

**TWELFTH JUDICIAL DISTRICT
DISTRICT COURT DIVISION**

FAMILY COURT DIVISION

**DOMESTIC RELATIONS
CASE MANAGEMENT PLAN**

RULE 1. GENERAL RULES

- 1.1** The purpose of these rules is to institute a Case Management Plan that will provide for the orderly, prompt, and just disposition of domestic matters. These rules are promulgated in compliance with Rule 40(a), Rules of Civil Procedure, and Rule 2(a) General Rules of Practice for Superior and District Courts and are to be administered under the direction of the Family Court Administrator.
- 1.2** These rules shall, at all times, be construed in such a manner as to promote justice and avoid delay. Attorneys shall adhere to the Canons of Ethics and the Rules of Professional Conduct as promulgated by the North Carolina State Bar.
- 1.3** It is recognized that these rules are not complete in every detail and will not cover every situation that may arise. In the event that these rules do not cover a specific matter, all parties shall act in accordance with the orders of the Chief District Court Judge, assigned Domestic Judge, or at the direction of the Family Court Administrator.
- 1.4** The Family Court Administrator shall establish and maintain a case tracking system pursuant to Rule 2(c), General Rules of Practice for Superior and District Courts and in accordance with these Local Rules. This system shall be used to monitor the number, age, type, and procedural status of all pending cases and provide for the calendaring of the same.
- 1.5** A trial schedule for the disposition of Domestic Relations cases in the Twelfth Judicial District, Cumberland County, District Court Division, shall be set and maintained by the Family Court Administrator in accordance with these rules and under the supervision of the Chief District Court Judge.

- 1.6 These rules and procedures, and all amendments hereafter, shall be filed with the Clerk of Superior Court for Cumberland County and may be cited accordingly.
- 1.7 The Family Court Administrator in the Twelfth Judicial District shall distribute a copy of these rules and any subsequent amendments hereafter to each member of the Domestic Bar in Cumberland County. The Family Court Administrator shall maintain a supply of printed rules, as well as associated forms to be provided upon request.
- 1.8 The Clerk of Superior Court for Cumberland County shall provide a case number at the time of filing and place the number upon the summons in accordance with the Rules of Recordkeeping. All subsequent pleadings and papers filed with the Clerk and all subsequent communication to opposing counsel or parties or court personnel shall accurately reflect this case number.
- 1.9 When a party files a complaint, answer, or counterclaim the filing party shall complete the following:

(a) Domestic Filing without a Child Support Claim

- (1) A *Domestic Civil Action Cover Sheet* (AOC-CV-750) plus one (1) copy, which is to be placed in the Family Court/Domestic Relations mailbox in the Clerk's office at the time of filing. The cover sheet **shall** contain the address of the opposing party.
- (2) A copy of the *Family Court Notice* **shall** be attached to the front of each complaint and answer before service. *[The Family Court Notice shall be on form CCLF-FC-001 as prepared and distributed by the Family Court Administrator's Office.]*
- (3) If any emergency/temporary hearings are scheduled for hearing pursuant to these rules, a copy of the *Notice of Hearing (Emergency/Temporary Hearings)* **shall** be attached to the front of each complaint and answer before service. *[The Notice of Hearing (Emergency/Temporary Hearings) shall be on form CCLF-FC-002 as prepared and distributed by the Family Court Administrator's Office.]*

(b) Domestic Filing including a Child Support claim

- (1)** An original *Domestic Civil Action Cover Sheet* (AOC-CV-750) plus one (1) copy, which is to be placed in the Family Court/Domestic Relations mailbox in the Clerk's office at the time of filing. The cover sheet **shall** contain the address of the opposing party.
- (2)** A *Child Support Cover Sheet* (AOC-CV-640 and AOC-CV-645) which shall contain the full name of each party including a middle or maiden name along with any suffix; a complete mailing address, to include the street address and post office box (*if both*); the date of birth of all parties; and the social security number of all parties. AOC-CV-645 is a confidential form which includes the full social security number of the parties.
- (3)** A copy of the *Family Court Notice* **shall** be attached to the front of each complaint and answer before service. [*The Family Court Notice shall be on form CCLF-FC-001 as prepared and distributed by the Family Court Administrator's Office.*]
- (4)** If any emergency/temporary hearings are scheduled for hearing pursuant to these rules, a copy of the *Notice of Hearing (Emergency/Temporary Hearing)* **shall** be attached to the front of each complaint and answer before service. [*The Notice of Hearing (Emergency/Temporary Hearings) shall be on form CCLF-FC-002 as prepared and distributed by the Family Court Administrator's Office.*]

1.10 No Complaint, Answer, or Counterclaim shall be accepted by the Clerk of Superior Court, unless the accurately completed Domestic Civil Action Cover Sheet, Family Court Notice, Child Support Coversheet [if applicable], and Notice of Hearing (Emergency/Temporary Hearing) [if applicable], are attached to the pleading.

1.11 Upon the filing of a domestic relations case, *other than uncontested divorces, IV-D child support establishment/enforcement cases, UIFSA cases, and civil termination of parental rights*, the case shall be assigned to one of the Family Court Domestic Judges and that judge's assigned Domestic Case Coordinator. Requests for reassignment shall be directed to the Chief District Court Judge. The Family Court Administrator shall monitor the number of cases assigned to each judge.

