

**LOCAL RULES FOR THE
MEDIATION OF CUSTODY AND VISITATION DISPUTES
NORTH CAROLINA CUSTODY AND VISITATION MEDIATION
PROGRAM
TWENTY-FIRST JUDICIAL DISTRICT**

The Judicial District 21 Custody and Visitation Mediation Program is established under the following North Carolina General Statutes: 7A-494,7A-495,and 50-13.1.

I. Purpose and Goals of the Program

The Custody Mediation Program provides the services of a skilled mediator to the parties involved in a custody and/or visitation dispute. The goal of the program centers on the reduction of stress and anxiety experienced by children during separation and divorce by furnishing an alternative way for the parties to resolve contested custody and/or visitation issues.

The mediator assists with communication as the parties reorganize the family and plan to continue parenting their children despite the separation. Ideally, an educational process begins in mediation which helps 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 of custody or visitation;
- 2) develop custody and visitation agreements that are in the child's best interest;
- 3) provide parties with informed choices and, where possible, give the parties the responsibility for making decisions about child custody and visitation;
- 4) minimize the stress and anxiety experienced by the parties, especially the child;
- 5) reduce the litigation of custody and visitation disputes.

II. Referral To Mediation

All actions involving unresolved or temporary **issues** of **custody** and visitation of a minor **child shall** be ordered to mediation on such **issues** either prior to hearing or after a temporary order has been **issued** by the **court**, unless the court waives mediation.

1. Issues that arise in motions for modification as well as pleadings shall be set for mediation unless mediation is waived by the court.
2. In motions for contempt, the presiding judge may determine whether to hear the

motion or to refer the matter for expedited mediation. (In expedited mediation, the parties meet with a mediator immediately, if available, or within 7 business days of the referral. Parties are not required to \ attend group orientation before expedited mediation.)

III. Procedures for Referral to Mediation

A. Step One – Calendar for Group Orientation

Unless custody mediation has been waived by the court (see item IV) any party filing a custody action, motion or claim must simultaneously schedule the matter for chambers and mediation group orientation. Scheduling a case for group orientation requires the case file number, the names of both parties, and the names of all attorneys representing any parties in the case. (**Note:** The calendar for group orientation is located in the Judges' Administrative Office.)

B. Step Two – Noticing All Parties to Attend Group Orientation

The party scheduling the Custody Mediation Orientation date is responsible for noticing all opposing parties. All parties should be given 10 days notice prior to the scheduled group orientation. A master copy of a suitable mediation orientation notice is available through the Mediation Office or the Office of the District Court Judges. Each law office should generate their own stock of notices from the master copy provided.

IV. Waiver of Mediation

On its own motion, or that of either party, the court may waive the setting of a contested custody or visitation matter (including modification or contempt motions) for mediation for good cause. Good cause includes, but is not limited to, a showing of undue hardship to a party, an agreement between the parties for voluntary mediation, allegations of abuse or neglect of a minor child, allegations of alcohol or drug abuse, spousal abuse, or allegations of severe psychological, psychiatric, or emotional problems.

Waivers of mediation will be made to and approved by the court.

The moving attorney may approach the judge ex parte to seek an exemption, then if the opposing counsel thinks that mediation is inappropriate, they must set the matter for the motions calendar.

If civil court is not in session or is canceled, then the Chief Judge shall rule on the motions for exemption. The motion for exemption may be made at any time prior to the scheduled mediation orientation.

Where the parties reside more than 75 miles from the court, such distance can be considered good cause at the discretion of the court. If the party residing outside the area is amenable, mediation may still take place. Note: The mediator maybe able to arrange an

orientation session closer to home for parents who reside more than 75 miles from our courthouse, or expedited mediation may be arranged, if needed.

A. Notice to Mediation Office of Exemption, Settlement or Dismissal

The custody mediation office will be notified by way of a copy of the signed agreement, of any change in the status of a pending case including: a signed consent order, voluntary dismissal, or exemption. The Custody Mediation Office will receive a copy at the same time that the order is entered with the Clerk of Court.

B. Holds on Discovery

No discovery regarding a custody or visitation claim shall be served, noticed or conducted until the mediation process is complete or has been exempted by judicial order. Except for oral depositions of parties discovery may proceed regarding child support.

V. The Mediation Process

All parties are mandated to attend the group, orientation and at least one private session before withdrawing from the process. The required private mediation session must occur within two weeks of group orientation, if the mediation program has mediation appointments available.

