

First Judicial District

(Camden, Chowan, Currituck, Dare, Gates, Pasquotank and Perquimans Counties)

Rules for Mediation Child Custody and Visitation Cases

Rule 1. Scope

These rules apply to all child custody and visitation cases and require mandatory mediation in the District Court Division of the First Judicial District.

Rule 2. Purpose

The purpose of the Child Custody and Visitation Program is to provide the Services of a skilled Mediator to the parties involved in a custody and visitation dispute. The goal of the program is to reduce stress and anxiety experienced by children in separation and divorce by furnishing an alternate means for the parties to resolve their disputes. This program helps the parties focus on parenting their children during this stressful period by recognizing and planning for the needs of their children. A successful mediation will help the parties put a Parenting Agreement in writing, assist them in resolving future problems without recourse to the courts, and reduce the re-litigation of custody and visitation disputes.

Rule 3. Definitions

- (a) **“Custody case”** means an action or motion in the cause which includes an issue of establishing or modifying a custody or visitation order.
- (b) **“Mediator”** means any qualified person designated by the Chief District Judge who will schedule and facilitate orientation, education and medication sessions.
- (c) **“Parenting Agreement”** means an agreement reached between parties in a custody case regarding some or all of issues involving custody and/or visitation as mediated by the Custody Mediation Program. If adopted by the court by a Judge’s signature, such agreement is a child custody order for all purposes.

Rule 4. Child Custody and Visitation

(a) Mandatory Mediation

Mediation is mandatory for all custody and visitation issues. The parties to any custody and/or visitation case, including initial filings, modifications or enforcement,

shall participate in mandatory mediation prior to any pretrial conference or other hearing of these issues unless exempted by the Court.

(b) **Exemption of the Mediation Process**

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 move to waive mediation for “good cause” and good cause is defined as including, but not limited to the following in N.C. General Statute 50-1(c): “showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child, allegations of alcoholism, drug abuse, or spouse abuse; or allegations of psychological, psychiatric, or emotional problems.”

- Parties desiring an exemption shall complete and submit a *Motion For Exemption from Mediation* to the Mediator for the Chief District Court Judge to review. **The Chief District Court Judge will make a decision based on the submission without a hearing.** The Court’s decision will be recorded on the *Order as to Exemption from Mediation*. If exempted, the Judge will calendar the case. If it is not exempted, refer to Rule 4 (e) for scheduling.

(c) **Parties Included**

The parties named as the plaintiff and defendant in the filing are required to attend orientation and at least one mediation session. The presence of other parties at the sessions will be allowed only with the consent of the parties involved and at the discretion of the Mediator. The Mediator shall set the rules of behavior for the presence of other parties at his/her discretion. **Parties are not to bring any children to the orientation and/or mediation session.**

(d) **Custody Mediation Cover Sheet**

The party filing a complaint, answer, counterclaim, motion or other pleading for custody, visitation or other parenting issues (not including child support) shall complete a *Custody Mediation Cover Sheet* obtained from the Clerk of Superior Court’s office with all required information and immediately deliver it to the Clerk for transmittal to the Mediator. When advised by the Mediator, the moving party shall serve upon the opposing party and counsel the pleading and the *Notice for Custody Mediation Orientation* that identifies the orientation date. Parties should be noticed at least 10 days prior to mediation orientation.

(e) **Scheduling**

The custody Mediator will schedule all custody issues for Custody Mediation Orientation within 30 days of the filing of the request for custody and/or visitation date for Custody Mediation Orientation will be assigned in all cases, and the Mediator will schedule individual sessions at the time of the orientation. The location of Custody Mediation Orientation and individual sessions shall be determined by the Mediator after consulting with the parties or their attorneys.

(f) **Expedited Mediation**

In some cases, the parties may be best served by attending orientation/mediation immediately. A written request for expedited mediation, signed by both parties and/or

their attorneys and forwarded to the Mediator will waive the group orientation requirement. The attorneys or parties should contact the Mediator to schedule an expedited appointment that will include both a mini-orientation and a mediation session.

(g) **Attendance**

The parties to any custody and/or visitation case must attend and participate in the orientation session, a one-hour parent education session, and at least one mediation session to fulfill the Court's order to participate in mediation. Any party who fails to attend and participate in mediation as ordered shall be subject to the contempt powers of the Court.

(h) **Recesses**

The Mediator may recess the mediation session at any time and may set times for reconvening. If the time for reconvening is set during the session, no further notice is required for persons present at the session.

(i) **Parenting Agreements**

If the parties are able to reach a full Parenting Agreement, the Mediator will prepare a draft and distribute copies to all parties and their attorneys, advising the parties to review the agreement with their attorneys. A time will be scheduled with the parties to return to sign the final draft (usually within twenty-one days). Final signed agreements shall be presented to the Court. The Court shall review each agreement signed by the parties and, if appropriate, make the Parenting Agreement an order of the Court by signing the *Order Approving Parenting Agreement*. The Mediator will file the final *Order and Parenting Agreement* with the Clerk of Superior Court, and distribute copies to the parties and/or counsel.

(j) **Partial Parenting Agreements**

If a partial agreement is reached, the Mediator will prepare a final draft of the partial agreement and follow the process set out in Rule 4 (h). The Mediator will then notify the Chief District Court Judge if there are unresolved issues that need to be heard by the Court.

(k) **Temporary Parenting Agreements**

If the parties wish to agree to temporary stipulations, the Mediator shall prepare an agreement for a specified period of time. The signing of the agreement will follow the process set out in Rule 4 (h). The Temporary Parenting Agreement will address the issue of what happens when the Agreement expires, according to the parties' wishes. It is the responsibility of the parties, not the Mediator, to initiate any follow-up appointment.

(l) **No Agreement Reached in Mediation**

If the parties fail to agree, the Mediator will notify the Chief District Court Judge who will then calendar the case for trial and send to each party or their Attorney Notice of Assignment for Hearing.

(m) **Uncontested child custody/visitation issues.**

Whenever the Mediator learns that a claim involving child custody/visitation issues is uncontested, that is, no answer or other mandatory responsive pleading has been filed within the time prescribed by law or a responsive pleading has been filed admitting or consenting to all of the allegations of the claimant, the Mediator shall take steps to cancel any scheduled mediation sessions or parent education classes and notify the Chief District Court Judge that the matter is ready for hearing.

(n) **Modifications**

If the parties previously attended an orientation, the moving party is responsible for contacting the Mediator to schedule a mediation appointment. The Mediator will notify the other party and arrange for a mutually convenient time for a mediation appointment.

(o) **Mediation Termination**

The Mediator, in her/his discretion, may terminate the mediation if the Mediator receives information during the course of the mediation that indicates continuing mediation would be inappropriate for reasons of safety, welfare, or significant psychological dynamics. The Mediator will then report to the attorneys and Chief District Court Judge that no agreement was reached, and the Chief District Court Judge will calendar the case for hearing.

(p) **Inadmissibility.**

All verbal or written communications from either or both the parties to the Custody Mediator or between the parties in the presence of the Custody Mediator made in a proceeding pursuant to these rules are absolutely privileged and inadmissible in Court. Neither the Custody 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.