RULE 2. READY CASES

- 2.1** Except where prohibited by statute, or where Child Custody/Visitation Mediation or Equitable Distribution Mediation is applicable as set forth in Rule 8 and Rule 10 below, a case shall be ready to set for trial when the Family Court Administrator has determined at least one of the following has occurred:
- (a)** A contested case has been on file for ninety (90) days or more; or
 - (b)** An uncontested divorce case has been on file for thirty (30) days or more; or
 - (c)** Prior to the expiration of the respective time periods designated in Local Rules 2.1(a) and 2.1(b) above, the assigned Domestic Case Coordinator has been notified that all counsel/unrepresented parties have consented to an earlier hearing date; or
 - (d)** After the expiration of the respective time periods designated in Local Rules 2.1(a) and 2.1(b) above, and the Family Court Administrator has not yet intervened, and either party has notified the assigned Domestic Case Coordinator that the party desires to schedule their case for hearing;
 - (e)** Service by publication has been completed. (Counsel/unrepresented parties shall notify the assigned Domestic Case Coordinator of the notice of publication and the date established in the notice that time to answer shall expire.)
 - (f)** Counsel/unrepresented parties have notified the assigned Domestic Case Coordinator that a case is designated as an “uncontested” action.
- 2.2** The Family Court Administrator shall place those cases determined to be ready for trial on the calendar pursuant to Local Rules 3 and 4 below.

RULE 3. CASES CALENDARED BY THE FAMILY COURT ADMINISTRATOR

- 3.1** Once the Family Court Administrator has determined that a case is ready for trial under the guidelines set forth in Rule 2.1(a) and 2.1(b) above, and more than thirty days has expired, allowing counsel an opportunity for scheduling pursuant to Rule 2.1(d), the assigned Domestic Case Coordinator will notify all counsel/unrepresented parties of a firm trial date.
- 3.2** Contested cases shall be scheduled for hearing not less than thirty (30) days in advance.
- 3.3** Uncontested cases shall be scheduled for hearing within six (6) weeks of the completion of service.
- 3.4** Service by Publication cases shall have a firm trial date established on all pending issues within six (6) weeks of the completion of service.
- 3.5** Any domestic relations case currently on file for one hundred and fifty (150) days or more, will be subject to immediate notice and the expedited assignment of a trial date.
- 3.6** Requests for alternative settings by the parties or their counsel will not be honored once the Family Court Administrator has intervened and established a trial date, except for extraordinary cause which could not have been foreseen.

RULE 4. CASES CALENDARED BY THE PARTIES OR THEIR COUNSEL

- 4.1** Parties or their counsel desiring to schedule a trial date in accordance with Local Rules 2.1(c) or 2.1(d) above shall contact the assigned Domestic Case Coordinator, who will provide a date and time certain for hearing.
- 4.2** Cases calendared under Local Rule 2.1(c) above must reflect the signature of opposing counsel on the *Domestic Case Notice of Hearing Calendar Request* form. *[The Domestic Case Notice of Hearing Calendar Request shall be on*

form CCLF-FC-003 as prepared and distributed by the Family Court Administrator's Office.]

- 4.3 No case will be calendared until such time as a copy of the *Domestic Case Notice of Hearing Calendar Request* form [CCLF-FC-003], is received by the assigned Domestic Case Coordinator. Said notices must be completely filled out with all requested information. Failure of any notice to be in compliance with these Local Rules will result in the matter not being calendared by the assigned Domestic Case Coordinator.
- 4.4 No case shall be heard by the Court unless it is calendared through the assigned Domestic Case Coordinator.
- 4.5 Service of the completed Calendar Request/Notice of Hearing form on the assigned Domestic Case Coordinator shall be made by hand delivery, U.S. Mail, facsimile transmission or electronic mail.

RULE 5. TRIAL CALENDAR

- 5.1 Whether directly scheduled by the Family Court Administrator or requested by counsel, contested or uncontested Domestic Relations cases will be set during each domestic court session. Scheduling Conferences; Initial Pretrial Conferences; Judicial Settlement Conferences in equitable distribution cases; and cases involving civil termination of parental rights shall be calendared pursuant to schedules promulgated by the Chief District Court Judge.
- 5.2 If possible, all the relief sought in the Complaint, Answer, or Counterclaim will be scheduled and heard together, with the exception of those matters not allowed by law.
- 5.3 All issues to be determined by jury trial in any Domestic Relations case shall be resolved in General Civil District Court pursuant to the case management plan enacted by the Chief District Court Judge and administered by the Trial Court Administrator.
- 5.4 The respective individual scheduling notices provided for in these rules shall serve as the final calendar, and shall be distributed to all counsel/unrepresented parties.

- 5.5** Published domestic calendars are also available for inspection in the Family Court Administrator's Office seven (7) calendar days prior to the court session and temporary order returns. Calendars are available two (2) days prior to the session. Published calendars, forms and local rules may be downloaded from the following web site: <http://www.nccourts.org>

It is the responsibility of counsel and unrepresented parties to be aware of cases appearing on trial calendars, and to contact the office of the Family Court Administrator to determine trial order in advance of the scheduled trial session.

- 5.6** The call of the calendar will take place pursuant to a schedule promulgated by the Chief District Court Judge. Counsel or unrepresented parties with cases appearing on the final calendar are required to appear at this time.

- 5.7** Pursuant to Rule 2(e), General Rules of Practice for Superior and District Courts, counsel for all parties in an action, when notified to appear for a pre-trial conference, hearing of a motion, or for trial, must, consistent with ethical requirements, appear or have a partner, associate, or other attorney familiar with the case present.

Pursuant to Rule 3.1, General Rules of Practice for Superior and District Courts, counsel for all parties in an action, when notified to appear for a pretrial conference, hearing of a motion, or for trial must notify the Court of any conflicts in scheduling in other courts.

Pursuant to Rule 12, General Rules of Practice for Superior and District Courts, except for some unusual reason connected with the business of the court, attorneys will not be sent for when their cases are called in their regular order. Counsel are at all times to conduct themselves with dignity and propriety.

