

MAINE STATE LEGISLATURE

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(New Draft of H.P. 346, L.D. 445)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1508

H.P. 1114 House of Representatives, May 11, 1987
Reported by Representative PARADIS from the Committee on
Judiciary and printed under Joint Rule 2.

EDWIN H. PERT, Clerk
Original bill sponsored by Representative ANTHONY of
South Portland. Cosponsored by Senator GAUVREAU of
Androscoggin and Representative MARSANO of Belfast.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT Permitting Private Mediation for
Divorcing Couples.

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

Sec. 1. 19 MRSA §214, sub-§4, as amended by PL
1985, c. 750, §3, is repealed and the following en-
acted to read:

4. Mediation. Prior to a contested hearing un-
der this section when there are minor children of the
parties, the court shall refer the parties to media-
tion. The court shall determine that this mediation
requirement has been met upon an affirmative showing
by the parties that they have in good faith partici-
pated in mediation with a Court Mediation Service me-

1 diator or with a private practitioner who has appro-
2 priate training and experience and is regularly en-
3 gaged in the private practice of divorce mediation.
4 Upon motion supported by affidavit, the court may
5 waive, for extraordinary cause shown, the mediation
6 requirement under this subsection. For good cause
7 shown, the court, prior to referring the parties to
8 mediation, may hear motions for temporary relief,
9 pending final judgment, on any issue or combination
10 of issues for which good cause for temporary relief
11 has been shown.

12 Any agreement reached by the parties through media-
13 tion on any issues shall be reduced to writing,
14 signed by the parties and presented to the court for
15 approval as a court order. When agreement through me-
16 diation is not reached on any issue, the court must
17 determine that the parties made a good faith effort
18 to mediate the issue before proceeding with a hear-
19 ing. If the court finds that either party failed to
20 make a good faith effort to mediate, the court may:
21 Order the parties to submit to mediation; dismiss the
22 action or any part of the action; render a decision
23 or judgment by default; assess attorney fees and
24 costs; or impose any other sanction that is appropri-
25 ate in the circumstances. The court may also impose
26 an appropriate sanction upon a party's failure with-
27 out good cause to appear for mediation after receiv-
28 ing notice of the scheduled time for mediation.

29 Sec. 2. 19 MRSa §581, sub-§4, as amended by PL
30 1985, c. 750, §4, is repealed and the following is
31 enacted to read:

32 4. Mediation. Prior to a contested hearing un-
33 der this section when there are minor children of the
34 parties, the court shall refer the parties to media-
35 tion. The court shall determine that this mediation
36 requirement has been met upon an affirmative showing
37 by the parties that they have in good faith partici-
38 pated in mediation with a Court Mediation Service me-
39 diator or with a private practitioner who has appro-
40 priate training and experience and is regularly en-
41 gaged in the private practice of divorce mediation.
42 Upon motion supported by affidavit, the court may
43 waive, for extraordinary cause shown, the mediation
44 requirement under this subsection. For good cause

1 shown, the court, prior to referring the parties to
2 mediation, may hear motions for temporary relief,
3 pending final judgment, on any issue or combination
4 of issues for which good cause for temporary relief
5 has been shown.

6 Any agreement reached by the parties through media-
7 tion on any issues shall be reduced to writing,
8 signed by the parties and presented to the court for
9 approval as a court order. When agreement through medi-
10 ation is not reached on any issue, the court must
11 determine that the parties made a good faith effort
12 to mediate the issue before proceeding with a hear-
13 ing. If the court finds that either party failed to
14 make a good faith effort to mediate, the court may:
15 Order the parties to submit to mediation; dismiss the
16 action or any part of the action; render a decision
17 or judgment by default; assess attorney fees and
18 costs; or impose any other sanction that is appropri-
19 ate in the circumstances. The court may also impose
20 an appropriate sanction upon a party's failure with-
21 out good cause to appear for mediation after receiv-
22 ing notice of the scheduled time for mediation.

23 Sec. 3. 19 MRSA §636, as amended by PL 1985, c.
24 396, §2, is further amended to read:

25 §636. Court authority to order mediation

26 The court may, in any case under this subchapter,
27 at any time refer the parties to mediation on any is-
28 sues. The court shall determine that a mediation re-
29 quirement imposed under this section has been met
30 upon an affirmative showing by the parties that they
31 have in good faith participated in mediation with a
32 Court Mediation Service mediator or with a private
33 practitioner who has appropriate training and experi-
34 ence and is regularly engaged in the private practice
35 of divorce mediation. Any agreement reached by the
36 parties through mediation on any issues shall be re-
37 duced to writing, signed by the parties and presented
38 to the court for approval as a court order. When
39 agreement through mediation is not reached on any is-
40 sue the court must determine that the parties made a
41 good faith effort to mediate the issue before pro-
42 ceeding with a hearing. If the court finds that ei-
43 ther party failed to make a good faith effort to me-

1 diate, the court may order the parties to submit to
2 mediation, may dismiss the action or any part of the
3 action, may render a decision or judgment by default,
4 may assess attorney's fees and costs or may impose
5 any other sanction that is appropriate in the circum-
6 stances. The court may also impose an appropriate
7 sanction upon a party's failure without good cause to
8 appear for mediation after receiving notice of the
9 scheduled time for mediation.

