

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2015**

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**HOUSE BILL 303**

Short Title: Dispute Resolution Amendments. (Public)

Sponsors: Representatives Horn, Daughtry, Davis, and Stevens (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Judiciary III, if favorable, Finance.

March 19, 2015

A BILL TO BE ENTITLED  
AN ACT TO AMEND THE LAW REGARDING MEDIATED SETTLEMENT  
CONFERENCES IN SUPERIOR COURT, MEDIATION IN DISTRICT COURT  
DOMESTIC CASES, AND THE REGULATION OF MEDIATORS, TO ESTABLISH A  
DISPUTE RESOLUTION FUND FOR MONIES COLLECTED THROUGH THE  
EXISTING ADMINISTRATIVE FEE FOR THE CERTIFICATION OF MEDIATORS  
AND MEDIATION TRAINING PROGRAMS, AND TO MAKE IT UNLAWFUL TO  
FALSELY REPRESENT ONESELF AS A CERTIFIED MEDIATOR OR TO FALSELY  
REPRESENT A MEDIATOR TRAINING PROGRAM AS CERTIFIED.

The General Assembly of North Carolina enacts:

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

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

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

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

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

No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the



1 signing of any agreements, and except proceedings for sanctions under this section, disciplinary  
2 hearings before the State Bar or ~~any agency established to enforce standards of conduct for~~  
3 ~~mediators or other neutrals,~~ the Dispute Resolution Commission, and proceedings to enforce  
4 laws concerning juvenile or elder abuse."

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

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

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

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

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

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

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

34 "**§ 7A-38.3B. Mediation in matters within the jurisdiction of the clerk of superior court.**

35 ...

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

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

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

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

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

- 10 (1) Proceedings for sanctions pursuant to this section;
- 11 (2) Disciplinary ~~proceedings~~hearings before the North Carolina State Bar or ~~any~~  
12 ~~agency established to enforce standards of conduct for mediators or other~~  
13 ~~neutrals;~~the Dispute Resolution Commission; or
- 14 (3) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse,  
15 neglect, or exploitation of an adult, for which there is a duty to report under  
16 G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes,  
17 respectively.

18 ...."

19 **SECTION 4.** G.S. 7A-38.3D(k) reads as rewritten:

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

- 24 (1) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse,  
25 neglect, or exploitation of an adult, for which there is a duty to report under  
26 G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes,  
27 respectively.
- 28 (2) Disciplinary ~~proceedings~~hearings before the North Carolina State Bar or  
29 ~~any agency established to enforce standards of conduct for mediators~~the  
30 Dispute Resolution Commission.
- 31 (3) Proceedings in which the mediator acts as a witness pursuant to subsection  
32 (j) of this section.
- 33 (4) Trials of a felony, during which a presiding judge may compel the disclosure  
34 of any evidence arising out of the mediation, excluding a statement made by  
35 the defendant in the action under mediation, if it is to be introduced in the  
36 trial or disposition of the felony and the judge determines that the  
37 introduction of the evidence is necessary to the proper administration of  
38 justice and the evidence cannot be obtained from any other source."

39 **SECTION 5.** G.S. 7A-38.2 reads as rewritten:

40 **"§ 7A-38.2. Regulation of mediators and other neutrals.**

41 ...

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

1 credited to it. All monies collected through the administrative fee authorized by this subsection  
2 shall be remitted to the Commission to be deposited by the Administrative Office of the Courts  
3 and held in this Fund. Monies in the Fund shall be used to support the operations of the  
4 Commission and used at the direction of the Commission.

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

14 ...."

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

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

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

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