

STATE OF NORTH CAROLINA

THE GENERAL COURT OF JUSTICE

JUDICIAL DISTRICT 20B

DISTRICT COURT DIVISION

COUNTY OF UNION

ORDER AMENDING AND ADOPTING LOCAL RULES FOR DISTRICT  
COURT

The attached Local Rules for District Court are hereby adopted as amended herein effective September 1, 2012 and shall apply to all cases filed on or after that date and, when practical, except when the time for compliance has passed, to all pending cases.

These Rules supersede all previous rules for civil and domestic cases in the District Court Division of Judicial District 20B.

It is so ordered August 30, 2012.

*N. Hunt Gwyn*

N. HUNT GWYN

CHIEF DISTRICT COURT JUDGE

JUDICIAL DISTRICT 20B



**20B JUDICIAL DISTRICT  
FAMILY COURT AND GENERAL CIVIL COURT RULES**

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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 problems affecting families and children in this district, whether court intervention is initiated by a family member or a governmental agency. These 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 Party without an attorney 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 must comply with these Rules. A party representing himself or herself may be referred to in these rules as a *pro se* party.
- 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 unnecessary delay and to promote the ends of justice. The Family Court Administration Staff are authorized to act in their discretion subject to consultation with the presiding judge or the Chief District Court Judge in applying these Rules.
- 1.4 Forms.** Local forms are required by these Rules and counsel or pro se parties shall use the forms provided.
- 1.5 Citation.** These Rules and all amendments hereafter shall be filed with the Clerk of Superior Court of the Judicial District and the Administrative Office of the Courts. These Rules may be cited accordingly as **Rules for District Court 20B (RDC20B)**
- 1.6 Availability of Rules.** The Family Court Case Coordinators (Case Coordinators) will maintain a supply of copies of these Rules and associated forms to be made available to attorneys and the public upon request. These Rules will be published on the internet at:  
<http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/1023.pdf>
- 1.7 Goals.** Family Court strives to:
- incorporate administrative practices which promote fair, effective, and efficient 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 delivery of professional services.

## **RULE 2: FILING OF FAMILY COURT CASES AND ASSIGNMENT TO DISTRICT COURT JUDGES**

- 2.1 Filing.** An original and one copy of a completed AOC Cover Sheet (Form #1) shall accompany the filing with the Clerk of Superior Court of any complaint, motion, answer, response, etc., pursuant to Rule 5 of the General Rules of Practice, except for the following cases: involuntary commitments, domestic violence, IV-D, U.R.E.S.A, U.I.F.S.A., and Clerk's child support cases. The Clerk of Superior Court shall provide a case number at the time of an initial filing and place the

number upon the summons. All subsequent pleadings and papers filed with the Clerk and all subsequent communications to opposing counsel or parties or court personnel shall contain the proper case number.

- 2.2 Assignment of Judge.** The Case Coordinator shall assign the case to a District Court Judge at the time of filing. Those cases previously assigned to or heard by a District Court Judge, including all juvenile court matters, will be assigned to that District Court Judge in so far as possible.
- 2.3 Scheduling by Case Coordinator.** Upon assignment of the judge, all motions and hearings shall be scheduled by the Case Coordinator before the judge assigned. The Case Coordinator or the assigned judge shall schedule the case for the next appropriate court event as may be necessary based on the issues raised in the pleadings. No court date shall be set until a pleading is filed.
- 2.4 Emergency or *Ex Parte* Matters.** Emergency matters may be heard by the judge assigned to the case regardless of the session at which the judge may be presiding. If the judge assigned to a case is not available to hear an *Ex Parte* motion or other emergency matter, the matter may be heard by the Chief District Court Judge or by a District Court Judge designated by the Chief District Court Judge.

### **RULE 3: GENERAL RULES FOR SCHEDULING CASES**

- 3.1 Case Tracking.** The Family Court Administration 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 Administration 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 Administration Staff shall inform the parties or their attorneys of scheduled events.
- 3.2 Status or Pretrial Conferences Required.** The Case Coordinator shall schedule Family Court cases not otherwise exempted herein for appropriate status or pretrial conferences and shall inform the parties or attorneys via publication of the Court Calendar at <http://www1.aoc.state.nc.us/www/calendars/Civil.jsp?county=UNION>. The following matters do not require status or pretrial conferences unless ordered by the Court in an individual case: uncontested divorces, hearings on orders to show cause, hearings for temporary or emergency relief, attorney fees, domestic violence, U.I.F.S.A., IV-D, or Clerk's child support cases. Equitable Distribution Status Conference orders are required. Attorneys and/or parties are required to bring Status Conference Orders to court on the day of the Status Conference hearing. The Clerk shall provide a copy of the Status Conference Order to the Family Court Case Coordinator. For delinquent orders, sanctions or penalties may be imposed in such cases deemed appropriate and as allowed by law (See Rule 22).
- 3.3 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 notification must be in accordance with Rule 4 of the Rules of Civil Procedure on *Notice of Hearing Form* (FORM #4). The moving party shall file all notices with the Clerk's office for inclusion in the case file.  
It is the responsibility of Pro Se parties to keep the Court apprised of their current mailing address.

**3.4 Upcoming Court Events.** In all actions with pending issues, there shall be scheduled a next court date for the upcoming court event that is appropriate in the case: initial scheduling conference, status or interim pretrial conference, pretrial hearing, final pretrial conference, or trial. The Case Coordinator will review and monitor pending actions. In any case without a properly scheduled court event, the Case Coordinator shall schedule the case for a status conference and/or other appropriate event 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 pretrial conference. To add a case for trial to an upcoming trial docket that has already been finalized, the requesting attorney or party must get the consent of all parties and the presiding judge.

**3.5 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.

Multiple cases involving the same family shall be consolidated by order entered at the first court event, unless leave is granted by the assigned judge for the cases to proceed separately.