- 5.8** Any case noticed for trial is subject to dismissal for failure to prosecute if, at the time it is called for trial, the attorneys or *pro se* parties are not present or ready to proceed. No case will be called and dismissed prior to 9:30 AM on any given court day.

- 5.9** The trial date assigned shall be a firm date. Continuances will not be granted, even if all parties agree, unless for crucial cause that could not have been foreseen.

RULE 6. TIME STANDARDS

Absent exigent circumstances or requirements of law, all Domestic Relations cases filed should be tried or disposed within the following deadlines:

- Contested Claims - twelve months; and
- Uncontested Claims - four months.

As to individual claims within a case file, the Family Court Time Standards will apply.

RULE 7. DIVORCE CASES

- 7.1** All pleadings containing a claim for absolute divorce shall state a specific date of separation.
- 7.2** If the date of separation is contested, the case will be tried as a contested case, regardless of whether both dates fall more than one year before the date of filing.
- 7.3** Calendar notices for uncontested divorces must be submitted to the Family Court Administrator's Office pursuant to the domestic calendar schedule promulgated by the Family Court Administrator. Submission of the calendar notice may be made by hand delivery, U.S. Mail, facsimile transmission, or by electronic mail.

RULE 8. EQUITABLE DISTRIBUTION CASES

8.1 Definitions

(a) Moving Party: The spouse who first files a claim for equitable distribution.

(b) Responding party: The spouse against whom the first claim for equitable distribution has been filed.

8.2 Inventory Affidavits

(a) The inventory affidavit of each party shall be the result of a good faith effort by each party to list each and every item of marital, divisible and separate property (including debts) and the party's best opinion as to the date of separation fair market value of each item.

(b) The inventory affidavit of each party shall be in the same form as the *Equitable Distribution Inventory Affidavit* and shall comply with the instructions contained on the inventory affidavit. *[The Equitable Distribution Inventory Affidavit shall be on form CCLF-FC-004 as prepared and distributed by the Family Court Administrator's Office.]*

(c) Property shall be listed in the following order: all marital property, all divisible property, and all separate property. Within each category, the property shall be listed in the following order: real property, vehicles, recreational vehicles, bank accounts, stocks and bonds, insurance policies, furniture and household goods, pensions, business or professional associations, miscellaneous, debts.

8.3 Scheduling Conference

(a) Within sixty (60) days after service of the initial pleading for Equitable Distribution, both parties shall file with the clerk and serve on each other an *Equitable Distribution Inventory Affidavit*. *[The Equitable Distribution Inventory Affidavit shall be on form CCLF-FC-004 as prepared and distributed by the Family Court Administrator's Office.]*

(b) A scheduling conference shall be noticed by the court within ninety (90) days after service of the initial pleading for Equitable Distribution. The

assigned Domestic Case Coordinator shall monitor the case for the filing of inventory affidavits.

(c) At least seven (7) days prior to the scheduling conference, each party or counsel shall file an *Equitable Distribution Affidavit* stating:

- (1) Inventory affidavit has or has not been filed;
- (2) The date of separation is _____;
- (3) The appointment of experts is or is not requested;
- (4) Any valuation issues;
- (5) An estimate of the net value of the marital estate;
- (6) The selected method of alternative dispute resolution; and,
- (7) The name of the mediator/evaluator selected by the parties.

[The Equitable Distribution Affidavit shall be on form CCLF-FC-005 as prepared and distributed by the Family Court Administrator's Office.]

(d) Parties and their attorneys will not be required to attend the scheduling conference if all inventory affidavits have been filed, there is no contest about the date of separation, and there is no request for the appointment of experts and appropriate selection of alternative dispute resolution has been made.

(e) An initial pretrial conference will be scheduled not more than sixty (60) days from the scheduling conference.

(f) Discovery should begin as soon as practicable after the filing of the claim; and nothing in these rules should be construed to mean that discovery should not begin until after the scheduling conference.

8.4 Initial Pretrial Conference

(a) At the initial pretrial Conference, the court shall:

- (1) Enter the date for the completion of discovery;
- (2) Enter the date for the filing and service of motions;
- (3) Enter the date for the service and completion of the final pre-trial order;
- (4) Enter the date on which the judicial pre-trial conference shall be held;

- (5)** Enter the date on which the case shall proceed to trial; and
 - (6)** Schedule the ADR procedure, if not previously scheduled.
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- (b)** The trial shall be scheduled not less than forty-five (45) days and not more than one hundred eighty (180) days from the initial pretrial conference. A judicial pre-trial conference shall be scheduled not more than fourteen (14) days prior to the trial.
 - (c)** Each party shall either be present in court or available by telephone to his/her attorney at the time of this conference. Counsel shall attend the conference fully apprised of any scheduling conflicts existing for themselves and their clients.

8.5 Discovery Conference

- (a)** When an equitable distribution case has been scheduled for 2 pretrial conferences without resolution, the court shall schedule the case for a discovery conference.
- (b)** A judge may schedule a case for a discovery conference at any time during the pendency of an action. Attorneys may also request that a case be scheduled for a discovery conference at any time during the pendency of an action.
- (c)** At the discovery conference, attorneys and/or parties shall be prepared to report on the list of property to be considered at trial; stipulations as to classification, valuation, or distribution of property; the need for appraisals of any property; needed documents; and any other issues or motions that the judge may need to resolve. If a party appears through counsel, it will be presumed that the attorney is authorized to stipulate on behalf of the party.
- (d)** The Court shall prepare a discovery conference order setting out stipulations; appraisals to be done, by which party, and by when; documents to be provided, by which party, and by when; motions to be heard and when; and subsequent motion, conference or trial dates.

