

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 668
Committee Substitute Favorable 3/28/01

Short Title: Settlement Procedures in Dist. Court Actions.

(Public)

Sponsors:

Referred to:

March 19, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH MEDIATED SETTLEMENT PROCEDURES IN
DISTRICT COURT ACTIONS INVOLVING FAMILY FINANCIAL ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-38.4 is repealed.

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

"§ 7A-38.4A. Settlement procedures in district court actions.

(a) The General Assembly finds that a system of settlement events should be established to facilitate the settlement of district court actions involving equitable distribution, alimony, or support and 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) Any chief district court judge in a judicial district may order a mediated settlement conference or 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.

(d) The parties to a district court action where a mediated settlement conference or other settlement procedure is ordered, their attorneys, and other persons or entities with authority, by law or contract, to settle a party's claim, shall attend the mediated

1 settlement conference or other settlement procedure, unless the rules ordering the
2 settlement procedure provide otherwise. No party or other participant in a mediated
3 settlement conference or other settlement procedure is required to make a settlement
4 offer or demand that the party or participant deems contrary to that party's or
5 participant's best interests. Parties who have been victims of domestic violence may be
6 excused from physically attending or participating in a mediated settlement conference
7 or other settlement procedure.

8 (e) Any person required to attend a mediated settlement conference or other
9 settlement procedure under this section who, without good cause fails to attend, is
10 subject to any appropriate monetary sanction imposed by a district court judge,
11 including the payment of attorneys' fees, mediator fees, and expenses incurred in
12 attending the settlement procedure. If the court imposes sanctions, it shall do so, after
13 notice and hearing, in a written order, making findings of fact and conclusions of law.
14 An order imposing sanctions shall be reviewable upon appeal, and the entire record
15 shall be reviewed to determine whether the order is supported by substantial evidence.

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

20 (g) A chief district court judge or that judge's designee, at the request of a party
21 and with the consent of all parties, may order the parties to attend and participate in any
22 other settlement procedure authorized by rules adopted by the Supreme Court or
23 adopted by local district court rules, in lieu of attending a mediated settlement
24 conference. Neutrals acting under this section shall be selected and compensated in
25 accordance with rules adopted by the Supreme Court. Nothing herein shall prohibit the
26 parties from participating in other dispute resolution procedures, including arbitration,
27 to the extent authorized under State or federal law. Nothing herein shall prohibit the
28 parties from participating in mediation at a community mediation center operating under
29 G.S. 71-38.5.

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

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

40 (j) Evidence of statements made and conduct occurring in a settlement
41 proceeding conducted under this section shall not be subject to discovery and shall be
42 inadmissible in any proceeding in the action or other actions on the same claim, except

1 in proceedings for sanctions or proceedings to enforce a settlement of the action. No
2 settlement proceeding conducted under this section shall be enforceable unless it has
3 been reduced to writing and signed by the parties and in all other respects complies with
4 the requirements of Chapter 50 of the General Statutes. No evidence otherwise
5 discoverable shall be inadmissible merely because it is presented or discussed in a
6 settlement proceeding.

7 No mediator, or other neutral conducting a settlement procedure under this section,
8 shall be compelled to testify or produce evidence concerning statements made and
9 conduct occurring in a mediated settlement conference or other settlement procedure in
10 any civil proceeding for any purpose, including proceedings to enforce a settlement of
11 the action, except to attest to the signing of any of these agreements, and except
12 proceedings for sanctions under this section, disciplinary hearings before the State Bar
13 or any agency established to enforce standards of conduct for mediators, and
14 proceedings to enforce laws concerning juvenile or elder abuse.

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

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

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

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

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

35 **SECTION 3.** G.S. 7A-38.4A(o), as enacted by Section 2 of this act,
36 becomes effective July 1, 2001. The remainder of this act becomes effective October 1,
37 2001.