**3.6 Required Court Appearances.** Parties and/or attorneys shall be present and ready to proceed as scheduled when a case is noticed for a conference, pretrial hearing, or trial (See Rule 18 regarding continuances and conflicts). If the attorneys and/or parties are not present and ready to proceed and have failed to notify the court of an 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. See Rule 22. Any case listed on a published calendar is subject to dismissal at the end of the civil term for failure to prosecute if, at the time it is called for hearing, the parties are not present or ready to proceed. All cases calendared shall be ready to be heard and may be called at any time during the session.

**3.7 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/or 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/or the parties may, as follows:

- appear as scheduled and read the terms of the agreement into the record. Another court date will be scheduled and an appropriate Order shall be prepared, signed, and filed with the Court prior to or at that proceedings; or
- be released from appearance if a Memorandum of Judgment/Order (FORM #13) has been executed and signed by the parties, their attorneys, and the assigned judge. The Memorandum of Judgment will be deemed as a final court order, unless the controlling case or statutory law requires additional findings of fact and conclusions of law..
- 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.

**3.8 Motions.** Any motion, including all discovery and non-evidentiary motions, shall be set for hearing by the Case Coordinator. When filing a Motion to Withdraw as attorney of record, the moving

attorney shall prepare an Order and provide in the Order the current address or last known address of the party for future service. Motions to withdraw shall indicate which issues are pending in the case and whether any rulings or orders are outstanding in the case.

- 3.9 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 for consideration. All motions must be presented in person to the assigned judge. Upon issuance of the Order to Appear and Show Cause, the Case Coordinator shall set the case on for hearing before the assigned judge without a pretrial conference. Notice shall be contained in the Order to Appear and Show Cause.
- 3.10 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. (See Rule 2.4).
1. Motions for *Ex Parte* Orders shall be verified and submitted in writing to the assigned judge and must be delivered in person to the assigned judge by the attorney or litigant requesting the *Ex Parte* Order.
  2. If an opposing party is represented, reasonable steps shall 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. *Ex Parte* Orders shall be in writing and shall include the date, time and place such order is scheduled for review.
  3. If any *Ex Parte* motion is filed and a subsequent communication with a Judge occurs about said motion 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 and if no attorney is involved on the opposing side, then service of said motion must be completed in compliance with Rule 4 of the North Carolina Rules of Civil Procedure.
- 3.11 Calendar Request.** An attorney of record may request that a case be placed on a non-jury trial calendar by filing a *Request For Setting (FORM #2A-#2B)* with the Clerk of Superior Court and delivering a copy to the Case Coordinator and to opposing counsel or parties of record not later than five (5) weeks before the session begins. No hearing date shall be assigned until the pleading containing the requested relief is filed with the Clerk of Superior Court.
- 3.12 Jury.** Issues to be determined by a jury in any domestic case shall be scheduled for trial by the assigned judge at the final pretrial conference.
- 3.13 Preemptory Hearings:** Requests for a preemptory setting for matters shall be submitted to the Case Coordinator in writing using the *Request for Preemptory Setting* form (FORM # 3) with a simultaneous copy sent or delivered to the opposing party or counsel. The opposing party or counsel shall respond to the Case Coordinator within seven (7) days if they oppose the request for preemptory setting or date sought. When consented to, after receiving a response from the opposing party or counsel, or after ten (10) days whichever comes first, the Case Coordinator shall place the request before the assigned judge who shall render his or her decision. A preemptory setting shall be granted only for good and compelling reason. The judge's decision shall be transmitted to the moving party who shall then notify the opposing party or counsel. Requests for preemptory settings will be granted at the discretion of the assigned judge but only for good cause, including but not limited to:

- a.** It is impossible or impractical for a witness of litigant to appear for the trial due to out of state travel greater than 150 miles without substantial notice and certainty of hearing;
- b.** The case involves numerous expert witnesses;
- c.** Severe adverse economic consequences will result from delay of trial;
- d.** Delay in hearing the case would likely cause substantial prejudice to a party or would be harmful to the best interests of the minor child or children in a custody case
- e.** The case has been repeatedly scheduled for trial without being tried.

Once a case has been peremptorily set but is continued, it remains peremptorily set until the hearing is complete.

- 3.14 Calendars.** All District Civil Calendars will be published through the internet web site [www.nccourts.org](http://www.nccourts.org). The availability of calendars published through these outlets shall constitute official notice to local and out of district attorneys, as well as to *pro se* parties who fail to provide a current and valid mailing address to the Case Coordinator. **If you are shown as the attorney of record for a client, but no longer represent said client, you have five (5) business days from the time the calendar is posted to notify the Family Court Case Coordinator. Otherwise you will be responsible for sending notice to that party.**

#### **RULE 4: TEMPORARY OR INTERIM HEARINGS ON AFFIDAVITS**

- 4.1 Temporary Hearings.** Temporary hearings shall include hearings of request for temporary custody or visitation, temporary child support, post-separation support, reviews of *Ex Parte* Orders (except domestic violence cases) and interim partial distributions pursuant to NCGS §50-20(i1).
- 4.2 Parties and Their Attorneys.** Parties and their attorneys, if any, shall be present at the hearing.
- 4.3 Temporary Hearings.** Temporary hearings shall be limited to thirty minutes per party for custody and visitation issues, and thirty minutes per party for financial issues involving temporary child support, post-separation support, and/or attorney's fees. No temporary hearing will exceed two total hours. For example, a hearing on temporary custody, child support, and post-separation support shall entitle each party to one hour. A hearing solely on temporary custody shall entitle each party to thirty minutes. Parties shall be entitled to use their time for presentation of testimony and evidence, cross-examination, and/or opening and closing statements. Examination of children in a temporary custody hearing is in the discretion of the presiding judge.
- 4.4 Affidavits.** Both parties shall file all affidavits on the Wednesday prior to the Monday of the District Court week for which the case is calendared.

