

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 528

Short Title: Mediated Settlement Conferences.

(Public)

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Sponsors: Senators Soles, Allran, Rand, Hartsell, Cooper, Martin of Guilford, Gulley, Winner, Ballantine, Odom, Warren, Kerr, Horton, and Ballance.

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Referred to: Judiciary I/Constitution

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March 30, 1995

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH MEDIATED SETTLEMENT CONFERENCES IN CIVIL  
ACTIONS IN SUPERIOR COURT.

The General Assembly of North Carolina enacts:

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

**"§ 7A-38.1. Mediated settlement conferences in superior court civil actions.**

(a) Purpose. The General Assembly finds that a system of court-ordered mediated settlement conferences should be established to facilitate the settlement of superior court civil actions and to make civil litigation more economical, efficient, and satisfactory to litigants and the State. Therefore, this section is enacted to require parties to superior court civil actions and their representatives to attend a pretrial, mediated settlement conference conducted pursuant to this section and pursuant to rules of the Supreme Court adopted to implement this section.

(b) Definitions. As used in this section:

(1) 'Mediated settlement conference' means a pretrial, court-ordered conference of the parties to a civil action and their representatives conducted by a mediator.

1           (2) 'Mediation' means an informal process conducted by a mediator with the  
2           objective of helping parties voluntarily settle their dispute.

3           (3) 'Mediator' means a neutral person who acts to encourage and facilitate a  
4           resolution of a pending civil action. A mediator does not make an  
5           award or render a judgment as to the merits of the action.

6           (c) Rules of procedure. The Supreme Court may adopt rules to implement this  
7           section.

8           (d) Statewide implementation. Mediated settlement conferences authorized by this  
9           section shall be implemented in all judicial districts as soon as practicable, as determined  
10          by the Director of the Administrative Office of the Courts.

11          (e) Cases selected for mediated settlement conferences. In judicial districts in  
12          which this section has been implemented by the Director of the Administrative Office of  
13          the Courts, a mediated settlement conference shall be held in each pending superior court  
14          civil action except those exempted by rule of the Supreme Court or by order of the senior  
15          resident superior court judge.

16          (f) Attendance of parties. The parties to a superior court civil action in which a  
17          mediated settlement conference is ordered, their attorneys and other persons or entities  
18          with authority, by law or by contract, to settle the parties' claims shall attend the mediated  
19          settlement conference unless excused by rules of the Supreme Court or by order of the  
20          senior resident superior court judge. Nothing in this section shall require any party or  
21          other participant in the conference to make a settlement offer or demand which it deems  
22          is contrary to its best interests.

23          (g) Sanctions. Any person required to attend a mediated settlement conference  
24          who, without good cause, fails to attend in compliance with this section and the rules  
25          adopted under this section, shall be subject to any appropriate monetary sanction imposed  
26          by a resident or presiding superior court judge, including the payment of attorneys' fees,  
27          mediator fees, and expenses incurred in attending the conference. If the court imposes  
28          sanctions, it shall do so, after notice and a hearing, in a written order, making findings of  
29          fact and conclusions of law. An order imposing sanctions shall be reviewable upon  
30          appeal where the entire record as submitted shall be reviewed to determine whether the  
31          order is supported by substantial evidence.

32          (h) Selection of mediator. The parties to a superior court civil action in which a  
33          mediated settlement conference is to be held pursuant to this section shall have the right  
34          to designate a mediator. Upon failure of the parties to designate a mediator within the  
35          time established by the rules of the Supreme Court, a mediator shall be appointed by the  
36          senior resident superior court judge.

37          (i) Other settlement procedures. The senior resident superior court judge, at the  
38          request of and with the consent of the parties, may order the parties to attend and  
39          participate in any other settlement procedure authorized by rules of the Supreme Court or  
40          by local superior court rules, in lieu of attending a mediated settlement conference.  
41          Neutral third parties acting pursuant to this section shall be selected and compensated in  
42          accordance with those rules or pursuant to agreement of the parties. Nothing in this

1 section shall prohibit the parties from participating in other dispute resolution procedures,  
2 including arbitration, under State or federal law.

3 (j) Standards for mediators. The Supreme Court is authorized to adopt standards  
4 for the certification and conduct of mediators, other neutrals, and mediator training  
5 programs, and to adopt procedures for the enforcement of those standards. An  
6 administrative fee may be charged by the Administrative Office of the Courts to be  
7 charged to applicants for certification as mediators, other neutrals, and mediator training  
8 programs.

9 (k) Immunity. Mediator and other neutrals acting pursuant to this section shall  
10 have judicial immunity in the same manner and to the same extent as a judge of the  
11 General Court of Justice, except that mediators and other neutrals may be disciplined in  
12 accordance with enforcement procedures adopted by the Supreme Court pursuant to  
13 subsection (j) of this section.

14 (l) Costs of mediated settlement conference. Costs of mediated settlement  
15 conferences shall be borne by the parties. Unless otherwise ordered by the court or  
16 agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties.  
17 For purposes of this section, multiple parties shall be considered one party when they are  
18 represented by the same counsel. The rules adopted by the Supreme Court implementing  
19 this section shall set out a method whereby parties found by the court to be unable to pay  
20 the costs of the mediated settlement conference are afforded an opportunity to participate  
21 without cost.

22 (m) Inadmissibility of negotiations. Evidence of statements made and conduct  
23 occurring in a mediated settlement conference shall not be subject to discovery and shall  
24 be inadmissible in any proceeding in the action or other actions on the same claim.  
25 However, no evidence otherwise discoverable shall be inadmissible merely because it is  
26 presented or discussed in a mediated settlement conference.

27 No mediator shall be compelled to testify or produce evidence concerning statements  
28 made and conduct occurring in a mediated settlement conference in any civil proceeding  
29 for any purpose, except proceedings for sanctions under this section, disciplinary  
30 hearings before the State Bar or any agency established to enforce standards of conduct  
31 for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.

32 (n) Right to jury trial. Nothing in this section or the rules adopted by the Supreme  
33 Court implementing this section shall restrict the right to jury trial."

34 Sec. 2. G.S. 7A-38(o) reads as rewritten:

35 "(o) Report on pilot program. The Administrative Office of the Courts shall file a  
36 written report with the General Assembly on the evaluation of the pilot program on or  
37 before May 1, 1995. The pilot program shall terminate on ~~June 30, 1995.~~ October 1,  
38 1995."

39 Sec. 3. Effective October 1, 1995, G.S. 7A-38 is repealed.

40 Sec. 4. Section 2 of this act is effective upon ratification. The remainder of  
41 this act becomes effective October 1, 1995, and shall apply, after the Supreme Court has  
42 adopted rules implementing this act, to all superior court civil actions filed in any county  
43 after the date this program is implemented in that county. This act also applies to all

- 1 previously filed actions which are or have been specifically ordered to a mediated
- 2 settlement conference by a senior resident superior court judge under G.S. 7A-38 prior to
- 3 its repeal.