

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 38
Committee Substitute Favorable 7/22/15
PROPOSED COMMITTEE SUBSTITUTE H38-PCS30417-SV-39

Short Title: Judicial Efficiency/Effect. Admin. of Justice.

(Public)

Sponsors:

Referred to:

February 4, 2015

A BILL TO BE ENTITLED

AN ACT TO INCREASE JUDICIAL EFFICIENCY AND THE EFFECTIVE ADMINISTRATION OF JUSTICE BY MAKING HARD COPIES OF APPELLATE DIVISION REPORTS AVAILABLE TO PERSONS AND ENTITIES OTHER THAN THOSE LISTED IN STATUTE AT COST AND ALSO MAKING THEM AVAILABLE ELECTRONICALLY, ESTABLISHING THE JOINT SELECT STUDY COMMITTEE ON THE PRESERVATION OF BIOLOGICAL EVIDENCE, DIRECTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP A CASE MANAGEMENT SYSTEM FOR CIVIL CASES IN SUPERIOR COURT, DIRECTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP A WRITTEN, COMPREHENSIVE POLICY FOR THE MANAGEMENT OF INFORMATION TECHNOLOGY RESOURCES, DIRECTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO STUDY THE APPOINTMENT AND SUPERVISION OF MAGISTRATES, PROVIDING A MECHANISM FOR ENFORCING PAYMENT OF THE CRIMINAL MEDIATION FEE, AND PROVIDING FOR MEDIATED SETTLEMENT CONFERENCES IN DISTRICT COURT CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-343.1 reads as rewritten:

"§ 7A-343.1. Distribution of copies of the appellate division reports.

(a) The Administrative Officer of the Courts shall, at the State's expense, distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, and other named entities as follows:

- ~~Governor, Office of the~~ 1
- ~~Lieutenant Governor, Office of the~~ 1
- ~~Secretary of State, Department of the~~ 2
- ~~State Auditor, Department of the~~ 1
- ~~Treasurer, Department of the State~~ 1
- ~~Superintendent of Public Instruction~~ 1
- ~~Office of the Attorney General~~ 14
- ~~State Bureau of Investigation~~ 1
- ~~Agriculture and Consumer Services, Department of~~ 1
- ~~Labor, Department of~~ 1
- ~~Insurance, Department of~~ 1
- ~~Budget Bureau, Department of Administration~~ 1
- ~~Property Control, Department of Administration~~ 1



* H 3 8 - P C S 3 0 4 1 7 - S V - 3 9 *

1	State Planning, Department of Administration	1
2	Environment and Natural Resources, Department of	1
3	Revenue, Department of	1
4	Health and Human Services, Department of	1
5	Juvenile Justice, Division of	1
6	Commission for the Blind	1
7	Transportation, Department of	1
8	Motor Vehicles, Division of	1
9	Utilities Commission	8
10	Industrial Commission	11
11	State Human Resources Commission	1
12	Office of State Human Resources	1
13	Office of Administrative Hearings	2
14	Community Colleges, Department of	38
15	Department of Commerce	1
16	Commission of Correction	1
17	Parole Commission	1
18	Archives and History, Division of	1
19	Public Safety, Department of	2
20	Cultural Resources, Department of	3
21	Legislative Building Library	21
22	Justices of the Supreme Court	1 ea.
23	Judges of the Court of Appeals	1 ea.
24	Judges of the Superior Court	1 ea.
25	Clerks of the Superior Court	1 ea.
26	District Attorneys	1 ea.
27	Emergency and Special Judges of the Superior Court	1 ea.
28	Supreme Court Library	AS MANY AS REQUESTED ⁵
29		
30	Appellate Division Reporter	1
31	University of North Carolina, Chapel Hill	71
32	University of North Carolina, Charlotte	1
33	University of North Carolina, Greensboro	1
34	University of North Carolina, Asheville	1
35	North Carolina State University, Raleigh	1
36	Appalachian State University	1
37	East Carolina University	1
38	Fayetteville State University	1
39	North Carolina Central University	17
40	Western Carolina University	1
41	Duke University	17
42	Davidson College	2
43	Wake Forest University	25
44	Lenoir Rhyne College	1
45	Elon College	1
46	Campbell University	25
47	Federal, Out of State and Foreign Secretary of State	1
48	Secretary of Defense	1
49	Secretary of Health, Education and Welfare	1
50	Secretary of Housing and Urban Development	1
51	Secretary of Transportation	1

1	Attorney General	1
2	United States Department of Justice	1
3	Internal Revenue Service	1
4	Veterans' Administration	1
5	Library of Congress	5
6	Federal Judges resident in North Carolina	1 ea.
7	Marshal of the United States Supreme Court	1
8	Federal District Attorneys resident in North Carolina	1 ea.
9	Federal Clerks of Court resident in North Carolina	1 ea.
10	Supreme Court Library exchange list	1
11	Cherokee Supreme Court, Eastern Band of	
12	Cherokee Indians	1

13 The Administrative Officer of the Courts shall develop a process through which all other
 14 persons or entities may obtain copies of the appellate division reports by purchase. The
 15 purchase price shall represent the actual cost to the State of publication and shipping.

