

MAINE STATE LEGISLATURE

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1 (After Deadline)
2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 1566

8 S.P. 597

In Senate, May 23, 1985

9 Approved for introduction by a majority of the Legislative Council
10 pursuant to Joint Rule 27.

Reference to the Committee on Judiciary suggested and ordered printed.

11 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Carpenter of Aroostook.

12 Cosponsored by Senator Gill of Cumberland, Representative Foster of
Ellsworth and Representative Lisnik of Presque Isle.

13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FIVE
17

18 AN ACT Concerning the Court Mediation Service
19 and the Conduct of Mediation.
20

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

23 Sec. 1. 4 MRSA §18 is enacted to read:

24 §18. Court Mediation Service

25 1. Court Mediation Service. There is estab-
26 lished within the Judicial Department a Court Media-
27 tion Service to provide mediation in both the Superi-
28 or and District Courts throughout the State.

29 2. Mediators. The Judicial Department through
30 the State Court Administrator or his designee shall
31 contract for the services of qualified persons to
32 serve as mediators. The mediators shall not be con-
33 sidered employees of the State for any purpose. They
34 shall be paid a reasonable per diem fee plus reim-

1 bursement of their actual, necessary and reasonable
2 expenses incurred in the performance of their duties,
3 consistent with policies established by the Adminis-
4 trative Office of the Courts.

5 3. Staff. With the advice and approval of the
6 Court Mediation Committee, the Chief Judge of the
7 District Court shall designate one of the mediators
8 to serve at his pleasure as Director of the Court Me-
9 diation Service. The Chief Judge of the District
10 Court may also designate from among the mediators one
11 or more deputy directors, who also shall serve at his
12 pleasure. The Chief Judge of the District Court
13 shall provide necessary clerical assistance to the
14 Court Mediation Service, within the limit of funds
15 available.

16 4. Facilities. The Chief Judge of the District
17 Court shall provide a principal office for the Court
18 Mediation Service and shall arrange for such media-
19 tion facilities throughout the State as are necessary
20 and adequate for the conduct of court mediations.

21 5. Court Mediation Committee. A Court Mediation
22 Committee shall be appointed by the Chief Justice of
23 the Supreme Judicial Court to set policy for and mon-
24 itor the Court Mediation Service. The committee
25 shall consist of the Chief Justice of the Supreme Ju-
26 dicial Court or his designee; the Chief Justice of
27 the Superior Court or his designee; the Chief Judge
28 of the District Court or his designee; and the State
29 Court Administrator or his designee. The Chief Jus-
30 tice of the Supreme Judicial Court shall also appoint
31 a Justice of the Superior Court and a Judge of the
32 District Court to the committee, who shall serve at
33 his pleasure.

34 Sec. 2. 19 MRSA §636, as enacted by PL 1983, c.
35 813, §3, is amended to read:

36 §636. Court authority to order mediation

37 The court may, in any case under this subchapter,
38 at any time refer the parties to mediation on any is-
39 ssues. Any agreement reached by the parties through
40 mediation on any issues shall be reduced to writing,
41 signed by the parties and presented to the court for

1 approval as a court order. When agreement through
2 mediation is not reached on any issue the court must
3 determine that the parties made a good faith effort
4 to mediate the issue before proceeding with a hear-
5 ing. If the court finds that either party failed to
6 make a good faith effort to mediate, the court may
7 refer the parties back to mediation order the parties
8 to submit to mediation, may dismiss the action or any
9 part of the action, may render a decision or judgment
10 by default, may assess attorney's fees and costs or
11 may impose any other sanction that is appropriate in
12 the circumstances. The court may also impose an ap-
13 propriate sanction upon a party's failure without
14 good cause to appear for mediation after receiving
15 notice of the scheduled time for mediation.

16 Sec. 3. 19 MRSA §665, as enacted by PL 1983, c.
17 813, §4, is amended to read:

18 §665. Court authority to order mediation

19 The court may, in any case under this subchapter,
20 at any time refer the parties to mediation on any is-
21 sues. Any agreement reached by the parties through
22 mediation on any issues shall be reduced to writing,
23 signed by the parties and presented to the court for
24 approval as a court order. When agreement through
25 mediation is not reached on any issue, the court must
26 determine that the parties made a good faith effort
27 to mediate the issue before proceeding with a hear-
28 ing. If the court finds that either party failed to
29 make a good faith effort to mediate, the court may
30 refer the parties back to mediation order the parties
31 to submit to mediation, may dismiss the action or any
32 part of the action, may render a decision or judgment
33 by default, may assess attorney's fees and costs or
34 may impose any other sanction that is appropriate in
35 the circumstances. The court may also impose an ap-
36 propriate sanction upon a party's failure without
37 good cause to appear for mediation after receiving
38 notice of the scheduled time for mediation.

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STATEMENT OF FACT

2 The purpose of this bill is to simply place the
3 Court Mediation Service, which has existed within the
4 Judicial Department for 8 years, into statute. The
5 provisions of section 1 simply codify the exiting op-
6 erations of the Court Mediation Service.

7 Sections 2 and 3 provide possible sanctions for
8 failure of parties to mediate in good faith when a
9 court has ordered them to attempt mediation. The
10 statutes to which these sanctions are added differ
11 from other statutes mandating mediation where parties
12 seeking a divorce or annulment are disputing and have
13 minor children. These statutes permit a court, in
14 any other case of divorce or annulment, to refer par-
15 ties to mediation when the court feels attempted me-
16 diation is appropriate. The sanctions for failure to
17 mediate in good faith were added to the mandatory me-
18 diation statutes by Public Law 1985, chapter 53. The
19 sanctions were inadvertently not added at the same
20 time to the Maine Revised Statutes, Title 19, sec-
21 tions 636 and 665.

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