

JUDICIAL DISTRICT 6B CUSTODY AND VISITATION MEDIATION RULES AND PROCEDURES

The following local Rules of Court are promulgated pursuant to North Carolina General Statute (N.C.G.S.) 50-13.1. These rules incorporate by reference the 'Uniform Rules Regulating Mediation of Child Custody and Visitation Disputes Under the North Carolina Custody and Visitation Mediation Program' as contained in the CUSTODY AND VISITATION MEDIATION PROGRAM PROCEDURES MANUAL, North Carolina Administrative Office of the Courts, 1992, reprinted, July 1997.

Section One. PURPOSE AND GOALS OF THE PROGRAM:

The purpose of the Child Custody and Visitation Mediation program is to provide the services of a skilled mediator to the parties involved in a custody and/or visitation dispute. The goal of the program is to reduce stress and anxiety experienced by children and the parties in separation and divorce by furnishing an alternate method for the parties to resolve custody and visitation disputes.

Section Two. REFERRAL TO MEDIATION:

Any action involving custody of and or visitation with a minor child or children shall be ordered to mediation prior to trial or after a temporary order has been issued by the Court, unless the Court waives mediation. At the time of filing of the action, the filing party must file a Domestic Civil Action Cover Sheet (AOC-CV-750) with the addresses of the parties and send a copy of the same to the Custody Mediator at Post Office Box 867, Windsor, North Carolina 27983. The civil clerk shall flag the custody/visitation action as being appropriate for mediation in the VCAP system.

Section Three. PROCEDURES FOR REFERRAL TO MEDIATION:

- A. Time-Referral Phase:** A custody and/or visitation action or motion to modify a prior custody or visitation order shall be ordered to mediation forty-five (45) days after the filing of the action.
- B. Attorney/Party Request for Expedited Mediation Phase:** Prior to the Court's intervention after forty-five (45) days of filing, the parties or their counsel may stipulate to an earlier mediation date by filing a Stipulation for Expedited Mediation and sending a copy of such stipulation to the Custody Mediator (DOM-6B-1).
- C. Motions for Contempt:** Motions for contempt involving custody or visitation shall be mediated if referred by the Court.

- D. **Modification of Parenting Agreement:** Parties may mutually agree to return to mediation to modify their existing parenting agreement by forwarding a Motion and Order to Return to Custody Mediation (AOC-CV-634) to the Chief District Court Judge's Judicial Assistant for the Court's consideration.
- E. The Chief District Court Judge may order any previously filed custody/visitation actions to mediation that are beyond the 45-day period in Subsection A above, if such actions have not been exempted from mediation by judicial order.
- F. No discovery regarding a custody or visitation claim shall be served, noticed, or conducted until the mediation process is complete or the claim has been exempted from mediation by judicial order. Except for oral depositions of parties, discovery may proceed regarding financial information

Section Four. WAIVER OF MEDIATION:

- A. On its own motion, or that of either party, the Court may waive mediation of a contested custody or visitation matter 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 subject to court approval, allegations of abuse or neglect of the minor child, allegations of alcohol or drug abuse, domestic abuse, or of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty miles from the court shall be considered good cause. If the party residing outside the area agrees, mediation may still proceed. **ALL REQUESTS FOR WAIVER OF MEDIATION, INCLUDING 50-MILE WAIVER REQUESTS, MUST BE MADE TO THE COURT.**
- B. In order to seek a waiver of mediation, the attorney or party must file a Motion for Waiver of Mediation (DOM-6B-2) with the Clerk of Superior Court and a **REQUEST FOR A CIVIL ACTION HEARING/TRIAL** form with the Chief District Court Judge's Judicial Assistant to have the motion calendared. Such requests shall be given priority in calendaring and in hearing. The Court will enter approval of a Motion for Waiver of Mediation on an **ORDER ON CHILD CUSTODY MEDIATION (AOC-CV-630)** and the clerk will forward a copy of said order to the Custody Mediator and to the Chief District Court Judge's Judicial Assistant.

Section Five. THE MEDIATION PROCESS:

- A. Prior to the mediation session, a group orientation session will be held during which the goals and procedures of the mediation process will be explained to the parties. The group orientation will be held on a regular schedule maintained in the Custody Mediator's office. The parties involved will schedule their private

mediation session at the time of orientation. Parties are required to attend the group orientation and at least one private mediation session before withdrawing from the process.

