

Eleventh Judicial District – Local Rules

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Eleventh Judicial District

STANDARDIZED PRACTICE FOR DISTRICT COURT CRIMINAL SESSIONS

PURPOSE:

To provide orderly, efficient and consistent methods and procedures; to delineate and define actions and responsibilities of respective court officials and participants operating within the District Courts of the Eleventh Judicial District.

METHOD OF OPERATION:

1. District Court sessions are designated by the Chief District Court Judge at such times and places as shall be published with the Clerks of Court within the Eleventh Judicial District.
2. The first order of business shall be the preliminary instructions given by the presiding judge or as may be delegated to the District Attorney or his designated assistant. Following this will be the calling of the calendar prepared by the Clerk of Superior Court. The purpose will be to identify those present and to determine how each defendant/ respondent intends to plead or answer charges.
3. The Courtroom Clerk shall maintain the calendar and shall mark the calendar during the calendar call to show those present and those called and failed. At the close of the session, the presiding judge shall issue appropriate orders relating to non-appearing defendants/ respondents who have been marked as called and failed at the initial calendar call.

CONTINUANCES:

Pursuant to Rule 3 of the rules governing District Court, continuances will be granted in the interest of justice and to insure the protection of the Constitutional Rights of the defendants. The final authority for all continuances shall rest in the sound discretion of the assigned trial judge for the designated session.

IN ORDER TO EFFECTUATE THE ABOVE POLICY AS A STANDARD OPERATING PROCEDURE, THE FOLLOWING WILL BE UNIFORMLY APPLIED IN ALL COURTS AND BY ALL DISTRICT COURT JUDGES, DISTRICT ATTORNEY AND ASSISTANTS AND CLERKS OF COURT AND THEIR DULY DESIGNATED REPRESENTATIVES.

1. The District Attorney may consent to continuances prior to the court sessions. The District Attorney shall so inform the court and the clerk during the initial call of the calendar and provide the clerk with the new court dates.
2. The District Attorney may consent to continuances during the session (at calendar call or during the business day) provided the defendant/ respondent is present in court and was not called and failed to initial calendar call. The District Attorney shall inform the court and clerk of the new court date(s).
3. All other motions for continuances shall be made in open court before the presiding judge.
4. The courtroom clerk shall note on each "shuck" beside the current court date, for whom the continuance was granted, i.e., State or defendant.
5. Upon completion of the calendar call, the presiding judge shall insofar as be practical, dispose of those cases wherein defendants/ respondents have indicated an intention to plead guilty/ responsible. The presiding judge shall then review all known affidavits of indigence to assure early and timely appointments of counsel to those qualifying.
6. The remaining business of the court will be conducted in such a manner as to promote an efficient disposition of cases and matters and remains in the discretion of the trial judge.

Entered the 29th day of August 1989.

Date: July 1, 1996

William A. Christian
Chief District Court Judge

ELEVENTH JUDICIAL DISTRICT

**ORDER FOR NON-APPEARING DEFENDANTS/ RESPONDENTS
AND
NON-COMPLYING DEFENDANTS/ RESPONDENTS AND
NON-COMPLYING DEFENDANTS/ RESPONDENTS AT CRIMINAL
SESSIONS**

PURPOSE:

To establish a uniform and consistent policy for bonds, bond forfeitures, orders for arrest and sanctions for non-appearing defendants/respondents or non-complying defendants/respondents.

The Courtroom Clerk, at the conclusion of the business day, shall take the following action as it relates to non-appearing defendants/ respondents or non-complying defendants/respondents:

1. As to all defendants who have failed to appear and whose case has not thereafter during the session been disposed of or continued and who have posted a secured bond, issue an order of forfeiture on the bond and issue an order for arrest for the defendant and double the bond required.
2. As to any defendant who posted an unsecured bond and failed to appear, issue an order for arrest and require a \$250.00 secured bond.
3. As to any defendant served with a criminal summons for a criminal offense, issue an order for arrest and require a \$250.00 secured bond.
4. As to any defendant issued a citation for a motor vehicle infraction who has failed to appear, the officer is directed to obtain a warrant for arrest for failure to appear.
5. As to any defendant issued a citation for a motor vehicle infraction who had failed to appear, statutory sanctions shall be implemented and as to any defendant issued a citation for an Alcoholic Beverage Control Act infraction, the officer is directed to obtain a criminal summons.
6. As to any defendant calendared for non-compliance with a criminal offense judgment, issue an order to show just cause if one had not been issued, and if the order to show cause had been issued and served and the defendant had not appeared, issue an order for arrest and require a \$250.00 bond.

7. As to any defendant who has been placed under a conditional show cause order for a criminal offense, and has not appeared, issue an order for arrest and require a \$250.00 secured bond.
8. As to any defendant who fails to appear pursuant to service of a criminal summons upon him for an infraction offense, issue an order to show cause.
9. As to any defendant who fails to pay fine and costs as ordered in an infraction case at the time ordered by the Court, the Clerk shall issue an order to show cause.

