

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 907
Senate Judiciary Committee Substitute Adopted 5/29/97

Short Title: Mediated Settlement/Family Issues.

(Public)

Sponsors:

Referred to:

April 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A PILOT PROGRAM OF MEDIATED SETTLEMENT
3 CONFERENCES IN DISTRICT COURT ACTIONS INVOLVING CERTAIN
4 FAMILY ISSUES.

5 The General Assembly of North Carolina enacts:

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

8 **"§ 7A-38.4. Mediated settlement conferences in district court actions.**

9 (a) The purpose of this section is to authorize the design, implementation, and
10 evaluation of a pilot program in which parties to district court actions involving equitable
11 distribution, alimony, and support may be required to attend a pretrial mediated
12 settlement conference or other settlement procedure.

13 (b) The Dispute Resolution Commission established under the Judicial Department
14 shall, with the advice of the Director of the Administrative Office of the Courts, design
15 the pilot program and its coordination with existing settlement programs. The planning
16 and design phase of the program shall include representatives from the Conference of
17 Chief District Court Judges, the AOC Child Custody Mediation Advisory Committee, the
18 Court Ordered Arbitration Subcommittee of the Supreme Court's Dispute Resolution
19 Committee, the North Carolina Mediation Network, the North Carolina Association of

1 Professional Family Mediators, the North Carolina Association of Clerks of Superior
2 Court, the North Carolina Association of Trial Court Administrators, the Family Law
3 Section of the North Carolina Bar Association, and the Dispute Resolution Section of the
4 North Carolina Bar Association.

5 (c) The Supreme Court may adopt rules to implement this section. The definitions
6 in G.S. 7A-38.1(b)(2) and (b)(3) apply to this section.

7 (d) The chief district court judge of any participating district may order a mediated
8 settlement conference for any action pending in the district involving issues of equitable
9 distribution, alimony, or child or spousal support. The chief district court judge may by
10 local rule order all such cases, not otherwise exempted by Supreme Court rule, to
11 mediated settlement conference.

12 (e) The parties to a district court action in which a mediated settlement conference
13 is ordered, their attorneys, and other persons or entities with authority, by law or by
14 contract, to settle the parties' claims shall attend the mediated settlement conference, or
15 other settlement procedure ordered by the court, unless excused by the rules of the
16 Supreme Court or by order of the chief district court judge. Nothing in this section shall
17 require any party or other participant in the conference to make a settlement offer or
18 demand which it deems is contrary to its best interests.

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

28 (g) The parties to a district court action in which a mediated settlement conference
29 is to be held pursuant to this section shall have the right to designate a mediator. Upon
30 failure of the parties to designate within the time established by the rules of the Supreme
31 Court, a mediator shall be appointed by the chief district court judge or its designee.

32 (h) The chief district court judge, at the request of and with the consent of the
33 parties, may order the parties to attend and participate in any other settlement procedure
34 authorized by rules of the Supreme Court or by local district court rules, in lieu of
35 attending a mediated settlement conference. Neutral third parties acting pursuant to this
36 section shall be selected and compensated in accordance with the rules or pursuant to
37 agreement of the parties. Nothing herein shall prohibit the parties from participating in
38 other dispute resolution procedures, including arbitration, to the extent authorized under
39 State or federal law.

40 (i) Mediators and other neutrals acting pursuant to this section shall have judicial
41 immunity in the same manner and to the same extent as a judge of the General Court of
42 Justice, except that mediators and other neutrals may be disciplined in accordance with
43 enforcement procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.

1 (j) Costs of mediated settlement conferences and other settlement procedures shall
2 be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties,
3 the mediator's fees shall be paid in equal shares by the parties. The rules adopted by the
4 Supreme Court implementing this section shall set out a method whereby parties found
5 by the court to be unable to pay the costs of settlement procedures are afforded an
6 opportunity to participate without cost to an indigent party and without expenditure of
7 State funds.

8 (k) Evidence of statements made and conduct occurring in a mediated settlement
9 conference shall not be subject to discovery and shall be inadmissible in any proceeding
10 in the action or other actions on the same claim. However, no evidence otherwise
11 discoverable shall be inadmissible merely because it is presented or discussed in a
12 mediated settlement conference.

13 No mediator, or other neutral conducting a settlement procedure pursuant to this
14 section, shall be compelled to testify or produce evidence concerning statements made
15 and conduct occurring in a mediated settlement conference or other settlement procedure
16 in any civil proceeding for any purpose, except proceedings for sanctions under this
17 section, disciplinary hearings before the State Bar or any agency established to enforce
18 standards of conduct for mediators, and proceedings to enforce laws concerning juvenile
19 or elder abuse.

20 (l) The Supreme Court may adopt standards for the certification and conduct of
21 mediators and other neutrals who participate in the mediated settlement conference
22 program established pursuant to this section. The standards may also regulate mediator
23 training programs. The Supreme Court may adopt procedures for the enforcement of
24 those standards. The administration of mediator certification, regulation of mediator
25 conduct, and decertification shall be conducted through the Dispute Resolution
26 Commission. An administrative fee not to exceed two hundred dollars (\$200.00) may be
27 charged by the Administrative Office of the Courts to applicants for certification and
28 annual renewal of certification for mediators and mediator training programs operation
29 under this section. The fees collected may be used by the Director of the Administrative
30 Office of the Courts to establish and maintain the operations of the Commission and its
31 staff.

32 (m) Nothing in this section or rules adopted pursuant to it shall restrict the right to
33 jury trial."

34 Section 2. The Administrative Office of the Courts may solicit and accept
35 funds from private sources to design a pilot program and to develop an implementation
36 and evaluation program, together with a cost and proposed funding analysis of the
37 programs authorized under this act, and shall report its findings and recommendations to
38 the Chairs of the House and Senate Appropriations Committees and the Chairs of the
39 House and Senate Appropriations Subcommittees on Justice and Public Safety by May 1,
40 1998.

41 Section 3. This act is effective when it becomes law.