Service on the opposing party should be completed by 5:00 on the Wednesday prior to the Monday of the District Court week for which the case is calendared (service by mail requires affidavits to be mailed three days earlier). Service by facsimile is allowed.

Testimonial affidavits in temporary custody and visitation cases shall not be filed or served on opposing parties until the parties have completed custody mediation.

Testimonial affidavits are not required to be filed in temporary custody or visitation hearings. However, should a party file testimonial affidavits the following guidelines apply:



1. Only the sworn testimony of the Plaintiff, Defendant, or an intervening party may be contained in the affidavits submitted.
2. Affidavits shall not exceed a total of 15 pages, not including the cover sheet and verification.
3. Affidavits shall be typed in 12 point font or hand-printed and double-spaced.
4. Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein..
5. The party affidavit must be accompanied by the designated cover sheet.
6. In addition to the testimonial affidavit, a party may submit the following certified records obtained from the appropriate agency (school records, daycare records, medical records, dental records, counseling records), accompanied by the designated cover sheet. All such records shall comply with Rule 803(6) of the N.C. Rules of Evidence as follows:

*Records of Regularly Conducted Activity. – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.*

Failure to abide by these rules by filing or serving affidavits untimely will allow the opposing party to elect a delay of 48 hours to further prepare for hearing, and the court in its discretion shall refuse to consider affidavits which do not meet the requirements of this rule. The court in its discretion may also sanction the offending party as permitted by Rule 22.

- 4.5 Service of Affidavits.** Service of Affidavits may be by hand delivery, fax, or mail; however, service of affidavits by mail requires an additional three (3) days. The Court may, in its discretion, postpone or waive these requirements. Pre-trial Conferences are not required prior to temporary hearings unless ordered by the assigned judge.

## **RULE 5: CHILD CUSTODY AND VISITATION**

- 5.1 Temporary Hearing.** Either party or attorney may file a Request for Setting (Form #2A) for a hearing on the issue of temporary custody or visitation. Upon request, the Case Coordinator will schedule a hearing before the assigned judge, on the issues of temporary custody or visitation and inform the parties or their attorneys of the date, time and place of the hearing. No hearing on temporary custody or visitation shall occur until such time as mediation has been completed, unless the case is exempted from mediation by the Court.
- 5.2 Mandatory Child Custody and Visitation 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 and visitation dispute. The goal of the program is to reduce stress and anxiety experienced by children in separation and divorce by furnishing an alternate means for the parties to resolve their disputes. This program helps the parties focus on parenting their children during this stressful period by recognizing and planning for the needs of their children. A successful mediation

will help the parties put a Parenting Agreement in writing, assist them in resolving future problems without recourse to the courts, and reduce the re-litigation of custody and visitation disputes.

- 5.3 Participation.** The parties to any custody and/or visitation case, including initial filings and modifications, shall participate in mandatory mediation prior to any pretrial conference or trial of these issues, unless exempted by the Court.
- 5.4 Parties Included.** The parties named as the plaintiff, defendant, and/or intervenor in the filing are required to attend orientation and at least one mediation session. Following the mediation orientation, the presence of other parties at the sessions will be allowed only with the consent of the parties involved and at the discretion of the Mediator. The Mediator shall set the rules of behavior for the presence of other parties in his/her discretion.
- 5.5 Attendance.** The parties to any custody and/or visitation case must attend and participate in the orientation session and at least one mediation session to fulfill the Court's order to participate in mediation. If a party fails to participate in accordance with these Rules, the case will be closed in mediation and referred to the Case Coordinator for a Show Cause Order. The Mediator will utilize Form, *Mediation Outcome*, to update the Case Coordinator and attorneys.
- 5.6 Scheduling.** Upon filing for custody or visitation, or for a modification to a custody or visitation order, the District Court Judges' office will register the parties involved for a mediation orientation. The *Notice for Custody Mediation Orientation* shall be provided to the parties and counsel. Parties should be noticed at least ten (10) days prior to mediation orientation.

The mediator will schedule subsequent mediation sessions with the parties at the time of orientation by providing a *Notice of Custody Mediation Conference*.

Mediation shall be completed prior to any temporary, permanent or modifications of custody hearings/trials, unless exempt.

- 5.7 Expedited Mediation.** In some cases, the parties may be best served by attending orientation/mediation immediately. A written request for expedited mediation, *Stipulation For Expedited Mediation*, signed by both parties and/or their attorneys and forwarded to the Mediator will waive the group orientation requirement. The attorneys or parties should contact the Mediator to schedule an expedited appointment that will include both a mini-orientation and a mediation session.
- 5.8 Exemption from the Custody Mediation Process.** In some instances, mediation may not be appropriate or in the best interest of the parties or their children. In these instances, a party may move for an exemption from mediation for "good cause" and good cause is defined as: "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 alcoholism, drug abuse, or spouse abuse; or allegations of psychological, psychiatric, or emotional problems." Parties desiring an exemption shall complete and submit a *Motion For Exemption From Mediation* to the Mediator for the Chief District Court Judge or assigned judge to review, with a copy to the Case Coordinator.

The Chief District Court Judge or assigned judge will make a decision based on the submission without a hearing. The Court's Decision will be recorded on the *Order As To Exemption From Mediation*. If exempted, the Case Coordinator will calendar the case. If it is not exempted, the case will be scheduled for mediation pursuant to Rule 5.6.

