

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 207
SENATE BILL 791

AN ACT TO ESTABLISH A PILOT PROGRAM OF MEDIATED SETTLEMENT
CONFERENCES IN SUPERIOR COURT ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding the following new section to read:

"§ 7A-38. Court ordered, mediated settlement conferences in superior court civil actions.

(a) Purpose. This section is enacted in order to provide for a pilot program in judicial districts selected by the Director of the Administrative Office of the Courts in which parties to superior court civil litigation may be required to attend a pretrial settlement conference conducted by a mediator. The purpose of the pilot program is to determine whether a system of mediated settlement conferences may make the operation of the superior courts more efficient, less costly, and more satisfying to the litigants.

(b) Definitions as used in this section:

- (1) 'Mediated settlement conference' means a court ordered conference between or among the parties to a civil action and their representatives conducted by a mediator prior to trial.
- (2) 'Mediation' means an informal process conducted by a mediator with the objective of helping parties voluntarily reach a mutually acceptable settlement of their dispute.
- (3) 'Mediator' means a neutral person who acts to encourage and facilitate a resolution of a pending civil action. A mediator does not render a judgment as to the merit of the action.

(c) Selection of districts. This procedure may be implemented in a judicial district or any part of a judicial district if the Director of the Administrative Office of the Courts and the senior resident superior court judge of that district determine that use of this program may assist in achieving objectives stated in subsection (a) of this section. The Director of the Administrative Office of the Courts may terminate any pilot program after consultation with the senior resident superior court judge.

(d) Rules of mediated settlement conferences. The Supreme Court may adopt rules to implement this section.

(e) Judge to select cases for mediated settlement conferences. The senior resident superior court judge of any district participating, in whole or in part, in any pilot program may order a mediated settlement conference for all or any part of a superior

court civil action pending in the pilot area, except as limited by the rules of the Supreme Court adopted under the authority of this section.

(f) Attendance of parties. The parties to a civil action in which a mediated settlement conference is ordered, their attorneys, and other persons having authority to settle the parties' claims shall attend the conference unless excused by rules of the Supreme Court or by order of the senior resident superior court judge.

(g) Selection of mediator. The parties shall have the right to stipulate to a mediator subject to the standards and rules established by the Supreme Court. Upon failure of the parties to agree within the time established by the rules, a mediator shall be appointed by the senior resident superior court judge.

(h) Sanctions. Upon failure of a party or attorney to attend a court ordered mediated settlement conference to the extent required by this section and rules promulgated by the Supreme Court, a resident or presiding judge may impose any lawful sanction, including but not limited to the payment of attorneys fees, mediator fees, and expenses incurred in attending the conference, contempt, or any other sanction authorized by G.S. 1A-1, Rule 37(b).

(i) Standards for mediators. The Supreme Court is authorized to establish standards for the qualification and conduct of mediators and mediator training programs. An administrative fee may be set by the Administrative Office of the Courts to be charged to applicants for approval as mediators and mediator training programs.

(j) Immunity. A mediator acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice.

(k) Costs of mediated settlement conference. Costs of the mediated settlement conference shall be paid: one share by the plaintiffs, one share by the defendants, and one share by any third-party defendant, unless otherwise ordered by the court or agreed to by the parties. The rules established by the Supreme Court under subsection (d) of this section shall set out a method whereby the parties found by the court to be unable to pay the costs of the mediated settlement conference are afforded an opportunity to participate without cost.

(l) Inadmissibility of negotiations. All conduct or communications made during a mediated settlement conference are presumed to be made in compromise negotiations and shall be governed by Rule 408 of the North Carolina Rules of Evidence.

(m) Evaluation. The pilot program authorized by this section shall be evaluated for a reasonable period of time under the direction of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall report the results of the evaluation to the General Assembly.

(n) Funding of the pilot program. The Administrative Office of the Courts may solicit funds from private sources to establish, conduct, and evaluate this pilot program. No State funds shall be used to establish, conduct, or evaluate this program.

(o) Report on pilot program. The Administrative Office of the Courts shall file a written report with the General Assembly on the evaluation of the pilot program on or before May 1, 1995. The pilot program shall terminate on June 30, 1995.

(p) Right to jury trial. Nothing in this section or the rules promulgated by the Supreme Court implementing this section shall restrict the right to jury trial."

Sec. 2. This act becomes effective October 1, 1991, and applies to mediated settlement conferences established on and after the Supreme Court's rules are adopted governing this establishment.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives