

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE DRS35161-LL-77 (2/24)

Short Title: Mediation Amendments.

(Public)

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Sponsors: Senator Hartsell.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING MEDIATED SETTLEMENT  
CONFERENCES IN SUPERIOR COURT, MEDIATION IN DISTRICT COURT  
DOMESTIC CASES, AND THE REGULATION OF MEDIATORS, AS  
RECOMMENDED BY THE DISPUTE RESOLUTION COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** 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 or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, ~~except in~~ except:

(1) In proceedings for sanctions under this section;

(2) ~~or~~ In proceedings to enforce or rescind a settlement of the action-  
action;

(3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or

(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No such settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties. No evidence otherwise discoverable

1 shall be inadmissible merely because it is presented or discussed in a mediated  
2 settlement ~~conference~~. conference or other settlement proceeding.

3 No ~~mediator~~ mediator, other neutral, or neutral observer present at a settlement  
4 proceeding shall be compelled to testify or produce evidence concerning statements  
5 made and conduct occurring in anticipation of, during, or as a follow-up to a mediated  
6 settlement conference or other settlement proceeding pursuant to this section in any civil  
7 proceeding for any purpose, including proceedings to enforce or rescind a settlement of  
8 the action, except to attest to the signing of any ~~such~~ agreements, and except  
9 proceedings for sanctions under this section, disciplinary hearings before the State Bar  
10 or any agency established to enforce standards of conduct for ~~mediators~~, mediators or  
11 other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

12 **SECTION 2.** G.S. 7A-38.2 reads as rewritten:

13 "**§ 7A-38.2. Regulation of ~~mediators~~. mediators and other neutrals.**

14 (a) The Supreme Court is authorized to adopt standards of conduct for ~~the~~  
15 ~~certification and conduct~~ of mediators and other neutrals who are certified or otherwise  
16 qualified pursuant to G.S. 7A-38.1, 7A-38.3, and 7A-38.4A, or who participate in the  
17 ~~mediated settlement conference program established pursuant to G.S. 7A-38.1.~~  
18 proceedings conducted pursuant to those sections. The standards may also regulate  
19 mediator and other neutral training programs. The Supreme Court may adopt procedures  
20 for the enforcement of those standards.

21 (b) The administration of ~~mediator certification, regulation of mediator conduct,~~  
22 ~~and decertification~~ the certification and qualification of mediators and other neutrals,  
23 and mediator and other neutral training programs shall be conducted through the  
24 Dispute Resolution Commission, established under the Judicial Department. ~~The rules~~  
25 ~~and regulations governing the operation of the Commission shall be adopted by the~~  
26 ~~Supreme Court. The Commission shall be administered under the direction and~~  
27 ~~supervision of the Director of the Administrative Office of the Courts. The Commission~~  
28 ~~shall exercise all of its duties independently of the Director, except all management~~  
29 ~~functions shall be performed under the direction and supervision of the Director. The~~  
30 Supreme Court shall adopt rules and regulations governing the operation of the  
31 Commission. The Commission shall exercise all of its duties independently of the  
32 Director of the Administrative Office of the Courts, except that the Commission shall  
33 consult with the Director regarding personnel and budgeting matters.

34 (c) The Dispute Resolution Commission shall consist of ~~14~~ 15 members: five  
35 judges appointed by the Chief Justice of the Supreme Court, at least two of whom shall  
36 be superior court judges, and at least two of whom shall be district court judges; one  
37 clerk of superior court appointed by the Chief Justice of the Supreme Court; two  
38 mediators certified to conduct superior court mediated settlement conferences and two  
39 mediators certified to conduct equitable distribution mediated settlement conferences  
40 appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are  
41 not certified as mediators appointed by the President of the North Carolina State Bar,  
42 one of whom shall be a family law specialist; and three citizens knowledgeable about  
43 mediation, one of whom shall be appointed by the Governor, one by the General  
44 Assembly upon the recommendation of the Speaker of the House of Representatives in

1 accordance with G.S. 120-121, and one by the General Assembly upon the  
2 recommendation of the President Pro Tempore of the Senate in accordance with  
3 G.S. 120-121. Members shall initially serve four-year terms, except that one judge, one  
4 mediator, one attorney, and the citizen member appointed by the Governor, shall be  
5 appointed for an initial term of two years. Incumbent members as of September 30,  
6 1998 shall serve the remainder of the terms to which they were appointed. Members  
7 appointed to newly-created membership positions effective October 1, 1998 shall serve  
8 initial terms of two years. Thereafter, members shall serve three-year terms and shall be  
9 ineligible to serve more than two consecutive terms. The Chief Justice shall designate  
10 one of the members to serve as chair for a two-year term. Members of the Commission  
11 shall be compensated pursuant to G.S. 138-5.