10 **Sec. 4. 19 MRSA §665, as amended by PL 1985, c.**
11 **396, §3, is further amended to read:**

12 **§665. Court authority to order mediation**

13 The court may, in any case under this subchapter,
14 at any time refer the parties to mediation on any is-
15 sues. The court shall determine that a mediation re-
16 quirement imposed under this section has been met
17 upon an affirmative showing by the parties that they
18 have in good faith participated in mediation with a
19 Court Mediation Service mediator or with a private
20 practitioner who has appropriate training and experi-
21 ence and is regularly engaged in the private practice
22 of divorce mediation. Any agreement reached by the
23 parties through mediation on any issues shall be re-
24 duced to writing, signed by the parties and presented
25 to the court for approval as a court order. When
26 agreement through mediation is not reached on any is-
27 sue the court must determine that the parties made a
28 good faith effort to mediate the issue before pro-
29 ceeding with a hearing. If the court finds that ei-
30 ther party failed to make a good faith effort to me-
31 diate, the court may order the parties to submit to
32 mediation, may dismiss the action or any part of the
33 action, may render a decision or judgment by default,
34 may assess attorney's fees and costs or may impose
35 any other sanction that is appropriate in the circum-
36 stances. The court may also impose an appropriate
37 sanction upon a party's failure without good cause to
38 appear for mediation after receiving notice of the
39 scheduled time for mediation.

40 **Sec. 5. 19 MRSA §752, sub-§4, as amended by PL**
41 **1985, c. 750, §5, is repealed and the following en-**
42 **acted in its place:**

1 4. Mediation. Prior to a contested hearing under
2 this section when there are minor children of the
3 parties, the court shall refer the parties to media-
4 tion. The court shall determine that this mediation
5 requirement has been met upon an affirmative showing
6 by the parties that they have in good faith partici-
7 ipated in mediation with a Court Mediation Service me-
8 diator or with a private practitioner who has appro-
9 prate training and experience and is regularly en-
10 gaged in the private practice of divorce mediation.
11 Upon motion supported by affidavit, the court may
12 waive, for extraordinary cause shown, the mediation
13 requirement under this subsection. For good cause
14 shown, the court, prior to referring the parties to
15 mediation, may hear motions for temporary relief,
16 pending final judgment, on any issue or combination
17 of issues for which good cause for temporary relief
18 has been shown.

19 Any agreement reached by the parties through media-
20 tion on any issues shall be reduced to writing,
21 signed by the parties and presented to the court for
22 approval as a court order. When agreement through me-
23 diation is not reached on any issue, the court must
24 determine that the parties made a good faith effort
25 to mediate the issue before proceeding with a hear-
26 ing. If the court finds that either party failed to
27 make a good faith effort to mediate, the court may:
28 Order the parties to submit to mediation; dismiss
29 the action or any part of the action; render a deci-
30 sion or judgment by default; assess attorney fees and
31 costs; or impose any other sanction that is appropri-
32 ate in the circumstances. The court may also impose
33 an appropriate sanction upon a party's failure with-
34 out good cause to appear for mediation after receiv-
35 ing notice of the scheduled time for mediation.

1 STATEMENT OF FACT

2 The original bill and this new draft provide sep-
3 arating and divorcing couples with the option of
4 using a private mediator, rather than a mediator of
5 the Court Mediation Service, in complying with the
6 statutory requirement to have attempted mediation
7 prior to a contested separation or divorce hearing.
8 The original bill permitted the use of a private me-
9 diator if the mediator had been certified by the
10 Court Mediation Service to be qualified based on
11 training and experience. The new draft removes this
12 certification responsibility from the Court Mediation
13 Service. Instead, the use by a couple of a private
14 mediator will be deemed to meet the mediation re-
15 quirement if a judge finds that the couple partici-
16 pated in good faith in mediation with that mediator
17 and the private mediator has appropriate training and
18 experience and is regularly engaged in the private
19 practice of divorce mediation. The new draft also
20 extends this ability to use a private mediator to in-
21 stances when a judge has ordered couples to attempt
22 mediation under the judge's discretionary authority.

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