16 Each justice of the Supreme Court and judge of the Court of Appeals shall receive for
 17 private use, one complete and up-to-date set of the appellate division reports. The copies of
 18 reports furnished each justice or judge as set out in the table above may be retained personally
 19 to enable the justice or judge to keep up-to-date the personal set of reports.

20 (b) A recipient listed in subsection (a) of this section may choose not to receive its
 21 copies of the appellate division reports, or choose to receive fewer than the number of copies
 22 allotted to it, by notifying the Administrative Officer of the Courts in writing. Should the
 23 recipient again wish to receive its full allotment of the appellate division reports, the recipient
 24 shall notify the Administrative Officer of the Courts in writing, and the Administrative Officer
 25 of the Courts may, in his or her discretion, resume distribution to the recipient.

26 (c) The appellate division reports shall be made available by electronic means, at no
 27 cost to the recipient, through publication in a downloadable format on a publicly available Web
 28 site."

29 **SECTION 2.(a)** The Joint Select Study Committee on the Preservation of
 30 Biological Evidence is established. The membership shall be as follows:

- 31 (1) Three members of the Senate appointed by the President Pro Tempore of the
 32 Senate.
- 33 (2) Three members of the House of Representatives appointed by the Speaker of
 34 the House of Representatives.
- 35 (3) The Attorney General or the Attorney General's designee.
- 36 (4) The Director of the North Carolina State Crime Laboratory or the Director's
 37 designee.
- 38 (5) The Director of the Administrative Office of the Courts or the Director's
 39 designee.
- 40 (6) The President of the North Carolina Association of Clerks of Superior Court
 41 or the President's designee.
- 42 (7) The President of the North Carolina Association of Chiefs of Police or the
 43 President's designee.
- 44 (8) The President of the North Carolina Sheriffs' Association or the President's
 45 designee.
- 46 (9) The President of North Carolina Advocates for Justice or the President's
 47 designee.
- 48 (10) One North Carolina district attorney appointed by the Speaker of the House
 49 of Representatives.
- 50 (11) One North Carolina district attorney appointed by the President Pro Tempore
 51 of the Senate.

1 (12) One public member appointed by the Speaker of the House of
2 Representatives.

3 (13) One public member appointed by the President Pro Tempore of the Senate.

4 The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall
5 each appoint one legislative member of the Committee to serve as cochair. The Committee
6 shall meet upon the call of the cochairs. A quorum of the Committee shall be a majority of its
7 members.

8 **SECTION 2.(b)** The Committee shall review matters related to the preservation of
9 DNA and biological evidence, including:

10 (1) The costs associated with the promulgation of minimum guidelines for the
11 retention and preservation of biological evidence.

12 (2) Emerging technologies with regard to the retention and preservation of
13 biological evidence.

14 (3) Procedures for the interagency transfer of biological evidence.

15 (4) Any other topic the Committee believes is related to its purpose.

16 **SECTION 2.(c)** Members of the Committee shall receive per diem, subsistence,
17 and travel allowance as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The expenses
18 of the Committee shall be considered expenses incurred for the joint operation of the General
19 Assembly. All expenses of the Committee shall be paid from the Legislative Services
20 Commission's Reserve for Studies. The Legislative Services Officer shall assign professional
21 and clerical staff to assist the Committee in its work.

22 **SECTION 2.(d)** The Committee shall submit a final report on the results of its
23 study, including any proposed legislation, to the General Assembly on or before April 1, 2016.
24 The Committee shall file a copy of its report with the President Pro Tempore's office, the
25 Speaker's office, and the Legislative Library. The Committee shall terminate on April 1, 2016,
26 or upon the filing of its final report, whichever occurs first.

