

GENERAL ASSEMBLY OF NORTH CAROLINA
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Short Title: Clerks May Order Mediation.

(Public)

Sponsors: Representatives Hackney; Coleman, Faison, and Insko.

Referred to: Judiciary I.

March 31, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CLERK OF SUPERIOR COURT TO ORDER
3 MEDIATION IN MATTERS WITHIN THE CLERK'S JURISDICTION.

4 The General Assembly of North Carolina enacts:

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

7 "**§ 7A-38.3B. Mediation in matters within the jurisdiction of the clerk of superior**
8 **court.**

9 (a) Purpose. – The General Assembly finds that the clerk of superior court in the
10 General Court of Justice should have the discretion and authority to order that mediation
11 be conducted in matters within the clerk's jurisdiction in order to facilitate a more
12 economical, efficient, and satisfactory resolution of those matters.

13 (b) Enabling Authority. – The clerk of superior court may order that mediation be
14 conducted in any matter in which the clerk has exclusive or original jurisdiction, except
15 for matters under Chapters 45 and 48 of the General Statutes and except in matters in
16 which the jurisdiction of the clerk is ancillary. The Supreme Court may adopt rules to
17 implement this section. Such mediations shall be conducted pursuant to this section and
18 the Supreme Court rules as adopted.

19 (c) Attendance. – In those matters ordered to mediation pursuant to this section,
20 the following persons or entities, along with their attorneys, may be ordered by the clerk
21 to attend the mediation:

22 (1) Named parties.

23 (2) Interested persons, meaning persons or entities who have a right,
24 interest, or claim in the matter; heirs or devisees in matters under
25 Chapter 28A of the General Statutes, next of kin under Chapter 35A of
26 the General Statutes, and other persons or entities as the clerk deems
27 necessary for the adjudication of the matter. The meaning of
28 "interested person" may vary according to the issues involved in the
29 matter.

1 (3) Nonparty participants, meaning any other person or entity identified by
2 the clerk as possessing useful information about the matter and whose
3 attendance would be beneficial to the mediation.

4 (4) Fiduciaries, meaning persons or entities who serve as fiduciaries, as
5 that term is defined by G.S. 36A-22.1, of named parties, interested
6 persons, or nonparty participants.

7 Any person or entity ordered to attend a mediation shall be notified of its date, time,
8 and location and shall attend unless excused by rules of the Supreme Court or by order
9 of the clerk. No one attending the mediation shall be required to make a settlement offer
10 or demand that it deems contrary to its best interests.

11 (d) Selection of Mediator. – Persons ordered to mediation pursuant to this section
12 have the right to designate a mediator in accordance with rules promulgated by the
13 Supreme Court implementing this section. Upon failure of those persons to agree upon a
14 designation within the time established by rules of the Supreme Court, a mediator
15 certified by the Dispute Resolution Commission pursuant to those rules shall be
16 appointed by the clerk.

17 (e) Immunity. – Mediators acting pursuant to this section shall have judicial
18 immunity in the same manner and to the same extent as a judge of the General Court of
19 Justice, except that mediators may be disciplined in accordance with procedures adopted
20 by the Supreme Court pursuant to G.S. 7A-38.2.

21 (f) Costs of Mediation. – Costs of mediation under this section shall be borne by
22 the named parties, interested persons, and fiduciaries ordered to attend the mediation.
23 The rules adopted by the Supreme Court implementing this section shall set out the
24 manner in which costs shall be paid and a method by which an opportunity to
25 participate without cost shall be afforded to persons found by the clerk to be unable to
26 pay their share of the costs of mediation. Costs may only be assessed against the estate
27 of a decedent, the estate of an adjudicated or alleged incompetent, a trust corpus, or
28 against a fiduciary upon the entry of a written order making specific findings of fact
29 justifying the taxing of costs.

30 (g) Inadmissibility of Negotiations. – Evidence of statements made or conduct
31 occurring during a mediation conducted pursuant to this section, whether attributable to
32 any participant, mediator, expert, or neutral observer, shall not be subject to discovery
33 and shall be inadmissible in any proceeding in the matter or other civil actions on the
34 same claim, except in:

35 (1) Proceedings for sanctions pursuant to this section;

36 (2) Proceedings to enforce or rescind a written and signed settlement
37 agreement;

38 (3) Incompetency, guardianship, or estate proceedings in which a
39 mediated agreement is presented to the clerk;

40 (4) Disciplinary proceedings before the North Carolina State Bar or any
41 agency established to enforce standards of conduct for mediators or
42 other neutrals; or

43 (5) Proceedings for abuse, neglect, or dependency of a juvenile, or for
44 abuse, neglect, or exploitation of an adult, for which there is a duty to

1 report under G.S. 7B-301 and Article 6 of Chapter 108A of the
2 General Statutes, respectively.