8.6 Judicial Pre-Trial Conference

The Judicial Pre-Trial Conference shall be conducted not more than fourteen (14) days before the trial and in accordance with the Rules of Civil Procedure. In peremptorily set cases, the judicial pre-trial conference shall be scheduled on the assigned judge's last calendar immediately preceding the week of the peremptory date. The Court shall rule on any matters reasonably necessary to effect a fair and prompt disposition of the case in the interest of justice. All counsel and parties shall be present at the final pre-trial conference. Out of state parties may be present by telephone. The final pre-trial order shall be completed before or at the final pre-trial conference. Sanctions may be imposed by the court for failure to cooperate in the discovery process and preparation of the final pre-trial order.

8.7 Pretrial Order

- (a)** Every equitable distribution case shall have a completed pretrial order prior to trial signed by the parties and counsel. (CCLF – FC – 013.)
- (b)** The pretrial order will set out the date of marriage, the date of separation, the date of divorce or a statement that the parties are not yet divorced, the name and birth date of any children born to or adopted by the parties and the status of the custody of any minor children.
- (c)** The pretrial order will contain the following schedules:
 - Schedule A – all property, including debts, stipulated to be marital with each party's contention as to value
 - Schedule B – all property, including debts, stipulated to be separate with each party's contention as to value
 - Schedule C – all property, including debts, stipulated to be divisible with each party's contention as to value
 - Schedule D – all property, including debts, contested as to classification with each party's contention as to value
 - Schedule E – plaintiff's contentions, if any, supporting an unequal division of property
 - Schedule F - defendant's contentions, if any, supporting an unequal division of property

8.8 Trial

Trial dates that are assigned by the Court are firm dates that shall not be continued except for exigent circumstances that could not have been foreseen and managed at the time of the initial pre-trial conference.

8.9 Alternate Dispute Resolution (ADR)

All Equitable Distribution actions are ordered to mandatory alternate dispute resolution procedures as outlined below. These rules are designed to focus the parties' attention on settlement rather than trial preparation and to provide a structured opportunity for settlement negotiations to take place.

Nothing in these rules is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time before or after those ordered by the court pursuant to these Rules.

All provisions of the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases are incorporated into these rules.

All cases involving two or more attorneys shall be scheduled initially by the mediation coordinator for neutral evaluation. A neutral evaluator shall be assigned from a list maintained by the coordinator. The neutral evaluator shall be compensated in the same manner as a mediator and shall file a report with the mediation coordinator following the proceeding.

Neutral evaluators shall have at least five years experience as an attorney and shall be familiar with the Cumberland County Domestic Courts.

All cases not resolved following neutral evaluation may be scheduled for formal mediation pursuant to the Supreme Court rules.

All cases reported as impasse and not scheduled for trial within 30 days shall be scheduled for a pretrial conference before the assigned judge to determine any discovery issues, date for trial and preparation of a pretrial order.

All cases involving one pro se party shall be scheduled by the mediation coordinator for a judicial settlement conference before a judge who is not assigned to the case.

RULE 9. CHILD SUPPORT CASES

- 9.1** Any Domestic Relations cases filed wherein child support is sought either by complaint, or by counterclaim shall be set for hearing on temporary child support on the first temporary child support date at least 2 weeks after filing.

A notice of the temporary child support hearing shall be indicated on the *Notice of Hearing (Emergency/Temporary Hearings)* and shall be attached to the complaint before service. A copy of the notice shall be provided to the assigned Domestic Case Coordinator. *[The Notice of Hearing (Emergency/Temporary Hearings) shall be on form CCLF-FC-002 as prepared and distributed by the Family Court Administrator's Office.]*

It is imperative that all Cover Sheets (AOC-CV-640 and 645) accurately reflect the child support issue, an address for the opposing party and both parties' social security number. (See Rule 1.8 above concerning completing and filing of all cover sheets.)

- 9.2** At the temporary child support hearing, an order shall be entered establishing some reasonable amount of child support to be paid by the non-custodial or supporting parent pending the final disposition of matters of custody and child support. Each party should bring income verification to the hearing. The hearing shall be conducted by affidavit and by argument of counsel. The order shall be based on the North Carolina Child Support Guidelines but oral motions for deviations may be considered.
- 9.3** A copy of all orders dealing with ongoing support or support arrearage shall be filed with the Domestic Division of the Office of the Clerk of Superior Court along with a Child Support Cover Sheet (pink sheet) containing required information about the parties.
- 9.4** In those cases where service has not been perfected, the case will be continued to a date certain at the call of the calendar. Counsel shall notify any unrepresented parties of the continuance date.
- 9.5** Continuances involving child support hearings will only be granted at the call of the calendar and then always to a date certain. Moving counsel shall notify any unrepresented parties of the continuance date, if such *pro se* party is not present in court when the continuance is granted.

