

**Family Court Rules**  
**Judicial District 19B**

Domestic

Effective 5/15/14

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## **Rule 1 General**

- 1.1 Purpose** The purpose of these Rules is to provide a framework for the fair, just, and timely resolution of legal issues affecting families and children in this district, whether court intervention is initiated by an individual or a government agency. The Rules are to complement the North Carolina Rules of Civil Procedure, North Carolina Rules of Evidence, and General Rules of Practice for Superior and District Courts.
- 1.2 Goals** Family Court strives to, among other things:
- incorporate administrative practices which promote timely resolution of family legal issues;
  - provide appropriate dispute resolution services as alternatives to the adversarial process;
  - ensure that participants are treated with dignity, respect, and courtesy; and
  - assure uniform application and enforcement of procedures.
- 1.3 Application** It is recognized that these Rules are not complete in every detail and will not cover every situation that may arise. In the event that these Rules fail to address a specific matter, they should be construed in such a manner as to avoid technical or unnecessary delay and to promote the ends of justice. The Family Court Administrative Staff is authorized to act with discretion subject to consultation with the presiding judge or the Chief District Court Judge in applying these Rules.
- 1.4 Attorneys and Unrepresented Parties Must Comply** Parties and attorneys shall comply with these Rules. Although a party is not required to have an attorney, any party who is not represented by an attorney (Pro Se) must comply with these Rules. All unrepresented litigants must keep the Family Court Office informed of any changes in their mailing address.
- 1.5 Citation** These Rules and all amendments shall be filed with the Clerk of Superior Court of each county in Judicial District 19B and the Administrative Office of the Courts. These Rules may be cited accordingly as Judicial District 19B Family Court Domestic Rules (19BFCDR).
- 1.6 Availability of Rules** The Family Court Staff shall make available a copy of these Rules and any amendments to each member of the Bar of Judicial District 19B. The Family Court Staff will maintain a supply of Rules and associated forms to be furnished to attorneys and the public upon request.
- 1.7 Forms** Except where specifically required herein, where local forms are required by these Rules, counsel or unrepresented parties may use either the forms

provided or a form of their own which substantially corresponds to the specified court form.

**1.8 Communication with Judges** Attorneys and parties shall not communicate ex parte with a judge except:

- In the course of official proceedings;
- In writing, if a copy of the writing is furnished simultaneously to the other party;
- Orally, upon adequate notice to opposing party; or
- As otherwise permitted by law.

Before any ex parte communication concerning a case between an attorney and a judge, the attorney must first inform the judge of any other attorneys that might be involved in the case at hand, or in a case in another court that might have overlapping issues. In addition, attorneys shall not engage in conduct intended to disrupt a court; including but not limited to failing to comply with known local customs of courtesy or practice of the Bar or of a particular court without giving opposing counsel timely notice of the intent not to comply, and shall not engage in undignified or discourteous conduct.

This Rule is designed to promote impartiality and decorum of the Court with the same intent of the North Carolina Rules of Professional Conduct.

**1.9 Notice of Appearance** An attorney must file a Notice of Appearance with the Clerk of Superior Court immediately after agreeing to represent a party in a domestic matter and shall serve a copy upon each counsel of record, unrepresented party and the Case Coordinator. An attorney who files a suit for a plaintiff or who files a timely Answer or other responsive pleading for a defendant need not file a Notice of Appearance, but if the case is on a published calendar, the attorney shall immediately notify the Case Coordinator so that the calendar can be updated. If a plaintiff or defendant adds or changes attorneys, new counsel shall file and serve a copy of the Notice upon each counsel of record, unrepresented party and the Case Coordinator.

**1.10 Notice of Other Actions** Attorneys and unrepresented parties must notify the Court of any other pending actions that may affect a pending case including bankruptcy and other civil or criminal matters in this district or other districts.

## **Rule 2 Domestic Case Filings**

**2.1 Commencement** No domestic matter, with the exceptions noted below, shall be filed in Judicial District 19B without (1) a date set for an upcoming court event (status conference, pre-trial conference, mediation orientation or hearing) as required by these Rules and (2) a judicial assignment.

Exceptions:

Uncontested divorce actions shall not require a date set for an upcoming court event or a judicial assignment. However, if a date is not set within 120 days, the Case Coordinator shall notify the parties that the case must be scheduled or it will be administratively closed.

The following filings shall not require either the AOC Cover Sheet or the Certification of Judicial Assignment: IV-D cases, UIFSA cases, Involuntary Commitments and Domestic Violence matters.

**2.2** **Requirements** The following steps are required for a party to file:

**Step 1** Complete the *AOC Cover Sheet* and provide a copy to the Case Coordinator along with a copy of the Complaint.

**Step 2** Meet with or contact the Case Coordinator to receive dates for requisite court events and a judicial assignment. The Case Coordinator shall set court dates in accordance with these rules and assign the case to a Family Court Judge on a random basis. Those families with issues previously assigned to, or heard by, a Family Court Judge (including juvenile court matters) will be assigned to that same Family Court Judge whenever possible.

**Step 3** Complete the *Notice of Hearing and Certification of Judicial Assignment* using the judicial assignment and court dates obtained from the Case Coordinator. Failure to truthfully file this Certification may result in sanctions deemed appropriate by the assigned Family Court Judge.

The party must provide the Case Coordinator with the copy of the completed *Notice of Hearing and Certification of Judicial Assignment* form.

**Step 4** File the case with the Clerk of Superior Court accompanied by the original *AOC Cover Sheet* and the *Notice of Hearing and Certification of Judicial Assignment*. The Clerk of Superior Court shall provide a case number at the time of the initial filing and place the number upon the summons. All subsequent pleadings and papers filed with the Clerk and all subsequent communications to opposing parties, attorneys, or court personnel shall contain the proper case number.