- 5.9 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 twenty-one days. Final signed agreements shall be presented to the assigned judge or the chief district court judge. The assigned judge or chief district court 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 Parenting Agreement(form AOC- CV- 631)*. 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 by utilizing *Mediation Outcome*.
- 5.10 Partial Parenting Agreements.** If a partial agreement is reached, the Mediator will prepare a final draft of the partial agreement and follow the process set out in Rule 5.9. The Mediator will notify the Case Coordinator by utilizing *Mediation Outcome*, identifying the issues that are to be heard by the Court.
- 5.11 Temporary Parenting Agreements.** If the parties wish to agree to temporary stipulations, the Mediator shall prepare an agreement for a specified period of time. The signing of the agreement will follow the process set out in Rule 5.9. The parties will be given a specific date and time to return to mediation to continue efforts towards reaching a Permanent Parenting Agreement. Should any or all of the parties fail to attend the specified mediation appointment, the Temporary Parenting Agreement shall become permanent one week from the date of the missed appointment at 8:00 AM, at which time the process for termination of mediation shall follow as set out in Rule 5.14. Should all parties attend the specified mediation session, but no agreement towards a Permanent Parenting Agreement is reached, the process for termination of mediation shall follow as set out in Rule 5.14. Should the parties agree upon a Full Parenting Agreement, the process set out in Rule 5.9 shall follow.
- 5.12 No Agreement Reached in Mediation.** If the parties fail to agree, the Mediator will notify the Case Coordinator and attorneys by utilizing *Mediation Outcome*
- 5.13 Modifications.** Upon filing a motion to modify a custody or visitation order, the moving party shall file a copy of the *Notice of Motion to Modify Custody/Visitation* with the Clerk of Superior Court's office and provide a copy to the mediator and Case Coordinator in the District Court Judge's Office. If the parties have previously attended mediation orientation they are exempt from attending orientation again and may proceed directly to mediation. The mediator will schedule a mediation session by providing a *Notice of Custody Mediation Conference* to all parties and counsel once the *Notice of Motion to Modify Custody/Visitation* form has been received. If the parties have not previously attended mediation orientation The District Court Judge's Office will schedule orientation and mediation pursuant to Rule 5.6.
- 5.14 Mediation Termination.** The Mediator, in her/his 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, if any, and Case Coordinator that no agreement was reached, and the Case Coordinator will calendar the case.
- 5.15 Closure of Mediation.** A case will be considered closed in mediation if it is exempted from mediation, or, if 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 the case. If a consent order has been reached or the case has been voluntarily dismissed, the moving party shall provide appropriate documentation to the Mediator. The Case Coordinator will not calendar for court any custody or visitation complaint that has not been closed in mediation.

- 5.16 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, express or implied threat, or fraud. Nothing in these rules shall exempt the Mediator or any other person involved in mediation from the requirements of N.C.G.S. 7B-301 or 108A-102.
- 5.17 Correspondence with Attorneys.** The Mediator will deliver any written communication to attorneys by using the attorney boxes located in the courthouse. If this method is unavailable, the Mediator will forward any written correspondence by U.S. mail.
- 5.18 Implementation.** Custody mediation was initiated in Union County on August 2, 1999.

## **RULE 6: CHILD SUPPORT**

- 6.1.1 Financial Affidavit and Employer Wage Affidavit.** The party filing a complaint or motion seeking the establishment of child support or the modification of an existing order for child support must attach at filing and serve upon the opposing party or attorney a completed *Financial Affidavit* (Form #8A) with the complaint or motion.

The opposing party or attorney shall file and serve upon the moving party or attorney—a *Financial Affidavit* no later than Wednesday at 5:00 p.m. prior to the week of hearing.

Upon request by either party, both Plaintiff and Defendant shall file and serve upon the other party or attorney the completed *Employer Wage Affidavit* no later than Wednesday at 5:00 p.m. prior to the week of hearing.

Both Plaintiff and Defendant shall give the opposing party (BUT NOT THE COURT) the documents listed under Child Support Cases in Form #8B on or before the Wednesday of the week before the start of the term when the case is scheduled.

- 6.2 Child Care Provider Affidavit.** Upon request by either party, both Plaintiff and Defendant shall file and serve upon the other party or attorney the completed *Child Care Provider Affidavit* no later than Wednesday at 5:00 p.m. prior to the week of hearing.
- 6.3 Admission of Employer Wage Affidavit and Child Care Provider Affidavit.** Unless the submitting party is notified of the objection the *Employer Wage Affidavit* or *Child Care Provider Affidavit* may be admitted into evidence at the hearing without the employer or child care provider present. The objection must be submitted in writing by noon the Friday before the week of court.

- 6.4 Hearing for Temporary Child Support.** Either party may file a Request for setting for a hearing on the issue of temporary child support. Upon request, the Case Coordinator will schedule a hearing on affidavits on the issue of temporary child support before the assigned judge and inform the parties or their attorneys of the date, time, and place of the hearing. Such hearing shall be limited to one hour (30 minutes per side).

## **RULE 7: POST-SEPARATION SUPPORT AND ALIMONY**

- 7.1 Pleadings for Post-Separation Support and Alimony.** All pleadings for post-separation support and alimony must have attached a completed *Financial Affidavit* (FORM #8A). The moving party shall serve upon the opposing party or counsel the pleading and the party's completed *Financial Affidavit*.

The opposing party or attorney shall file and serve upon the moving party the completed *Financial Affidavit* within 30 days of service of the moving party's *Financial Affidavit*, or with the Answer, Counterclaim, or other responsive pleading, within the time allowed by the North Carolina Rules of Civil Procedure.

Upon request by either party, both Plaintiff and Defendant shall file and serve upon the other party or attorney the completed *Employer Wage Affidavit* no later than Wednesday at 5:00 p.m. prior to the week of hearing.

Both Plaintiff and Defendant shall give the opposing party (BUT NOT THE COURT) the documents listed under Post Separation Support and Alimony Cases in Form #8B on or before the Wednesday of the week before the start of the term when the case is scheduled.

