

**16B JUDICIAL DISTRICT
DISTRICT COURT DIVISION**

**LOCAL RULES IMPLEMENTING THE CUSTODY
AND VISITATION MEDIATION PROGRAM**

**Adopted November 26, 2007
Effective December 1, 2007**

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JUDICIAL DISTRICT 16B

The Custody and Visitation Mediation Program for Judicial District 16B is established under the following North Carolina General Statutes: §7A-494, §7A-495, and §50-13.1.

1. PURPOSE AND GOALS OF THE PROGRAM:

The purpose of the Custody and Mediation Program is to provide the services of a skilled mediator to parties that are involved in a custody and visitation dispute. All mediation services shall be provided by a mediator trained in facilitating dispute resolution who has been employed by the Chief District Court Judge to mediate all custody and visitation cases in the district. The goal of the program is the reduction of stress and anxiety experienced by children and parents in separation and divorce by furnishing an alternative way for the parties to resolve these disputes. The mediator helps the parties to continue parenting their children despite the separation and to begin an educational process which will help the parties recognize and meet the changing needs of their children. Successful mediation will help the parties reach a parenting agreement and reduce it to writing. Furthermore, the process should assist the parties to develop skills enabling them to resolve future problems without recourse to the courts.

2. SCOPE OF RULES:

For the purposes of these rules, the term “custody action” shall include all actions, complaints, counterclaims, and motions in the cause concerning the legal or physical custody of, or visitation with, a child. These rules apply equally to motions to modify prior custody or visitation orders or parenting agreements approved by the court. Motions for contempt related to custody or visitation issues are not “custody actions” within the meaning of these rules. Cases originating as domestic violence cases under N.C.G.S. Chapter 50B are excluded from the application of these rules.

3. MANDATORY REFERRAL TO MEDIATION:

All custody actions filed on or after the effective date of these rules shall be ordered to mediation prior to trial or after a temporary order has been issued by the court, unless the Chief Judge waives mediation. Any custody action filed prior to the effective date of these rules may be referred to mediation upon the consent of the parties or by order of the court.

4. PROCEDURES FOR REFERRAL TO MEDIATION:

- (A) Unless custody mediation has been waived by the Chief Judge, any party or attorney filing a custody action must complete a Cover Sheet for Custody Mediation and furnish it to the Clerk of Court at the time of filing that identifies the case as a custody or visitation action. The Clerk of Court shall

provide a copy of the cover sheet to the custody mediator. A copy of the cover sheet form to be utilized for this purpose is attached to these rules.

- (B) Upon receipt of the cover sheet, the custody mediator shall prepare an Order on Child Custody Mediation and submit the Order for the signature of the Chief Judge. The Order on Custody Mediation will notify the parties of the date, time and location of the mediation group orientation session. Unless waived by both sides, the Order shall be served at least ten days prior to the mediation group orientation session. A written Stipulation for Expedited Mediation, signed by both parties or by their attorneys, shall waive the ten day notice period.
- (C) At the discretion of the presiding judge, a case may be ordered to mediation from the bench.

5. WAIVER OF MEDIATION:

In some instances, mediation may not be appropriate or in the best interest of the parties or their children. In these instances a party may file a motion to waive mediation of a custody action for good cause. Good cause includes, but is not limited to, the factors listed in N.C.G.S. §50-13.1(c): a showing of undue hardship to a party, an agreement between the parties for voluntary mediation, allegations of abuse or neglect of the minor child, of alcoholism, of drug abuse, of spousal abuse, or of severe psychological, psychiatric, or emotional problems.

Where the parties reside more than fifty miles from the court, such distance may be considered good cause in the discretion of the Chief Judge. If the party residing outside the area agrees, mediation may still proceed.

A party seeking a waiver shall complete and submit Form AOC-CV-632 to the Chief Judge and serve a copy on the opposing party or attorney at least five days prior to the date of the group orientation session or the first private mediation session.

The Chief Judge may exempt parties from mediation on the court's own motion or upon the determination of the mediator that the action is not appropriate for mediation.

6. NOTICE OF EXEMPTION, SETTLEMENT OR DISMISSAL:

The parties or their attorneys shall notify the custody mediator of any change in the status of a pending case including a signed consent order, voluntary dismissal, or exemption. The clerk will place a copy of any such notices filed with the Clerk in the custody mediator's box.