- B. The Custody Mediator shall notify the attorneys of the date, time, and place for the parties' group orientation session by use of an ORDER ON CHILD CUSTODY MEDIATION (AOC-CV-630) ten (10) days prior to the Group Orientation date. Attached to every notice *shall* be a letter from the Chief District Court Judge concerning mediation (DOM-6B-3). 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.
- C. Parties who fail to comply with the ORDER ON CHILD CUSTODY MEDIATION shall be subject to the contempt powers of the Court.
- D. Parties permitted to be present in mediation are only those named in the suit. Attorneys are generally not present at the mediation session. The participation of persons other than the parties will only be with the consent of the parties and at the discretion of the Mediator.
- E. Pursuant to N.C.G.S. 50-13.1(e), the discussions in the mediation proceeding shall be confidential and except as provided in the statute, 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.
- F. Pursuant to N.C.G.S. 50-13.1(f), neither the Mediator nor any party or other person involved in mediation sessions shall be competent to testify to communications made during or in furtherance of such mediation sessions; provided, communications made in furtherance of a crime or fraud are not privileged.
- G. The Custody Mediator in her/his discretion may terminate the mediation if the Mediator receives information during the course of the mediation that shows that continuing mediation would be inappropriate for reasons of safety, welfare, or psychological dynamics.

Section Six. THE PARENTING AGREEMENT:

- A. If the parties are able to reach a full parenting agreement, the Mediator will prepare a final draft and mail copies to both parties and their attorneys, advising the parties to review the agreement with their attorneys. A time will be scheduled for the parties to return to the Custody Mediator to sign the final draft within a timely manner. Final signed agreements shall be presented to the Court by the Custody Mediator. The Court shall review each parenting agreement, and, if acceptable,

shall sign an ORDER APPROVING PARENTING AGREEMENT (AOC-CV-631) as an order of the Court. The order and parenting agreement shall be filed with the Clerk of Superior Court by the Custody Mediator. The Custody Mediator shall forward a copy of the ORDER APPROVING PARENTING AGREEMENT to the Chief District Court Judge's Judicial Assistant.

- B. If a partial agreement is reached, the Mediator will prepare a final draft of the partial agreement and mail copies to both parties and their attorneys. As with the full agreement, the parties will be scheduled to return and sign the final draft once they have reviewed the copy with their attorneys. Final signed partial agreements shall be presented to the Court by the Custody Mediator. The Court shall review each partial parenting agreement and, if acceptable, shall sign an ORDER APPROVING PARENTING AGREEMENT as an order of the Court. The order and partial parenting agreement shall be filed with the Clerk of Superior Court by the Custody Mediator. The Mediator will refer the unresolved issues for calendaring by having a judge sign an ORDER TO CALENDAR CUSTODYMSITATION DISPUTE (DOM-6B-4). The Mediator shall file the above order in the respective Clerk's office and shall forward a copy of the order to the Chief District Court Judge's Judicial Assistant. Calendaring shall be as in other civil matters.
- C. If the parties fail to reach any agreement, the Mediator will refer the case for calendaring by having a judge sign an ORDER TO CALENDAR CUSTODYNISITATION DISPUTE (DOM-6B-4). The Mediator shall file the above order in the respective Clerk's office and shall forward a copy of the order to the Chief District Court Judge's Judicial Assistant. Calendaring shall be as in other civil matters.
- D. The Custody Mediator shall mail copies of all orders entered pursuant to this section with the Clerk of Superior Court's file stamp to the parties and their counsel if applicable.

Section Seven. DISPOSITION OF ISSUES BY OTHER THAN MEDIATION:

When custody and/or visitation issues have been completely settled by consent or dismissal, the issues will not be removed from the mediation process until a file-stamped copy of the signed consent order or dismissal is provided by the moving party to the Chief District Court Judge's Judicial Assistant and to the Custody Mediator.

FORMS/ATTACHMENTS

1. DOMESTIC CIVIL ACTION COVER SHEET (AOC-CV-750)
2. STIPULATION FOR EXPEDITED MEDIATION (DOM-6B-1)
3. MOTION AND ORDER TO RETURN TO CUSTODY MEDIATION (AOC-CV-634)
4. MOTION FOR WAIVER OF MEDIATION (DOM-6B-2)
5. ORDER ON CHILD CUSTODY MEDIATION (AOC-CV-630)
6. LETTER FROM CHIEF DISTRICT COURT JUDGE TO PARENTS @OM-6B-3)
7. ORDER APPROVING PARENTING AGREEMENT (AOC-CV-63 1)
8. ORDER TO CALENDAR CUSTODY MEDIATION DISPUTE (DOM-6B-4)
9. MOTION TO SHOW CAUSE FOR FAILURE TO COMPLY WITH CUSTODY MEDIATION (DOM-6B-5)
10. ORDER TO APPEAR AND SHOW CAUSE FOR FAILURE TO COMPLY WITH CUSTODY MEDIATION (DOM-6B-6)