- 7.2 Admission of Employer Wage Affidavit.** The receiving party shall notify the submitting party within 10 days, or within one business day of receipt if the hearing is scheduled sooner than 10 days, if there is any objection to the *Employer Wage Affidavit* being admitted into evidence without the employer being present at the hearing to testify. Unless the submitting party is notified of the objection, the *Employer Wage Affidavit* may be admitted into evidence at the hearing without the employer present.
- 7.3 Case Coordinator.** The Case Coordinator shall set the issue of post-separation support for hearing within forty-five (45) days of the filing of the pleading.
- 7.4 Case Coordinator.** The Case Coordinator shall set alimony issues for a status conference within ninety (90) days of the filing of the pleading.

## **RULE 8: EQUITABLE DISTRIBUTION**

- 8.1 Equitable Distribution Inventory Affidavit: Moving Party.** The moving party asserting a claim for equitable distribution shall serve the opposing party or counsel with the pleading asserting equitable distribution. *The Equitable Distribution Inventory Affidavit* is intended to aid the parties and the Court in determining the marital and separate estates of the parties.

- 8.2 Equitable Distribution Inventory Affidavit: Moving Party.** The party asserting claim for equitable distribution shall file a completed Equitable Distribution Inventory Affidavit and serve on the opposing party within ninety (90) days of the date of filing of the claim for equitable distribution. The parties are encouraged to supply a copy of the Equitable Distribution Affidavit on a Compact Disc (CD) or other electronic sharing device to the opposing party or counsel.
- 8.3 Attachments to ED Affidavits:** The parties shall attach documentation as set forth in Form 13 to the Inventory Affidavit (if same is in their custody or in the custody of a third party over which they have control) and shall serve such documentation on the opposing party or counsel at the time of filing. Each party shall file with the Clerk of Superior Court a Certificate of Service (Form #15) to the Court file which indicates what documents were attached and served on opposing party counsel. Copies of documentation are not required to be filed with the Clerk of Superior Court at the time of filing.
- 8.4 Opposing Party:** Within thirty (30) days after service of the first moving party's Inventory Affidavit, the opposing party shall file and serve a combined Equitable Distribution Inventory Affidavit on the moving party requesting Equitable Distribution. Further, the combined Equitable Distribution Inventory Affidavit must utilize substantially similar numbering as the moving party's affidavit. The opposing party shall also attach documentation, if available in the control of the party or the control of a third party over which the party has control, not previously supplied by the moving party, to the Inventory Affidavit and attach the certificate of service (form #15), as required above.
- 8.5 Scheduling Conference.** The Case Coordinator shall schedule a scheduling conference which will occur within 120 days of the date of service of the initial moving party's claim for equitable distribution and serve both parties with a *Notice of Hearing* setting the scheduling conference date.

The Rules of North Carolina Supreme Court implementing settlement procedures in equitable distribution and other family financial cases shall be followed.

The purpose of the scheduling conference is to ensure that the case is proceeding toward resolution in a timely and orderly fashion. At the scheduling conference the Court will confirm that each party has completed and filed his or her *Equitable Distribution Inventory Affidavit*. At the scheduling conference an Order of Reference will be entered designating the method of ADR to be employed if a party has filed a motion for ADR other than mediation, the Neutral who will conduct the ADR and the deadline for the completion of the ADR process (within 90 days of the status conference)(ADR Form 825 for mediation; ADR Form 826 for alternate ADR procedures). The Order will also set the date for an interim pretrial conference approximately ninety (90) days following the scheduling conference and a final pretrial conference approximately one hundred and twenty (120) days following the scheduling conference, and a trial date approximately 150 days following the scheduling conference, or 270 days from the date of the initial filing. Designation of Mediator form AOC-CV-825 and Report of Mediator form AOC-CV-827 must be filed with the Clerk and a copy provided to the Family Court Case Coordinator.

**8.6 Issues to be Addressed at Scheduling Conference:**

- 1. Method of Alternate Dispute Resolution:** Mediation is required unless the parties agree on another method of dispute resolution.
- 2. Mediation:** Selection by parties or counsel of mediator or Court appointment of mediator and order for completion date of mediation. ADR Form 825 filed at hearing if not before.
- 3. Discovery:** Date for completion of discovery.

4. **Inventory Affidavits:** If a party has not filed an Equitable Distribution Affidavit by the date of the scheduling conference, the Court will issue an order wherein the party or parties are required to file a preliminary affidavit within thirty (30) days of the scheduling conference.
5. **Trial date designation:** The Court will set a tentative trial date that is approximately 150 days from the date of the conference.
6. **Designation of complexity:** Counsel and/or parties shall inform the Court as to the level of complexity of the pending case. The Court shall designate a case as complex based upon, but not limited to, the following:
  - a. Experts other than an appraiser;
  - b. Business/pension evaluation;
  - c. Multiple properties requiring commercial appraisals.
7. **Designation of preparation of combined affidavit:** The responding party shall prepare a combined inventory affidavit. The combined affidavit shall be completed and served upon the moving party three (3) days prior to mediation.
8. **Order:** An order shall be entered at the conclusion of the Scheduling Conference that sets forth the above-referenced dates, designation and other information concerning the case. A copy of the Order shall be filed and entered in the Court file and a copy delivered to the Case Coordinator.

**8.7 Attendance at Scheduling Conference:** All parties and counsel shall be present at the scheduling conference, unless it is waived by the Court after determining in advance of the scheduling conference that:

1. Each party has completed and served the other party with the ED Inventory Affidavit, and
2. The parties have submitted to the Case Coordinator the completed appropriate form, signed by the parties setting for their chosen method of ADR, and
3. A signed Consent Order, approved by the Court, sets forth a discovery schedule and scheduling conference information and dates.

**Status/Administrative Conferences:** Parties and/or counsel shall be present at the status/administrative conferences unless waived by the Court. Parties that are represented are not required to attend unless directed to do so by their counsel or the assigned judge. In the event that any of the dates, information, or designations determined at the scheduling conference is changed or amended by a status or administrative conference, then an order shall be filed and a copy given to the Case Coordinator.

