

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

2

HOUSE BILL 1470
Committee Substitute Favorable 7/15/98

Short Title: District Ct Settlement Procedures.

(Public)

Sponsors:

Referred to:

May 25, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO APPROPRIATE FUNDS FOR THE ESTABLISHMENT OF A PILOT
3 PROGRAM OF SETTLEMENT PROCEDURES IN DISTRICT COURT ACTIONS
4 INVOLVING FAMILY ISSUES.

5 The General Assembly of North Carolina enacts:

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

7 "~~§ 7A-38.4. Mediated settlement conferences~~ Settlement procedures in district court
8 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~~ District court judges of any participating district
8 may order a mediated settlement conference or another settlement procedure for any
9 action pending in the district involving issues of equitable distribution, alimony, or child
10 or spousal ~~support.~~ support, pursuant to rules adopted by the Supreme Court. The chief
11 district court judge may by local rule order all such cases, not otherwise exempted by
12 Supreme Court rule, to mediated settlement conference.

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

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

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

36 (h) ~~The~~ Pursuant to rules of the Supreme Court, a chief district court judge, at the
37 request of a party and with the consent of ~~the~~ all parties, may order the parties to attend
38 and participate in any other settlement procedure authorized by rules ~~of~~ adopted by the
39 Supreme Court or adopted by local district court rules, in lieu of attending a mediated
40 settlement conference. ~~Neutral third parties~~ Neutrals acting pursuant to this section shall
41 be selected and compensated in accordance with ~~the rules of the Supreme Court~~ or
42 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 to
4 jury trial."

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

6 "(c) The Dispute Resolution Commission shall consist of ~~nine~~ 14 members: ~~two~~ five
7 judges appointed by the Chief Justice of the Supreme Court; Court, at least two of whom
8 shall be superior court judges, and at least two of whom shall be district court judges; two
9 mediators certified to conduct superior court mediated settlement conferences and two
10 mediators certified to conduct equitable distribution mediated settlement conferences
11 appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are
12 not certified as mediators appointed by the President of the North Carolina State Bar; Bar,
13 one of whom shall be a family law specialist; and three citizens knowledgeable about
14 mediation, one of whom shall be appointed by the Governor, one by the General
15 Assembly upon the recommendation of the Speaker of the House of Representatives in
16 accordance with G.S. 120-121, and one by the General Assembly upon the
17 recommendation of the President Pro Tempore of the Senate in accordance with G.S.
18 120-121. Members appointed by the Governor, the Speaker of the House of
19 Representatives, and the President Pro Tempore of the Senate shall not be attorneys.
20 Members shall initially serve four-year terms, except that one judge, one mediator, one
21 attorney, and the citizen member appointed by the Governor, shall be appointed for an
22 initial term of two years. Incumbent members as of September 30, 1998, shall serve the
23 remainder of the terms to which they were appointed. Thereafter, members who are
24 reappointed and members appointed to fill new positions created by this section shall
25 serve terms of three years and be ineligible to serve more than two consecutive terms;
26 except that five of the six persons initially appointed to fill new membership positions
27 shall serve terms of two years as designated by the Chief Justice. For the year 1998-99,
28 the Commission shall have 15 members to enable both members appointed by the
29 President of the North Carolina State Bar in 1997 to complete their terms. Members may
30 serve no more than two consecutive terms.—The Chief Justice shall designate one of the
31 judge members to serve as chair for a two-year term. Members of the Commission shall
32 be compensated pursuant to G.S. 138-5.

33 Vacancies shall be filled for unexpired terms and full terms in the same manner as
34 incumbents were appointed. Appointing authorities may receive and consider
35 suggestions and recommendations of persons for appointment from the Dispute
36 Resolution Commission, the Family Law, Litigation, and Dispute Resolution Sections of
37 the North Carolina Bar Association, the North Carolina Association of Professional
38 Family Mediators, the North Carolina Association of Clerks of Superior Court, the North
39 Carolina Conference of Court Administrators, the Mediation Network of North Carolina,
40 the Dispute Resolution Committee of the Supreme Court, the Conference of Chief
41 District Court Judges, the Conference of Superior Court Judges, the Director of the
42 Administrative Office of the Courts, and the Child Custody Mediation Advisory
43 Committee of the Administrative Office of the Courts."

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

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

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

15 Section 6. Sections 4, 5, and 6 of this act become effective July 1, 1998. The
16 remainder of this act becomes effective October 1, 1998.