

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1541

H. P. 1211

House of Representatives, March 27, 1979

On Motion of Mr. Hobbins of Saco, referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Nelson of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Establish an Office of Mediation in the Area of Domestic Relations.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 19 MRSA § 751, first sentence, as amended by PL 1975, c. 293, § 4, is amended to read:

Whenever in any divorce action the custody or visitation arrangements of a minor child is involved, the court may request the ~~State Department of Human Services~~ **Office of Mediation** to investigate conditions and circumstances of the child and ~~its~~ **his** parents and to recommend appropriate relief to the court.

Sec. 2. 19 MRSA § 751, 2nd sentence, as amended by PL 1965, c. 299, is further amended to read:

Upon completion of investigation, the ~~department~~ **office** shall submit a written report to the court at least ~~3~~ **10** days before date of hearing.

Sec. 3. 19 MRSA c. 17 is enacted to read:

CHAPTER 17

OFFICE OF MEDIATION

§ 901. Purposes and construction

1. **Purposes.** The purposes of this chapter are to promote the public welfare by preserving, promoting and protecting the family life and the institution of matrimony, to protect the rights of children, and to provide greater dignity and sensitivity for those persons who seek annulment, separation or dissolution of their marriage.

2. **Liberally construed.** This chapter shall be liberally construed to carry out the purposes set forth.

§ 902. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms shall have the following meanings.

1. **Action for divorce, annulment or separation.** "Action for divorce, annulment or separation" shall mean any action brought pursuant to sections 214, 301, 442, 443, 581, 632 and 691.

2. **Office of Mediation.** "Office of Mediation" shall mean the Office of Mediation provided for in this chapter.

§ 903. Office of Mediation

There shall be established an Office of Mediation, which shall be under the administration and direction of the District Court. The District Court may appoint the following persons to assist the Office of Mediation in disposing of its business:

1. **Director.** A Director of Mediation to be appointed by the Chief Judge of the District Court;

2. **Additional mediators.** Such additional mediators as the Chief Judge of the District Court shall prescribe, to be appointed by the Director of Mediation upon consultation with the Chief Judge of the District Court; and

3. **Custody workers and other employees.** Such additional custody study workers, investigators, stenographers and clerks as the director shall find necessary to carry out the work of the Office of Mediation, to be appointed by the Director of Mediation.

§ 904. Powers and duties

The Director of Mediation, or his subordinates, shall:

1. **Investigate facts.** Investigate the facts upon which to base warrants, subpoenas, orders or directions in action or proceedings filed in or transferred to the Office of Mediation pursuant to this chapter or section 751;

2. **Conferences.** Hold mediation conferences with parties to proceedings under this chapter and report the results of the proceedings to the Judge of the District Court;

3. **Supervision.** Provide such supervision in connection with the exercise of its jurisdiction as may be proper under the circumstances;

4. **Orders and findings.** Cause the orders and findings of the Office of Mediation to be entered in the same manner as orders and findings are entered in domestic relations cases in District Court; and

5. **Reports.** Cause such reports to be made, such statistics to be compiled and such reports to be kept by the District Court as may be proper under the circumstances.

§ 905. Jurisdiction

Whenever any controversy exists between spouses which may, unless a reconciliation is achieved, result in the legal separation, dissolution or annulment of the marriage or in the disruption of the household, the Office of Mediation shall have jurisdiction over the controversy, and over the parties thereto, and all persons having any relation to the controversy subordinate to the jurisdiction of the court as is further provided in this chapter.

§ 906. Petition invoking jurisdiction or for transfer of action to conciliation court

Prior to the filing of any action for annulment, divorce or legal separation, either spouse, or both spouses, may file in the Office of Mediation a petition invoking the jurisdiction of the Office of Mediation for the purpose of preserving the marriage by effecting a conciliation between the parties, or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issues involved. In any case where an action for annulment, divorce or legal separation has been filed, either party thereto may by petition filed therein or any judge having jurisdiction over the matter may by order have the cause transferred to the Office of Mediation for proceedings in the same manner as though action had been instituted in the Office of Mediation in the first instance.

§ 907. Petition; contents

The petition shall:

1. **Controversy existence.** Allege that a controversy exists between the spouses and request the aid of the Office of Mediation to effect a reconciliation or an amicable settlement of the controversy;

2. **Name and age of child.** State the name and age of each minor child whose welfare may be affected by the controversy;

3. **Name and address of petitioners.** State the name and address of the petitioner or petitioners;

4. **Other spouse.** If the petition is presented by one spouse only, name the other spouse as a respondent and state the address of that spouse;

5. **Respondent named.** Name as a respondent any other person who has any direct relation to the controversy and state the address of the person if known to the petitioner; and

6. Other information. State such other information as the Office of Mediation may by rule require.

§ 908. Blank forms; assistance in preparing and presenting petition

The clerk of the District Court shall provide, at the expense of the Office of Mediation, blank forms for petitions for filing pursuant to this chapter. The employees of the Office of Mediation shall assist any person in the preparation and presentation of any such petition when requested to do so.

§ 909. Fees

A fee in the amount of \$5 shall be charged for filing the petition, and additional fees shall be charged by the Office of Mediation for the performance of services pursuant to this chapter, at a rate not to exceed \$20 per hour and commensurate with the petitioner's ability to pay the fee. A sliding scale of fees shall be established by the Office of Mediation.

§ 910. Hearing; time; place; notice; citation; witnesses

The Office of Mediation shall fix a reasonable time and place for mediation on the petition, which shall take place within 30 days of the date of the filing of the petition. The office shall cause notice of the filing of the petition and of the time and place of the mediation session to be given to the respondents. The office may, when it deems necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil suits.

