

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 1094
PROPOSED COMMITTEE SUBSTITUTE H1094-PCS10586-SA-63

Short Title: Mediated Settlements/District Ct.

(Public)

Sponsors:

Referred to:

May 19, 2014

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR MEDIATED SETTLEMENT CONFERENCES IN DISTRICT COURT CIVIL ACTIONS AND TO MAKE A TECHNICAL CORRECTION TO THE RULES OF CIVIL PROCEDURE, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON JUDICIAL EFFICIENCY AND EFFECTIVE ADMINISTRATION OF JUSTICE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The catch line of G.S. 7A-38.4A reads as rewritten:

"§ 7A-38.4A. **Settlement procedures in ~~district court~~ family financial actions.**"

SECTION 1.(b) G.S. 7A-38.4A(c) reads as rewritten:

"(c) Any chief district court judge in a judicial district may order a mediated settlement conference or may order another settlement procedure, as provided under subsection (g) of this section, for any action pending in that district involving issues of equitable distribution, alimony, child or post separation support, or claims arising out of contracts between the parties under G.S. 52-10, G.S. 52-10.1, or Chapter 52B of the General Statutes. The chief district court judge may adopt local rules that order settlement procedures in all of the foregoing actions and designate other district court judges or administrative personnel to issue orders implementing those settlement procedures. However, local rules adopted by a chief district court judge shall not be inconsistent with any rules adopted by the Supreme Court."

SECTION 2. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-38.4B. **Settlement procedures in district court general civil actions.**

(a) The General Assembly finds that a system of settlement events should be established to facilitate the settlement of district court civil actions, other than those involving family issues covered by the provisions of G.S. 7A-38.4A, in order to make that litigation more economical, efficient, and satisfactory to the parties, their representatives, and the State. District courts should be able to require parties to those actions and their representatives to attend a pretrial mediated settlement conference or other settlement procedure conducted under this section and rules adopted by the Supreme Court to implement this section.

(b) The definitions in G.S. 7A-38.1(b)(2) and (b)(3) apply in this section.

(c) The chief district court judge, or that person's designee, in a judicial district may order a mediated settlement conference or may order another settlement procedure, as provided under subsection (g) of this section, for any district court civil action, other than those involving family issues covered by the provisions of G.S. 7A-38.4A and issues exempted by the rules of the Supreme Court implementing this section. The chief district court judge may adopt local rules that order settlement procedures in all of the foregoing actions and designate



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1 other district court judges or administrative personnel to issue orders implementing those
2 settlement procedures. However, local rules adopted by a chief district court judge shall not be
3 inconsistent with any rules adopted by the Supreme Court.

4 (d) The parties to a district court action where a mediated settlement conference or
5 other settlement procedure is ordered, their attorneys, and other persons or entities with
6 authority, by law or contract, to settle a party's claim, shall attend the mediated settlement
7 conference or other settlement procedure, unless the rules ordering the settlement procedure
8 provide otherwise. No party or other participant in a mediated settlement conference or other
9 settlement procedure is required to make a settlement offer or demand that the party or
10 participant deems contrary to that party's or participant's best interests. Parties who have been
11 victims of domestic violence may be excused from physically attending or participating in a
12 mediated settlement conference or other settlement procedure.

13 (e) Any person required to attend a mediated settlement conference or other settlement
14 procedure under this section who, without good cause fails to attend or fails to pay any or all of
15 the mediator's or other neutral's fee in compliance with this section is subject to the contempt
16 powers of the court and monetary sanctions imposed by a district court judge. A party seeking
17 sanctions against another party or person shall do so in a written motion stating the grounds for
18 the motion and the relief sought. The motion shall be served upon all parties and upon any
19 person against whom sanctions are being sought. The court may initiate sanction proceedings
20 upon its own motion by the entry of a show cause order. If the court imposes sanctions, it shall
21 do so, after notice and hearing, in a written order making findings of fact and conclusions of
22 law. An order imposing sanctions is reviewable upon appeal, and the entire record shall be
23 reviewed to determine whether the order is supported by substantial evidence.

24 (f) The parties to a district court action in which a mediated settlement conference is to
25 be held under this section shall have the right to designate a mediator. Upon failure of the
26 parties to designate within the time established by the rules adopted by the Supreme Court, a
27 mediator shall be appointed by a district court judge.

28 (g) A chief district court judge, or that judge's designee, at the request of a party and
29 with the consent of all parties, may order the parties to attend and participate in any other
30 settlement procedure authorized by rules adopted by the Supreme Court or adopted by local
31 district court rules, in lieu of attending a mediated settlement conference. Neutrals acting under
32 this section shall be selected and compensated in accordance with rules adopted by the
33 Supreme Court. Nothing herein shall prohibit the parties from participating in other dispute
34 resolution procedures, including arbitration, to the extent authorized under State or federal law.
35 Nothing herein shall prohibit the parties from participating in mediation at a community
36 mediation center operating under G.S. 7A-38.5.

