

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 806

Short Title: Mediation Amendments.

(Public)

Sponsors: Senators Hartsell; and Bingham.

Referred to: Judiciary II.

March 23, 2005

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;

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

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

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

11 "**§ 7A-38.2. Regulation of ~~mediators~~. mediators and other neutrals.**

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

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

32 (c) The Dispute Resolution Commission shall consist of 44 15 members: five
33 judges appointed by the Chief Justice of the Supreme Court, at least two of whom shall
34 be superior court judges, and at least two of whom shall be district court judges; one
35 clerk of superior court appointed by the Chief Justice of the Supreme Court; two
36 mediators certified to conduct superior court mediated settlement conferences and two
37 mediators certified to conduct equitable distribution mediated settlement conferences
38 appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are
39 not certified as mediators appointed by the President of the North Carolina State Bar,
40 one of whom shall be a family law specialist; and three citizens knowledgeable about
41 mediation, one of whom shall be appointed by the Governor, one by the General
42 Assembly upon the recommendation of the Speaker of the House of Representatives in
43 accordance with G.S. 120-121, and one by the General Assembly upon the
44 recommendation of the President Pro Tempore of the Senate in accordance with

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

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

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

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

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

41 (1) Administer oaths and affirmations;

42 (2) Sign and issue subpoenas in the name of the Dispute Resolution
43 Commission or direct its executive secretary to issue such subpoenas
44 on its behalf requiring attendance and the giving of testimony by

1 witnesses and the production of books, papers, and other documentary
2 evidence;

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

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

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

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

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

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

26 (3) Violate program rules; or

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

30 The Commission may publish names, contact information, and biographical
31 information for mediators, neutrals, and training programs that have been certified or
32 qualified.

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

42 (j) The Commission shall conduct in private its initial review of all matters
43 relating to the ethics or conduct of an applicant for certification, qualification, or
44 renewal of certification or qualification or the ethics or conduct of a mediator, other

1 neutral, trainer, or training program manager. If an applicant appeals the Commission's
2 initial determination that sanctions be imposed, the hearing of such appeal by the
3 Commission shall be open to the public, except that for good cause shown, the presiding
4 officer may exclude from the hearing room all persons except the parties, counsel, and
5 those engaged in the hearing. No hearing shall be closed to the public over the objection
6 of an applicant, mediator, other neutral, trainer, or training program manager.

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

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

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

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

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

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

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

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

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

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

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

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

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