If the case is not filed within ten days of receiving court dates from the Case Coordinator, the court or mediation time may be reassigned to another case.

### **Rule 3 General Calendaring**

- 3.1 Case Tracking** The Family Court Staff shall establish and maintain a case tracking system pursuant to Rule 2(c), General Rules of Practice for Superior and District Courts, and in accordance with these Rules as approved by the Chief District Court Judge. The Family Court Staff shall schedule family court cases for court events as may be necessary and appropriate based on the issues raised in the pleadings. The Family Court Administrative Staff shall publish a calendar and distribute the calendar to the Clerk's Office 10 days before the scheduled session.
- 3.2 Attorneys Must Subscribe** Attorneys must subscribe to receive Domestic calendars directly via email. Subscriptions are available through [www.nccourts.org](http://www.nccourts.org). Once the Family Court Staff posts any calendar on the web, subscribed attorneys will be notified via email that the calendar is available. Therefore, all attorneys are deemed to have notice of every calendar published on the website. Attorneys may request a waiver from this requirement from the Chief District Court Judge.
- 3.3 Status or Pretrial Conferences Required** The Case Coordinator shall schedule domestic cases for the appropriate status or pretrial conferences and notify the parties.
- 3.4 Notice is Responsibility of Moving Party** It is the responsibility of the moving party to give notice to the opposing party or counsel immediately of the date, time, and place of the event as set by the Court. The moving party shall file all notices with the Clerk's Office for inclusion in the case file with a copy forwarded to the Case Coordinator. If a court time is changed, a revised Notice of Hearing must be served and filed by the party requesting the revision with a copy forwarded to the Case Coordinator.
- 3.5 Upcoming Court Events** In all actions with pending issues other than uncontested divorces, there shall be scheduled a next court date for the upcoming court event that may be appropriate in the case such as initial scheduling conference, status or interim pre-trial conference, pre-trial hearing, final pre-trial conference, or trial. The Case Coordinators will review and monitor pending actions; and in any case without a properly scheduled court event, the Case Coordinator shall schedule the case for a status conference or as otherwise appropriate to ensure that the Court addresses matters in a timely manner. Scheduling Orders are encouraged; however, trial dates are confirmed only when set by the assigned Judge at the final pre-trial conference.
- 3.6 Consolidated Cases** When cases have been consolidated for trial, they will be regarded as one case for calendaring purposes and will appear under the oldest case number. A copy of the Order consolidating the cases for trial shall be filed in all pertinent court files, and all pleadings or documents filed thereafter shall be captioned with the oldest file number only.

- 3.7 Required Court Appearances** All parties and attorneys shall be present and ready to proceed as scheduled when a case is noticed for hearing or trial. Pro Se parties and attorneys shall appear at Status Conferences unless excused by the assigned judge in advance. Parties who are represented by an attorney are only required to attend Status Conferences if ordered by the Court. **Attorneys shall promptly notify the Case Coordinator of any known conflicts with a scheduled court event.** If the attorneys and parties are not present and ready to proceed and have failed to notify the court of any emergency or conflict which would preclude the attorney or party from being present, the Court may impose sanctions for failure to comply with these Rules.
- 3.8 Dismissal for Missed Court Appearances** Any case noticed for a court event, including pre-trial conferences, is subject to dismissal for failure to prosecute if, at the time the matter is called for hearing, the attorneys and parties are not present and ready to proceed, or have failed to notify the court of any emergency or conflict, which would preclude the attorney or party from being present.
- 3.9 Settlement of Contested Issues** Parties are encouraged to engage in settlement discussions at every opportunity. The Family Court recognizes the importance to the family of bringing closure to these disputes and the responsibility of the Court to assist the parties in resolving these disputes. Parties and attorneys are required to appear at scheduled court events as noticed unless otherwise ordered by the Court. If a resolution of the relevant issues is reached prior to the time of court, the attorneys and the parties may, as follows:
- (1) Appear as scheduled and read the terms of the agreement into the record. If needed, another court date will be scheduled and an appropriate Order shall be prepared, signed, and filed with the Court prior to or at that proceeding; OR
  - (2) Be released from appearance if a Memorandum of Judgment/Order has been executed and signed by the parties, their attorneys, and the assigned Judge. If needed, another court date will be scheduled and an appropriate Order shall be prepared, signed, and filed with the Court prior to or at that proceeding; OR
  - (3) Be released from appearance if an appropriate Order is prepared, signed by the parties and their attorneys, and the assigned Judge, and filed prior to the time of court.
- 3.10 Setting Motions for Hearing** All motions shall be set for hearing by the Case Coordinators.
- 3.11 Motions in the Cause for Contempt** All motions for Orders to Appear and Show Cause for contempt filed with the Clerk of Superior Court shall be submitted to the assigned judge. If the assigned Judge is not available, another

Family Court Judge in that county may review the matter. If a Family Court Judge is not available, any District Court Judge may review the matter. Upon issuance of the Order to Appear and Show Cause, the Case Coordinator shall set the case on for a first appearance before the assigned judge. Notice shall be contained in the Order to Appear and Show Cause.

**3.12 Motions for Ex Parte Orders** Motions for Ex Parte Orders shall be submitted only for such emergency circumstances as are allowed by the Rules of Civil Procedure, statute or other law.