RULE 10. CHILD CUSTODY

- 10.1** In every action where it is determined that a contested issue as to custody and/or visitation exists, the Family Court Administrator/Custody Mediation Office shall schedule the case for mediation of the contested custody and/or visitation claims prior to calendaring before the Court.
- 10.2** Each case, which is subject to Custody/Visitation Mediation, shall also be subject to a mandatory Parenting Education program. The Parenting Education program shall be developed locally by the Family Court Administrator and shall be incorporated into the Custody Mediation Orientation session. There shall be no cost for the Parenting Education program; however, attendance shall be mandatory and such shall be enforced in accordance with Rule 10.7.
- 10.3** A case shall be ready to set for mediation when the Family Court Administrator has determined that at least one of the following conditions exists;
- (a.)** A custody and/or visitation case has been on file for thirty (30) days or more with no consent order or judgment of record;
 - (b.)** Prior to the Court's intervention, the parties or their counsel have consented to an earlier mediation date and have contacted the Custody Mediation Office to schedule the matter for the next available custody mediation orientation session;
 - (c.)** Thirty (30) days have passed since the expiration of the time period in Rule 10.3(a), the Family Court Administrator has failed to set the case, and either party has contacted the assigned Domestic Case Coordinator to schedule the case for the next available custody orientation session.
- 10.4** When the Family Court Administrator has determined a case ready for mediation, she/he shall in conjunction with the custody mediation office, notify the attorneys of record and the parties of the date, time, and place the parties are to appear for initial mediation orientation and parent education session.
- 10.5** Attorneys shall reinforce with their clients that attendance at the mediation orientation session, parent education session and the individual mediation sessions is mandatory.
- 10.6 Notice**
- (a.)** Attached to each Parent Education and Custody Mediation Orientation Notice shall be *The Goals and Benefits of Child Custody/Visitation*

Mediation form (CCLF –FC- 009). In each case, the Custody Mediation Office shall distribute a copy of the notice and form to each counsel of record/unrepresented party.

- (b.) In each case, counsel shall provide to their respective party a copy of the Notice and form identified above.
- (c.) Each Domestic Civil Action Cover Sheet (AOC – CV – 750) filed with the Court shall contain the address of all counsel/unrepresented party.
- (d.) After receipt of the Parent Education and Custody Mediation Orientation Notice, all further communications regarding mediation scheduling shall be directed to the Custody Mediation office.

10.7 Sanctions

Notice from the Family Court Administrator/Custody Mediation Office instructing the parties to appear for mediation shall have the same force and effect as an order of the Chief District Court Judge. Parties who fail to comply with this notice shall be subject to the contempt powers of the Court.

10.8 Motions to Modify Prior Order

- (a.) Motions to modify a prior custody and/or visitation Court order shall also be scheduled for mediation prior to any hearing before the Court. Counsel shall contact the Custody Mediation Office at the time of filing the motion to schedule the mediation orientation session or mediation session.
- (b.) If the parties have already attended a mediation orientation session for initial agreement, the case will be directly assigned to a mediation session.
- (c.) The Custody Mediation Office shall be responsible for providing notice of hearing to all parties pursuant to Rule 10.4 above.
- (d.) Motions referred directly by the Court shall be scheduled for mediation by the Custody Mediation Office.

10.9 Exemptions

- (a.) For good cause, on the motion of either party or on the Court's own motion, the Court may waive the mandatory setting of a contested custody and/or visitation matter for mediation. Good cause is defined under North Carolina General Statute 50-13.1(c).
- (b.) Counsel desiring an exemption shall complete and file a Motion to *Exempt Child Custody/Visitation Mediation* form with the Custody

Mediation Office for approval by the Court. Requests to exempt based on distance shall include the physical location of each party. Exemptions from mediation are discretionary with the court. Exemptions from mediation do not exempt one or more parties from attendance of the Parenting Education Session. Parties who receive a mediation exemption based on distance must contact the Family Court Administrator for referral to an approved parenting education program. (Motions shall be on form CCLF-FC-010)

- (c.) The Custody Mediation Office shall monitor the number of contested custody and/or visitation case filings in relation to mediator staffing levels. In the mediator's discretion and in accordance with the policies of the Family Court Administrator's office, a contested custody case or post decree motion may bypass mediation and be scheduled directly for hearing before the Court. This action shall only be taken when the next regularly available mediation session would result in undue delay to the parties.
- (d.) Mere notification that the parties have reached agreement is not sufficient to exempt any party from attendance at a scheduled orientation session, parenting education session, or mediation session. The assigned Domestic Case Coordinator or Custody Mediation Office must have actual receipt of a consent order, memorandum of judgment, or voluntary dismissal in order for a party to be excused from attendance at a scheduled orientation session, parenting education session, or mediation session.

10.10 Privileged Communications

- (a.) All verbal or written communications from either or both the parties to the mediator, or between the parties in the presence of the mediator, made in a proceeding pursuant to these Rules are absolutely privileged and inadmissible in Court.
- (b.) Neither the mediator nor any party or other person involved in mediation under these Rules shall be called to testify as to communications made during or in furtherance of such mediation sessions, provided there is no privilege as to communications made in furtherance of a crime or fraud.
- (c.) No party shall bring into a mediation session any electronic device capable of audio, video, or still picture recording or transmitting. No audio or video recording of a mediation session shall be made. No transmission of any portion of a mediation session shall occur.

Rule 10A CHILD CUSTODY EXPERT

10A.1 Definition and Role of Child Custody Expert (CCE)

Pursuant to Rule 706 of the North Carolina Evidence Code, a CCE may be appointed by the Court to investigate and report on issues regarding a child's best interests in a contested custody case. The CCE acts as an investigator and may make recommendations to the parties and to the Court regarding any issues affecting the child's welfare.

10A .2 Procedure to Appoint

Upon written motion, notice and hearing, a CCE will be appointed to investigate issues related to a child's best interests in a contested case. A Motion shall clearly state the basis for the request of a CCE in the court action. A CCE may also be appointed on the Court's own motion. (CCLF – FC- 012.)

An Order setting out the duties and requirements of the CCE shall be entered at the time of the appointment of the CCE, preferably in open court with both parties present. The Order shall authorize the CCE to speak with the child's teachers, health care providers, mental health providers or other individuals who may have confidentiality requirements. (CCLF – FC – 011.)

10A.3 Qualified Individuals

A CCE shall be chosen from a list maintained by Cumberland County Family Court. To be included on this list, the CCE must possess the following and produce verification in writing upon request:

- (a.)** Education: Juris Doctor degree, Masters or Ph.D degree in psychology, social work, counseling and relevant training or experience; and
- (b.)** Training/Experience: no less than 5 years of post graduate work-related experience.