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

41 (i) Costs of mediated settlement conferences and other settlement procedures shall be
42 borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the
43 mediator's fees shall be paid in equal shares by the parties. The rules adopted by the Supreme
44 Court shall set out a method whereby a party found by the court to be unable to pay the costs of
45 settlement procedures is afforded an opportunity to participate without cost to that party and
46 without expenditure of State funds.

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

- 1 (1) Proceedings for sanctions under this section.
- 2 (2) Proceedings to enforce or rescind a settlement of the action.
- 3 (3) Disciplinary proceedings before the State Bar or any agency established to
4 enforce standards of conduct for mediators or other neutrals.
- 5 (4) Proceedings to enforce laws concerning juvenile or elder abuse.

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

8 No settlement agreement to resolve any or all issues reached at the proceeding conducted
9 under this section or during its recesses shall be enforceable unless it has been reduced to
10 writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible
11 merely because it is presented or discussed in a settlement proceeding.

12 No mediator, other neutral, or neutral observer present at a settlement proceeding under this
13 section shall be compelled to testify or produce evidence concerning statements made and
14 conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement
15 conference or other settlement proceeding pursuant to this section in any civil proceeding for
16 any purpose, including proceedings to enforce or rescind a settlement of the action, except to
17 attest to the signing of any agreements, and except proceedings for sanctions under this section,
18 disciplinary hearings before the State Bar or any agency established to enforce standards of
19 conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or
20 elder abuse.

21 (k) The Supreme Court may adopt standards for the certification and conduct of
22 mediators and other neutrals who participate in settlement procedures conducted under this
23 section. The standards may also regulate mediator training programs. The Supreme Court may
24 adopt procedures for the enforcement of those standards. The administration of mediator
25 certification, regulation of mediator conduct, and decertification shall be conducted through the
26 Dispute Resolution Commission.

27 (l) An administrative fee not to exceed two hundred dollars (\$200.00) may be charged
28 by the Administrative Office of the Courts to applicants for certification and annual renewal of
29 certification for mediators and mediator training programs operating under this section. The
30 fees collected may be used by the Director of the Administrative Office of the Courts to
31 establish and maintain the operations of the Commission and its staff. The administrative fee
32 shall be set by the Director of the Administrative Office of the Courts in consultation with the
33 Dispute Resolution Commission.

34 (m) The Administrative Office of the Courts, in consultation with the Dispute
35 Resolution Commission, may require the chief district court judge of any district to report
36 statistical data about settlement procedures conducted under this section for administrative
37 purposes.

38 (n) Nothing in this section or in rules adopted by the Supreme Court implementing this
39 section shall restrict a party's right to a trial by jury.

40 (o) The Supreme Court may adopt rules to implement this section.

41 **SECTION 3.** G.S. 1A-1, Rule 8(a) of the Rules of Civil Procedure, reads as
42 rewritten:

43 "(a) Claims for relief. – A pleading which sets forth a claim for relief, whether an
44 original claim, counterclaim, crossclaim, or third-party claim shall contain

- 45 (1) A short and plain statement of the claim sufficiently particular to give the
46 court and the parties notice of the transactions, occurrences, or series of
47 transactions or occurrences, intended to be proved showing that the pleader
48 is entitled to relief, and
- 49 (2) A demand for judgment for the relief to which he deems himself entitled.
50 Relief in the alternative or of several different types may be demanded. In all
51 negligence actions, and in all claims for punitive damages in any civil action,

1 wherein the matter in controversy exceeds the sum or value of ~~ten thousand~~
2 ~~dollars (\$10,000);~~twenty-five thousand dollars (\$25,000), the pleading shall
3 not state the demand for monetary relief, but shall state that the relief
4 demanded is for damages incurred or to be incurred in excess of ~~ten~~
5 ~~thousand dollars (\$10,000);~~twenty-five thousand dollars (\$25,000).
6 However, at any time after service of the claim for relief, any party may
7 request of the claimant a written statement of the monetary relief sought, and
8 the claimant shall, within 30 days after such service, provide such statement,
9 which shall not be filed with the clerk until the action has been called for
10 trial or entry of default entered. Such statement may be amended in the
11 manner and at times as provided by Rule 15."

12 **SECTION 4.** Section 3 of this act is effective when it becomes law. The remainder
13 of this act becomes effective July 1, 2014, and applies to actions filed on or after that date.