12 Vacancies shall be filled for unexpired terms and full terms in the same manner as  
13 incumbents were appointed. Appointing authorities may receive and consider  
14 suggestions and recommendations of persons for appointment from the Dispute  
15 Resolution Commission, the Family Law, Litigation, and Dispute Resolution Sections  
16 of the North Carolina Bar Association, the North Carolina Association of Professional  
17 Family Mediators, the North Carolina Association of Clerks of Superior Court, the  
18 North Carolina Conference of Court Administrators, the Mediation Network of North  
19 Carolina, the Dispute Resolution Committee of the Supreme Court, the Conference of  
20 Chief District Court Judges, the Conference of Superior Court Judges, the Director of  
21 the Administrative Office of the Courts, and the Child Custody Mediation Advisory  
22 Committee of the Administrative Office of the Courts.

23 (d) An administrative fee, not to exceed two hundred dollars (\$200.00), may be  
24 charged by the Administrative Office of the Courts to applicants for certification and  
25 annual renewal of certification for mediators and mediation training programs ~~operation~~  
26 operating under this Article. The fees collected may be used by the Director of the  
27 Administrative Office of the Courts to establish and maintain the operations of the  
28 Commission and its staff.

29 (e) The chair of the Commission may employ an executive secretary and other  
30 staff as necessary to assist the Commission in carrying out its duties. The chair may also  
31 employ special counsel or call upon the Attorney General to furnish counsel to assist the  
32 Commission in conducting hearings pursuant to its certification or qualification and  
33 regulatory responsibilities. Special counsel or counsel furnished by the Attorney  
34 General may present the evidence in support of a denial or revocation of certification or  
35 qualification or a complaint against a mediator, other neutral, training program, or  
36 trainers or staff affiliated with a program. Special counsel or counsel furnished by the  
37 Attorney General may also represent the Commission when its final determinations are  
38 the subject of an appeal.

39 (f) In connection with any investigation or hearing conducted pursuant to an  
40 application for certification or qualification of any mediator, other neutral, or training  
41 program, or conducted pursuant to any disciplinary matter, the chair of the Dispute  
42 Resolution Commission or his/her designee, may:

43 (1) Administer oaths and affirmations;

1           (2) Sign and issue subpoenas in the name of the Dispute Resolution  
2           Commission or direct its executive secretary to issue such subpoenas  
3           on its behalf requiring attendance and the giving of testimony by  
4           witnesses and the production of books, papers, and other documentary  
5           evidence;

6           (3) Apply to the General Court of Justice, Superior Court Division, for any  
7           order necessary to enforce the power conferred in this section.

8           (g) The General Court of Justice, Superior Court Division, may enforce  
9           subpoenas issued in the name of the Dispute Resolution Commission and requiring  
10           attendance and the giving of testimony by witnesses and the production of books,  
11           papers, and other documentary evidence.

12           (h) The Commission shall keep confidential all information in its files pertaining  
13           to the certification of mediators, the qualification of other neutrals, the certification or  
14           qualification of training programs for mediators or other neutrals, and the renewal of  
15           such certifications and qualifications. However, disciplinary matters reported by an  
16           applicant for certification or qualification, a mediator, other neutral, trainer, or manager  
17           shall be treated as a complaint as set forth below. The Commission shall also keep  
18           confidential the identity of those persons requesting informal guidance or the issuance  
19           of formal advisory opinions from the Commission or its staff.

20           Unless an applicant, mediator, other neutral, or training program trainer or manager  
21           requests otherwise, all information in the Commission's disciplinary files pertaining to a  
22           complaint regarding the conduct of an applicant, mediator, other neutral, trainer, or  
23           manager shall remain confidential until such time as a preliminary investigation is  
24           completed and a determination is made that probable cause exists to believe that the  
25           applicant, mediator, neutral, trainer, or manager's words or actions:

26           (1) Violate standards for the conduct of mediators or other neutrals;

27           (2) Violate other standards of professional conduct to which the applicant,  
28           mediator, neutral, trainer, or manager is subject;

29           (3) Violate program rules; or

30           (4) Consist of conduct or actions that are inconsistent with good moral  
31           character or reflect a lack of fitness to serve as a mediator, other  
32           neutral, trainer, or manager.

33           The Commission may publish names, contact information, and biographical  
34           information for mediators, neutrals, and training programs that have been certified or  
35           qualified.

