

CUSTODY AND VISITATION MEDIATION RULES FOR THE TWENTY-SECOND JUDICIAL DISTRICT

The Custody and Visitation Mediation Program for the 22nd Judicial District is established, effective *Ar4.i 3, -7*, under the following North Carolina General Statutes: **7A-494, 7A-495** and 50-13.1.

I. PURPOSE AND GOALS OF THE PROGRAM:

The purpose of the Custody and Visitation Mediation Program is to provide the services of a skilled mediator to parties that are involved in a custody and/or visitation dispute. 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 contested custody or visitation issues.

The mediator assists the parties with communication, as the parties reorganize the family and plan to continue parenting their children despite their separation. Ideally, an educational process begins in mediation, which helps the parties refocus in order to meet the ongoing needs of their children.

Through mediation, parties have the opportunity to:

1. Reduce any acrimony that exists between the parties regarding the dispute around custody and/or visitation;
2. Develop custody and visitation agreements that are in the child(ren)'s best interest;
3. Minimize the stress and anxiety experienced by the parties, especially the child;
4. Reduce the litigation of custody and visitation disputes.

II. REFERRAL TO MEDIATION:

All actions involving unresolved issues of permanent custody and visitation, and motions to modify permanent custody, shall be referred to mediation on such issues prior to trial by either the Chief District Court Judge or the Trial Judge scheduled to hold civil court in the county in which the action is filed. Such referral will be made at the time the action is filed or noticed for hearing, unless the Judge waives the mediation.

1. Issues that arise in motions for modification, as well as other pleadings, shall be set for mediation, unless:
 - A. Mediation is waived by Chief District Court Judge or the then presiding Trial Judge (defined as the District Court Judge scheduled to hold Civil Court in the county in which the action is filed, at the time the action is filed or noticed for hearing); or

- B. The motion or pleading alleges an emergency; or
 - C. The motion or pleading alleges that one parent is being deprived of custody or visitation by the other parent.
2. In motions for contempt, the Chief Judge, or the Trial Judge scheduled to hold civil court in the county in which the action is filed, may determine whether to hear the motion or to refer the matter for expedited mediation. In expedited mediation, the parties will meet with the mediator immediately, if available, or within seven (7) business days of the referral. Note that parties subject to expedited mediation are not required to attend the group orientation before expedited mediation.

III. PROCEDURES FOR REFERRAL TO MEDIATION

1. **Attorney Referral Phase:** Unless Custody Mediation has been waived by the court, any party filing a custody or visitation action, motion or claim must schedule the matter for mediation orientation prior to docketing the case for final hearing on the merits. In any event, the filing party shall schedule the mediation orientation to occur within 45 days of the original filing. The party requesting and scheduling the custody mediation orientation date is responsible for noticing all opposing parties. Unless waived by both sides, opposing parties shall be given at least 10 days notice in the manner provided in NCGS 1A-1, Rules 5(B) and 6. If one or more of the parties fails to attend the scheduled custody mediation orientation, the judge will be asked by the mediator to sign an Order to Mediation. Parties failing to comply with an Order to Mediation will be subject to appropriate legal sanctions and the contempt powers of the court.
2. **Request for Expedited Mediation:** The parties may, in writing, jointly request an expedited mediation which will be deemed a waiver of the normal waiting period.
3. **Time-Referral Phase:** Should counsel for the parties fail to schedule mediation orientation within 45 days of the filing of the action, an Order for Mediation shall be issued. It shall be the responsibility of the custody Mediator to track all custody/visitation cases subject to these rules and to prepare and present to a District Court Judge the Order to Mediate within IS days of the expiration of the initial 45 day period. Parties failing to comply with an Order to Mediation will be subject to appropriate legal sanctions and the contempt powers of the court.
4. **Mediation Follow-Up:** At the call of the domestic court calendar for each domestic term, the presiding judge shall confirm that the mediation procedure has been completed. In the event the mediation process has not been followed or completed the court will either order the matter to mediation or, where appropriate, waive the mediation and set the case for trial.

IV. WAIVER OF MEDIATION:

Either party may file a request for waiver of mediation at any time subsequent to the

filing of the custody or visitation action, motion or claim. For good cause shown, a District Court Judge may waive the mediation requirement. Good cause may include, but is not limited to, a showing of undue hardship (including travel distance of 50 miles or more from outside the judicial district), an agreement between the parties for voluntary mediation, allegations of abuse or neglect of a minor child, allegations of alcoholism, drug abuse, spousal abuse, or allegations of severe psychological, psychiatric, or emotional problems, or allegations that one party is unreasonably limiting the contact between a parent and child(ren). Mediation under this rule may also be waived if the parties elect to submit to mediation pursuant to the Local Rules for Alternative Dispute Resolution of the Twenty-Second Judicial District.