A. Orientation

Orientation will be held twice a month in the Hall of Justice-Courtroom 4H. Orientation is an educational group session during which the goals and procedures of the mediation process are explained to the parties as a group. Orientation is open to the public. Once parties have attended the group orientation they do not need to return for orientation again-even if their case requires a return to mediation years later.

(The core committee of attorneys recommends that a standard of practice for attorneys who perform domestic work in our judicial district would be to attend one of the group orientation sessions within 90 days of their start in domestic law practice in Forsyth County.)

If one or more of the parties is not present as scheduled they may be subject to the contempt power of the court. Also, a judge may be asked to sign an Order to Mediation. It is important from a case management perspective that parties begin the mediation process in a timely manner.

B. Scheduling of First Private Mediation Session

The parties involved generally schedule their private mediation session at the group orientation.

1. If consented to by both parties (or their counsel) a request may be made for expedited mediation which will waive the normal waiting period.
2. At the discretion of the presiding judge, a case may be ordered to expedited

mediation from the bench.

C. Private Mediation Sessions

Each session lasts approximately 2 hours. It is not uncommon for parenting parties to spend more than one mediation session to fully resolve the issues around parenting the children. Each case is unique and the average number of sessions needed is 1-3.

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 its strengths, the need to maintain a continuity of relationships and stability in the child's life, and the options available to the parties that would accomplish these goals.

The mediator does not decide issues but encourages parents to assume responsibility for parenting decisions. Parents are not required to reach an agreement in mediation.

D. Outcomes

As a result of mediation, the parties may enter into a full agreement, a partial agreement, or remain unresolved. The full agreement records all issues surrounding custody and visitation that have been addressed and agreed to. The partial agreement will state those issues that have been resolved and those that still remain open to litigation. Both the court and representing attorneys will be notified of the disposition of each mediated case.

The mediator has a responsibility to solicit from the parents what issues are significant to them and then to facilitate the mediation of those issues, provided they do not go outside the specific limits of child custody mediation.

E. Pending Cases and Administrative Accounting

Any custody mediation case that is open beyond sixty days of orientation will not retain its open status, but shall be referred to the bench as "unresolved": unless there is a conscious, valid reason to keep it open. This reason must be expressed to the Mediation Office. Any case that remains open after ninety days will require a letter to the judge stating the special that require consideration.

F. Confidentiality

Mediation proceedings shall be held in private and shall be confidential.

Except as provided in G.S. 50-13.1, all verbal or written communications from either or both parties to the mediator or between the parties in the presence of the mediator made in a proceeding pursuant to this section are absolutely privileged and inadmissible in court.

The mediator shall not at anytime disclose to any Judge or Court Personnel the reason that the mediation was not successful. The Court will not inquire of the parties or the mediator as to the reasons for the success or failure of the mediation.

G. Review of Agreement with Counsel & The Signing of Agreements

Parents or custodians have approximately 10businessdays after the receipt of the agreement to consider the agreement before signing. A copy of any parenting agreement will be sent to each parent and attorney for review. *The mediator recommends that each party review the agreement with legal counsel before signing.*

The mediator will schedule signing through the mediation office. Parents will not be required to sign at the same time, however they may be required to sign on the same day. A copy of any signed agreements will be filed and sent to each parent and attorney. Parents may, if they wish, conduct the signings through their attorneys. *[The moving attorney is required to send a copy of any final custody order, exemption or dismissal to the mediation office.]*

Minor changes to proposed agreements may be initiated by parents with the mediator over the telephone. Major changes that are desired through mediation will require both parties to return to mediation.

[Signing Agreements: Parenting Agreements are to be signed at the mediation office. If an out-of-town party would like the option of mailing in their signed parenting agreement, they will need to have their signature properly notarized.]

K Mediator May Terminate Process

In the event that the mediator ascertains that mediation is inappropriate, or there are safety issues which mediation will not address appropriately, he or she may terminate the mediation and return the case to court. In the event that mediation is deemed inappropriate, the mediator will still utilize the standard release form for the file, indicating that "the parties met the requirements of the mediation program but did not reach a mediated parenting agreement."

L. Attorney Orientation

It is the professional expectation of the Core Committee that attorneys who are involved on domestic practice attend at least one orientation. The mediator has been asked to keep a record of attorney attendance at orientation. Please contact the Mediation Office to schedule your visit or give your card to a member of the Mediation Office before you leave the orientation.

This the 9th day of February, 1999

WILLIAM B. REINGOLD
Chief District Court Judge

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J. ANDREW BRIGGS
Custody Mediator