

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE DRS45333-LLf-124A* (03/11)

Short Title: Dispute Resolution Amendments. (Public)

Sponsors: Senator Hartsell (Primary Sponsor).

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 before the State Bar or ~~any agency established to~~
20 ~~enforce standards of conduct for mediators or other neutrals;~~ the Dispute
21 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



1 hearings before the State Bar or ~~any agency established to enforce standards of conduct for~~
2 ~~mediators or other neutrals;~~ the Dispute Resolution Commission, and proceedings to enforce
3 laws concerning juvenile or elder abuse."

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

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

- 10 (1) In proceedings for sanctions under this section;
- 11 (2) In proceedings to enforce or rescind a settlement of the action;
- 12 (3) In disciplinary proceedings before the State Bar or ~~any agency established to~~
13 ~~enforce standards of conduct for mediators or other neutrals;~~ the Dispute
14 Resolution Commission; or
- 15 (4) In proceedings to enforce laws concerning juvenile or elder abuse.

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

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

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

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

33 **"§ 7A-38.3B. Mediation in matters within the jurisdiction of the clerk of superior court.**

34 ...

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

- 39 (1) Proceedings for sanctions pursuant to this section;
- 40 (2) Proceedings to enforce or rescind a written and signed settlement agreement;
- 41 (3) Incompetency, guardianship, or estate proceedings in which a mediated
42 agreement is presented to the clerk;
- 43 (4) Disciplinary ~~proceedings~~ hearings before the North Carolina State Bar or ~~any~~
44 ~~agency established to enforce standards of conduct for mediators or other~~
45 ~~neutrals;~~ the Dispute Resolution Commission; or
- 46 (5) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse,
47 neglect, or exploitation of an adult, for which there is a duty to report under
48 G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes,
49 respectively.

50 No evidence otherwise discoverable shall be inadmissible merely because it is presented or
51 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 ~~any~~
10 ~~agency established to enforce standards of conduct for mediators or other~~
11 ~~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(k) 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 reads as rewritten:

38 "**§ 7A-38.2. Regulation of mediators and other neutrals.**

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

1 and held in this Fund. Monies in the Fund shall be used to support the operations of the
2 Commission and used at the direction of the Commission.

3 (e) The chair of the Commission may employ an executive ~~secretary~~director and other
4 staff as necessary to assist the Commission in carrying out its duties. The chair may also
5 employ special counsel or call upon the Attorney General to furnish counsel to assist the
6 Commission in conducting hearings pursuant to its certification or qualification and regulatory
7 responsibilities. Special counsel or counsel furnished by the Attorney General may present the
8 evidence in support of a denial or revocation of certification or qualification or a complaint
9 against a mediator, other neutral, training program, or trainers or staff affiliated with a program.
10 Special counsel or counsel furnished by the Attorney General may also represent the
11 Commission when its final determinations are the subject of an appeal.

12"

13 **SECTION 6.** G.S. 7A-38.2 is amended by adding two new subsections to read:

14 "(l) In order to protect the public and safeguard the courts, the Commission may issue a
15 cease and desist letter to any individual who falsely represents himself or herself to the public
16 as certified, or eligible to be certified, pursuant to this section or who uses any words, letters,
17 titles, signs, cards, Web postings, or advertisements to expressly or indirectly convey such
18 misrepresentation to the public.

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

33 **SECTION 7.** Section 6 of this act becomes effective December 1, 2015, and
34 applies to offenses committed on or after that date. The remainder of this act becomes effective
35 July 1, 2015, and applies to mediations commenced after that date.