Requests for waiver of mediation will be submitted to the court by a filing in writing for consideration by the court. The request shall be served on opposing counsel of record or on unrepresented parties upon filing. Opposing counsel or the unrepresented party shall respond in writing within ten (10) days of receipt. The response to the request for waiver of mediation will be filed and will be served on opposing counsel of record or on unrepresented parties. The court will rule on the request for waiver based upon the written request for waiver and any response thereto, or the court may conduct a hearing on the request.

V. CHANGES IN STATUS:

The party who filed the original action, claim or motion for custody or visitation shall immediately advise the mediator of any changes in the status of the pending case including a signed consent order, voluntary dismissal or waiver. Notice shall be given at least 24 hours in advance of the pending orientation or scheduled mediation session where possible.

VI. THE MEDIATION PROCESS:

The mediator shall assist the parties in focusing on the needs of their children, the need to use the family's strengths to maintain a continuity of relationships between parents and child, stability and consistency in regard to parenting and the options available to the parties that would accomplish these goals. The ultimate goal of the mediation process is to have the parties enter into a Parenting Agreement.

The mediation process covers two phases: the mediation orientation and the actual mediation sessions. The parties involved will schedule private mediation sessions at the time of orientation. Absent a waiver, parties are required to attend the orientation and at least one private session before terminating the process. The orientation meeting shall last approximately one hour and the mediation approximately two hours per session.

- A.** Prior to mediation, an orientation session is held at which time the goals and procedures of the mediation process are explained to the parties. Orientation sessions will be held twice each month in the County in which the action is pending. Orientation is a public information session that may be attended by any interested person. At the conclusion of the orientation, the parties will be

seen separately from the larger group to schedule the first mediation session. It is anticipated that the mediation process will include approximately one to three mediation sessions with each session lasting no more than approximately two hours.

Parties are required to attend the orientation and at least one private mediation session before terminating the process. Thereafter, at any time, either party or the mediator may unilaterally terminate the mediation process. In the event of termination, the mediator shall file a notice of termination in the court file which notice shall not disclose the reason for termination or the individual who initiated in termination.

- B.** At the conclusion of mediation the parties may enter into a full agreement, a partial agreement or the case may remain unresolved. If some, but not all, issues are resolved parties may enter into a partial agreement detailing the resolved issues and setting forth with specificity those that remain open to litigation. A copy of the partial agreement will be sent to each attorney for review prior to the execution of the agreement by the parties. Both the court and involved attorneys will be notified of the disposition of each mediated case although information discussed during the mediated session remains confidential. The mediator shall maintain a neutral position and at no time will testify on behalf of either party.
- C.** After the final mediation session any full agreement or partial agreement which has been reached by the parties shall be reduced to writing by the mediator in a parenting agreement, a copy of which is sent to each attorney for review prior to execution of the agreement by the parties. At the final mediation session the mediator shall set **an** appointment for each party to sign the agreement in the mediator's office which appointment shall be scheduled within approximately two weeks of the final session giving each party at least ten days to review the parenting agreement and consult with counsel regarding that agreement.

If the parties or attorneys prepare and sign a consent judgment in lieu of the parenting agreement they shall present it to the mediator prior to or at the time scheduled for the signing of the parenting agreement; otherwise, the parties will appear at the time and place set by the mediator and sign the parenting agreement.

- D.** After both parties have signed the parenting agreement, the mediator shall tender the parenting agreement and the Adopting Order to a District Court Judge for the 22nd Judicial District for signing and entry. At such time as the adopting order is signed the agreement becomes a custody order within the meaning of Chapter SOA of the general statues of North Carolina.
- E.** Custody orders resulting from the mediation process may be enforced as any other court order. They are not enforced by the mediation office although parties may return to modify their existing agreement without refiling with the court.
- F.** **Parties present in mediation sessions are those named in the suit. Participation of non-parties is permitted in the discretion of the mediator with the consent of all parties and upon** giving five days notice to the mediator and opposing counsel of record and any unrepresented parties. Nothing in these

rules shall prevent attorneys for the parties from attending mediation sessions, but attendance by the attorneys is optional.

- G.** If information becomes available regarding safety and welfare issues, or psychological dynamics, which would cause mediation in a particular case to be inappropriate, the mediator may, in his/her sole and unfettered discretion, terminate the mediation process.
- H.** Parties, by consent, may return to mediation at any time after the parenting agreement, consent order or other order has been signed and adopted, for the purpose of reviewing or modifying the original parenting agreement.

VI. LIMITATIONS:

Mediation within this program is limited to issues of child custody and visitation.

VII. NO INTERFERENCE WITH LOCAL RULES FORESTABLISHMENT OF ALTERNATIVE DISPUTE RESOLUTION IN THE 22ND JUDICIAL DISTRICT

Nothing herein shall be construed to prevent any parties and their counsel from participating in mediation as provided for by the Local Rules of the Twenty-Second Judicial District for Alternative Dispute Resolution and participation in that program shall in all respects satisfy the mediation requirements of this rule.

This the 6th day of March, 2007.

The Honorable Wayne L. Michael
Chief District Court Judge