Nothing included within this blanket order precludes the assigned trial judge from issuing orders in his discretion relating to the cases or matters subject to his jurisdiction.

The foregoing blanket order shall apply as a Local Rule of the District Court as to Emergency Judges and Judges from outside the Eleventh Judicial District.

Entered the 31st day of August, 1989.

Date: July 1, 1996

William A. Christian
Chief District Court Judge

ADMINISTRATIVE ORDER CALENDARING PROBABLE CAUSE HEARINGS

These procedures are to be followed in the management and calendaring of probable cause hearings in the District Courts of the Eleventh Judicial District. These procedures are put in place to insure that incarcerated defendants are accorded timely probable cause hearings and to permit, but not compel, hearings for defendants released under pretrial release procedures.

- I. At the initial appearances, the presiding judge shall determine if the defendant is incarcerated. If so, the judge will set the probable cause hearing date within fifteen (15) working days. If the defendant should make pretrial release prior to the probable cause date, but after the initial appearance date, the defendant shall be bonded to the probable cause date set at the initial appearance. On this hearing date, the defendants who met pretrial release prior to or at the initial appearance.
- II. If the defendant is not incarcerated or is meeting conditions of pretrial release at the initial appearance, the following rules apply:
 - A. The defendant will be afforded a probable cause hearing provided a written motion is filed on his/her behalf within the time limits described herein. If no such motion is filed, the defendant will have no further requirements for District Court appearance for this felony matter. The defendant's next court appearance will be for a session of Superior Court, the date to be determined at the initial appearance and given to the defendant.
 - B. The next Superior Court session to which the defendant will be bonded will be the next Superior Court session, with a grand jury assigned, that is more than thirty (30) calendar days from the date of the defendant's initial appearance. During this 30 day period, the defendant may file his/her written motion for a probable cause hearing with the court and the district attorney shall then determine an appropriate probable cause hearing date within fifteen (15) working days of the filing of the motion and set the case on the trial calendar

After the expiration of the 30 calendar days, no motion for hearings may be filed except with the consent of the District Attorney.

- III. Method of filing motions for hearings, calendaring hearings and rulings on contested issues relevant to probable cause hearings:
 - A. The defendant will file his/her motion with the Clerk of Superior Court and serve a copy on the District Attorney or Assistant District Attorney. If the District Attorney does not determine a date for hearing on the date the motion is filed, the Clerk shall place the motion on for hearing on the next District Court Session and the judge presiding shall, after consultation with the defendants and District Attorney, set the hearing date within fifteen (15) working days. If the District Attorney sets the case, without court intervention, he will file with the

Clerk of Court, a written notice of hearing, stating the defendant's name, address, case file number and the date of hearing. The Clerk of Court will use this notice to manage the subsequent calendaring and will file the notice in the court record. The District Attorney will serve upon or mail to the defendant a copy of this notice setting the court date.

- B. Continuances: After probable cause hearing has been set, continuances may be granted by the judge presiding for good cause shown upon proper motion made either by the State or the defendant.
- IV. Dispositions and District Court proceedings prior to indictment: The District Court retains jurisdiction of these matters until dismissal, indictment or until the case has been bound over to the Superior Court Division following a probable cause hearing. During this interim period, the district court may act upon the following matters:
- A. Bonds: Upon appropriate motion made, either by the State or the defendant, the judge may modify bonds or other items of pretrial release as deemed appropriate in fact or law.
 - B. Negotiated pleas to allow disposition of the case in the District Court Division: Cases pending action by the grand jury may be set upon a criminal district court session and disposed of by the presiding if reduced or charged upon appropriate form to a misdemeanor grade.
 - C. The defendant, at any stage prior to indictment, may sign a waiver of probable cause.
 - D. The District Court retains all other powers in criminal actions as set forth in statute and common law except for the matters specifically addressed or modified herein.

Signed March, 1993. EFFECTIVE April 5, 1993.

Date: July 1, 1996

William A. Christian
Chief District Court Judge

CASE MANAGEMENT RULES FOR CALENDARING AND DIPOSING OF CIVIL CASES IN DISTRICT COURT

The Clerk of Superior Court shall designate a Civil Calendar Clerk who shall:

1. Receive and process requests for trials, hearings, motions, continuances and objections thereto.
2. Prepare, publish and distribute the term calendar in accordance with these rules not later than four (4) weeks prior to the first day of the court session.
3. Receive and process notices of settlement, voluntary dismissals, and orders of the court.
4. Communicate with attorneys, parties without attorneys, and judges regarding calendar matters, continuances, and disposition of cases.
5. Prepare, publish and provide a Supplemental Calendar to the presiding judge, appropriate court officials and the Chief District Court Judge.

