

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 728

Short Title: Mediation in District Criminal Courts. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II (Criminal).

March 14, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO ENCOURAGE MEDIATION IN DISTRICT CRIMINAL COURTS
3 AND TO ESTABLISH A PROGRAM WITHIN THE DISPUTE RESOLUTION
4 COMMISSION FOR THE CERTIFICATION OF MEDIATORS WORKING IN
5 THE DISTRICT CRIMINAL COURTS.

6 The General Assembly of North Carolina enacts:

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

9 "**§ 7A-38.3D. Mediation in matters within the jurisdiction of the district criminal**
10 **courts.**

11 (a) Purpose. – The General Assembly finds that it is in the public interest to
12 promote high standards for persons who mediate matters in district criminal court. To
13 that end, a program of certification for these mediators shall be established in judicial
14 districts designated by the Dispute Resolution Commission and the Director of the
15 Administrative Office of the Courts and in which the chief district court judge, the
16 district attorney, and the community mediation center agree to participate. This section
17 does not supercede G.S. 7A-38.5.

18 (b) Enabling Authority. – In each district, the court may encourage mediation for
19 any criminal district court action pending in the district, and the district attorney may
20 delay prosecution of those actions so that the mediation may take place.

21 (c) Program Administration. – A community mediation center established under
22 G.S. 7A-38.5 and located in a district designated under subsection (a) of this section
23 shall assist the court in administering a program providing mediation services in district
24 criminal court cases. A community mediation center may assist in the screening and
25 scheduling of cases for mediation and provide certified volunteer or staff mediators to
26 conduct district criminal court mediations.

27 (d) Rules of Procedure. – The Supreme Court shall adopt rules to implement this
28 section. Each mediation shall be conducted pursuant to this section and the Supreme
29 Court Rules as adopted.

1 (e) Mediator Authority. – In the mediator's discretion, any person whose
2 presence and participation may assist in resolving the dispute or addressing any issues
3 underlying the mediation may be permitted to attend and participate. The mediator shall
4 have discretion to exclude any individual who seeks to attend the mediation, but whose
5 participation the mediator deems would be counterproductive. Lawyers for the
6 participants may attend and participate in the mediation.

7 (f) Mediator Qualification. – The Supreme Court shall establish requirements for
8 the certification or qualification of mediators serving under this section. The Court shall
9 also establish requirements for the qualification of training programs and trainers,
10 including community mediation center staff, that trains these mediators. The Court shall
11 also adopt rules regulating the conduct of these mediators and trainers.

12 (g) Oversight and Evaluation. – The Supreme Court may require community
13 mediation centers and their volunteer or staff mediators to collect and report caseload
14 statistics, referral sources, fees collected, and any other information deemed essential
15 for program oversight and evaluation purposes.

16 (h) Immunity. – A mediator under this section has judicial immunity in the same
17 manner and to the same extent as a judge of the General Court of Justice, except that a
18 mediator may be disciplined in accordance with procedures adopted by the Supreme
19 Court. A community mediation center and its staff involved in supplying volunteer or
20 staff mediators or other personnel to schedule cases or perform other duties under this
21 section are immune from suit in any civil action, except in any case of willful or wanton
22 misconduct.

23 (i) Confidentiality. – Any memorandum, work note, or product of the mediator
24 and any case file maintained by a community mediation center acting under this section
25 and any mediator certification application are confidential.

26 (j) Inadmissibility of Negotiations. – Evidence of any statement made and
27 conduct occurring during a mediation under this section shall not be subject to
28 discovery and shall be inadmissible in any proceeding in the action from which the
29 mediation arises. Any participant in a mediation conducted under this section, including
30 the mediator, may report to law enforcement personnel any statement made or conduct
31 occurring during the mediation process that threatens or threatened the safety of any
32 person or property. A mediator has discretion to warn a person whose safety or property
33 has been threatened. A mediator may testify in matters and under circumstances as set
34 forth in subsection (k) of this section. No evidence otherwise discoverable is
35 inadmissible for the reason it is presented or discussed in a mediated settlement
36 conference or other settlement proceeding under this section.

37 (k) Testimony. – No mediator or neutral observer present at the mediation shall
38 be compelled to testify or produce evidence concerning statements made and conduct
39 occurring in or related to a mediation conducted under this section in any proceeding in
40 the same action for any purpose, except in:

- 41 (1) Proceedings for abuse, neglect, or dependency of a juvenile, or for
42 abuse, neglect, or exploitation of an adult, for which there is a duty to
43 report under G.S. 7B-301 and Article 6 of Chapter 108A of the
44 General Statutes, respectively.

1 (2) Disciplinary proceedings before the North Carolina State Bar or any
2 agency established to enforce standards of conduct for mediators.

3 (3) Proceedings in which the mediator acts as a witness pursuant to
4 subsection (j) of this section.

5 (4) Trials of a felony, during which a presiding judge may compel the
6 disclosure of any evidence arising out of the mediation, excluding a
7 statement made by the defendant in the action under mediation, if it is
8 to be introduced in the trial or disposition of the felony and the judge
9 determines that the introduction of the evidence is necessary to the
10 proper administration of justice and the evidence cannot be obtained
11 from any other source.

12 (l) Written Agreements. – Any agreement reached in mediation shall be reduced
13 to writing and signed by the parties. A non-attorney mediator may assist parties in
14 reducing the agreement to writing.

15 (m) Dismissal Fee. – Where an agreement has been reached in mediation and the
16 case will be dismissed, the defendant shall pay to the clerk the dismissal fee of court set
17 by G.S. 7A-38.7. By agreement, all or any portion of the fee may be paid by a person
18 other than the defendant. The judge may in the judge's discretion waive the fee for good
19 cause shown.

20 (n) Definitions. – As used in this section, the following definitions apply:

21 (1) Court. – A district court judge, a district attorney, or the designee of a
22 district court judge or district attorney.

23 (2) Neutral observer. – Includes any person seeking mediator certification,
24 any person studying any dispute resolution process, and any person
25 acting as an interpreter."

26 **SECTION 2.** G.S. 7A-38(a) reads as rewritten:

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

33 **SECTION 3.** G.S. 7A-38.2(c) reads as rewritten:

34 "(c) The Dispute Resolution Commission shall consist of ~~15~~16 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; one certified district criminal
41 court mediator who is a representative of a community mediation center appointed by
42 the Chief Justice of the Supreme Court; two practicing attorneys who are not certified as
43 mediators appointed by the President of the North Carolina State Bar, one of whom
44 shall be a family law specialist; and three citizens knowledgeable about mediation, one

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

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

25 **SECTION 4.** The Supreme Court shall adopt rules under G.S. 7A-38.3D(d),
26 as enacted in Section 1 of this act, and shall establish requirements for the certification
27 or qualification under G.S. 7A-38.3D(f), as enacted by Section 1 of this act, no later
28 than January 1, 2008.

29 **SECTION 5.** This act is effective when it becomes law and applies to
30 mediations conducted on and after the date the Supreme Court adopts rules and
31 requirements for the certification or qualification under Section 4 of this act.