

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-354
HOUSE BILL 924

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.

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

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

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

"§ 84-2.1. "Practice law" defined.

The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be

construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition. The phrase "practice law" does not encompass the writing of memoranda of understanding or other mediation summaries by mediators at community mediation centers authorized by G.S. 7A-38.5."

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

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

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

(1) Repealed by Session Laws 1993, c. 514, s. 1.

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

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

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

a. Counseling. – Assisting individuals, groups, and families through the counseling relationship by treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans, and other psychotherapeutic techniques, to develop an understanding of personal problems, to define goals, and to plan action reflecting the client's interests, abilities, aptitudes, and mental health needs as these are related to personal-social-emotional concerns, educational progress, and occupations and careers.

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

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

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

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

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

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

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

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

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

"ARTICLE 15.

"Mediation Negotiations.

"§ 8-110. Inadmissibility of negotiations.

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

(b) No mediator shall be compelled to testify or produce evidence in any civil proceeding concerning statements made and conduct occurring in a mediation conducted by a community mediation center authorized by G.S. 7A-38.5. A civil proceeding includes any civil matter in any administrative agency or the General Court of Justice, including a proceeding to enforce a settlement reached at the mediation. For purposes of this subsection, a mediator is a person assigned by the center to conduct the mediation and any staff person employed by the center to provide supervision of that person. This subsection does not excuse a mediator from the reporting requirements of G.S. 7B-301 or G.S. 108A-102.

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

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

"(l) Inadmissibility of negotiations. – Evidence of statements made and conduct occurring in a mediated settlement conference shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same ~~claim~~ claim, except in proceedings for sanctions or proceedings to enforce a settlement of the

action. No such settlement shall be enforceable unless it has been reduced to writing and signed by the parties. ~~However, no~~ No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference.

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

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

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

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

Section 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:15 p.m. this 22nd day of July, 1999