- (1) Motions for Ex Parte Orders shall be submitted in writing to the judge assigned to the case. If the assigned judge is not available to hear an ex parte or other emergency matter, another Family Court Judge may hear the matter. If a Family Court Judge is not available, the matter may be heard by any District Court Judge.
- (2) If a party is represented, reasonable steps should be taken to contact counsel for the opposing party before an Ex Parte motion is submitted. When seeking an Ex Parte ruling, parties shall inform the Court of the identity of any opposing counsel. Before considering a request for an Ex Parte ruling, the Court should inquire about the existence of any opposing counsel and of steps taken to advise opposing counsel in advance of the Ex Parte contact. Ex Parte Orders shall be in writing and shall include the date, time and place such order is scheduled for review. The scope, structure and time limit of the Ex Parte Review Hearing is within the discretion of the presiding judge. Ex Parte Orders that are filed on Monday, Tuesday or Wednesday will have the review hearing scheduled the next week unless otherwise set by the judge. Ex Parte Orders that are filed on Thursday or Friday will have the review scheduled during the second week after the Order is filed unless otherwise set by the judge. If the review hearing is continued, it should be continued to the assigned judge's next term unless the presiding judge determines an earlier hearing is necessary.
- (3) If any Ex Parte communication with a Judge occurs without the other party or lawyer present, then the attorney or party must promptly deliver a written copy of such communication to the opposing party or counsel by the same means used to deliver the communication to the judge, i.e. hand delivery, facsimile, express mail or otherwise.

**3.13 Jury** Issues to be determined by a jury in any domestic case shall be scheduled for trial during the next available jury session.



- 3.14 Peremptory Hearings** Requests for a peremptory setting shall be submitted in open court or sent to the Case Coordinator in writing with a copy sent to the other party or counsel.
- 3.15 Sessions of Family Court** The schedules for Family Court civil sessions shall be posted in the Family Court office. The schedules will also be posted on the website.
- 3.16 Managing and Closing Cases** The Family Court Staff shall monitor the pending docket and manage the cases so that all issues can be expeditiously resolved. Attorneys shall cooperate in assisting the Case Coordinators in identifying the issues to be heard in cases in which they are involved. Therefore, attorneys and parties should be careful in using and accurately preparing the *AOC Cover Sheet* required for domestic filings.

In Family Court matters, when a Judgment or Order is entered which renders moot issues not addressed in the Order, the Clerk shall close the moot issues administratively upon being informed of the Judgment or Order resolving the main issue. Therefore, the Clerk shall administratively enter as closed and remove from the pending docket the following issues, which are moot:

- (1) The entry of a final Equitable Distribution Order shall close any request for an Interim Distribution;
  - (2) The entry of an Alimony order shall close any request for Post-Separation Support;
  - (3) The entry of a Divorce Judgment shall close a request for Divorce from Bed and Board, whether the Divorce is entered in the main action or in a collateral action between the parties. To complete the record, the Clerk may place a certified copy of the Divorce Judgment in the case in which the Divorce from Bed and Board is pending if the Divorce was granted in a separate action;
  - (4) A final Custody Order shall close any request for Temporary Custody; and
  - (5) Orders for Judgments resolving all other issues shall close any request for “such other relief as may be appropriate” or similar requests for unspecified additional relief.
- 3.17 Administrative Orders** If a case is made inactive by an Administrative Order, either party may submit a Motion to Reinstate to the Case Coordinator for the assigned Family Court Judge to review. The assigned Family Court Judge can decide to reopen the case without a hearing or schedule a hearing to determine

whether the case should be reopened. If the case is reopened, the Case Coordinator will set the matter for a hearing.

#### **Rule 4 Temporary or Interim Hearings**

- 4.1 Temporary Hearings** Temporary hearings include hearings requesting custody, visitation, child support, post-separation support, reviews of *Ex Parte* Orders (except domestic violence cases) and interim partial distributions. Temporary hearings may be heard on affidavits.
- 4.2 Service of Affidavits** Unless otherwise stated in these Rules, affidavits for temporary hearings must be served in accordance with the North Carolina Rules of Civil Procedure - when a motion is supported by affidavit, the affidavits shall be served with the motion; opposing affidavits shall be served at least two days before the hearing. If the opposing affidavit is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served affidavit or take such other action as the ends of justice require. For the purpose of the two day requirement, service shall mean personal delivery, facsimile or other means such that the party actually receives the affidavit within the required time. The affidavits shall be filed with the Court on the date of hearing.
- 4.3 Parties and Their Attorneys** Parties and their attorneys, if any, shall be present at the hearing.
- 4.4 Time Limits** Temporary hearings for custody shall be limited to two hours. Temporary hearings for all other matters shall be limited to one hour. Each party shall be allocated one-half of the time to be used for direct examination of the party's witnesses, cross-examination of the other party's witnesses, examination of affidavits, and opening and closing statements. It is anticipated that most Temporary Hearings will conclude within these time limits because of the exchange of information between the parties before the hearing; however, this time limit may be extended in the discretion of the presiding Family Court Judge for good cause.

#### **Rule 5 Custody and Visitation Procedures**

- 5.1 New Actions, Modifications, or Any Pleading Seeking Custody/Visitation** After a party has contacted the Case Coordinator as required by these Rules, the party may file the pleading with the Clerk of Court. If the party does not file the pleading within 10 days of contacting the Case Coordinator, the party must notify the Case Coordinator.
- 5.2 Scheduling** The Case Coordinator shall schedule the Orientation to Mediation for the parties within 45 days and allowing for ten days notice.