CALENDARING OF GENERAL CIVIL CASES

A. Calendaring by the Chief District Court Judge.

All cases shall be placed on the active trial calendar for the first term of court that occurs six (6) months after the date of the filing of the complaint (unless a contrary order has been entered by a Court of competent jurisdiction). This shall be done by designated Calendar Clerk without the necessity of a calendar request having been filed by the parties.

B. Calendaring by Attorneys or Parties not Represented by Counsel

1. Calendar requests for trials, motions and hearings shall be in writing and delivered to the designated Civil Calendar Clerk and a copy thereof delivered to opposing counsel or party without counsel not later than five (5) weeks before the first day of court, except District Court Domestic cases in which no jury trial has been requested.

2. Non-jury cases may be added to the Supplement Calendar **BY CONSENT OF ALL THE PARTIES.**

3. Motions may be added to the Supplemental Calendar **BY CONSENT, WAIVER OR UPON STATUTORY NOTICE ONLY.**

4. Nothing in the application of these rules shall prevent or limit the ability, for good cause shown, the setting of general civil cases by the Chief District Court Judge in accordance

with his supervisory authority of civil calendar preparation or in the establishment of peremptory settings as contemplated in Rule 2(f) of the General Rules of Practice for the Superior and District Courts, effective January 15, 1993.

C. Calendaring Perfected Magistrate Small Claim Appeals

1. Properly perfected appeals in accordance with N.C.G.S. 7A-228 shall be calendared by the designated Calendar Clerk on a regular court calendar and shall comply with the rules for publication and distribution in the duties prescribed for by the Civil Calendar Clerk.

2. This matter may be calendared on a Supplemental Calendar **IF ALL PARTIES TO THE PROCEEDING CONSENT, IN WRITING, AND AGREE TO WAIVE NOTICE REQUIREMENTS AND CERTIFY THAT THE MATTER IS READY FOR TRIAL ON ALL ISSUES.**

D. Calendaring of Domestic Cases Including Equitable Distribution

See “Domestic Court Rules” and “Equitable Distribution Rules.”

MOTIONS FOR CONTINUANCES AND MATTERD FOR THE COURT

Motions for continuances shall be made to the judge assigned to the particular Civil District Court in which the case is scheduled for hearing. These continuances shall be granted, for good cause shown, in the sound discretion of the judge presiding. If at all practical and time permitted, these motions shall be made in writing and any orders entered presented to the judge for appropriate signature and filing.

If a case is continued during a session, an Order of Continuance **MUST BE FILED** indicating for whom the continuance was granted and why.

COMPLETION OF DISCOVER

All discovery must be completed **NO LATER THAN 120 days** from the date of filing of the Complaint.

AUTHORITY AND EFFECTIVE DATE

This plan is adopted pursuant to the authority granted under Article 5A, Section 7A-34, N.C.G.S., and adopted through the General Rules of Practice for the Superior and District Courts, Subsection 2, Calendaring of Civil Cases, with amendments through January 15, 1993.

These rules supersede any previous publications and become effective July 1, 1994.

Date: July 1, 1996

William A. Christian
Chief District Court Judge

DOMESTIC COURT RULES

Rule 1. CALENDARING OF DOMESTIC CASES

Rule 1.1 NOTICE.

The party requesting a hearing must give notice of the hearing date and time to the opposing party in accordance with the Rules of Civil Procedure. If the opposing party is represented by counsel, the party requesting the hearing must attempt to notify opposing counsel of the proposed hearing date prior to calendaring the case in order to avoid scheduling conflicts. All notices of hearings shall include a statement that “all parties must comply with the Rules of Domestic Court, a copy of which may be obtained from the office of the Clerk of Superior Court in the in which the action is pending.”

Rule 1.2 CALENDAR REQUESTS.

Subject to the discretion of the presiding judge, domestic cases will be heard in the following order:

- (1) uncontested matters including absolute divorce;
- (2) cases requiring a hearing within a specified time pursuant to statute or court order (i.e., Chapter 50B orders, temporary custody orders, restraining orders, etc.);
- (3) child support arrearages;
- (4) initial custody matters in which there is a need for a prompt hearing;
- (5) cases which are not reached at a prior session because of a crowded docket;
- (6) cases set at the request of counsel (these cases shall be calendared by number beginning with the oldest cases first and shall be called at the discretion of the judge);
and
- (7) pretrial conferences.

Nothing herein shall be construed to deprive the presiding judge of his discretion to call any matter at any time or cases in any particular order. If a case is continued by the consent of the parties, the party requesting a hearing must file another calendar request with the domestic court clerk. At the conclusion of each session, the presiding judge shall sign an order (DR Form F) providing that cases which were not reached because of a crowded docket and the parties and their witnesses were present in court shall be given priority at the following session. This order shall be tendered to the court by the party requesting the priority setting.

