

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 791
Judiciary II Committee Substitute Adopted 5/1/91

Short Title: Settlement Conferences/Civil Actions.

(Public)

Sponsors:

Referred to:

April 24, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A PILOT PROGRAM OF MEDIATED SETTLEMENT
3 CONFERENCES IN SUPERIOR COURT ACTIONS.

4 The General Assembly of North Carolina enacts:

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

7 "**§ 7A-38. Court ordered, mediated settlement conferences in superior court civil**
8 **actions.**

9 (a) Purpose. This section is enacted in order to provide for a pilot program in
10 judicial districts selected by the Director of the Administrative Office of the Courts in
11 which parties to superior court civil litigation may be required to attend a pretrial
12 settlement conference conducted by a mediator. The purpose of the pilot program is to
13 determine whether a system of mediated settlement conferences may make the
14 operation of the superior courts more efficient, less costly, and more satisfying to the
15 litigants.

16 (b) Definitions as used in this section:

17 (1) 'Mediated settlement conference' means a court ordered conference
18 between or among the parties to a civil action and their representatives
19 conducted by a mediator prior to trial.

20 (2) 'Mediation' means an informal process conducted by a mediator with
21 the objective of helping parties voluntarily reach a mutually acceptable
22 settlement of their dispute.

1 (3) 'Mediator' means a neutral person who acts to encourage and facilitate
2 a resolution of a pending civil action. A mediator does not render a
3 judgment as to the merit of the action.

4 (c) Selection of districts. This procedure may be implemented in a judicial
5 district or any part of a judicial district if the Director of the Administrative Office of
6 the Courts and the senior resident superior court judge of that district determine that use
7 of this program may assist in achieving objectives stated in subsection (a) of this
8 section. The Director of the Administrative Office of the Courts may terminate any
9 pilot program after consultation with the senior resident superior court judge.

10 (d) Rules of mediated settlement conferences. The Supreme Court may adopt
11 rules to implement this section.

12 (e) Judge to select cases for mediated settlement conferences. The senior resident
13 superior court judge of any district participating, in whole or in part, in any pilot
14 program may order a mediated settlement conference for all or any part of a superior
15 court civil action pending in the pilot area, except as limited by the rules of the Supreme
16 Court adopted under the authority of this section.

17 (f) Attendance of parties. The parties to a civil action in which a mediated
18 settlement conference is ordered, their attorneys, and other persons having authority to
19 settle the parties' claims shall attend the conference unless excused by rules of the
20 Supreme Court or by order of the senior resident superior court judge.

21 (g) Selection of mediator. The parties shall have the right to stipulate to a
22 mediator subject to the standards and rules established by the Supreme Court. Upon
23 failure of the parties to agree within the time established by the rules, a mediator shall
24 be appointed by the senior resident superior court judge.

25 (h) Sanctions. Upon failure to attend a court ordered mediated settlement
26 conference to the extent required by this section and rules promulgated by the Supreme
27 Court, a resident or presiding judge may impose any lawful sanction, including but not
28 limited to the payment of attorneys fees, mediator fees, and expenses incurred in
29 attending the conference, contempt, or any other sanction authorized by G.S. 1A-1, Rule
30 37(b).

31 (i) Standards for mediators. The Supreme Court is authorized to establish
32 standards for the qualification and conduct of mediators and mediator training
33 programs. An administrative fee may be set by the Administrative Office of the Courts
34 to be charged to applicants for approval as mediators and mediator training programs.

35 (j) Immunity. A mediator acting pursuant to this section shall have judicial
36 immunity in the same manner and to the same extent as a judge of the General Court of
37 Justice.

38 (k) Costs of mediated settlement conference. Costs of the mediated settlement
39 conference shall be paid: one share by the plaintiffs, one share by the defendants, and
40 one share by any third-party defendant, unless otherwise ordered by the court or agreed
41 to by the parties. The rules established by the Supreme Court under subsection (d) of
42 this section shall set out a method whereby the parties found by the court to be unable to
43 pay the costs of the mediated settlement conference are afforded an opportunity to
44 participate without cost.

1 (l) Inadmissability of negotiations. All conduct or communications made during
2 a mediated settlement conference are presumed to be made in compromise negotiations
3 and shall be governed by Rule 408 of the North Carolina Rules of Evidence.

4 (m) Evaluation. The pilot program authorized by this section shall be evaluated
5 for a reasonable period of time under the direction of the Administrative Office of the
6 Courts. The Director of the Administrative Office of the Courts shall report the results
7 of the evaluation to the General Assembly.

8 (n) Funding of the pilot program. The Administrative Office of the Courts may
9 solicit funds from private sources to establish, conduct, and evaluate this pilot program.
10 No State funds shall be used to establish, conduct, or evaluate this program.

11 (o) Report on pilot program. The Administrative Office of the Courts shall file a
12 written report with the General Assembly on the evaluation of the pilot program on or
13 before May 1, 1995. Upon the filing of the report, the pilot program shall terminate.

14 (p) Right to jury trial. Nothing in this section or the rules promulgated by the
15 Supreme Court implementing this section shall restrict the right to jury trial."

16 Sec. 2. This act becomes effective October 1, 1991, and applies to mediated
17 settlement conferences established on and after the Supreme Court's rules are adopted
18 governing this establishment.