**Failure to Attend:** Failure to file documentation and/or attend the scheduling conference, failure to properly complete, including amendments or supplements, file and exchange ED Inventory Affidavits, may result in an immediate hearing before the assigned judge. At the hearing, the judge may impose sanctions as permitted by law against the non-complying party, parties, or attorneys of record, and may limit or exclude the responsible party's proffered testimony or evidence (either written or oral) at trial.

**8.8 Reference:** In any equitable distribution claim, the Court may, in its discretion, and pursuant to Rule 53 and Rule 16(a)(5) of the North Carolina Rules of Civil Procedure, order a reference before proceeding further, or before entering final judgment. The Court may provide for the apportionment of the costs of said references, filing deadlines, and scope as it deems to be in the furtherance of the disposition of the claim.

- 8.9 Equitable Distribution Pre-Trial Order.** No later than seven (7) days prior to the equitable distribution pre-trial conference, the party initially requesting equitable distribution shall file and serve a proposed *Equitable Distribution Pre-Trial Order* (FORM #18) which accurately combines the contentions of the parties as set forth in their Affidavits as amended and supplemented. At the equitable distribution pre-trial conferences the parties and the Court will sign and *Equitable Distribution Pre-Trial Order* which may be amended with the consent of the parties up to the date of trial, which amendments shall be entered by written stipulation. Upon the beginning of the trial, the Pre-Trial Order shall be binding on the parties at trial, unless further amendment is consented and stipulated to or allowed by the judge for good cause shown.
- 8.10 Interim Distribution:** If a party moves for an Interim Distribution pursuant to N.C.G.S 50-20 (i1), et. seq., the party shall contact the Case Coordinator who will schedule an Interim Distribution hearing before the assigned judge within forty-five (45) days of the date of filing. It is the responsibility of the party seeking an interim distribution to serve the opposing party or counsel with a Notice of Hearing for the Interim Distribution and a copy of the pleading seeking an interim distribution.
- 8.11 Sanctions:** The failure of any party and/or counsel to follow the Court rules, regulations, deadlines or orders of the Court, without good cause shown, may be subject to sanctions by the court, including but not limited to the following:
- a.** such sanctions as are allowed by law and deemed appropriate at the discretion of the presiding judge, including but not limited to: exclusion of evidence and/or testimony; payment of a fine; payment of reasonable costs incurred by a party due to another party's noncompliance; payment of the opposing party's reasonable legal fees; dismissal by the court of any or party of any non-complying party's claim for relief or pleadings; and/or
  - b.** the adoption of the complying parties' Equitable Distribution Affidavit as the affidavit for the Pre-Trial Order.
- 8.12 Request for Report of Mediation Form:** The Request for Report of Mediation Form shall be filed with the Court no later than ten (10) days after mediation has been completed and a copy shall be served on the Family Court Case Coordinator.

## **RULE 9: SHARING OF INFORMATION IN JUVENILE AND FAMILY COURT CASES**

- 9.1 Designated Agencies.** The following agencies are authorized and directed to share information that is in their possession that may be relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, delinquent and/or undisciplined and each shall continue to do so until the juvenile is no longer subject to the jurisdiction of the Court. These agencies may also be involved in Family Court Cases involving, but not limited to: Child Custody, Visitation, Child Support, Equitable Distribution, and Post Separation Support.

### **A. Mental Health Facilities**

- 1.** Piedmont Area Behavioral Healthcare - Union Unit
- 2.** Developmental Evaluation Center - Concord Office (serving Union County)
- 3.** United Family Services
- 4.** Daymark Recovery Services

### **B. Departments of Social Services**



1. Union County Department of Social Services
2. Other Departments of Social Services with relevant information

**C. School Administrative Units**

1. Union County Board of Education
2. Union County Public Schools
3. Union County Private Schools
4. Union Academy

**D. Health Departments**

1. Union County Health Department
2. Other Health Departments with relevant information.

**E. Law Enforcement Agencies**

1. Union County Sheriff's Department
2. Marshville Police Department
3. Monroe Public Safety
4. Stallings Police Department
5. Waxhaw Police Department
6. Wingate Police Department

**F. Office of Juvenile Justice;**

**G. Office of Guardian ad Litem of the Administrative Office of the Courts;**

**H. Turning Point**

**I. District Attorney for the 20B Judicial District;**

The district attorney is authorized to disclose or release among agencies; however, unlike the other designated agencies, nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney unless ordered by the Court..

**J. Child Support Enforcement (State, County or Private agency);**

**K. Other provisions**

1. **Confidentiality.** Any information shared among agencies pursuant to this Order shall remain confidential, shall be withheld from public inspection and shall be used only for the protection of the juvenile.
2. **Not Limiting.** Nothing herein shall preclude any other necessary sharing of information among agencies.
3. **Federal Restrictions.** This Order does not supersede any federal restrictions on the release of confidential information.

**9.2 Pre-Adjudications in Delinquency Cases**

1. A pre-Adjudication conference shall be held upon filing a petition by the Department of Juvenile Justice prior to adjudication. All parties, including the juvenile's parent(s) and/or guardian(s), shall attend the pre-adjudication conference. The purpose of the conference

shall be to notify the juvenile of the nature of the petition, to inform the juvenile and his/her parents of the requirements of the court proceedings and to allow the State to comply with open-file discovery in compliance with NCGS 7B-2300.

- 2.** To ensure compliance with NCGS 7B-2300, the existence of a pre-adjudication conference in all juvenile delinquency matters shall be deemed as procedurally equivalent to a motion made by the juvenile requesting discovery from the State, and will be followed as such with open-file discovery by the State through the District Attorney for maintaining its continuing duty to provide discovery to the juvenile as the case proceeds.