Rule 1.4 ADMINISTRATIVE CALENDAR.

The Clerk of Superior Court shall periodically review the statistical report furnished by AOC of domestic relations cases pending for more than one (1) year. Such cases shall be placed on a calendar called on a date set by the Chief District Court Judge.

Rule 1.5 SPECIAL SETTINGS.

If a case is estimated to take more than five (5) hours to try, the party requesting a hearing may request a special setting from the Chief District Court Judge. Prior to requesting a special setting, counsel for the parties will attempt to settle the case and will inform the Chief District Court Judge of their attempt to settle the case, but that settlement is not forthcoming. Prior to requesting a special setting, counsel for the parties will conduct a discovery conference and execute a stipulation in accordance with Rule 6.1 herein. When requesting a special setting, counsel for the parties must provide alternative dates for the Chief District Court Judge in order to avoid scheduling conflicts. If the case is settled prior to the assigned court date, a Memorandum of Order or Consent Order is not executed, the case will be called for trial. If a special setting is requested before a particular judge, a copy of an order retaining jurisdiction must be provided to the Chief District Court Judge along with a filed Motion requesting a special setting.

Rule 2. SETTLEMENTS

Rule 2.1 MEMORANDUM OF ORDER.

Counsel for all parties shall promptly notify the domestic court clerk of a settlement of any calendared case and shall file either a proposed judgment or memorandum of order prior to the date the case is calendared for trial. The terms of the settlement shall be set forth in the Memorandum of Order attached hereto as DR Form B.

Rule 2.2 SUPPORT PROVISIONS.

The memorandum of order shall clearly set forth the date on which child support and alimony payments are to begin and whether the payments are to be paid into the Clerk of Court.

Rule 2.3 JUDICIAL INQUIRY.

The presiding judge shall read the terms of the memorandum of order in open court and shall inquire of both parties whether or not they understand the provisions of the settlement and whether the settlement is freely and voluntarily consented to by both parties.

Rule 3. FINANCIAL AFFIDAVITS

Rule 3.1 FORM.

In all domestic actions involving child support or alimony, both parties shall file a Financial Affidavit using the form attached hereto as DR Form C or DR Form C1.

Rule 3.2 PARTY SEEKING SUPPORT/ COMPLAINT OR MOTION.

CHILD SUPPORT - The party seeking child support in an original complaint or motion in the cause, shall file a short form financial affidavit (DR Form C1) setting forth the information required by the current Child Support Guidelines. The short form affidavit shall be filed with the complaint or motion, or within ten days thereafter and served upon the opposing party. In any event, the short form financial affidavit must be filed and served no less than five (5) days preceding the first day that a hearing is scheduled in the case. If a party seeking child support wants to deviate from the current child support guidelines, he or she must file a complete financial affidavit (DR Form C) and serve it upon the opposing party. The complete affidavit shall be filed with the complaint or motion, within ten (10) days thereafter. In any event, the complete financial affidavit must be filed and served no less than five (5) days preceding the hearing.

ALIMONY - The party seeking alimony in an original complaint or motion in the cause, shall file his or her financial affidavit and serve it upon the opposing party. The affidavit shall be filed with the complaint or motion, within ten (10) days thereafter. In any event, the financial affidavit must be filed and served no less than five (5) days preceding the first day that a hearing is scheduled in the case.

Rule 3.3 PARTY SEEKING SUPPORT/RESPONSIVE PLEADING

CHILD SUPPORT - The party seeking child support in a responsive pleading, shall file a short form financial affidavit (DR Form C1) with a responsive pleading, or within five (5) days preceding the hearing, whichever comes first. The short form financial affidavit must be served upon the opposing party. If a party seeking child support wants to deviate from the current child support guidelines, he or she must file a completed financial affidavit (DR Form C) and serve it upon the opposing party. The completed affidavit shall be filed with the responsive pleading, or within ten (10) days thereafter. IN any event, the completed financial affidavit must be filed and served no less than five (5) days preceding the hearing.

ALIMONY - The party seeking alimony in a responsive pleading, shall file the financial affidavit with the responsive pleading, or five (5) days preceding the hearing, whichever comes first. The financial affidavit must be served upon the opposing party.

Rule 3.4 REQUIREMENTS ARE MANDATORY.

The party seeking child support or alimony cannot calendar a support matter hearing, except in the case of emergency orders entered under N.C.G.S. 50B, unless he or she has complied with the requirements concerning the filing of financial affidavits. In the event the moving party fails to comply with these requirements, the responding party shall be entitled to a continuance of the hearing, and such other relief as the court deems proper, including costs and attorney fees.

Rule 3.5 PARTY FROM WHOM SUPPORT IS SOUGHT.

