

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE DRH10191-LLf-82 (02/28)

Short Title: Mediation Amendments.

(Public)

Sponsors: Representatives T. Moore, Bryan, Glazier, and Schaffer (Primary Sponsors).

Referred to:

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, TO ESTABLISH A  
5 DISPUTE RESOLUTION FUND FOR MONIES COLLECTED THROUGH THE  
6 EXISTING ADMINISTRATIVE FEE FOR THE CERTIFICATION OF MEDIATORS  
7 AND MEDIATION TRAINING PROGRAMS, AND TO MAKE IT UNLAWFUL TO  
8 FALSELY REPRESENT ONESELF AS A CERTIFIED MEDIATOR OR TO FALSELY  
9 REPRESENT A MEDIATOR TRAINING PROGRAM AS CERTIFIED.

10 The General Assembly of North Carolina enacts:

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

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

- 17 (1) In proceedings for sanctions under this section;  
18 (2) In proceedings to enforce or rescind a settlement of the action;  
19 (3) In disciplinary ~~proceedings~~ hearings before the State Bar or ~~any agency~~  
20 ~~established to enforce standards of conduct for mediators or other neutrals;~~  
21 the Dispute Resolution Commission; or  
22 (4) In proceedings to enforce laws concerning juvenile or elder abuse.

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

25 No settlement agreement to resolve any or all issues reached at the proceeding conducted  
26 under this subsection or during its recesses shall be enforceable unless it has been reduced to  
27 writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible  
28 merely because it is presented or discussed in a mediated settlement conference or other  
29 settlement proceeding.

30 No mediator, other neutral, or neutral observer present at a settlement proceeding shall be  
31 compelled to testify or produce evidence concerning statements made and conduct occurring in  
32 anticipation of, during, or as a follow-up to a mediated settlement conference or other  
33 settlement proceeding pursuant to this section in any civil proceeding for any purpose,  
34 including proceedings to enforce or rescind a settlement of the action, except to attest to the  
35 signing of any agreements, and except proceedings for sanctions under this section, disciplinary  
36 hearings before the State Bar or ~~any agency established to enforce standards of conduct for~~



1 ~~mediators or other neutrals, the Dispute Resolution Commission,~~ and proceedings to enforce  
2 laws concerning juvenile or elder abuse."

3 **SECTION 2.** G.S. 7A-38.4A(j) reads as rewritten:

4 "(j) Evidence of statements made and conduct occurring in a mediated settlement  
5 conference or other settlement proceeding conducted under this section, whether attributable to  
6 a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding,  
7 shall not be subject to discovery and shall be inadmissible in any proceeding in the action or  
8 other civil actions on the same claim, except:

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

10 (2) In proceedings to enforce or rescind a settlement of the action;

11 (3) In disciplinary ~~proceedings~~ hearings before the State Bar or ~~any agency~~  
12 ~~established to enforce standards of conduct for mediators or other neutrals;~~  
13 the Dispute Resolution Commission; or

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

15 As used in this subsection, the term "neutral observer" includes persons seeking mediator  
16 certification, persons studying dispute resolution processes, and persons acting as interpreters.

17 No settlement agreement to resolve any or all issues reached at the proceeding conducted  
18 under this section or during its recesses shall be enforceable unless it has been reduced to  
19 writing and signed by the parties and in all other respects complies with the requirements of  
20 Chapter 50 of the General Statutes. No evidence otherwise discoverable shall be inadmissible  
21 merely because it is presented or discussed in a settlement proceeding.

22 No mediator, other neutral, or neutral observer present at a settlement proceeding under this  
23 section, shall be compelled to testify or produce evidence concerning statements made and  
24 conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement  
25 conference or other settlement proceeding pursuant to this section in any civil proceeding for  
26 any purpose, including proceedings to enforce or rescind a settlement of the action, except to  
27 attest to the signing of any agreements, and except proceedings for sanctions under this section,  
28 disciplinary ~~hearings~~ before the State Bar or any agency established to enforce standards of  
29 ~~conduct for mediators or other neutrals, the Dispute Resolution Commission,~~ and proceedings  
30 to enforce laws concerning juvenile or elder abuse."

31 **SECTION 3.** G.S. 7A-38.3B reads as rewritten:

32 **"§ 7A-38.3B. Mediation in matters within the jurisdiction of the clerk of superior court.**

33 ...

34 (g) Inadmissibility of Negotiations. – Evidence of statements made or conduct  
35 occurring during a mediation conducted pursuant to this section, whether attributable to any  
36 participant, mediator, expert, or neutral observer, shall not be subject to discovery and shall be  
37 inadmissible in any proceeding in the matter or other civil actions on the same claim, except in:

38 (1) Proceedings for sanctions pursuant to this section;

39 (2) Proceedings to enforce or rescind a written and signed settlement agreement;

40 (3) Incompetency, guardianship, or estate proceedings in which a mediated  
41 agreement is presented to the clerk;

42 (4) Disciplinary ~~proceedings~~ hearings before the North Carolina State Bar or  
43 ~~any agency established to enforce standards of conduct for mediators or~~  
44 ~~other neutrals;~~ the Dispute Resolution Commission; or

45 (5) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse,  
46 neglect, or exploitation of an adult, for which there is a duty to report under  
47 G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes,  
48 respectively.

