

§ 7A-38.1. Mediated settlement conferences in superior court civil actions.

(a) Purpose. - The General Assembly finds that a system of court-ordered mediated settlement conferences should be established to facilitate the settlement of superior court civil actions and to make civil litigation more economical, efficient, and satisfactory to litigants and the State. Therefore, this section is enacted to require parties to superior court civil actions and their representatives to attend a pretrial, mediated settlement conference conducted pursuant to this section and pursuant to rules of the Supreme Court adopted to implement this section.

(b) Definitions. - As used in this section:

- (1) "Mediated settlement conference" means a pretrial, court-ordered conference of the parties to a civil action and their representatives conducted by a mediator.
- (2) "Mediation" means an informal process conducted by a mediator with the objective of helping parties voluntarily settle 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 make an award or render a judgment as to the merits of the action.

(c) Rules of procedure. - The Supreme Court may adopt rules to implement this section.

(d) Statewide implementation. - Mediated settlement conferences authorized by this section shall be implemented in all judicial districts as soon as practicable, as determined by the Director of the Administrative Office of the Courts.

(e) Cases selected for mediated settlement conferences. - The senior resident superior court judge of any participating district may order a mediated settlement conference for any superior court civil action pending in the district. The senior resident superior court judge may by local rule order all cases, not otherwise exempted by the Supreme Court rule, to mediated settlement conference.

(f) Attendance of parties. - The parties to a superior court civil action in which a mediated settlement conference is ordered, their attorneys and other persons or entities with authority, by law or by contract, to settle the parties' claims shall attend the mediated settlement conference unless excused by rules of the Supreme Court or by order of the senior resident superior court judge. Nothing in this section shall require any party or other participant in the conference to make a settlement offer or demand which it deems is contrary to its best interests.

(g) Sanctions. - Any person required to attend a mediated settlement conference or other settlement procedure under this section who, without good cause, fails to attend or fails to pay any or all of the mediator's or other neutral's fee in compliance with this section and the rules promulgated by the Supreme Court to implement this section is subject to the contempt powers of the court and monetary sanctions imposed by a resident or presiding superior court judge. The monetary sanctions may include the payment of fines, attorneys' fees, mediator and neutral fees, and the expenses and loss of earnings incurred by persons attending the procedure. A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served upon all parties and upon any person against whom the sanctions are being sought. The court may initiate sanction proceedings upon its own motion by the entry of a show cause order. If the court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence.

(h) Selection of mediator. - The parties to a superior court civil action in which a mediated settlement conference is to be held pursuant to this section shall have the right to designate a mediator. Upon failure of the parties to designate a mediator within the time established by the rules of the Supreme Court, a mediator shall be appointed by the senior resident superior court judge.

(i) Promotion of other settlement procedures. - Nothing in this section is intended to preclude the use of other dispute resolution methods within the superior court. Parties to a superior court civil

action are encouraged to select other available dispute resolution methods. The senior resident superior court judge, at the request of and with the consent of the parties, may order the parties to attend and participate in any other settlement procedure authorized by rules of the Supreme Court or by the local superior court rules, in lieu of attending a mediated settlement conference. Neutral third parties acting pursuant to this section shall be selected and compensated in accordance with such rules or pursuant to agreement of the parties. Nothing in this section shall prohibit the parties from participating in, or the court from ordering, other dispute resolution procedures, including arbitration to the extent authorized under State or federal law.

(j) Immunity. - Mediator and other neutrals 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, except that mediators and other neutrals may be disciplined in accordance with enforcement procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.

(k) Costs of mediated settlement conference. - Costs of mediated settlement conferences shall be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the mediator's fees shall be paid in equal shares by the parties. For purposes of this section, multiple parties shall be considered one party when they are represented by the same counsel. The rules adopted by the Supreme Court implementing this section shall set out a method whereby 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. The rules adopted by the Supreme Court shall set the fees to be paid a mediator appointed by a judge upon the failure of the parties to designate a mediator.

(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; 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 signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse.

(m) Right to jury trial. - Nothing in this section or the rules adopted by the Supreme Court implementing this section shall restrict the right to jury trial. (1995, c. 500, s. 1; 1999-354, s. 5; 2005-167, s. 1; 2008-194, s. 8(a).)