The party from whom support is sought shall file and serve on the opposing party the short form financial affidavit with his or her responsive pleading or the completed financial affidavit if deviation from child support is requested or if alimony is requested, no less than five (5) days preceding the hearing, whichever comes first. In the event this party fails to comply with this requirement, the party seeking support shall be entitled to a continuance, costs, attorney fees and such other relief as the court deems proper.

Rule 3.6 BOTH PARTIES SEEKING SUPPORT.

In the event both parties are seeking child support or alimony, each party shall file a financial affidavit in accordance with these rules.

Rules 3.7 PURPOSE OF RULE.

It is the intent of these rules that each party file a financial affidavit in order to provide information for frank discussion of settlement, to allow preparation for trial and to reduce the time necessary for trial.

Rule 3.8 DUTY TO SUPPLEMENT.

All financial information contained in the financial affidavit shall be treated as a continuing discovery, pursuant to Rule 26 of the Rules of Civil Procedure. All parties are required pursuant to Rule 26 to promptly supplement their responses if circumstances change affecting the information provided in the financial affidavit. When practical, the affidavit shall be supplemented prior to trial.

Rule 4. PREPARATION OF ORDER

Rule 4.1 ORDER SUBMITTED TO OPPOSING COUNSEL BEFORE JUDICIAL REVIEW.

Whether a case is resolved by consent or hearing, counsel for one of the parties may be designated to prepare any necessary orders. Proposed orders shall be submitted to opposing counsel for review prior to presenting the order to the judge. Such order shall be submitted for judicial review within ten (10) working days from the date of decision.

Rule 4.2 JUDICIAL REVIEW WHEN PARTIES CANNOT AGREE.

If the parties disagree about the contents of the order, counsel for all parties shall meet with the presiding judge to determine the final content of the order before the order is actually entered. If the presiding judge has not heard from the opposing party within five (5) days from receiving the proposed order, it may be entered.

Rule 4.3 DATA SHEET.

DR Form D attached hereto shall be filed with every financial affidavit, order or memorandum of order requiring the payment of child support or alimony.

Rule 4.4 CHILD SUPPORT GUIDELINE WORKSHEET.

The appropriate Child Support Guideline Worksheet shall be attached to every order or consent order in all child support cases.

Rule 5. GENERAL SANCTIONS.

Rule 5.1 ATTORNEY FEES, COSTS AND OTHER SANCTIONS.

Failure to comply with these rules shall entitle the complying party to request payment of reasonable attorney fees and costs and other sanctions. If attorney fees are requested, the court shall presume that the party not in compliance with these rules shall be responsible for payment of reasonable attorney fees for time spent by counsel for the complying party caused by the failure of the opposing party to comply with these rules. Attorney fees shall be paid at the standard prevailing hourly rate of the attorney of the party in compliance.

Rule 5.2 CONTINUANCES.

In addition to any other remedies, the complying party may ask for a continuance of the hearing previously scheduled. The motion for continuance shall be granted by the court based upon the failure to comply with these rules.

Rule 5.3 CONTEMPT AND OTHER REMEDIES.

Any party not in compliance with these rules shall be subject to any sanctions or remedies available under the laws of the State of North Carolina, including contempt.

Rule 6. DISCOVERY CONFERENCE

Rule 6.1 STIPULATIONS.

Prior to the call of the calendar, or in any event before the case is called for trial, both parties shall conduct a pretrial conference. The parties shall narrow and define all issues to be heard and make a good faith attempt to resolve as many issues as possible prior to the hearing. Before the case is called for trial, the parties shall execute and file a written stipulation using the form attached hereto as DR Form E, upon the written request of either party ten (10) days prior to trial.

Rule 7. EQUITABLE DISTRIBUTION

Rule 7.1 RULES AND PROCEDURES.

The rules and procedures governing all equitable distribution cases are attached hereto and incorporation by reference.

RULE 8. CITATION OF DOMESTIC COURT RULES

Rule 8.1 FORM OF CITATION.

These Domestic Court Rules shall be cited as DOM Rule 1, etc.

AUTHORITY FOR RULES

These rules are promulgated pursuant to Rule 22 of the General Rules of Practice for the Superior and District Courts, supplemental to the Rules of Civil Procedure. These rules shall supersede all prior rules and orders of the Eleventh Judicial District.

These rules apply to pleadings and motions filed after March 1, 1992.

These rules will not apply to IV-D and URESA cases.