### **9.3 Adjudications in Delinquency Cases**

To the extent required by NCGS 15A-825, all adjudications taking place in juvenile delinquency court shall take place after reasonable notice to the parties involved, specifically including all witnesses and victims. This shall be accomplished by separating pre-adjudication and adjudication so that timely notice can be provided to such parties except under such circumstances where good cause is demonstrated for conducting both hearings on the same date.

## **RULE 10: IN COURT USE OF RESTRAINTS ON JUVENILES**

In order to comply with NCGS 7B-2402.1, use of restraints on juveniles will occur only under the following conditions:

- (1)** Should a juvenile court counselor believe it is necessary to secure a juvenile with restraints in the courtroom the court counselor shall inform the judge of that fact as soon as the juvenile is brought into the courtroom.
- (2)** The judge, as soon as practical, shall allow the juvenile and the juvenile's attorney an opportunity to contest the use of restraints. The judge shall also allow the district attorney and the juvenile court counselor to present reasons for continued use of restraints.
- (3)** In determining if restraints should be placed on a juvenile while in court the presiding judge shall consider the following factors:
  - (a)** Use of physical restraints is reasonably necessary to maintain order;
  - (b)** Use of physical restraints is reasonably necessary to prevent escape;
  - (c)** Use of physical restraints is reasonably necessary to provide for the safety of the court.
- (4)** Should the judge continue the use of restraints, the judge shall make findings of fact to support the continued use of physical restraints.
- (5)** The juvenile and the juvenile's attorney shall have the right to request that the continued use of restraints be addressed and reviewed at any and all future hearings where restraints are in use.

## **RULE 11: JUVENILE ABUSE, NEGLECT, AND DEPENDENCY CASES**

### **11.1 Scope**

These rules apply to all cases in which a petition is filed alleging that a juvenile is abused, neglected, or dependent.

### **11.2 Purpose**

These rules are designed to help achieve stable and secure homes for children who come into the court's juvenile jurisdiction. To that end, these rules serve the following purposes:

- (1)** To provide for judicial oversight of case planning;
- (2)** To ensure a coordinated decision-making process;

- (3) To eliminate unnecessary delays in court proceedings; and
- (4) To encourage the involvement of families and children in the planning and decision making process.

### **11.3 Construction and Enforcement**

These rules shall be liberally construed to accomplish the purposes set forth in Rule 2. The court may impose sanctions against a party or attorney who fails to comply with these rules; however, no rule shall be construed, applied, or enforced in a manner that will endanger or harm a child or prejudice the rights of a party.

### **11.4 Definitions**

Unless the context clearly requires otherwise, for purposes of these rules:

- (1) “Case coordinator” means a person deemed qualified and so designated by the chief district court judge as a juvenile case manager.
- (2) “Clerk” means the clerk or an assistant or deputy clerk of superior court.
- (3) “Court” means the district court or a district court judge.
- (4) “Initial Conferences” means a voluntary meeting with a case manager of the petitioner, the parent(s), the guardian ad litem, all attorneys involved in the case, and other appropriate persons, held on the first business day after the juvenile is taken into custody.
- (5) “DSS” means the county department of social services.
- (6) “Judge” means a district court judge.
- (7) “UCCJA” means the Uniform Child Custody Jurisdiction Act, Chapter 50A of the North Carolina General Statutes.

### **11.5 Appointment of Counsel**

**A.** When a petition is filed alleging abuse, neglect, or dependency, the clerk shall appoint separate provisional counsel to represent each parent named in the petition.

**B.** The clerk shall prepare a *Notice of Appointment of Counsel* to be served on the parent with the petition and summons. The notice shall include the attorney’s name, business address and telephone number and shall encourage the parent to contact the attorney. The notice also shall inform the parent:

- (1) the parent may retain counsel;
- (2) that the court, at the first hearing, will determine whether the parent qualifies for appointed counsel and, if the parent does, whether the parent waives the right to counsel; It is the responsibility of the provisional counsel to complete the Affidavit of Indigency (AOC-CR-226) at the Initial Conference.
- (3) that the court shall dismiss the appointed counsel, pursuant to North Carolina General Statute 7B-602 if the parent:
  - a.** does not appear at the hearing
  - b.** does not qualify for court appointed counsel
  - c.** has retained counsel; or
  - d.** waives the right to counsel

**C.** Before appointing a specific attorney, the clerk shall ensure that the attorney will be available for the Initial Conference and the first hearing in the case and, to the best of the attorney’s knowledge, for other stages of the proceeding. The clerk may make this determination either by talking with the attorney or by pre-arrangement with one or more attorneys on the appointment list to be maintained by the Clerk.

### **11.6 Responsibilities of Attorneys**

- A.** Before being eligible for appointment to represent parents, attorneys must satisfy the court:
  - (1) that they have sufficient experience and skills to provide competent representation;
  - (2) that they have a good working knowledge of juvenile law and juvenile court procedures;
  - (3) that they have a good understanding of child protective services and the related mandates that apply to DSS and to guardians ad litem; and
  - (4) that they have completed satisfactorily any initial or continuing training specified by the chief district court judge.
- B.** An attorney shall not accept an appointment pursuant to Rule 11.5 unless the attorney can be available for the Initial Conference at which time he/she shall complete the Affidavit of Indigency (AOC-CR-226), and the first hearing in the case.
- C.** After the first hearing in a case, an attorney appointed to represent a parent who has not been served and who does not appear at the hearing, shall not be responsible for further appearances until the clerk notifies the attorney that the parent has been served.
- D.** An attorney who has a conflict in another court shall comply with the relevant rules relating to priority and when absent from juvenile court because of a conflict, shall keep the case manager or courtroom clerk informed of his or her location at all times.
- E.** Leave of court for an attorney to withdraw from a case shall be granted only for compelling reasons or pursuant to North Carolina General Statute 7B-602 (And, see Rule 11.5).