§ 911. Time and place of holding mediation sessions

Mediation sessions pursuant to this chapter may be held at any time and place within the county and shall normally be held in a conference room, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

§ 912. Conduct of sessions; recommendations; aid of specialists; expense; confidential communications

The mediation sessions shall be conducted informally by the mediator as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues.

At the conclusion of the sessions, the mediator shall report the results of the hearing to the Judge of the District Court.

To facilitate and promote the purposes of this chapter, the Office of Mediation may, with the consent of both of the parties to the action, recommend or invoke the consent of both of the parties to the action, recommend or invoke the aid of appropriate resources such as physicians, psychiatrists, social agencies or other

individuals or agencies, including clergymen of the religious denomination to which the parties belong or may request, but no reports of any such individual or agency available to the mediator shall be filed with or become a part of the records of the case. Any such aid shall not be at the expense of the Office of Mediation unless it shall specifically authorize the expenditure in advance.

Mediation sessions or conferences conducted before a mediator for the purpose of effecting a reconciliation of the spouses or an amicable adjustment or settlement of issues shall be held in private, and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses, except that the mediator may exclude attorneys for the parties if he deems it to be appropriate. In addition, hearings or conferences may be held with each party separately with counsel for that party present or excluded, in the discretion of the mediator.

§ 913. Orders; duration of effectiveness; reconciliation agreement

The mediator shall have full power to make, alter, modify and enforce all orders or temporary orders, orders for custody of children, restraining orders, preliminary injunctions and orders affecting possession of property, as may appear just and equitable, but such orders shall not be effective for more than 10 days without approval of the Judge of the District Court.

Any reconciliation agreement or mediated settlement of issues between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

§ 914. Review and appeal

Upon receipt of a proposed decree, mediated settlement or order, the Judge of the District Court:

1. Review. Shall review the proposed decree or order for jurisdictional validity;
2. Requested review. May, upon request of an aggrieved party, review the proposed decree or order to determine whether:
 - A. It was procured by corruption, fraud or other undue means;
 - B. The Office of Mediation engaged in misconduct prejudicing the rights of any party; or
 - C. The office exceeded its powers; and
3. Issue order. Shall issue its order.

Any final decree or order issued by the District Court may be appealed to the Superior Court of this State in the manner provided by the laws and rules of this State.

§ 915. Substitution of mediators

In a proceeding before the Office of Mediation, either party may request that the assigned mediator be disqualified and a new mediator be substituted.

Upon good cause shown for disqualification, either by written request or upon hearing before the Director of Mediation, or his delegate, the Office of Mediation shall reassign the case to a different mediator.

“Good cause” shall mean personal interest, financial interest or other bias or prejudice of the mediator assigned.

§ 916. Post-decree matters: Enforcement; modification; contempt

Any request for enforcement or modification of a final divorce or separation decree or order shall be made in the following manner:

1. **Motion of District Court.** By a motion to the District Court pursuant to the laws and rules of this State; or

2. **Petition.** By individual or joint post-decree petition to the Office of Mediation filed with the clerk of the District Court on forms provided therefor. Notice thereof shall be made in the same manner as required for motions to the District Court.

Upon receipt of the petition, the clerk shall assign a mediator to the matter for further proceedings forthwith.

§ 917. Enforcement

Upon notice and after a duly conducted show cause hearing before the Office of Mediation, violation of any preliminary or final order or decree or a failure to obey a subpoena may be punished in District Court by contempt or other sanctions allowed by law.

STATEMENT OF FACT

Divorce is a tough, wrenching experience, in which feelings of guilt or anger, or both, come to the surface and need to be dealt with. The adversary system with its side-against-side combat before a judge often simply heightens those feelings and channels them into fighting over custody, financial support and division of accumulated property. Intervention by a mediator who is trained to expose the sources of those feelings, help the couple to understand them and help both individuals to dissipate those feelings on something less crucial than their children, is a far better alternative in divorces to the formalities of a court battle. Feelings can be calmed down that way and parents can be assisted in their struggle to become effective co-parents of their children even though they may no longer be living together.

In Cumberland County, a pilot project of mediation services has successfully resolved many disputes in domestic relations cases with otherwise would have been presented to a judge in a formal court hearing. The result has clearly been of

benefit to the people involved and to the children who are always the innocent victims in divorce cases. It has also saved valuable courtroom time for other cases more appropriately resolved in adversary setting. This bill further develops that mediation project and adds to it the assistance of custody study worker-investigators, to form the nucleus of a family court system.

Custody study workers have been employed in the Department of Human Services for a number of years. They have often been extremely helpful in resolving custody and visitation disputes, but at times the lack of effective communication between the workers and the courts has limited their effectiveness. Placing these individuals under the direction of the courts and in close cooperation with the mediators will increase their usefulness to the courts and will make their services available to the mediators as well.

This bill expands upon the mediation program which has been developed in Cumberland County. It establishes an Office of Mediation under the direction of the District Court, and empowers either party or a District Court Judge to refer a custody, divorce, annulment or separation action or a motion to enforce or modify a prior order in such a case to the Office of Mediation.

The bill is based on similar laws developed in other states, especially Arizona's Court of Conciliation. The law is designed so that the basic costs of the Office of Mediation would be borne by those persons who would utilize the system. The transfer of custody study workers from the Department of Human Services to the Office of Mediation would involve no change in expense. Judicial manpower would be freed up from domestic litigation to a considerable extent, at substantial savings to the State. Some increased overall expense to the State is anticipated by enactment of this chapter, but it is expected that this would be reflected in a lower rate of post-separation violence, higher level of voluntary compliance with child support decrees and a lower level of emotional problems among children of divorce or separation.