7. DISCOVERY STAYED DURING MEDIATION:

Parties may file motions for custody evaluations, substance abuse assessments or for discovery compliance at any time. Motions shall not be scheduled for hearing however and discovery shall be stayed until after custody mediation is completed or

waived. Discovery concerning other issues between the parties not related to custody and visitation is not stayed by these rules. The parties may proceed to engage in discovery and motions practice for other issues such as paternity, child support, divorce, spousal support, and equitable distribution. Cases involving genuine issues of paternity of children should not be mediated until the issue of paternity has been resolved.

8. THE MEDIATION PROCESS:

All parties are required to attend the group orientation session and at least one private mediation session before withdrawing from the mediation process.

(A) Group Orientation Sessions

Prior to private mediation sessions, a group orientation session shall be held at which the goals and procedures of the mediation process are explained to the parties of a number of pending actions as a group. Group orientation sessions will be held in the Robeson County Courthouse in Lumberton, N.C. on a regular schedule that shall be maintained in the custody mediator's office. Once parties have attended a group orientation session they are not required to return to orientation if their case ever returns to custody mediation at any future time.

(B) Scheduling Private Mediation Sessions

The custody mediator and the parties will schedule their private mediation session at the conclusion of the group orientation session. The required private mediation session should occur within two weeks of group orientation or as soon after the orientation session as possible.

(C) Private Mediation Sessions

Private mediation sessions last approximately two hours. It is not uncommon for parenting parties to spend more than one mediation session to fully resolve the issues concerning parenting the children. Each case is unique. On average, parties require one to three sessions to complete the mediation process.

The mediator facilitates communication and problem-solving, which assists the parties in focusing on the needs of their children, the need to reorganize the family and use their strengths, and the need to maintain continuity of relationships and stability in the child's life. The mediator will help the parties to explore the options available to them that will best accomplish these goals.

The mediator does not decide issues but encourages parents to assume responsibility for parenting decisions. Parents are encouraged, but not required, to reach an agreement in mediation. The mediator has a responsibility to solicit from the parents the issues that are significant to them and then to facilitate the mediation of those issues. The mediator shall mediate issues all associated with child custody and visitation. The mediator shall not mediate issues not associated with custody and visitation such as child support, spousal support and equitable distribution.

(D) Who Attends Private Mediation Sessions

Only the parties named in the action may attend the private mediation sessions. Attorneys and other interested parties generally are not permitted to attend the private mediation sessions. Attorneys and other interested parties may attend only with the consent of both of the parties and as permitted in the discretion of the mediator. All participants in mediation are bound by the confidentiality requirement set out below.

(E) Mediation Resolutions and Outcomes

As a result of mediation, the parties may enter into a full parenting agreement, a partial parenting agreement, a temporary parenting agreement, or fail to reach agreement. The full parenting agreement resolves all issues surrounding custody and visitation that have been addressed and agreed to by the parties. The partial parenting agreement will state those issues that have been resolved and those that still remain open to litigation. The temporary parenting agreement resolves issues surrounding custody and visitation but contemplates that the parties will return to mediation at a designated time to revisit the terms of the agreement. Temporary agreements might be appropriate in the following situations: cases involving infants and very young children; cases where one parent has had little recent contact with a child and a gradual re-introduction is best for children; cases involving changes of custody for teenagers and the parties want to make sure the new arrangement will work; and cases involving parents moving or relocating in the near future and the parties desire one plan prior to such a move and then to return to mediation if and when a move actually occurs.

Both the Chief Judge and the attorneys for the parties will be notified of the disposition of each mediated case no later than the end of the next business day, although information discussed during the mediation sessions remains confidential. The mediator maintains a neutral stance and at no time will testify on behalf of either party. The mediator shall draft written parenting agreements in all cases in which a full or partial agreement has been reached by the parties.

When mediation does not result in a parenting agreement, the custody mediator shall send a notice of that fact to the attorneys of record and to unrepresented parties. Thereafter, the custody mediator shall submit an Order to Calendar Custody or Visitation Dispute AOC-CV-914 to the Chief Judge.

9. REVIEW OF AGREEMENTS WITH COUNSEL:

After the conclusion of private mediation, the parties shall have ten business days after the receipt of the written parenting agreement from the custody mediator to consider the agreement before signing the parenting agreement. The custody mediator shall furnish a copy of the parenting agreement for review to each party and to any

attorneys of record. The court strongly recommends that parties review proposed agreements with attorneys before signing the agreements.