- 5.3 Temporary Hearings** Either party or attorney may request the scheduling of a temporary hearing on the issue of custody or visitation. Upon request, the Case Coordinator will schedule a temporary hearing within 45 days before the assigned Judge on the issue of temporary custody or visitation and inform the parties or their attorneys of the date, time, and place of the hearing. The parties will still participate in Custody Mediation.
- 5.4 Responsibility of the Moving Party at the time of filing** The moving party shall serve on the opposing party:
- (1) The pleading;
  - (2) The Notice of Mediation;
  - (3) The Notice of Parent Education
  - (4) The Notice of Hearing and Certification of Judicial Assignment setting the temporary hearing date, if temporary relief was requested.
- 5.5 Mandatory Parent Education** The parties to any custody or visitation action, including initial filings and modifications, shall attend the *Parenting Under Two Roofs* workshop presented by the Family Life Council or any other similar workshop approved by the Chief District Court Judge. Within ten days of initiating a custody or modification of custody action, the moving party shall register for the workshop and pay the fee as directed by the agency. Within ten days of service, the responding party shall register for the class and pay the fee as directed by the agency. A copy of the Certificate of Completion shall be filed and served on the opposing party.
- 5.6 Waiver of Parent Education** Attendance may be waived for good cause. A party who has attended the workshop within the prior three years or a party who resides more than 50 miles from this workshop or any similar workshop may be considered good cause. Parties desiring a waiver shall complete and submit a Motion to Waive Parent Education to the Case Coordinator for the assigned Family Court Judge to review. If the opposing party is represented, the Case Coordinator shall contact the attorney to determine if there is an objection to the Motion. The assigned Family Court Judge will make a decision based on the submission with or without a hearing as determined by the judge.
- 5.7 Failure to Comply with Parent Education Requirement** The failure of a party to comply shall subject that party to sanctions as provided in Rule 12.

**The following Rules reflect NCGS 7A-494, 7A-495 and 50-13.1:**

- 5.8 Mandatory Child Custody and Visitation Mediation** The parties to any custody and/or visitation case, including initial filings and modifications, shall

participate in mandatory mediation prior to trial of these issues, unless exempted by the Court.

**5.9 Purpose of Mediation** 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 or visitation dispute. The goal of the program is to reduce stress and anxiety experienced by children in separation and divorce by furnishing an alternate way for the parties to resolve contested custody or visitation issues. Ideally, an educational process begins in mediation that helps the parties focus on parenting their children during this stressful period by recognizing and planning for the needs of their children during the changes in the family structure. A successful mediation may help the parties put a Parenting Agreement in writing, assist them in resolving future problems without recourse to the courts, and reduce the stress of re-litigation of custody and visitation issues.

**5.10 Opportunities for Parties through the Mediation Program** Through mediation the 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) Participate in a process that invites informed choices and, where possible, gives the parties the responsibility for making decisions about their child's custody and visitation.
- (4) Minimize the stress and anxiety experienced by the parties, especially the child.
- (5) Reduce the stress and expense of litigation of custody and visitation disputes.

**5.11 Attendance** The parties named as the plaintiff and defendant in the filing are required to attend (1) an orientation to mediation and (2) at least one mediation session. If a party fails to participate in accordance with these Rules, the case will be closed in mediation and referred to the Case Coordinator who will promptly schedule the case for a Status Conference in front of the assigned judge. The Mediator will use a *Mediation Outcome* form to update the Case Coordinator and attorneys.

**5.12 Failure to Appear** After notice, the failure of any party to appear for a scheduled orientation or a mediation session may result in the following sanctions:

First failure to attend Orientation:

The Mediation Staff or Family Court Staff is authorized to notify the person of possible sanctions and reschedule the Orientation.

First failure to attend a Mediation Session OR

Second failure to attend Orientation:

The Mediation Staff shall report the failure to attend to Family Court. The person failing to appear is subject to a \$100 fine plus the cost of any expenses incurred by the other party as determined at the next scheduled Status Conference.

Any subsequent failure to attend - A Show Cause Order shall issue for a contempt hearing before the assigned Family Court Judge and such sanctions as may be appropriate may be imposed.

**5.13 Orientation** Prior to the mediation sessions, parties shall attend an Orientation to mediation where the goals and procedures of the mediation process are explained by the mediator. Orientation lasts approximately 2 hours (including the completion of a questionnaire and the scheduling of appointments for the first mediation session). Children are not included in the Orientation session. If the parties have attended an Orientation within the previous three years, they do not need to attend an Orientation if they return to mediation.

**5.14 Mediation Session** Only parties named in the suit are permitted to be present in the mediation session; however, other parties may be present only with the consent of the parties involved and at the discretion of the Mediator. Generally, children are not permitted to attend the mediation session unless that is agreed to in advance by both parties and the mediator. All participants in mediation are bound by the statutory requirement of confidentiality. The Mediator shall set the rules of behavior for the presence of other parties at his/her discretion. Each mediation session lasts approximately two hours. Frequently, parents spend more than one session resolving issues centered on parenting their children. Each case is unique, but the number of mediation sessions is usually one or two. The mediator helps to provide an environment where parents can:

- (a) engage in problem-solving that focuses on the needs of their children;
- (b) utilize the strengths of all concerned in reorganizing the family;
- (c) find ways to provide continuity and stability in the child's life; and
- (d) examine their responsibility for their children.

The mediator does not decide issues, but provides a structure where parents can develop a parenting plan. Parents are not required to reach an agreement in mediation.