10A.4 Payment of CCE

Compensation of the CCE shall be determined and outlined in the order at the time of the appointment of the CCE. The standard fee per hour may be

allocated between the parties in proportion to their income or divided equally, whichever the Judge determines to be fair and equitable. The CCE should provide regular detailed bills to the parties to avoid fee disputes and delay in the court action. The appointment order should state any initial deposits to be paid to the CCE, to include amounts, dates to pay and the party responsible for the payments. The CCE shall not begin his or her duties until the appropriate deposits have been paid AND SHALL NOT EXCEED THE NUMBER OF HOURS AUTHORIZED BY THE COURT IN ITS ORDER WITHOUT PRIOR APPROVAL OF THE COURT.

10A.5 Scope of CCE

The CCE may at any time, request a “court review” of the case upon proper notice to the parties. There shall be no ex parte communications between the CCE and the presiding Judge. The CCE may file a Motion requesting appointment of any additional experts and a Motion for payment of fees. The CCE may contact or meet with a parent individually without the consent of the parent’s attorney. A CCE may communicate with one attorney without the express consent of the other attorney on administrative matters but communication on substantive matters should involve both attorneys. Any communication between the CCE and another court appointed expert must be simultaneously communicated to the parties’ attorneys including any written documentation that the CCE provides to the expert.

The CCE may be authorized to speak to the teachers, counselors, therapists, medical providers for the minor child, as well as other relevant witnesses in his or her investigation of the best interests of the minor child. The order appointing the CCE should clearly state the scope of the CCE’s authority to investigate and the duties of the CCE in each particular case.

10A.6 Recommendations and Written Reports by a CCE

A written CCE report is required in all cases, within ninety (90) days of appointment unless specifically waived by the Court. The written report is to be provided to the attorneys of record of all parties, or to a pro se party, a minimum of two (2) weeks prior to trial. The CCE shall disclose all sources of information provided. No report will be submitted to the presiding Judge pretrial without the consent of the parties’ attorneys. Per Rule 706, the CCE may be called to testify by the Court or any party and shall be subject to cross examination.

10A.7 Termination of CCE Duties

Upon completion of duties or other just cause, the CCE shall file a Motion requesting an Order of release as CCE in the case to confirm the cessation of the CCE's obligations.

RULE 11. EMERGENCY MATTERS/TEMPORARY ORDERS

- 11.1** *Requests for ex parte* temporary custody orders, domestic violence protective orders, or temporary restraining orders, should be directed to a District Court Judge for issuance.
- 11.2** Requests for other emergency relief should be directed to the assigned District Court Judge.
- 11.3** In all cases wherein the moving party knows the other litigant to be represented by counsel, reasonable notice shall be given to opposing counsel who shall be given the opportunity to be present at the time of making the motion before the Court. Reasonable notice shall be presumed to be oral notice given at least two (2) hours prior to appearance before the Court for the purpose of making the motion. At all times practicable, and unless emergency circumstances warrant otherwise, reasonable notice of the motion shall also be given to an opposing party not represented by counsel.
- 11.4** Failure of moving counsel to notify opposing counsel, where known, may result in an automatic denial of the relief sought upon objection of opposing counsel or party and may result in the Order being set aside to give the opposing counsel the opportunity to be heard.
- 11.5** An emergency/temporary hearing pursuant to this section shall be conducted in chambers upon arguments of counsel.
- 11.6** If an ex parte temporary/emergency order is executed by the Judge, a Return Hearing shall be scheduled pursuant to a schedule promulgated by the Family Court Administrator. Moving counsel shall receive a date and time certain for the Return Hearing from the schedule published by the Family

Court Administrator or by contacting the assigned Domestic Case Coordinator.

(a) For temporary/emergency orders issued prior to the service of the complaint, the date and time certain for hearing shall be cited in the order and the *Notice of Hearing (Emergency/Temporary Hearings)* form (CCLF-FC-002) and shall be filed with the Family Court Office and upon opposing counsel/unrepresented party.

(b) For temporary/emergency orders issued after service of the complaint, the date and time certain for hearing shall be cited in the order and the *Domestic Case Notice of Hearing Calendar Request* form (CCLF-FC-003) and shall be filed with the Family Court Office and upon opposing counsel/unrepresented party.

11.7 The assigned Domestic Case Coordinator shall receive a copy of the *Notice of Hearing (Emergency/Temporary Hearings)* form (CCLF-FC-002) or the *Domestic Case Notice of Hearing Calendar Request* form (CCLF-FC-003). Failure to provide a copy of the notice to the assigned Domestic Case Coordinator will result in the matter not being calendared or heard.

11.8 Returns of temporary custody orders will be scheduled for hearing within ten (10) days of issuance of any ex parte temporary custody order. Hearings on requests for temporary custody will be heard pursuant to a schedule promulgated by the Chief District Court Judge. Hearings on returns of or for temporary custody will be heard on affidavits and arguments without live testimony, unless the presiding judge elects to hear testimony. Affidavits are limited to five (5) for each party unless the presiding judge agrees to accept additional affidavits.

11.9 Complaints or answers containing claims for Post Separation Support (hereafter "PSS") shall be scheduled at the first PSS date at least four (4) weeks after filing and pursuant to a schedule promulgated by the Chief District Court Judge. A notice of the PSS hearing shall be on the *Notice of Hearing (Emergency/Temporary Hearings)* form (CCFC-FC-002), and shall be attached to the complaint before service and a copy provided to the assigned Domestic Case Coordinator. Hearings on PSS shall be heard on affidavits presented to the court on the *Post Separation Support Affidavit* and on arguments without live testimony unless the presiding judge elects to hear testimony. *[The Post Separation Support Affidavit shall be on form CCLF-FC-006 as prepared and distributed by the Family Court Administrator's Office.]*

11.10 PSS affidavits shall be exchanged between counsel at least 24 hours prior to the scheduled hearing. Exchanged affidavits should be accurate but need not be signed by a party and may be updated and signed prior to the hearing.