10. SIGNING OF PARENTING AGREEMENTS:

Parenting agreements shall be signed at the custody mediator's office. The custody mediator shall schedule appointments for the parties to return to the mediation office in order to sign parenting agreements. Parents shall not be required to appear and sign the agreements at the same time but may be required to sign on the same day. Signed parenting agreements will be file-stamped in the office of the Clerk of Court and the mediator shall furnish a file-stamped copy to each party and to any attorneys of record.

11. AGREEMENTS BECOME ORDERS OF THE COURT:

Signed parenting agreements shall be submitted by the custody mediator to the Chief Judge for review and signature together with an Order Approving Parenting Agreement (AOC-CV-631). Once approved and signed by the Chief Judge such agreements become custody orders within the meaning of N.C.G.S. §14-320.1, §110-139.1, and in other sections where that term may appear in the General Statutes.

12. TIME STANDARDS:

The custody mediation process should be completed within ninety days from the date of filing. The parties shall attend the group orientation session as soon as possible but in any event no later than forty-five days of filing. Any custody mediation case that remains open thirty days after the completion of the final mediation session must be reported to the Chief Judge as an unresolved case. If the parties or their attorneys believe that there are valid reasons to retain the case as an open mediation case then such reasons must be stated in writing to the custody mediator who may elect to retain the case for mediation. Any custody mediation case that remains open forty-five days after the final mediation session must be reported to the Chief Judge as an unresolved case and may only remain in mediation in the discretion of the Chief Judge.

13. ENFORCEMENT

Custody orders entered by the court as a result of mediation shall be enforced in the same manner as other orders of the court. Such orders are not enforced by the custody mediator. However, if disagreements or other issues arise, the parties may agree to return to mediation. Often parties may agree to this process in the parenting agreement.

The parties to any custody action must attend and participate in good faith in a group orientation session and at least one private mediation session to fulfill their obligation to participate in custody mediation. Any party who fails to attend and participate in a scheduled session as required by the court shall be subject to the contempt power of the court and possible sanctions as allowed by law in cases of contempt.

14. CONFIDENTIALITY

Mediation proceedings shall be conducted in private and shall be confidential. Except as provided in N.C.G.S. §50-13.1, all verbal or written communications from the parties to the mediator or between the parties in the presence of the mediator are absolutely privileged and inadmissible in court. Neither the mediator nor any party involved in mediation under these Rules shall be called to testify concerning any communications made during or in the furtherance of such mediation sessions. However, there shall be no privilege of confidentiality or issue of incompetence as to communications made in furtherance of a crime or fraud.

15. MEDIATOR MAY TERMINATE PROCESS

In the event that the mediator determines that mediation is inappropriate or determines that there are safety issues which cannot be addressed appropriately in mediation, then the mediator may terminate the mediation process and return the case to court. In such event the mediator shall report that the parties met the requirements of the mediation program but did not reach a mediated parenting agreement.

16. MODIFICATIONS:

By consent, parties may return to mediation for the purpose of reviewing or modifying a parenting agreement, consent order or other order at any time after the adoption of a parenting agreement, consent order or other order has been entered in a custody action. Parties who want to modify their parenting agreement without filing additional court pleadings, and who want to use the services of the custody mediator, may request a mediation session through the custody mediator.

17. ATTORNEY ORIENTATION

The undersigned encourages all attorneys involved in domestic practice to attend at least one group orientation session. Attorneys may contact the custody mediator to schedule a visit.

18. CONTACT PERSON FOR CUSTODY MEDIATION

The Custody Mediator for District 16B shall be the contact person concerning matters addressed in these rules. The Custody Mediator shall have administrative authority to make decisions with regard to mediation procedure and scheduling. The Custody Mediator may be contacted as follows:

Mail	Ms. Barbara A. Britt Robeson County Courthouse Courthouse Box 18 Lumberton, NC 28358
Phone	(910) 671-3330
Fax	(910) 671-7230
Email	barbara.a.britt@nccourts.org

19. EFFECTIVE DATE

These rules shall be filed with the Clerk of Court and shall become effective beginning the 1st day of December 2007. The Clerk of Court shall furnish a copy of these Rules to members of the Bar of Judicial District 16B. The custody mediator shall maintain a supply of these Rules and associated forms to be furnished to attorneys and the public upon request.

ENTERED in chambers this 26th day of November 2007.

J. Stanley Carmical
Chief District Court Judge