

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 271
Committee Substitute Favorable 5/4/95

Short Title: Pilot Mediation/Equit. Dist.

(Public)

Sponsors:

Referred to:

February 23, 1995

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PILOT MEDIATION PROGRAM FOR EQUITABLE
DISTRIBUTION UNDER THE ADMINISTRATIVE OFFICE OF THE COURTS.

The General Assembly of North Carolina enacts:

Section 1. There is established a pilot program in not more than four judicial districts selected by the Director of the Administrative Office of the Courts in which parties to equitable distribution cases may be required to attend a pretrial settlement conference conducted by a mediator. The purpose of the pilot program is to determine whether mediation helps expedite equitable distribution cases, reduces costs to the litigants, and is a more satisfactory process than litigation.

Sec. 2. 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 chief district court judge of that district determine that use of this program may assist in achieving objectives stated in Section 1 of this act. The Director of the Administrative Office of the Courts may terminate any pilot program after consultation with the chief district court judge.

Sec. 3. The Supreme Court shall adopt rules to implement this act, which shall include, but not be limited to, a requirement that both parties to a mediation shall make full disclosure of all marital property and all marital debt, all separate property and all

1 separate debt, and each party's income. The definitions in G.S. 7A-38(b)(2) and (b)(3)
2 apply to this act.

3 Sec. 4. Whenever one or both parties in a new or pending case in a
4 participating district seek an equitable distribution of the marital property and marital
5 debt, the court shall set the matter for a pretrial mediation of the contested issues with
6 such mediation to occur either before or concurrent with the setting of the matter for
7 hearing, unless the court determines that the value of the marital estate and the income of
8 the parties are insufficient to justify the expense of mediation or that an alternative
9 method of alternative dispute resolution would be more effective in a specific case or that
10 mediation is otherwise inappropriate in that case.

11 Sec. 5. The parties have the right to stipulate to a mediator, subject to the
12 standards and rules adopted by the Supreme Court. Upon failure of the parties to agree
13 within the time established by the rules, the chief district court judge shall appoint a
14 mediator or, in the alternative, the mediator may be appointed pursuant to provisions of
15 the local rules of the judicial district.

16 Sec. 6. At the time the case is referred to mediation, the court shall provide to
17 the participant and their counsel, if any, access to copies of all materials required by the
18 standards and rules adopted by the Supreme Court. Before the mediation begins, each
19 party shall file with the court and with the mediator a written acknowledgment that the
20 party has read and understands the information in such materials. In the alternative, a
21 party may comply with this requirement by signing a form consenting to mediation which
22 form shall contain acknowledgment language, or by signing a final mediation agreement
23 or memorandum of agreement that also contains such acknowledgment language. The
24 mediator shall file each party's written acknowledgment with the court when the
25 mediation has concluded.

26 Sec. 7. Either party may move to have the mediator disqualified, due to the
27 mediator's bias or undue familiarity with a party, or unfamiliarity with the pertinent area
28 of law or legal issues in the particular case.

29 Sec. 8. The mediator shall use his or her best efforts to effect a settlement of
30 the contested issues. The mediator shall not advise the parties as to legal, tax, valuation,
31 or other such issues.

32 Sec. 9. Absent specific agreement between the parties, the mediation shall
33 include only issues of equitable distribution of the property and debt of the parties. The
34 parties may agree to include other issues, including, but not limited to custody, child
35 support, and alimony, in the mediation.

36 Sec. 10. The parties to an equitable distribution action in which a mediated
37 settlement conference is ordered, and their attorneys, shall attend the mediation
38 conference unless excused by the rules of the Supreme Court or by order of the chief
39 district court judge, or, if applicable, by order of the judge to whom the case is assigned
40 pursuant to the local rules of the judicial district.

41 Sec. 11. Upon failure of a party to attend a court-ordered mediation or the
42 failure of a party to comply with any duty of disclosure, the court may impose any lawful
43 sanction, including the payment of attorneys' fees, mediator fees, and expenses incurred

1 in attending the conference, contempt, or any other sanction authorized by G.S. 1A-1,
2 Rule 37(b).

3 Sec. 12. The Supreme Court shall establish standards for the qualification and
4 conduct of mediators and mediator training programs. Standards for the qualification for
5 a mediator shall include at least 40 hours of training in mediation techniques by a
6 qualified instructor of mediation in accordance with rules adopted by the Supreme Court.

7 Sec. 13. A mediator acting under this legislation has judicial immunity in the
8 same manner and to the same extent as a judge of the General Court of Justice.

9 Sec. 14. The plaintiff and the defendant shall each pay one-half of the costs of
10 the mediation, unless otherwise ordered by the court or agreed to by the parties. The
11 rules adopted by the Supreme Court under Section 3 shall set out a method whereby
12 parties found by the court to be unable to pay the costs of the mediation may participate
13 without cost.

14 Sec. 15. (a) All conduct communications made during a mediation are presumed
15 to be made in compromise negotiations and are governed by Rule 408 of the North
16 Carolina Rules of Evidence. In addition, whenever a mediation agreement is not reached
17 between the parties to a mediation, evidence of statements made and conduct occurring in
18 a mediated settlement conference shall not be subject to discovery and shall be
19 inadmissible in any proceeding in the action or other actions on the same claim.
20 However, no evidence otherwise discoverable shall be inadmissible merely because it is
21 presented or discussed in a mediated settlement conference.

22 (b) Whenever a mediation agreement is not reached between the parties to a
23 mediation, the mediator shall not be compelled to testify or produce evidence concerning
24 statements made and conduct occurring in a mediated settlement conference in any civil
25 proceeding for any purpose, except proceedings for sanctions under this section,
26 disciplinary hearings before the State Bar or any agency established to enforce standards
27 of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder
28 abuse.

29 (c) If a mediation agreement is reached, the provisions of subsections (a) and (b)
30 of this section shall not apply. Rule 408 shall apply and no evidence that is otherwise
31 discoverable shall be inadmissible merely because it is presented or discussed in a
32 mediated settlement conference.

33 Sec. 16. The Administrative Office of the Courts shall evaluate the pilot
34 program and file a report with the General Assembly on or before the convening of the
35 1999 Session. The pilot program shall terminate April 1, 1999.

36 Sec. 17. Nothing in this act or in the rules promulgated by the Supreme Court
37 implementing this act shall restrict the right to trial or the right of the court to order other
38 appropriate methods of alternative dispute resolution or other process such as referral to a
39 special master, arbitration, or any other such process that is appropriate in a given case.

40 Sec. 18. The Administrative Office of the Courts may solicit funds from
41 private sources to establish, conduct, and evaluate this pilot program.

42 Sec. 19. There is appropriated from the General Fund to the Judicial
43 Department the sum of one hundred ninety thousand four hundred fifteen dollars

- 1 (\$190,415) for the 1995-96 fiscal year and the sum of one hundred ninety thousand four
- 2 hundred fifteen dollars (\$190,415) for the 1996-97 fiscal year to implement this act.
- 3 Sec. 20. This act becomes effective October 1, 1995.