Any updates must be immediately provided to opposing counsel. A copy of a current pay statement should be attached.

- 11.11** The court shall hold no temporary return order hearing, unless it is calendared through the assigned Domestic Case Coordinator.

RULE 12. MOTIONS

- 12.1** All motions (*except Motions to Withdraw*) shall be scheduled for hearing through the Office of the Family Court Administrator prior to the assigned trial date. (See Rule 12.6 below relating to Motions to Withdraw.)
- 12.2** Prior to scheduling a motion, counsel/ pro se party shall contact the assigned Domestic Case Coordinator, who will provide date and time certain for hearing. The courtroom location, date and time certain should be cited in the *Domestic Case Notice of Hearing Calendar Request* form, filed with the Family Court Office and served upon opposing counsel/ pro se party with a copy provided to the assigned Domestic Case Coordinator. [*Domestic Case Notice of Hearing Calendar Request shall be on form CCLF-FC-003 as prepared and distributed by the Family Court Administrator's Office.*]
- 12.3** Failure of moving counsel to notify opposing counsel or party may result in an automatic denial of the relief sought upon objection of opposing counsel or party.
- 12.4** The assigned Domestic Case Coordinator shall be provided a copy of the *Domestic Case Notice of Hearing Calendar Request* form (CCLF-FC-003) Failure to provide a copy of the notice to the assigned Domestic Case Coordinator will result in the matter not being calendared or heard.
- 12.5** Motions not reached or continued from Domestic Relations Calendars must be recalendared by moving counsel through the assigned Domestic Case Coordinator in accordance with Rule 12.2 above. When a motion has been continued in open court to a specific date, counsel shall provide notice of the new date to any unrepresented party.
- 12.6** All motions to withdraw shall be scheduled for hearing pursuant to a schedule promulgated by the Chief District Court Judge, and in advance of any assigned trial date.

- 12.7 No motion shall be double calendared or recalendared until such time that it is continued or not reached by the Court.

RULE 13. PEREMPTORY SETTINGS

- 13.1 Requests for peremptory settings for cases involving persons who must travel long distances, have numerous expert witnesses or where other extraordinary reasons for such a request exist, must be made to the Family Court Administrator or Chief District Court Judge. A peremptory setting shall be granted only for good cause and compelling reasons.
- 13.2 Requests for a peremptory setting must be in writing, in letter or motion form, and a copy thereof must be served upon all counsel/pro se party(ies) and a copy provided to the assigned Domestic Case Manager. Motions for peremptory setting shall set out the issues to be heard and indicate with specificity the reasons for the request. Requests for peremptory settings may be ruled upon by the court without hearing and notice provided to the parties by the Family Court Administrator. The Judge assigned may set a case peremptorily on his/her own motion.
- 13.3 Cases scheduled peremptorily shall be calendared for a pretrial conference on the assigned judge's last calendar immediately preceding the week of the peremptory date. All counsel and parties shall be present at the final pre-trial conference. If a party appears through counsel, it will be presumed that the attorney is authorized to stipulate on behalf of the party. Out of state parties may be present by telephone. The final pre-trial order shall be completed before or at the final pre-trial conference. Sanctions may be imposed by the court for failure to cooperate in the discovery process and preparation of the final pre-trial order.

RULE 14. MOTIONS FOR CONTINUANCE

- 14.1 Any requests for continuance shall be made to the Family Court Administrator prior to the printing of the calendar by written motion on a *Domestic Case Motion For Continuance* form and specify with particularity the reason(s) for continuance. [*The Domestic Case Motion For Continuance shall be on form*

CCLF-FC-007 as prepared and distributed by the Family Court Administrator's Office, or be in letter form which essentially provides the same information.] Motions shall be presented;

- (a) As soon as counsel/unrepresented parties become aware of the reason for the motion for continuance.
- (b) Any requests made after the printing of the calendar will not be heard, except for an exigent circumstance that could not have been foreseen.

Moving counsel/party shall notify any unrepresented parties of any such emergency continuance request that is allowed in open court, at the assigned session or the call of the calendar.

- 14.2 Opposing counsel/unrepresented parties must be notified of the motion for continuance prior to the delivery of the request to the Family Court Administrator. The manner and date of notice to opposing counsel/unrepresented parties shall be indicated on the motion.
- 14.3 Opposing counsel/unrepresented parties shall thereafter have three (3) working days to file an objection to the motion for continuance with the Family Court Administrator. All objections shall be made by written motion on the *Domestic Case Objection to Request for Continuance* form setting forth the particular reasons for objection and served on opposing counsel/unrepresented parties. If a response is not received from the opposing counsel/parties within three (3) working days of the receipt of the motion to continue, it will be assumed that the opposing counsel/ parties do not object. *[The Domestic Case Objection to Request for Continuance shall be on form CCLF-FC-008 as prepared and distributed by the Family Court Administrator's Office, or in letter form which essentially provides the same information].*
- 14.4 Motions for continuance pursuant to Rules 14.1(a) shall be ruled upon by the Family Court Administrator within five (5) working days.
- 14.5 Motions for continuance pursuant to Rule 14.1(b) may be ruled upon by the Family Court Administrator provided all provisions of Rule 14.2 and 14.3 above are met, and all parties may be notified of the ruling prior to the scheduled court session.
- 14.6 Requests for continuance will only be granted when compelling reasons are presented which affect the fundamental fairness of the trial and it is clearly in the interest of justice. In addition, consideration will be given to the following factors:
 - ◆ Age of the case;
 - ◆ Status of the trial calendar for the session;
 - ◆ The order in which the case appears on the calendar, to include peremptory setting status;