36           (i) The Commission shall conduct its initial review of all applications for  
37           certification and certification renewal or qualification and qualification renewal in  
38           private. The Commission shall also conduct its initial review of complaints regarding  
39           the qualifications of any certified mediator, other neutral, or training program, but not  
40           involving issues of ethics or conduct, in private. Appeals of denials of applications for  
41           certification, qualification, or renewal and appeals of revocations of certification or  
42           qualification for reasons that do not relate to ethics or conduct, shall be heard by the  
43           Commission in private unless the applicant, certified mediator, qualified neutral, or  
44           certified or qualified training program requests a public hearing.

1       (j) The Commission shall conduct in private its initial review of all matters  
2 relating to the ethics or conduct of an applicant for certification, qualification, or  
3 renewal of certification or qualification or the ethics or conduct of a mediator, other  
4 neutral, trainer, or training program manager. If an applicant appeals the Commission's  
5 initial determination that sanctions be imposed, the hearing of such appeal by the  
6 Commission shall be open to the public, except that for good cause shown, the presiding  
7 officer may exclude from the hearing room all persons except the parties, counsel, and  
8 those engaged in the hearing. No hearing shall be closed to the public over the objection  
9 of an applicant, mediator, other neutral, trainer, or training program manager.

10       (k) Appeals of final determinations by the Commission to deny certification or  
11 renewal of certification, to revoke certification, or to discipline a mediator, trainer, or  
12 training program manager shall be filed in the General Court of Justice, Wake County  
13 Superior Court Division. Notice of appeal shall be filed within 30 days of the date of the  
14 Commission's decision."

15       **SECTION 3.** G.S. 7A-38.4A(j) reads as rewritten:

16       "(j) Evidence of statements made and conduct occurring in a mediated settlement  
17 conference or other settlement proceeding conducted under this section ~~section~~, whether  
18 attributable to a party, the mediator, other neutral, or a neutral observer present at the  
19 settlement proceeding, shall not be subject to discovery and shall be inadmissible in any  
20 proceeding in the action or other civil actions on the same claim, ~~except~~ except:

21       (1) ~~in~~ In proceedings for sanctions under this section;

22       (2) ~~or~~ In proceedings to enforce or rescind a settlement of the action-  
23 action;

24       (3) In disciplinary proceedings before the State Bar or any agency  
25 established to enforce standards of conduct for mediators or other  
26 neutrals; or

27       (4) In proceedings to enforce laws concerning juvenile or elder abuse.

28       As used in this subsection, the term "neutral observer" includes persons seeking  
29 mediator certification, persons studying dispute resolution processes, and persons acting  
30 as interpreters.

31       No settlement agreement to resolve any or all issues reached at a settlement  
32 conference or settlement the proceeding conducted under this section or during its  
33 recesses shall be enforceable unless it has been reduced to writing and signed by the  
34 parties and in all other respects complies with the requirements of Chapter 50 of the  
35 General Statutes. No evidence otherwise discoverable shall be inadmissible merely  
36 because it is presented or discussed in a settlement proceeding.

37       No mediator, ~~or other neutral conducting a settlement procedure~~ other neutral, or  
38 neutral observer present at a settlement proceeding under this section, shall be  
39 compelled to testify or produce evidence concerning statements made and conduct  
40 occurring in anticipation of, during, or as a follow-up to a mediated settlement  
41 conference or other settlement procedure proceeding pursuant to this section in any civil  
42 proceeding for any purpose, including proceedings to enforce or rescind a settlement of  
43 the action, except to attest to the signing of any ~~of these~~ agreements, and except  
44 proceedings for sanctions under this section, disciplinary hearings before the State Bar

1 or any agency established to enforce standards of conduct for ~~mediators~~, mediators or  
2 other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse."

3           **SECTION 4.** If "A Bill To Be Entitled An Act To Authorize The Clerk Of  
4 Superior Court To Order Mediation In Matters Within The Clerk's Jurisdiction"  
5 becomes law, then G.S. 7A-38.2(a), as amended by Section 2 of this act, reads as  
6 rewritten:

7           "(a) The Supreme Court is authorized to adopt standards of conduct for mediators  
8 and other neutrals who are certified or otherwise qualified pursuant to G.S. 7A-38.1,  
9 G.S. 7A-38.3, G.S. 7A-38.3B, and G.S. 7A-38.4A who participate in proceedings  
10 conducted pursuant to those sections. The standards may also regulate mediator and  
11 other neutral training programs. The Supreme Court may adopt procedures for the  
12 enforcement of those standards."

13           **SECTION 5.** This act is effective when it becomes law.