

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 806  
Second Edition Engrossed 5/12/05

Short Title: Mediation Amendments.

(Public)

Sponsors: Senators Hartsell; and Bingham.

Referred to: Judiciary II.

March 23, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW REGARDING MEDIATED SETTLEMENT  
3 CONFERENCES IN SUPERIOR COURT, MEDIATION IN DISTRICT COURT  
4 DOMESTIC CASES, AND THE REGULATION OF MEDIATORS, AS  
5 RECOMMENDED BY THE DISPUTE RESOLUTION COMMISSION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 7A-38.1(l) reads as rewritten:

8 "(l) Inadmissibility of negotiations. – Evidence of statements made and conduct  
9 occurring in a mediated settlement conference or other settlement proceeding conducted  
10 under this section, whether attributable to a party, the mediator, other neutral, or a  
11 neutral observer present at the settlement proceeding, shall not be subject to discovery  
12 and shall be inadmissible in any proceeding in the action or other civil actions on the  
13 same claim, ~~except in~~ except:

14 (1) In proceedings for sanctions under this section;

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

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

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

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

24 No ~~such~~ settlement agreement to resolve any or all issues reached at the proceeding  
25 conducted under this subsection or during its recesses shall be enforceable unless it has  
26 been reduced to writing and signed by the parties. No evidence otherwise discoverable  
27 shall be inadmissible merely because it is presented or discussed in a mediated  
28 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.** Sections 1 and 3 of this act become effective October 1, 2005,  
12 and apply to mediations commenced on or after that date. The remainder of this act is  
13 effective when it becomes law.