

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1470

Short Title: District Ct Settlement Procedures.

(Public)

Sponsors: Representatives Baddour; Hackney, Neely, Hardy (Cosponsors), Dedmon, Goodwin, Gulley, Hurley, Insko, Morris, Rayfield, Sexton, Starnes, Warwick, and C. Wilson.

Referred to: Judiciary II, if favorable, Appropriations.

May 25, 1998

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS FOR THE ESTABLISHMENT OF A PILOT PROGRAM OF SETTLEMENT PROCEDURES IN DISTRICT COURT ACTIONS INVOLVING FAMILY ISSUES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-38.4 reads as rewritten:

"§ 7A-38.4. ~~Mediated settlement conferences~~ Settlement procedures in district court actions.

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

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

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

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

8 ~~The chief district court judge~~ District court judges of any participating district  
9 may order a mediated settlement conference or another settlement procedure for any  
10 action pending in the district involving issues of equitable distribution, alimony, or child  
11 or spousal ~~support.~~ support, pursuant to rules adopted by the Supreme Court. The chief  
12 district court judge may by local rule order all such cases, not otherwise exempted by  
13 Supreme Court rule, to mediated settlement conference.

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

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

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

37 (h) ~~The~~ Pursuant to rules of the Supreme Court, a chief district court judge, at the  
38 request of a party and with the consent of ~~the~~ all parties, may order the parties to attend  
39 and participate in any other settlement procedure authorized by rules ~~of~~ adopted by the  
40 Supreme Court or adopted by local district court rules, in lieu of attending a mediated  
41 settlement conference. ~~Neutral third parties~~ Neutrals acting pursuant to this section shall  
42 be selected and compensated in accordance with ~~the~~ rules of the Supreme Court or  
43 pursuant to agreement of the parties. Nothing herein shall prohibit the parties from

1 participating in other dispute resolution procedures, including arbitration, to the extent  
2 authorized under State or federal law.

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

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

14 (k) Evidence of statements made and conduct occurring in a ~~mediated settlement~~  
15 ~~conference settlement proceeding~~ conducted pursuant to this section shall not be subject to  
16 discovery and shall be inadmissible in any proceeding in the action or other actions on  
17 the same claim. However, no evidence otherwise discoverable shall be inadmissible  
18 merely because it is presented or discussed in a ~~mediated settlement conference settlement~~  
19 ~~proceeding~~.

20 No mediator, or other neutral conducting a settlement procedure pursuant to this  
21 section, shall be compelled to testify or produce evidence concerning statements made  
22 and conduct occurring in a mediated settlement conference or other settlement procedure  
23 in any civil proceeding for any purpose, except proceedings for sanctions under this  
24 section, disciplinary hearings before the State Bar or any agency established to enforce  
25 standards of conduct for mediators, and proceedings to enforce laws concerning juvenile  
26 or elder abuse.

27 (l) The Supreme Court may adopt standards for the certification and conduct of  
28 mediators and other neutrals who participate ~~in the mediated settlement conference program~~  
29 ~~established settlement procedures~~ conducted pursuant to this section. The standards may  
30 also regulate mediator training programs. The Supreme Court may adopt procedures for  
31 the enforcement of those standards. The administration of mediator certification,  
32 regulation of mediator conduct, and decertification shall be conducted through the  
33 Dispute Resolution Commission.

34 (m) An administrative fee not to exceed two hundred dollars (\$200.00) may be  
35 charged by the Administrative Office of the Courts to applicants for certification and  
36 annual renewal of certification for mediators and mediator training programs operation  
37 under this section. The fees collected may be used by the Director of the Administrative  
38 Office of the Courts to establish and maintain the operations of the Commission and its  
39 staff. The administrative fee shall be set by the Director of the Administrative Office of  
40 the Courts in consultation with the Dispute Resolution Commission.

41 (n) The Administrative Office of the Courts, in consultation with the Dispute  
42 Resolution Commission, may require the chief district court judge of any participating

1 district to report statistical data about settlement procedures conducted pursuant to this  
2 section for administrative purposes.

3 ~~(m)~~ (o) Nothing in this section or rules adopted pursuant to it shall restrict the right  
4 to jury trial."

5 Section 2. G.S. 7A-38.2(c) reads as rewritten:

6 "(c) The Dispute Resolution Commission shall consist of ~~nine~~fourteen members:  
7 ~~two~~five judges appointed by the Chief Justice of the Supreme ~~Court~~Court, at least two  
8 of whom shall be superior court judges, and at least two of whom shall be district court  
9 judges; two mediators certified to conduct superior court mediated settlement conferences  
10 and two mediators certified to conduct equitable distribution mediated settlement  
11 conferences appointed by the Chief Justice of the Supreme Court; two practicing  
12 attorneys who are not certified as mediators appointed by the President of the North  
13 Carolina State ~~Bar~~Bar, one of whom shall be a certified family law specialist; and three  
14 citizens knowledgeable about mediation, one of whom shall be appointed by the  
15 Governor, one by the General Assembly upon the recommendation of the Speaker of the  
16 House of Representatives in accordance with G.S. 120-121, and one by the General  
17 Assembly upon the recommendation of the President Pro Tempore of the Senate in  
18 accordance with G.S. 120-121. Members shall initially serve four-year terms, except that  
19 one judge, one mediator, one attorney, and the citizen member appointed by the  
20 Governor, shall be appointed for an initial term of two years. ~~Members may serve no more~~  
21 ~~than two consecutive terms.~~ The Chief Justice shall designate one of the judge members to  
22 serve as chair for a two-year term. Members of the Commission shall be compensated  
23 pursuant to G.S. 138-5.

24 Vacancies shall be filled for unexpired terms and full terms in the same manner as  
25 incumbents were appointed. Appointing authorities may receive and consider  
26 suggestions and recommendations of persons for appointment from the Dispute  
27 Resolution Commission, the Family Law, Litigation, and Dispute Resolution Sections of  
28 the North Carolina Bar Association, the North Carolina Association of Professional  
29 Family Mediators, the North Carolina Association of Clerks of Superior Court, the North  
30 Carolina Conference of Court Administrators, the Mediation Network of North Carolina,  
31 the Dispute Resolution Committee of the Supreme Court, the Conference of Chief  
32 District Court Judges, the Conference of Superior Court Judges, the Director of the  
33 Administrative Office of the Courts, and the Child Custody Mediation Advisory  
34 Committee of the Administrative Office of the Courts."

35 Section 3. The Administrative Office of the Courts may solicit and accept  
36 funds from private sources to evaluate the pilot program conducted pursuant to this  
37 section. The Administrative Office of the Courts shall report its findings and  
38 recommendations to the Chairs of the House and Senate Appropriations Committees and  
39 the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public  
40 Safety by April 1, 2001.

41 Section 4. There is appropriated from the General Fund to the Judicial  
42 Department the sum of thirty thousand dollars (\$30,000) for the 1998-99 fiscal year to  
43 provide grant-matching funds for the evaluation study authorized by this act.

1           Section 5. There is appropriated from the General Fund to the Judicial  
2 Department the sum of fifty thousand dollars (\$50,000) for the 1998-99 fiscal year to  
3 fund the activities of the Dispute Resolution Commission in association with the pilot  
4 program authorized by this act. No such funds shall be expended for the payment of  
5 mediator fees.

6           Section 6. This act becomes effective July 1, 1998.