- 5.15 Discovery** No discovery regarding a custody or visitation claim shall be conducted until the mediation process is complete or has been exempted by the Court. With the exception of oral depositions of parties, discovery may proceed regarding financial considerations.
- 5.16 Subsequent Mediation Sessions** A party must attend the Orientation and first mediation session. The Mediator will schedule any subsequent mediation sessions with consent of the parties and at the discretion of the mediator.
- 5.17 Expedited Mediation** In some cases, the parties may be best served by attending orientation/mediation immediately. The parties must contact the Mediation Office to discuss this option.
- 5.18 Waiving the Custody Mediation Process** In some instances, such as an ongoing investigation by the Department of Social Services, the mediator may determine a case is inappropriate for mediation and release the case for the Case Coordinator to schedule in Court. In other instances, a party may move to waive mediation for “good cause”. Good cause is defined as including, but not limited to the following as set out in General Statute 50-13.1(c): “(1) showing of undue hardship to a party; (2) an agreement between the parties for voluntary mediation, subject to court approval; (3) allegations of abuse or neglect of the minor child, (4) allegations of alcoholism, drug abuse, or spouse abuse; or (5) allegations of psychological, psychiatric, or emotional problems.” A showing by either party that the party resides more than 50 miles from the court may be considered good cause. Before a mediation waiver based on distance is considered, any North Carolina resident must provide verification of attendance at a Mediation Orientation in a North Carolina county or provide an explanation why such attendance is not possible. Parties desiring an exemption shall complete and submit a Motion to Waive Mediation to the Case Coordinator for the assigned Family Court Judge to review. If the opposing party is represented, the Case Coordinator shall contact the attorney to determine if there is an objection to the Motion. The assigned Family Court Judge will make a decision based on the submission with or without a hearing as determined by the judge. If mediation is exempted, the Case Coordinator will set the matter for trial.
- 5.19 Full Parenting Agreements** If the parties are able to reach a full parenting agreement, the Mediator will prepare a draft and distribute copies to all parties and their attorneys. A time will be scheduled with the parties to return to sign the final draft, usually within 14 days. Final signed agreements shall be presented to the assigned Family Court Judge. The assigned Judge shall review each agreement signed by the parties, and, if appropriate, make the parenting agreement an order of the Court by signing the Order Approving the Parenting Agreement. The Mediator will file the final order and Parenting Agreement with the Clerk of Superior Court, and distribute copies to the parties and counsel. The Mediator will update the Case Coordinator with the *Mediation Outcome* form.

- 5.20 Partial Parenting Agreements** If a partial agreement is reached, the Mediator will prepare a final draft of the partial agreement and follow the same process for a full parenting agreement. The Mediator will notify the Case Coordinator with the *Mediation Outcome* form and identify the issues that are to be heard by the Court.
- 5.21 Temporary Parenting Agreements** If the parties sign an agreement containing temporary provisions, the custody case will remain open until a final Order is filed either through mediation or a court proceeding. For all temporary agreements, Family Court staff will schedule a Status Conference with the assigned judge. The judge will review the status of the case and determine whether the case will be scheduled for trial or referred back to mediation.
- 5.22 Enforcement** Custody Orders developed through mediation shall have the same force and effect and shall be enforced as any other Court Order.
- 5.23 No Agreement Reached in Mediation** If the parties fail to agree, the Mediator will notify the Case Coordinator and the attorneys with the *Mediation Outcome* form. If no agreement is reached in Mediation, the Case Coordinator will promptly set the matter for hearing or a status conference.
- 5.24 Modifications of Existing Agreements** The parties must have a custody or visitation issue formally pending before the Court to return to mediation.
- 5.25 Mediation Termination** The Mediator, in his/her discretion, may terminate the mediation if the Mediator receives information during the course of the mediation that indicates continuing mediation would be inappropriate for reasons of safety, welfare or significant psychological dynamics. The Mediator will then report to the attorneys and Case Coordinator that no agreement was reached with the *Mediation Outcome* form. If mediation is terminated, the Case Coordinator will set the matter for hearing within 45 days.
- 5.26 Closure of Mediation** A case will be considered closed in mediation once the parties have reached an agreement, attended Orientation and at least one mediation session without an agreement, reached a consent order through their attorneys or voluntarily dismissed. If the case has been voluntarily dismissed, the moving party shall provide appropriate documentation to the Case Coordinator. The Case Coordinator will not calendar for court any custody or visitation complaint that has not been closed in mediation.
- 5.27 Inadmissibility** All verbal or written communications from either or both the parties to the Mediator or between the parties in the presence of the Mediator made in a proceeding pursuant to these Rules are absolutely privileged and inadmissible in Court. Neither the Mediator nor any party or other person involved in mediation under these Rules shall be called to testify as to communications made during or in furtherance of such mediation sessions,

provided there is no privilege as to communications made in furtherance of a crime, implied threat or fraud.

- 5.28 Correspondence with Attorneys** The Mediator will deliver any written communication to attorneys by fax, email, or the boxes located in the courthouse.
- 5.29 Interpreter** The parties shall notify the Family Court Office or the Mediation Office if an interpreter is needed for mediation. If an interpreter is requested at the time of filing, Family Court Staff will wait until service has been obtained and then refer the case to the Mediation Office for scheduling. The Mediation Office may schedule the Orientation and Session as a combined event.
- 5.30 Family Court Time Standards** The Family Court time standards are goals as established by the statewide Family Court Advisory Committee under the direction of the North Carolina Supreme Court. The following time frames represent maximum time limits that are goals for custody matters. Unless otherwise specified, “days” are calendar days.

<b><u>Event</u></b>	<b><u>Time from Filing of Complaint</u></b>
a. Temporary Custody Orders, if requested by one or both parties:	
(1) in 90% of cases	Within 30 days
(2) in 100% of cases	Within 45 days
b. Orientation to Mediation Scheduled:	
(1) in 100% of cases	Within 45 days
c. Mediation Sessions Completed:	
(1) in 90% of cases	Within 90 days
(2) in 98% of cases	Within 120 days
(3) in 100% of cases	Within 150 days
d. Orders Entered:	
(1) in 90% of cases	Within 150 days
(2) in 100% of cases	Within 180 days

## **Rule 6 Child Support Procedures**

- 6.1 New Actions, Modifications or Any Pleading Seeking Child Support** After a party has contacted the Case Coordinator as required by these Rules, the party may file the pleading with the Clerk of Court. If the party does not file the



pleading within 10 days of contacting the Case Coordinator, the party must notify the Case Coordinator.