Dated: July 1, 1996

William A. Christian
Chief District Court Judge

DOMESTIC RELATIONS FORMS

DR Form A	Domestic Relations Cover Sheet
DR Form B	Memorandum of Order (2 pages)
DR Form C	Financial Affidavit (long form)
DR Form C-1	Financial Affidavit (short form)
DR Form D	Child Support Personal Information Sheet
DR Form E	Stipulation
DR Form F	Order Assigning Priority on the Domestic Court Calendar
DR Form G	Addendum to Child Support Order

CUSTODY AND VISITATION MEDIATION RULES AND PROCEDURES

The following Local Rules of Court are promulgated pursuant to G.S. 50-13.1. These rules incorporate by reference the “Uniform Rules Regulating Mediation Program” and Visitation Disputes Under the North Carolina Custody and Visitation Mediation Program” as contained in CUSTODY AND VISITATION MEDIATION PROGRAM PROCEDURES MANUAL, North Carolina Administrative Office of the Courts, March 1994.

RULE 1 CUSTODY/ VISITATION MEDIATION

1.1 When a party files a Complaint, Answer, Counterclaim, Motion, or other pleading in a domestic relations case, the party shall complete a Cover Sheet (DOM-1) which is to be attached to the pleading at the time of filing. The cover sheet will be used by the Custody Mediation Office (CMO) and the Clerk of Court for case tracking purposes.

1.2 Any Complaint, Answer, Counterclaim, Motion or other pleading filed in a domestic relations case which is not accompanied by a properly executed cover sheet will be subject to dismissal after giving the party a reasonable amount of time to file the cover sheet.

1.3 When a cover sheet indicates that a custody or visitation issue exists, the CMO shall set the issue(s) for mediation prior to calendaring.

1.4 A matter shall be set for mediation when either:

- (a) the Custody Mediator has determined that a contested custody or visitation issue has been on file for thirty (30) days or more with no filed order resolving the issue; or
- (b) prior to the court’s intervention at thirty (30) days, the parties or their counsel have STIPULATED to an earlier orientation date by filing a Stipulation for Expedited Mediation (DOM-6).

1.5 Motions for contempt involving custody or visitation shall not be mediated unless stipulated by the parties.

1.6 The CMO shall notify the attorneys of the date, time, and place for the parties’ initial mediation orientation session (DOM-2). Attached to every notice shall be a letter from the Chief District Attorney (DOM-5) concerning mediation. Counsel shall ensure that their clients receive a copy of the notice and letter. Where there is no counsel of record, the parties shall be notified directly.

1.7 For good cause as defined by G.S. 50-13.1(c), on the motion of either party or the court, the court may waive the mandatory mediation of a contested custody or visitation matter. Counsel or parties desiring an exemption shall complete, file and serve on the opposing party a Motion and Notice of Hearing for Exemption from Mediation (DOM-3).

1.8 All oral or written communications and information derived there from either or both the parties in the presence of the mediator are absolutely privileged and inadmissible in court except as related to abuse or neglect.

1.9 Neither the mediator nor anyone involved in mediation under these rules shall be called to testify to communications made during or in furtherance of such mediation sessions; provided however that, communications made in furtherance of a crime or fraud or concerning abuse or neglect are not privileged.

1.10(a) If the parties are able to reach a tentative full parenting agreement, the mediator will prepare a draft and mail copies to the attorneys for represented parties. If, after consultation with their attorneys, the parties approve the tentative parenting agreement, the attorneys will prepare a Consent Order incorporating the provisions of the parenting agreement within 15 days and present it to the court. If the parties are not represented, a time will be scheduled for the parties to return to the CMO to sign the final order approving the parenting agreement to be presented to the court. The court shall review each document and, if acceptable, sign the order as an order of the court. The final order and parenting agreement shall be filed with the Clerk of Superior Court. If, after consultation with their attorneys, the parties do not approve the tentative full parenting agreement, the procedures under 1.10(b) or 1.10(c), whichever applies, shall be followed. The parties may agree to send the matter back to mediation to attempt to resolve any remaining issues.

1.10(b) If a tentative partial parenting agreement is reached, the mediator will prepare a draft of the tentative partial agreement and mail copies to the attorneys for represented parties. A list of the unresolved issues shall be attached. If, after consultation with their attorneys, the parties approve the tentative partial agreement, the attorneys will prepare a consent order incorporating the provisions of the partial agreement within 15 days and refer the consent order for court approval and the unresolved issues for calendaring as in all other domestic matters. If the parties are not represented, a time will be scheduled for the parties to return to the mediator to sign the partial agreement and order approving the parenting agreement to be presented to the court and the mediator will notify the clerk that unresolved issues remain. Calendaring of the unresolved will be as in all other domestic matters.

1.10(c) If the parties fail to reach any agreement, the mediator shall send notice to the attorneys, or to the parties if unrepresented, and file the notice with the clerk, and then either party may calendar the matter. Calendaring will be as in other domestic matters.

1.11 When custody and/ or visitation issues have been completely settled by consent or dismissed, the issues will not be removed from the mediation process until a filed copy of an order as to Exception from Mediation (DOM-4) or a dismissal is provided to the mediator by the attorney of represented parties or by the parties if not represented. When a signed consent order for custody and/ or visitation is presented to the court for its approval, it must be accompanied by a DOM-4 for the judge to sign.