3 No evidence otherwise discoverable shall be inadmissible merely because it is
4 presented or discussed in mediation.

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

8 (h) Testimony. – No mediator or neutral observer shall be compelled to testify or
9 produce evidence concerning statements made and conduct occurring in anticipation of,
10 during, or as a follow-up to the mediation in any civil proceeding for any purpose,
11 including proceedings to enforce or rescind a settlement of the matter except to attest to
12 the signing of any agreements reached in mediation, and except in:

13 (1) Proceedings for sanctions pursuant to this section;

14 (2) Disciplinary proceedings before the North Carolina State Bar or any
15 agency established to enforce standards of conduct for mediators or
16 other neutrals; or

17 (3) Proceedings for abuse, neglect, or dependency of a juvenile, or for
18 abuse, neglect, or exploitation of an adult, for which there is a duty to
19 report under G.S. 7B-301 and Article 6 of Chapter 108A of the
20 General Statutes, respectively.

21 (i) Agreements. – In matters before the clerk in which agreements are reached in
22 a mediation conducted pursuant to this section, or during one of its recesses, those
23 agreements shall be treated as follows:

24 (1) Where as a matter of law, a matter may be resolved by agreement of
25 the parties, a settlement is enforceable only if it has been reduced to
26 writing and signed by the parties.

27 (2) In all other matters before the clerk, including guardianship and estate
28 matters, all agreements shall be delivered to the clerk for consideration
29 in deciding the matter.

30 (j) Sanctions. – The clerk may sanction any person ordered to attend a mediation
31 conducted pursuant to this section and rules of the Supreme Court who, without good
32 cause, fails to attend the mediation, by imposing an appropriate monetary sanction,
33 including the payment of attorneys' fees, mediator fees, and expenses incurred in
34 attending the conference. If the clerk imposes sanctions, the clerk shall do so, after
35 notice and a hearing, in a written order, making findings of fact and conclusions of law.
36 An order imposing sanctions is reviewable by the superior court in accordance with
37 G.S. 1-301.2 and G.S. 1-301.3, as applicable, and thereafter by the appellate courts in
38 accordance with G.S. 7A-38.1(g).

39 (k) Authority to Supplement Procedural Details. – The clerk of superior court
40 shall make all those orders just and necessary to safeguard the interests of all persons
41 and may supplement all necessary procedural details not inconsistent with rules adopted
42 by the Supreme Court implementing this section."

43 **SECTION 2.** G.S. 35A-1108 reads as rewritten:

44 **"§ 35A-1108. Issuance of notice.**

1 (a) Within five days after filing of the petition, the clerk shall issue a written
2 notice of the date, time, and place for a hearing on the petition, which shall be held not
3 less than 10 days nor more than 30 days after service of the notice and petition on the
4 respondent, unless the clerk extends the time for good ~~cause or~~ cause, for preparation of
5 a multidisciplinary evaluation as provided in ~~G.S. 35A-1111~~. G.S. 35A-1111, or for the
6 completion of a mediation.

7 (b) If a multidisciplinary evaluation or mediation is ordered after a notice of
8 hearing has been issued, the clerk may extend the time for hearing and issue a notice to
9 the parties that the hearing has been continued, the reason therefor, and the date, time,
10 and place of the new hearing, which shall not be less than 10 days nor more than 30
11 days after service of such notice on the respondent.

12 (c) Subsequent notices to the parties shall be served as provided by G.S. 1A-1,
13 Rule 5, Rules of Civil Procedure, unless the clerk orders otherwise."

14 **SECTION 3.** G.S. 35A-1116 is amended by adding a new subsection to
15 read:

16 "(c1) Mediator fees and other costs associated with mediation shall be assessed in
17 accordance with G.S. 7A-38.3B."

18 **SECTION 4.** G.S. 46-27 reads as rewritten:

19 "**§ 46-27. Sale of land required for public use on cotenant's petition.**

20 When the lands of joint tenants or tenants in common are required for public
21 purposes, one or more of such tenants, or their guardian for them, may file a petition
22 verified by oath, in the superior court of the county where the lands or any part of them
23 lie, setting forth therein that the lands are required for public purposes, and that their
24 interests would be promoted by a sale thereof. Whereupon the court, all proper parties
25 being before it, and the facts alleged in the petition being ascertained to be true, shall
26 order a sale of such lands, or so much thereof as may be necessary. The expenses, fees
27 and costs of this proceeding shall be paid in the discretion of the court. Mediator fees
28 and costs of mediation shall be assessed in accordance with G.S. 7A-38.3B."

29 **SECTION 5.** This act is effective when it becomes law and applies to all
30 matters pending before a clerk of superior court on, or filed with the clerk after, the date
31 the Supreme Court adopts rules implementing this act.