

RULES FOR THE CUSTODY AND VISITATION MEDIATION PROGRAM FOR THE 4TH JUDICIAL DISTRICT.

The 4th Judicial District Custody and Visitation Mediation Program local rules are established under the following North Carolina General Statutes, 7A-494, 7A-495, 50-13.1 and the Custody and visitation program procedures manual dated March, 1994.

1. PURPOSE AND GOALS OF PROGRAM.

The purpose of the Child Custody and Visitation Mediation program is to provide the services of a skilled mediator to the parties that are involved in a custody and visitation dispute. The goal of the program is centered in the reduction of stress and anxiety experienced by children in separation and divorce, by furnishing an alternative way for the parties to resolve these disputes. The mediator will attempt to assist the parties in reorganizing the family in an attempt to enable each party to continue the parenting of their children despite the separation, and begin an educational process which will allow parties to recognize and meet the needs of their children. A successful mediation will help the parties put a parenting agreement in writing, teach them to resolve future problems without recourse to the courts, and, reduce the relitigation of custody and visitation disputes.

2. REFERRAL TO MEDIATION.

All actions involving unresolved, contested, or temporary issues, or change of custody and visitation of a minor child shall be ordered to mandatory mediation on such issues either prior to trial or after a temporary order has been issued by the court. Such actions include an action for custody or visitation in which no order has been previously entered, motions to modify orders previously entered, and actions to enforce custody and visitation orders. This mandatory referral procedure as set forth in N.C.G.S. 50-13.1, para (b) does not limit the court to enter temporary and *ex parte* orders under the applicable statutory provisions, or to enforce existing orders. Cases involving temporary or *ex parte* custody orders shall be referred to mediation unless specifically waived by the court.

3. PROCEDURES FOR REFERRAL TO MEDIATION.

Whenever it appears to the court, from the pleadings or otherwise, that an action involves a contested issue of custody or visitation and the case cannot be resolved by the attorneys prior to a hearing by the court, the case will be referred to mediation prior to or concurrent with the setting of the matter for hearing as set forth in N.C.G.S. 50-13.1. Exceptions are those cases eligible for exemption from mediation as set forth in N.C.G.S. 50-13.2, para (c). (See paragraph 5 of these local rules.)

- I. Contested custody and visitation matters will be referred to mediation 30 days after the filing of the answer or in cases of counter claim, the reply, if the matter will be a contested custody or visitation issue and the issues cannot be resolved by the attorneys of record within the **30** days of the last pleading filed. This **30** day window will allow the attorneys of record time to attempt to resolve the contested issues prior to mediation. If the case cannot be resolved by the attorneys within the 30 days, the case will be referred to the custody mediator by the attorney for plaintiff, either by written or telephonic means, or the case may be exempted from mediation with the court. (See enclosure 1.) In cases where the defendant has been served, but no answer has been filed within the prescribed time, cases will be referred to mediation by plaintiff's attorney within 45 days from service on the defendant if the case is not resolved. The court will not hear a contested custody or visitation case unless there is a record in the case file that the case has been to mediation and mediation was unsuccessful, or that there is a court

approved exemption. After notification to the custody mediator that the case cannot be resolved by the attorneys or that an answer has not been filed within the prescribed time, Mediation orientation notices will be sent by the Custody Mediator to all parties in the dispute, and their attorney of record, for the parties to attend a mediation orientation session.

Unless waived by both sides, notice for mediation orientation will be sent by the mediation office to all parties **10** days prior to the actual orientation to allow for service. If one or more of the parties is not present as scheduled, a judge may be asked to sign an Order On Child Custody Mediation. [See enclosure (2).] Parties that do not attend court ordered mediation can be held in contempt of court.

- II. Cases may be referred to mediation through several other channels: -.
- A. Both parties in the dispute can request mediation in their pleadings. The attorneys of record shall refer the case to mediation at that time by written or telephonic notification to the mediator.
 - B. Those cases that are before the court for either a temporary custody and visitation order or *ex parte* order may be referred to mediation by the court and this referral incorporated into the temporary or *ex parte* or on a separate Order On Child Custody Mediation, see enclosure (2). These cases shall be referred to mediation by the attorney for plaintiff, or if both parties are Pro Se, through the Clerk of Court.
 - C. Actions brought before the court under the provisions of Chapter 50B of the General Statutes (Domestic Violence) often include issues of custody and visitation and may be referred to mediation as an order of the court. However, the court shall deem each case appropriate for mediation on its merits as these cases involve allegations of spousal abuse. If deemed appropriate for mediation, referral to mediation will be incorporated into the court's order or a separate Order On Child Custody Mediation and these cases shall be referred to mediation by the attorney for plaintiff, or if both parties are Pro Se, through the Clerk of Court.
 - D. Actions brought before the court under the provisions of the Juvenile Code, as found in Chapter 7A of the General Statutes, often include issues of placement and visitation at the dispositional stage; such issues may, at the discretion of the court, be referred for mediation by the district court judge presiding. If appropriate for mediation, referral to mediation will be incorporated into the court's order or a separate Order On Child Custody Mediation and these cases shall be referred to mediation by the attorney for plaintiff, or if both parties are Pro Se through the Clerk of Court.

4. TERMINATION of, or VOLUNTARY WITHDRAWAL FROM MEDIATION:

The mediation process terminates after the parties have reached an agreement, and the mediator has submitted a parenting agreement to the court for approval or the parties have attended the orientation session and one mediation session, and either or both parties decide not to participate further in the mediation process, or the mediator feels that impasse has been reached and can no longer be of service to the parties. The parties must attend the orientation session and one mediation session prior to voluntarily withdrawing from the mediation process. In cases where mediation was attempted but was unsuccessful or the parties voluntarily chose not to continue with mediation, a notice will be sent to the court that the case may be calendared for trial, (see enclosure (4) Order To Calendar Custody or Visitation Dispute). The original order will be placed in the case file and a copy of the order will be sent to the attorneys of record. At that time, the case may be calendared for trial by the attorneys and heard by the court.

5. EXEMPTION FROM MEDIATION.

On its own motion, or that of either party, or their attorney, the court may exempt the setting of a contested custody or visitation matter 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 the minor child, allegations of alcoholism, drug abuse, spousal abuse, or allegations of severe psychological, psychiatric, or emotional problems. **Exemptions from mediation will be submitted to the Court by the attorney requesting the exemption** (See enclosure (1) Exemption Form. Where the parties reside more than 50 miles from the court, such distance can be considered good cause for exemption at the discretion of the court. If the party residing outside the 50 mile area is amenable to attend mediation, the mediation may take place.

6. COMPLAINT PROCEDURE:

If either or both parties, or their attorneys have a complaint about the mediator, or the mediation process, they may file a written complaint with the Chief District Court Judge of this judicial district. All complaints will be reviewed by the District Court Judge and a written response to their complaint shall be forwarded.