49 No evidence otherwise discoverable shall be inadmissible merely because it is presented or  
50 discussed in mediation.

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

3 (h) Testimony. – No mediator or neutral observer shall be compelled to testify or  
4 produce evidence concerning statements made and conduct occurring in anticipation of, during,  
5 or as a follow-up to the mediation in any civil proceeding for any purpose, including  
6 proceedings to enforce or rescind a settlement of the matter except to attest to the signing of  
7 any agreements reached in mediation, and except in:

8 (1) Proceedings for sanctions pursuant to this section;

9 (2) Disciplinary ~~proceedings~~ hearings before the North Carolina State Bar or  
10 ~~any agency established to enforce standards of conduct for mediators or~~  
11 ~~other neutrals;~~ the Dispute Resolution Commission; or

12 (3) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse,  
13 neglect, or exploitation of an adult, for which there is a duty to report under  
14 G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes,  
15 respectively.

16 ...."

17 **SECTION 4.** G.S. 7A-38.3D reads as rewritten:

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

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

26 (2) Disciplinary ~~proceedings~~ hearings before the North Carolina State Bar or  
27 ~~any agency established to enforce standards of conduct for mediators.~~ the  
28 Dispute Resolution Commission.

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

31 (4) Trials of a felony, during which a presiding judge may compel the disclosure  
32 of any evidence arising out of the mediation, excluding a statement made by  
33 the defendant in the action under mediation, if it is to be introduced in the  
34 trial or disposition of the felony and the judge determines that the  
35 introduction of the evidence is necessary to the proper administration of  
36 justice and the evidence cannot be obtained from any other source."

37 **SECTION 5.** G.S. 7A-38.2(d) reads as rewritten:

38 "(d) An administrative fee, not to exceed two hundred dollars (\$200.00), may be charged  
39 by the Administrative Office of the Courts to applicants for certification and annual renewal of  
40 certification for mediators and mediation training programs operating under this Article. The  
41 fees collected ~~may be used by the Director of the Administrative Office of the Courts to~~  
42 ~~establish and maintain the operations of the Commission and its staff. Notwithstanding the~~  
43 ~~provisions of G.S. 143C-1 2(b), certification and renewal fees collected by the Dispute~~  
44 ~~Resolution Commission are nonreverting and are only to be used at the direction of the~~  
45 Commission shall be deposited in a Dispute Resolution Fund. The Dispute Resolution Fund  
46 shall be established within the Judicial Department as a nonreverting, interest-bearing special  
47 revenue account. Accordingly, interest and other investment income earned by the Fund shall  
48 be credited to it. All monies collected through the administrative fee within G.S. 7A-38.2 shall  
49 be remitted to the Commission to be deposited by the Administrative Office of the Courts and  
50 held in this Fund. Monies in the Fund shall be used to support the operations of the  
51 Commission and used at the direction of the Commission."

1           **SECTION 6.** G.S. 7A-38.2 is amended by adding two new subsections to read:  
2           "(b1) In order to protect the public and safeguard the courts, the Commission may issue  
3 cease and desist letters to any individual who falsely represents himself or herself to the public  
4 as certified, or eligible to be certified, pursuant to this section or who uses any words, letters,  
5 titles, signs, cards, Web postings, or advertisements to expressly or indirectly convey such  
6 misrepresentation to the public, or to any individual or firm that falsely represents a mediator  
7 training program to the public as certified, or eligible to be certified, pursuant to this section or  
8 uses any words, letters, titles, signs, cards, Web postings, or advertisements to expressly or  
9 indirectly convey such misrepresentation to the public.

10          (b2) It shall be unlawful for any individual to falsely represent himself or herself to the  
11 public as a certified mediator, or as eligible to be certified, pursuant to this section, or for an  
12 individual or firm to falsely represent a mediator training program to the public as certified, or  
13 eligible to be certified, pursuant to this section. Any individual or firm making such  
14 misrepresentations in violation of this subsection shall be (i) guilty of a Class 2 misdemeanor  
15 and (ii) subject to a civil penalty not to exceed five hundred dollars (\$500.00) per day of such  
16 violation. Each day of such unlawful representation shall constitute a distinct and separate  
17 violation. The clear proceeds of any civil penalty collected under this subsection shall be  
18 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The  
19 Commission may appear in its own name and apply to the superior court for an injunction to  
20 prevent violations of this section or any rules enacted pursuant to this section, and the court  
21 may grant such an injunction regardless of whether criminal prosecution or other action has  
22 been or may be instituted as a result of such violations. Actions and prosecutions under this  
23 section shall be filed in the courts of Wake County."

24          **SECTION 7.** Section 6 of this act becomes effective December 1, 2013, and  
25 applies to offenses committed on or after that date. The remainder of this act becomes effective  
26 July 1, 2013, and applies to mediations commenced on or after that date.