27 **SECTION 3.** The Administrative Office of the Courts shall study and develop a
28 case management system for civil cases in superior court designed to make more efficient use
29 of superior court time and resources, including a more flexible designation of mixed sessions.
30 The study shall consider a system that would allow exceptional cases to be assigned to a
31 superior court judge to oversee the case, including scheduling of pretrial hearings, motions
32 hearings, and trial of the case. The Administrative Office of the Courts shall report on the study
33 and the system developed as a result of the study to the Joint Legislative Oversight Committee
34 on Justice and Public Safety by March 1, 2016.

35 **SECTION 4.** The Administrative Office of the Courts shall develop a written,
36 comprehensive policy for the management of information technology resources that includes
37 specific guidelines for the distribution and maintenance of information technology hardware.
38 The Administrative Office of the Courts shall report on this policy to the Joint Legislative
39 Oversight Committee on Justice and Public Safety and the Joint Legislative Oversight
40 Committee on Information Technology by March 1, 2016.

41 **SECTION 5.** The Administrative Office of the Courts shall study the current law
42 for the appointment and supervision of magistrates. The study shall consider whether
43 supervision of magistrates should be the responsibility of some person other than the chief
44 district court judge and shall address whether any other changes should be made to the process
45 for appointing and supervising magistrates. The Administrative Office of the Courts shall
46 report the results of this study to the Joint Legislative Oversight Committee on Justice and
47 Public Safety by March 1, 2016.

48 **SECTION 6.** G.S. 7A-38.7 reads as rewritten:

49 **"§ 7A-38.7. Dispute resolution fee for cases resolved in mediation.**

50 (a) In each criminal case filed in the General Court of Justice that is resolved through
51 referral to a community mediation center, a dispute resolution fee shall be assessed in the sum

1 of sixty dollars (\$60.00) per mediation to support the services provided by the community
2 mediation centers and the Mediation Network of North Carolina. Prior to mediation, the parties
3 shall be notified of the fee and the fee shall be paid as part of any mediation that results in
4 dismissal. Fees assessed under this section shall be paid to the clerk of superior court in the
5 county where the case was filed and remitted by the clerk to the Mediation Network of North
6 Carolina. The Mediation Network may retain up to three dollars (\$3.00) of this amount as an
7 allowance for its administrative expenses. The Mediation Network must remit the remainder of
8 this amount to the community mediation center that mediated the case. The court may waive or
9 reduce a fee assessed under this section only upon entry of a written order, supported by
10 findings of fact and conclusions of law, determining there is just cause to grant the waiver or
11 reduction.

12 (b) No criminal case shall be dismissed through referral to mediation unless the full
13 amount of the dispute resolution fee as required by subsection (a) of this section is paid within
14 45 days of the completion of the mediation. If payment has not been made within that time, the
15 case shall be remanded back to the court for disposition. Before providing the district attorney
16 with a dismissal form, the community mediation center shall require proof that the defendant
17 has paid the dispute resolution fee as required by subsection (a) of this section and shall attach
18 the receipt to the dismissal form."

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

20 "**§ 7A-38.4A. Settlement procedures in ~~district court~~family financial actions.**"

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

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

31 **SECTION 7.(c)** Article 5 of Chapter 7A of the General Statutes is amended by
32 adding a new section to read:

33 "**§ 7A-38.4B. Settlement procedures in district court general civil actions.**

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

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

42 (c) The chief district court judge, or that person's designee, in a judicial district may
43 order a mediated settlement conference or may order another settlement procedure, as provided
44 under subsection (g) of this section, for any district court civil action, other than those
45 involving family issues covered by the provisions of G.S. 7A-38.4A and issues exempted by
46 the rules of the Supreme Court implementing this section. The chief district court judge may
47 adopt local rules that order settlement procedures in all of the foregoing actions and designate
48 other district court judges or administrative personnel to issue orders implementing those
49 settlement procedures. However, local rules adopted by a chief district court judge shall not be
50 inconsistent with any rules adopted by the Supreme Court.

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

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

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

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

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

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

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

49 (1) Proceedings for sanctions under this section.

50 (2) Proceedings to enforce or rescind a settlement of the action.

1 (3) Disciplinary proceedings before the State Bar or any agency established to
2 enforce standards of conduct for mediators or other neutrals.

3 (4) Proceedings to enforce laws concerning juvenile or elder abuse.

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

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

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

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

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

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

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

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

39 **SECTION 8.** Section 6 of this act becomes effective October 1, 2015, and applies
40 to criminal cases referred to mediation on or after that date. Section 7 of this act becomes
41 effective October 1, 2015, and applies to actions filed on or after that date. The remainder of
42 this act is effective when it becomes law.