Any non IV-D child support motion for modification or termination that has no other active pending domestic issues shall be calendared and heard in regularly scheduled sessions of Civil Court. If it involves a complex or lengthy issue it should be referred to Family Court for assignment and scheduling.

- 6.2 Scheduling** If requested, the Case Coordinator shall set a temporary child support hearing within 45 days of the request (unless paternity is involved).
- 6.3 IVD Issues in Domestic Cases** If a IVD issue is scheduled in Domestic Court in conjunction with other domestic issues, the IVD attorney shall receive notice of the hearing by the moving party.
- 6.4 Collateral matters in IVD Cases** Pursuant to NCGS 110-130.1(c), any non-child support or collateral matter filed in a Title IV-D action in this District shall be dismissed upon being calendared in court. The Clerk of Superior Court should provide anyone attempting to file such matter a copy of this rule prior to filing.
- 6.5 Responsibility of Moving Party at the Time of Filing** The moving party shall serve on the opposing party:
- (1) The pleading; and
  - (2) The Notice of Hearing and Certification of Judicial Assignment including any temporary hearing dates.
- 6.6 Presence Required** Both the parties and their attorneys, if any, shall be present at the hearing.
- 6.7 Proof Required** Parties shall exchange documentation of income (W-2, federal tax return, pay stubs, etc.) and insurance costs at or before the hearing.
- 6.8 Establishment of a Permanent Child Support Order** If at the hearing both parties and the presiding judge agree, the Court may proceed with the establishment of a permanent order of child support.
- 6.9 Pre-Trial Conferences** Pre-Trial Conferences are not required unless requested by a party or ordered by the assigned Family Court Judge.
- 6.10 Settlement Proceedings** Cases may be sent by the Chief District Judge, or designee, to mediation by motion and order after notice of hearing to all parties, or by a Consent Order signed by the parties, or in the discretion of the presiding Judge.

**6.11 Family Court Time Standards** The Family Court time standards are goals as established by the statewide Family Court Advisory Committee under the direction of the North Carolina Supreme Court. The following time frames represent maximum time limits that are goals for child support matters. Unless otherwise specified, “days” are calendar days.

**Event**

**Time from Filing of Complaint**

a. Temporary Child Support Orders entered, if requested, and do not involve paternity determinations:

- |                   |                          |
|-------------------|--------------------------|
| (1) 90% of cases  | Within 30 days of filing |
| (2) 100% of cases | Within 45 days of filing |

b. Permanent Orders entered:

- |                   |                            |
|-------------------|----------------------------|
| (1) 75% of cases  | Within 90 days of service  |
| (2) 90% of cases  | Within 180 days of service |
| (3) 100% of cases | Within 270 days of service |

**Rule 7 Post-Separation Support, Alimony and Modification of Alimony Procedures**

**7.1 Actions for Post-Separation Support and Alimony** After a party has contacted the Case Coordinator as required by these Rules, the party may file the pleading with the Clerk of Court. If the party does not file the pleading within 10 days of contacting the Case Coordinator, the party must notify the Case Coordinator.

**7.2 Scheduling** The Case Coordinator shall set the issue of post-separation support for hearing within 60 days of the request. The Case Coordinator shall set alimony issues for a Status Conference within 120 days of the filing of the pleading.

**7.3 Mandatory Use of Financial Affidavits** It shall be mandatory that the financial affidavit form adopted in this district be used in cases seeking post-separation support and/or alimony.

**7.4 Responsibility of the Moving Party at the Time of Filing** The moving party must serve the other party with the following:

- (1) the pleading seeking post-separation support and/or alimony and
- (2) the Notice of Hearing and Certification of Judicial Assignment.

**7.5 Responsibilities of Moving Party before the Post-Separation Support Hearing** The moving party must serve the completed financial affidavit and proof of income for the previous thirty days on the opposing party fourteen days prior to the hearing.

- 7.6 Responsibility of the Opposing Party Before the Post-Separation Support Hearing** The opposing party must serve the completed financial affidavit and proof of income for the previous thirty days on the moving party seven days prior to the hearing.
- 7.7 The Post-Separation Support Hearing** Both parties must file the completed financial affidavits with the court at or before the hearing. Any filed financial affidavit is deemed to be before the Court as evidence offered in the PSS hearing and is subject to cross-examination and objection. Both parties and their attorneys, if any, shall be present at the hearing.
- 7.8 Initial Status Conference** At the Initial Status Conference, the Judge shall enter a Scheduling Order including a requirement that the parties and their counsel attend a mediated settlement conference or, if the parties agree, other settlement procedure, unless excused by the Court for good cause shown.
- 7.9 Affidavits for the Alimony or Modification of Alimony Hearing** Unless otherwise set in the Scheduling Order, the parties shall exchange financial affidavits and proof of income thirty days prior to mediation/judicial settlement conference or thirty days before the hearing if ADR is waived. Trial will be scheduled after the parties have filed Certificates of Service indicating the affidavits have been exchanged. Parties are under a continuing obligation to file updated financial affidavits reflecting any substantive changes.
- 7.10 Family Court Time Standards** The Family Court time standards are goals as established by the statewide Family Court Advisory Committee under the direction of the North Carolina Supreme Court. The following time frames represent maximum time limits that are goals for post separation and support matters and alimony matters. Unless otherwise specified, “days” are calendar days.