Date: July 1, 1996

William A. Christian
Chief District Court Judge

MEDIATION FORMS

- DOM-1 Domestic Relations Cover Sheet
- DOM-2 Notice and Order of Custody Mediation Orientation
- DOM-3 Motion and Notice of Hearing for Exemption from Mediation
- DOM-4 Order as to Exemption from Mediation
- DOM-5 Letter from Chief District Court Judge
- DOM-6 Stipulation for Expedited Mediation
- DOM-7 Mediator's Status Report
- DOM-8 Motion to Show Cause for Failure to Comply with Custody Mediation
- DOM-9 Order to Appear & Show Cause for Failure to Comply with Custody Mediation
- DOM-10 Notice of Failure to File a Completed Domestic Relations Cover Sheet
- AOC-CV-631 Order Approving Parenting Agreement



*State of North Carolina
General Court of Justice
11th District Court District*

WILLIAM A. CHRISTIAN
CHIEF DISTRICT COURT JUDGE
P.O. BOX 2007
SANFORD, N.C. 27330
OFFICE: (919) 708-4440
FAX: (919) 708-4472

DISTRICT COURT JUDGES
EDWARD H. McCORMICK
SAMUEL S. STEPHENSON
T. YATES DOBSON
ALBERT A. CORBETT, JR.
FRANKLIN F. LANIER

Dear Parent:

Please read the enclosed orientation notice carefully. The purpose of the group orientation meeting is to explain the mediation process, answer your questions, and schedule your initial mediation session. You are not allowed to bring children or friends to the orientation or mediation sessions and you will need to allow up to two hours for the orientation and at least one mediation session. **FAILURE TO DO SO WILL SUBJECT YOU TO THE CONTEMPT POWERS OF THE COURT.**

The goals of custody and visitation mediation are to reduce the stress and anxiety on children whose parents are divorcing and to give you, the parents, an opportunity to make the most important decisions regarding your child(ren) without having to go through the ordeal of a trial. Mediation provides the structured setting necessary to keep you focused on what is in the best interest of your child(ren) regardless of the problems between you and your spouse.

Custody mediation is a program that has been very successful throughout other parts of our State. It is our sincere hope that mediation will assist both of you in agreeing on a written parenting plan which will enable you to remain good parents despite your personal and legal differences.

Sincerely,

William A. Christian
Chief District Court Judge

RULE 7. EQUITABLE DISTRIBUTION RULES

Effective July 1, 1996

RULE 7.1 APPLICATION.

These rules apply only to equitable distribution claims filed pursuant to G.S. 50-20.

RULE 7.2 EFFECTIVE DATE.

These rules apply to all equitable distribution claims filed on or after July 1, 1996.

RULE 7.3 TIME.

Upon motion of either party, and for good cause shown, the times set forth in these rules may be modified by the court.

RULE 7.4 SANCTIONS.

Failure to comply with these rules may result in sanctions, including dismissal of a claim with or without prejudice; refusal to receive into evidence the offending party's affidavit or oral testimony as to matters which should have been set forth in the affidavit; contempt; and any other sanction allowed by law.

RULE 7.5 ADMINISTRATIVE SCHEDULING CONFERENCE AND PRETRIAL CONFERENCE NOTICE REQUIREMENTS.

At the time a claim for equitable distribution is filed, the party filing the claim shall:

- a. Notify the calendaring clerk in domestic court that the action involves equitable distribution and request the clerk to place the case on an administrative scheduling conference calendar as close as practicable to ninety (90) days after the filing of the claim.
- b. Obtain from the calendaring clerk in domestic court a pre-trial conference date as close as practicable to one hundred eighty (180) days from the date the equitable distribution claim is filed; and
- c. Within five (5) days, serve upon the opposing party or attorney:
 - (1) notice of the administrative scheduling conference and the pre-trial conference dates (See ED Form C);
 - (2) notice of the date by which affidavits must be filed (See ED Form C).

RULE 7.6 FILING OF AFFIDAVITS.

Both parties must file an accurate and complete affidavit (See ED Form A) in the office of the Clerk of Superior Court and deliver a copy to the opposing party or attorney in the form required by the Instructions (See ED Form B). The party filing the claim shall file his/her equitable distribution affidavit within ninety (90) days after the filing of the claim. Upon request, and if available, the initiating party shall provide the computer disc which contains his/her equitable distribution affidavit to the opposing party. In any event, the opposing party shall use the same numbering system as used by the party filing the claim. The opposing party shall file his/her affidavit within thirty (30) days thereafter. The opposing party shall use additional numbers for any property not listed on the initial equitable distribution affidavit. The party filing the claim shall file a responsive affidavit to any of those additional numbers within thirty (30) days thereafter.

