

§ 7A-38.3D. Mediation in matters within the jurisdiction of the district criminal courts.

(a) Purpose. – The General Assembly finds that it is in the public interest to promote high standards for persons who mediate matters in district criminal court. To that end, a program of certification for these mediators shall be established in judicial districts designated by the Dispute Resolution Commission and the Director of the Administrative Office of the Courts and in which the chief district court judge, the district attorney, and the community mediation center agree to participate. This section does not supersede G.S. 7A-38.5.

(b) Enabling Authority. – In each district, the court may encourage mediation for any criminal district court action pending in the district, and the district attorney may delay prosecution of those actions so that the mediation may take place.

(c) Program Administration. – A community mediation center established under G.S. 7A-38.5 and located in a district designated under subsection (a) of this section shall assist the court in administering a program providing mediation services in district criminal court cases. A community mediation center may assist in the screening and scheduling of cases for mediation and provide certified volunteer or staff mediators to conduct district criminal court mediations.

(d) Rules of Procedure. – The Supreme Court shall adopt rules to implement this section. Each mediation shall be conducted pursuant to this section and the Supreme Court Rules as adopted.

(e) Mediator Authority. – In the mediator's discretion, any person whose presence and participation may assist in resolving the dispute or addressing any issues underlying the mediation may be permitted to attend and participate. The mediator shall have discretion to exclude any individual who seeks to attend the mediation but whose participation the mediator deems would be counterproductive. Lawyers for the participants may attend and participate in the mediation.

(f) Mediator Qualification. – The Supreme Court shall establish requirements for the certification or qualification of mediators serving under this section. The Court shall also establish requirements for the qualification of training programs and trainers, including community mediation center staff, that train these mediators. The Court shall also adopt rules regulating the conduct of these mediators and trainers.

(g) Oversight and Evaluation. – The Supreme Court may require community mediation centers and their volunteer or staff mediators to collect and report caseload statistics, referral sources, fees collected, and any other information deemed essential for program oversight and evaluation purposes.

(h) Immunity. – A mediator under this section has judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that a mediator may be disciplined in accordance with procedures adopted by the Supreme Court. A community mediation center and its staff involved in supplying volunteer or staff mediators or other personnel to schedule cases or perform other duties under this section are immune from suit in any civil action, except in any case of willful or wanton misconduct.

(i) Confidentiality. – Any memorandum, work note, or product of the mediator and any case file maintained by a community mediation center acting under this section and any mediator certification application are confidential.

(j) Inadmissibility of Negotiations. – Evidence of any statement made and conduct occurring during a mediation under this section shall not be subject to discovery and shall be inadmissible in any proceeding in the action from which the mediation arises. Any participant in a mediation conducted under this section, including the mediator, may report to law enforcement personnel any statement made or conduct occurring during the mediation process that threatens or threatened the safety of any person or property. A mediator has discretion to warn a person whose safety or property has been threatened. No evidence otherwise

discoverable is inadmissible for the reason it is presented or discussed in a mediated settlement conference or other settlement proceeding under this section.

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

- (1) Proceedings for abuse, neglect, or dependency of a juvenile, or for abuse, neglect, or exploitation of an adult, for which there is a duty to report under G.S. 7B-301 and Article 6 of Chapter 108A of the General Statutes, respectively.
- (2) Disciplinary hearings before the State Bar or the Dispute Resolution Commission.
- (3) Proceedings in which the mediator acts as a witness pursuant to subsection (j) of this section.
- (4) Trials of a felony, during which a presiding judge may compel the disclosure of any evidence arising out of the mediation, excluding a statement made by the defendant in the action under mediation, if it is to be introduced in the trial or disposition of the felony and the judge determines that the introduction of the evidence is necessary to the proper administration of justice and the evidence cannot be obtained from any other source.

(l) Written Agreements. – Any agreement reached in mediation is enforceable only if it has been reduced to writing and signed by the parties against whom enforcement is sought. A non-attorney mediator may assist parties in reducing the agreement to writing.

(m) Dispute Resolution Fee. – A dispute resolution fee shall be assessed and paid to the clerk in advance of mediation as set forth in G.S. 7A-38.7. By agreement, all or any portion of the fee may be paid by a person other than the defendant.

(n) Definitions. – As used in this section, the following definitions apply:

- (1) Court. – A district court judge, a district attorney, or the designee of a district court judge or district attorney.
- (2) Neutral observer. – Includes any person seeking mediator certification, any person studying any dispute resolution process, and any person acting as an interpreter. (2007-387, s. 1; 2012-194, s. 63.3(b); 2015-57, s. 3; 2016-107, s. 7; 2017-158, s. 26.7(d).)