<u>Event</u>	<u>Time from Filing of Complaint</u>
<u>Post Separation Support</u>	
Order entered 75% of cases	Within 60 days
100% of cases	Within 90 days
<u>Alimony</u>	
a. First Status Conference	120 days
b. Completion of ADR*	210 days
c. Final Pre-Trial Conference	240 days
d. Start of Trial	270 days

- |    |                            |                           |
|----|----------------------------|---------------------------|
| e. | Order entered 90% of cases | Within 270 days of filing |
|    | 100% of cases              | Within 365 days of filing |

\* Completion of mediation session(s) – not when report is filed

**Rule 8 Equitable Distribution Procedures**

**8.1 Actions for Equitable Distribution** After a party has contacted the Case Coordinator as required by these Rules, the party may file the pleading with the Clerk of Court. If the party does not file the pleading within 10 days of contacting the Case Coordinator, the party must notify the Case Coordinator.

**8.2 Scheduling** The Case Coordinator shall set the issue of interim distribution, if requested, for hearing within 60 days of the request.

These are the court events anticipated for the typical equitable distribution case:

- Initial Status Conference – set within 120 days of filing
- Initial Pretrial Conference – Pretrial Order due
- Final Pre-trial Conference
- Trial

**8.3 Inventory Affidavit** The form adopted in this district must be used unless all parties, and the assigned judge, consent to a different form. If a different form is approved, all parties must submit their data on that single form. Once finalized, the *Inventory Affidavit* will be submitted to the Court as a single document.

**8.4 Responsibility of Initiating Party** Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution *Inventory Affidavit* listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property in accordance with N.C.G.S. 50-21(a).

**8.5 Responsibility of Responding Party** Within 30 days after service of the *Inventory Affidavit*, the party upon whom service is made, shall list all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property to the original affidavit.

**8.6 Exchange of Affidavits/Worksheet** The parties shall continue to exchange the affidavit until such time as each party has listed their contentions as to the classification, value, possession, and proposed distribution of all property to be divided. Every block for each item listed on the affidavit shall be completed. All incomplete fields, including “TBD”, must be updated within thirty days unless extended by the assigned judge. The failure of any one party to provide a

complete listing without good cause constitutes substantial evidence of a lack of good faith. Prior to mediation, it is expected that the parties will have in their possession a full and final listing of all property that the trial judge may be asked to distribute.

It is the intent of the Court that the parties list the items that are identified and the values as close as possible so that a Pre-Trial Order may be completed. If there are items where value cannot be determined, the parties should be prepared to have a plan for the Court, previously discussed with the opposing counsel, as to how values can be determined: i.e., appraisals, sale, etc. If there are items that need discovery, a plan for discovery should be presented at the Initial Status Conference. It is expected that each party will share with the other party, records that they have in their possession as to items that are clearly marital, and that the parties will cooperate with opposing counsel prior to the Initial Status Conference to allow for access to the records and items for inspection. The Court intends for the parties to exchange data and information so that the proposed Pre-Trial Order may be as thorough as possible at the Pretrial Conference.

- 8.7 Filing the Affidavit** Each time the affidavit is exchanged with the other party, a Certificate of Service shall be filed in the court file. The *Inventory Affidavit* is only filed after it is a full and final listing of all property on a single form.
- 8.8 Initial Status Conference** At the Initial Status Conference, the Judge shall enter a Scheduling Order including a requirement that the parties and their counsel attend a mediated settlement conference or, if the parties agree, other settlement procedure, by a specified date unless excused by the Court for good cause shown. The parties may avoid an Initial Status Conference if they submit a Consent Scheduling Order to Family Court in advance. Deadlines listed in any Scheduling Order may be extended for good cause by the assigned judge.
- 8.9. Pre-Trial Orders** The Pre-Trial Order shall be filed in accordance with the Scheduling Order or subsequent extensions granted by the Court. The Court retains its authority, based on the evidence, to make findings of fact, conclusions of law and orders regarding value, classification or distribution to affect an equitable division of the property notwithstanding the stipulations of the parties.
- 8.10 Pre-Trial Conference** After the Pre-Trial Order is filed, the Case Coordinator will schedule a fifteen minute Pretrial Conference for the parties to narrow the issues and set a trial date.
- 8.11 Fast Track to Mediation** At any time, the parties may enter a Consent Order referring a case to mediation and selecting a mediator as otherwise described in these Rules.
- 8.12 Expedited Equitable Distribution Trial** At the Initial Status Conference, the parties may request to bypass settlement procedures and expedite an equitable

distribution trial. Upon consent of the assigned judge, the Case Coordinator shall schedule the case for trial without further discovery.

- 8.13 Supreme Court Rules** These Rules are supplemental to the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases. Any conflict between the Rules should be resolved in favor of the Supreme Court Rules. These Rules shall allow for settlement procedures including binding or non-binding arbitration as permitted by law in N.C.G.S. 7A-37.1 and Arbitration Rule 1(b).
- 8.14 Appointment of Mediators** The Court is only permitted to appoint certified mediators. However, the assigned judge will approve a qualified mediator nominated by consent of the parties.
- 8.15 Notification to Mediator** Once a mediator is selected, the Case Coordinator shall send the mediator a copy of the Scheduling Order and a Report of Mediator form. If the mediator is unable to mediate the case by the deadline listed on the Scheduling Order, the mediator shall contact the Case Coordinator.
- 8.16 Report of Mediator** The mediator shall file a report, with a copy to the Case Coordinator, within ten days of the conference.
- 8.17 Judicial Settlement Conferences** Judicial Settlement Conferences (JSC) are only authorized upon the consent of both the assigned judge and the judge presiding over the settlement conference. If an attorney or party is unavailable to attend a JSC within 90 days of the date the case is eligible for JSC scheduling, the case may be transferred to the mediation track by the assigned judge. A request to continue a scheduled JSC must be in writing. Lack of good cause for a continuance or more than one continuance request may result in the case being ordered into mediation by the assigned judge.
- 8.18 Report of Neutral** The neutral shall complete a report, with a copy to the Case Coordinator, within ten days of the conference.
- 8.19 Settlement** If the parties reach a settlement on a case scheduled for trial, they shall immediately notify the Case Coordinator of the settlement.
- 8.20 Family Court Time Standards** The Family Court time standards are goals as established by the statewide Family Court Advisory Committee under the direction of the North Carolina Supreme Court. The following time frames represent maximum time limits that are goals for post separation and support matters and alimony matters. Unless otherwise specified, “days” are calendar days.