RULE 7.7 DISCOVERY DEADLINE.

Unless otherwise provided by the court order, all discovery shall be completed no later than sixty (60) days before the pre-trial conference.

RULE 7.8 ADMINISTRATIVE SCHEDULING CONFERENCE.

Both parties and their attorneys shall attend the administrative scheduling conference. At this conference, the court will determine the time needed to prepare the case, resolve discovery issues, determine what assets need to be appraised and procedures for determining values, set a time for exchanging expert reports and address any other issues with a goal of expediting the resolution of the case. At the conclusion of the administrative scheduling conference, the court shall enter an order setting forth the issues resolved at the conference. In the event the case shall settle prior to the 90-day scheduling conference, the party who initially requested equitable distribution shall notify the Clerk of Superior Court, in writing, to remove the scheduling conference from the regular trial calendar.

RULE 7.9 THE PRE-TRIAL CONFERENCE.

Both parties and their attorneys shall attend the pre-trial conference. The party who initiated the equitable distribution proceeding shall prepare the first draft of the pre-trial order from the affidavits filed by the parties and shall furnish copies of the same to opposing counsel at least five (5) days prior to the pre-trial conference. Unless special circumstances exist, the 180-day pre-trial conference shall be both the initial and the final pre-trial conference. In the event the case shall settle prior to the pre-trial conference, the party who initially requested equitable distribution shall notify the Clerk of Superior Court, in writing, to remove the scheduling conference from the regular trial calendar.

RULE 7.10 THE PRE-TRIAL ORDER.

If the pre-trial conference does not result in a settlement of the case, a pre-trial order shall be prepared in the form set out in ED Form D. After the pre-trial order has been completed, signed by the judge and filed, either party or the court may calendar the case for trial.

RULE 7.11 EVIDENCE.

As to those matters covered by the affidavit, the testimony of each party must be presented in the form of the equitable distribution affidavit rather than by oral testimony, unless a particular item listed in the affidavit is challenged by opposing affidavit, by cross-examination, or otherwise. The parties may testify orally as to such challenged matters not covered by the affidavit. Whether challenged or not, the evidence presented in the affidavits shall be received by the court as evidence by the party presenting it. Other witnesses, including experts, are not required to testify by affidavit. Cross-examination of all witnesses, including the parties, is not limited to this rule and is in the discretion of the trial judge. All appraisals, expert witness reports, and exhibits, expected to be introduced at trial, shall be exchanged by counsel for each party at least ten (10) days prior to the trial of the matter.

RULE 7.12 CALENDAR DATE.

The calendar dates for the administrative scheduling conference and the pre-trial conference shall be selected by the clerk from dates provided by the Chief District Court Judge for the hearing of equitable distribution matters. If a date cannot be furnished by the clerk in domestic court that satisfies these rules, or if other good cause exists, a party or his/her attorney may apply directly to the Chief District Court Judge for an administrative scheduling conference or a pre-trial conference date.

RULE 7.13 AVAILABILITY OF COPIES OF THESE RULES AND FORMS.

Upon their adoption, these rules and appended forms shall be filed in the office of the Chief District Court Judge and in the office of each Clerk of Superior Court or his/her designee. The forms attached to these rules may be duplicated or copies by parties to proceedings or their attorneys and used as originals for the purpose of meeting the filing requirements of these rules.

RULE 7.14 CITATION OF EQUITABLE DISTRIBUTION RULES.

These Equitable Distribution Rules shall be cited as ED Rule 7, etc.

Date: July 1, 1996

William A. Christian
Chief District Court Judge

EQUITABLE DISTRIBUTION FORMS

ED Form A	Equitable Distribution Affidavit (Cover Sheet)
A-1	Form for listing marital property (duplicate extra copies as needed).
A-1.1	Income and Expense Form
A-1.2	Separate Property Form (1 st page) (duplicate copies for subsequent pages)
A-1.3 A-1.4 and A-1.5	Marital and family data
A-1.6 A-1.6A	Non-vested Pension or Retirement Rights Vested Pension or Retirement Rights
A-1.7	Court use only
A-1.8	Education of spouse data
A-1.9	Increase in value of separate property during marriage
A-1.10	Marital debts
ED Form B,	Instructions to Parties
B-2 and B-3	Description of Assets (Worksheet)
ED Form C	Notice of Equitable Distribution Hearing
ED Form D	Pre-Trial Order
ED Form E	Waiver of Objections to Calendaring Case
ED Form F	Judgment of Distribution of Marital Property

The forms identified above are attached as ED forms A through F, are those referred to in the foregoing rules, and are approved for use and required in all Equitable Distribution claims in District Court effective March 1, 1989.

Date: July 1, 1996

William A. Christian
Chief District Court Judge