- ◆ Number of previous continuances;
 - ◆ The extent to which counsel had input into the scheduling of the trial date;
 - ◆ The diligence of counsel in promptly filing the continuance motion;
 - ◆ The reason for continuance and length of the continuance requested;
 - ◆ Consent or opposition by other counsel/parties to the continuance motion;
 - ◆ Present or future inconvenience or unavailability of witnesses/parties;
- 14.7** Reasons that shall not be considered valid bases for allowing a continuance motion include:
- ◆ First time scheduling of the case for trial;
 - ◆ Failure to calendar motions for hearing ;
 - ◆ Potential conflicting scheduling of other trials in other courts.
- 14.8** Should an objection arise, any failure on the part of the moving party to comply with the rules concerning written motion and notice to opposing counsel/ unrepresented parties shall result in the voiding of any continuance granted.
- 14.9** The Family Court Administrator, under the supervision of the Chief District Court Judge and/or the assigned Domestic Judge, has sole authority to continue cases prior to the scheduled trial session.
- 14.10** Appeals from the decision of the Family Court Administrator shall be directed to the assigned Domestic Judge.
- 14.11** When a case has been continued or not reached during a trial session, the case shall be rescheduled by the request of either party in a manner consistent with the provisions set forth in Rules 12.2 through 12.4 above; or, by order of the court.

RULE 15. SETTLEMENTS

- 15.1** Pursuant to Rule 2(g), General Rules of Practice for Superior and District Courts, when a case is settled, all attorneys of record must notify the assigned Domestic Case Coordinator or, where appropriate, the Custody Mediation Office within twenty-four (24) hours of the settlement and advise who will prepare and present the judgment.
- 15.2** Cases will not be removed from the trial calendar or mediation calendar until such time that a copy of a file-stamped consent order, memorandum of

judgment, or dismissal is provided to the assigned Domestic Case Coordinator or Custody Mediator.

- 15.3** Any time that a case is settled at a scheduled court hearing and all parties and counsel are present, the settlement should be reduced to writing in a Memorandum of Judgment (MOJ) or Consent order and signed by all parties and the court. Oral stipulations are disfavored since they do not finally resolve the issues. If a party is not present and counsel has been given express authority to consent to a settlement, that authority should be noted on the signature line of the MOJ.

RULE 16. DELINQUENT ORDERS OR JUDGMENTS

- 16.1** Cases or motions, which are reported as settled shall be assigned a deadline for submission of the consent order, memorandum of judgment, or dismissal. This deadline shall be not less than four weeks from the date settlement is reported.
- 16.2** Orders entered by a presiding judge shall be assigned a deadline for submission of the order of judgment. This deadline shall be not less than four weeks from the Monday of the session in which the order is entered.
- 16.3** All orders shall be prepared on plain paper. In order to properly identify responsibility for delinquent orders, the following language shall be required text at the end of every order filed with the Court:

Counsel certifies that a copy of this order was provided to opposing counsel for review on _____ 20__.

Plaintiff/Defendant's Counsel

Read and approved as to form:

Plaintiff/Defendant's Counsel

- 16.4** Child Custody orders shall contain facts upon which the Court's jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act is based. Additionally, the order shall contain a conclusion of law setting out the jurisdictional basis for the Court's entry of an order of child custody.
- 16.5** All orders shall include a caption indicating the nature of the order. For example, Equitable Distribution and Dismissal of Alimony, Permanent Child Custody and Temporary Child Support, Interim Equitable Distribution and Post Separation Support.
- 16.6** Orders involving *pro se* parties or orders which have been denoted as read and approved by opposing counsel shall be placed in the appropriate Judge's box (*located in the District Court Judges' Office*) for signature.
- 16.7** Orders, which are not agreed upon between counsel, shall be brought to the attention of the appropriate judge for resolution prior to the date on which the order or judgment is due. Copies of the proposed orders or other documentation should be provided to the judge for review.
- 16.8** Orders in which opposing counsel have made no response within ten days of receipt shall be placed in the appropriate Judge's box (*located in the District Court Judges' Office*) for signature.
- 16.9** The Family Court Administrator will identify those cases that are delinquent pursuant to Rule 16, and provide notice to responsible counsel for each such delinquency. Non-compliance by counsel with any section of Rule 16 shall result in the imposition of any and all sanctions deemed appropriate and allowed by law, including monetary sanctions, as determined by the Chief District Court Judge or the presiding judge.

RULE 17. SANCTIONS

Failure to comply with any section of these rules shall subject an action to dismissal or other sanctions allowed by law as deemed appropriate at the discretion of the Chief District Court Judge or presiding judge.

RULE 18. FORMS

Local forms for use by counsel/unrepresented parties in accordance with these rules are attached hereto and are subject to change as legislation and/or policy dictates.

THESE RULES SUPERSEDE ALL PREVIOUS CALENDAR RULES FOR DOMESTIC RELATIONS CASES IN THE DISTRICT COURT OF CUMBERLAND COUNTY, TWELFTH JUDICIAL DISTRICT. THEY SHALL BECOME EFFECTIVE FOR ALL ACTIONS PENDING ON AND ALL CASES OR MOTIONS FILED ON OR AFTER July 1, 2014.

THIS THE 31th DAY OF MARCH, 2014.

**A. ELIZABETH KEEVER
CHIEF DISTRICT COURT JUDGE**