<b><u>Event</u></b>	<b><u>Time from Filing of Complaint</u></b>
a. First Status Conference	120 days
b. Completion of ADR*	210 days
c. Final Pre-Trial Conference	240 days
d. Start of Trial	270 days
e. Orders entered 90% of cases	Within 270 days of filing
100% of cases	Within 365 days of filing

\* Completion of mediation session(s) – not when report is filed.

## **Rule 9 Domestic Violence Actions**

**9.1 Collateral Issues in 50B actions** Entry of Orders regarding collateral issues in an action filed pursuant to Chapter 50B are discouraged and should be addressed in a separate action. Any Order entered pursuant to a Chapter 50B action shall be for a fixed period of time not to exceed one year.

## **Rule 10 Continuance Requests**

**10.1 General Rule** Domestic cases should be addressed at the earliest opportunity, including the first pre-trial or status conference. However, when compelling reasons for continuance are presented, a continuance may be granted for good cause.

**10.2 Discovery Extensions** Once a trial date has been scheduled, only the assigned judge can approve extensions for discovery if the requested extension date falls within fourteen days prior to trial or falls after the scheduled trial date. Extensions approved by the Clerk are not automatically considered good cause for a continuance to be granted for the trial.

**10.3 Conflicts** Attorneys shall notify the Court and other counsel or unrepresented party of any other court conflicts as they become known.

**10.4 Motions** A request for a continuance shall be submitted on the local *Motion for Continuance* form and delivered to the Case Coordinator after filing with a copy to opposing counsel or unrepresented party via the quickest means available. The moving party must also submit an *Order for Continuance* form with the header complete. Any objection to any written request for continuance must be in writing. Oral requests are allowed if they are made on the record in front of the assigned judge as soon as possible after the need for a continuance is known.

If the parties agree that a continuance may be granted, the parties may complete a *Stipulation of Continuance* form and submit it directly to Family Court. The assigned judge may grant or deny the continuance. No party is excused from Court until the Judge has signed a Continuance Order. It is the responsibility of the attorney or unrepresented party to follow-up with the Case Coordinator.

The judge may review the Motion for Continuance or the Stipulation of Continuance out of session or may schedule a hearing. Once the judge has completed the Order, the Case Coordinator shall promptly notify the parties, schedule a new date, file the Order and send copies to all parties with the new date noted

If a rescheduling request is made before the court docket is published and both sides consent, the Case Coordinator may reschedule the matter as long as the new date is reasonably in accordance with the time standards. Otherwise, the Case Coordinator should consult with the presiding Judge.

## **Rule 11 Timely Orders and Judgments**

- 11.1 Orders and Judgments** All proposed domestic orders or judgments must be submitted to the court within 30 days following the ruling by the judge. The party preparing the proposed judgment or order shall provide a copy of the proposed document to the opposing party three days (six if by mail) prior to submitting the document to the judge. The Family Court Coordinator will schedule a status conference for any case with an order due.
- 11.2 Delinquent Orders and Judgments** Parties delinquent in submitting proposed orders and judgments shall be identified to the Chief District Court Judge or the assigned Family Court Judge and sanctions or penalties may be imposed as deemed appropriate and as allowed by law.
- 11.3 Rulings** In any case where a ruling is not given immediately at the conclusion of the hearing or trial, the judge should announce in court a date and time within 30 days for the ruling to be issued and the Coordinator shall calendar the case for that date. If no date is announced and no ruling is entered within thirty days from the hearing, the Coordinator shall calendar the case for status during the judge's next status session or other appropriate court date if the judge has been reassigned to another county. If no ruling is entered at that time, the Coordinator shall schedule the case for review during the judge's status sessions or other appropriate court date until the ruling is entered.

## **Rule 12 Sanctions**

- 12.1 Failure to Comply** Failure to comply with these Rules may subject the parties and/or their attorneys to such sanctions as allowed by law and deemed appropriate



by the assigned Family Court Judge. The purpose of this section is to encourage an efficient flow of cases and is not designed to create an unfair advantage to one party. The sanctions may include, but are not limited to:

- (1) Dismissal by the Court of all or any part of any claim for relief or pleading; or
- (2) Disallowance of evidence and/or testimony; or
- (3) Payment of a fine; or
- (4) Payment of the reasonable cost incurred by a party due to the other party's non-compliance with these Rules; or
- (5) Payment of the opposing party's reasonable attorney's fees.

### **Rule 13 Remanded Cases**

**13.1 Remands** When cases are remanded by the Appellate Division, appellant's counsel shall promptly notify the Case Coordinator so that the case can be scheduled for a pre-trial conference within 30 days of being notified by appellant's counsel.

### **Rule 14 Telephone Conferences**

**14.1 Telephone Conferences** The Court may, in its discretion, order or allow oral argument on any motion by telephone conference call or speaker phone conference call, provided that all participants to the conference can be heard by all other parties at all times during the conference call. The attorney shall schedule such conference calls at a time convenient to all parties and the judge. The judge may direct which party or parties shall bear the cost of the conference call.