) Practice of Marriage and Family Therapy, Psychology, or Social Work. – No  
21 person licensed as a licensed professional counselor under the provisions of this Article  
22 shall be allowed to hold himself or herself out to the public as a certified marriage and  
23 family therapist, licensed practicing psychologist, psychological associate, or certified  
24 clinical social worker unless specifically authorized by other provisions of law."

25 Section 4. Chapter 8 of the General Statutes is amended by adding a new  
26 Article to read:

### 27 **"ARTICLE 15.**

#### 28 **"MEDIATION NEGOTIATIONS.**

##### 29 **"§ 8-110. Inadmissibility of negotiations.**

30 (a) Evidence of statements made and conduct occurring during mediation at a  
31 community mediation center authorized by G.S. 7A-38.5 shall not be subject to discovery  
32 and shall be inadmissible in any proceeding in the action or other actions on the same  
33 claim, except in proceedings to enforce a settlement of the action. No such settlement  
34 shall be binding unless it has been reduced to writing and signed by the parties. No  
35 evidence otherwise discoverable shall be inadmissible merely because it is presented or  
36 discussed during mediation.

37 (b) No mediator shall be compelled to testify or produce evidence in any civil  
38 proceeding concerning statements made and conduct occurring in a mediation conducted  
39 by a community mediation center authorized by G.S. 7A-38.5. A civil proceeding  
40 includes any civil matter in any administrative agency or the General Court of Justice,  
41 including a proceeding to enforce a settlement reached at the mediation. For purposes of  
42 this subsection, a mediator is a person assigned by the center to conduct the mediation  
43 and any staff person employed by the center to provide supervision of that person. This

1 subsection does not excuse a mediator from the reporting requirements of G.S. 7B-301 or  
2 G.S. 108A-102.

3 (c) Except as provided in this subsection, no mediator shall be compelled to testify  
4 or produce evidence in any criminal misdemeanor or felony proceeding concerning  
5 statements made and conduct occurring in a mediation conducted at a community  
6 mediation center authorized by G.S. 7A-38.5. A judge presiding over the trial of a felony  
7 may, however, compel disclosure of any evidence unrelated to the dispute that is the  
8 subject of the mediation if it is to be introduced in the trial or disposition of the felony  
9 and the judge determines that the introduction of the evidence is necessary to a proper  
10 administration of justice, and the evidence may not be obtained from any other source.  
11 For purposes of this subsection, a mediator is a person assigned by the center to conduct  
12 the mediation and any staff person employed by the center to provide supervision of that  
13 person. This subsection does not excuse a mediator from the reporting requirements of  
14 G.S. 7B-301 or G.S. 108A-102."

15 Section 5. G.S. 7A-38.1(l) reads as rewritten:

16 "(l) Inadmissibility of negotiations. – Evidence of statements made and conduct  
17 occurring in a mediated settlement conference shall not be subject to discovery and shall  
18 be inadmissible in any proceeding in the action or other actions on the same ~~claim.~~ claim,  
19 except in proceedings for sanctions or proceedings to enforce a settlement of the action.  
20 No such settlement shall be enforceable unless it has been reduced to writing and signed  
21 by the parties. However, no ~~No~~ evidence otherwise discoverable shall be inadmissible  
22 merely because it is presented or discussed in a mediated settlement conference.

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

30 Section 6. G.S. 7A-38.4(k) reads as rewritten:

31 "(k) Evidence of statements made and conduct occurring in a settlement proceeding  
32 conducted pursuant to this section shall not be subject to discovery and shall be  
33 inadmissible in any proceeding in the action or other actions on the same ~~claim.~~ claim,  
34 except in proceedings for sanctions or proceedings to enforce a settlement of the action.  
35 No such settlement shall be enforceable unless it has been reduced to writing and signed  
36 by the parties. However, no ~~No~~ evidence otherwise discoverable shall be inadmissible  
37 merely because it is presented or discussed in a settlement proceeding.

38 No mediator, or other neutral conducting a settlement procedure pursuant to this  
39 section, shall be compelled to testify or produce evidence concerning statements made  
40 and conduct occurring in a mediated settlement conference or other settlement procedure  
41 in any civil proceeding for any ~~purpose,~~ purpose, including proceedings to enforce a  
42 settlement of the action, except to attest to the signing of any such agreements, and  
43 except proceedings for sanctions under this section, disciplinary hearings before the State

- 1 Bar or any agency established to enforce standards of conduct for mediators, and  
2 proceedings to enforce laws concerning juvenile or elder abuse."  
3 Section 7. This act is effective when it becomes law.