#### **11.7 Appointment of Guardian ad Litem and Attorney Advocate**

- A.** When a petition is filed alleging abuse or neglect, a guardian ad litem shall be appointed by the court to represent the juvenile named in the petition. If the guardian ad litem is not an attorney, then an attorney advocate also shall be appointed. When a petition is filed alleging dependency, a guardian ad litem and attorney advocate similarly may be appointed.
- B.** Before assigning a specific guardian ad litem or attorney advocate, the district administrator of the Guardian Ad Litem Program shall ensure that the guardian ad litem or attorney advocate will be available for the Initial Conference and the first hearing in the case and for other stages of the proceedings.

#### **11.8 Responsibilities of Guardian ad Litem and Attorney Advocate**

- A.** A guardian ad litem or attorney advocate shall not accept an appointment pursuant to Rule 11.7 unless, to the best of the guardian ad litem's or attorney advocate's knowledge, he or she can be available for all stages of the proceeding, including the Initial Conference.
- B.** An attorney advocate who has a conflict in another court shall comply with the relevant rules relating to priority and, when absent from juvenile court because of a conflict, shall keep the case manager or courtroom clerk informed of his or her location at all times.

#### **11.9 Service: Summons and Petition: Notice**

- A.** From the date the petition is filed until the adjudication hearing, the petitioner shall have a continuing duty to identify and locate any parent who has not been served with a copy of the summons and petition and to have the summons and petition served on any such parent.
- B.** Any motion for service by certified or registered mail shall be liberally granted.
- C.** The *Notice of Appointment of Counsel* required by Rule 11.5 shall be served on each parent with the petition and summons and non-secure order (if applicable).
- D.** Any time a parent is served with a copy of a non-secure custody order on the day a juvenile is taken into non-secure custody, the parent also shall be served with a notice informing the parent of the nature, date, place, and time of the Initial Conference.

### 11.10 UCCJA Affidavit

The information required G.S. 50A-209 shall be included in the petition, in an affidavit attached to and served with the petition, or in a separate affidavit filed with the court and served on the parties as soon as feasible after the petition is filed. A completed and verified AOC Form AOC-CV-609 is the preferred means of satisfying this requirement.

### 11.11 Initial Conference

A. Whenever a juvenile is taken into non-secure custody, an Initial Conference shall be held pursuant to the following schedule:

<u>Non-Secure Custody Order filed</u>	<u>Initial Conference</u>	
Monday	Wednesday	9:00 AM
Tuesday	Wednesday	9:00 AM
Wednesday	Friday	9:00 AM
Thursday	Monday	9:00 AM
Friday	Tuesday	9:00 AM

B. The Initial Conference shall be conducted by a case coordinator.

C. At the Initial Conference, the case coordinator shall:

- (1) introduce himself or herself and the parties and advise the parties of their rights, of the fact that participation in the conference is voluntary, and of the fact that a non-secure custody hearing will be held before a district court judge;
- (2) explain the nature of the proceeding and the purposes of the conference;
- (3) review the adequacy of notice and service of process;
- (4) attempt to ascertain the identity and whereabouts of any parent, guardian, or custodian of the juvenile who is not present, whether that person has been served, and what steps need to be taken to identify, locate, or serve any such person;
- (5) hear information from the parties, aimed at determining:
  - (a) what condition is alleged in the petition,
  - (b) what condition or risk precipitated the non-secure custody order, including considerations of the results of the petitioner's risk assessment.
  - (c) what efforts the petitioner has made to prevent or eliminate the need for Non-Secure Custody
  - (d) whether there are other placements available for consideration.

D. The case coordinator shall explore the following with the parties:

- (1) placement options for the juvenile, including possible relative placements and efforts to keep siblings together,
- (2) efforts needed to ensure that a school-aged juvenile's school placement and attendance are not disrupted,
- (3) parental visitation,
- (4) sibling visitation,
- (5) service needs and referrals,
- (6) whether a court order is needed to address the juvenile's immediate needs, such as an immediate need for medical treatment or evaluation, and
- (7) specific steps the parties agree to take before the non-secure custody hearing.

E. Before the conclusion of the Initial Conference, the case coordinator shall:

- (1) summarize what has occurred,
- (2) give all parties an opportunity to ask questions,
- (3) set a specific date for the first hearing,
- (4) explain the purpose of the hearing,

- (5) prepare and ensure that all parties have a copy of any order a judge has signed or any written agreement entered as a result of the Initial Conference,
- (6) in any case in which a parent's identity or whereabouts are unknown or the paternity of the child has not been legally established, specify in writing any steps that are to be taken to identify the parent, locate the parent, or establish paternity.

#### **11.12 Non-secure Custody Hearing**

- A.** If a juvenile remains in non-secure custody after an Initial Conference, the non-secure custody hearing required by G.S. 7B-506 to determine the need for continued non-secure custody shall be held within seven calendar days after the juvenile was taken into non-secure custody.
- B.** Non-secure custody hearings shall be held before a district court judge.
- C.** At a non-secure custody hearing, the judge shall:
  - (1) introduce himself or herself and the parties;
  - (2) review the nature of the proceeding and the purposes of the hearing;
  - (3) address any issues relating to adequacy of notice and service of process;
  - (4) follow up on any pending issue regarding the identity or whereabouts of any parent, guardian, or custodian of the juvenile; and
  - (5) hear sworn testimony from the parties aimed at determining:
    - (a) whether a condition or risk justifying continued non-secure custody exists under G.S. 7B-503,
    - (b) what efforts the petitioner has made to eliminate the need for non-secure custody,
    - (c) what other steps the parties have taken since the Initial Conference.
- D.** After giving all parties an opportunity to present evidence and to ask questions of other parties, the judge shall make appropriate findings of fact and conclusions of law, indicating:
  - (1) whether there is a reasonable factual basis to believe:
    - (a) that the matters alleged in the petition are true,
    - (b) that continued non-secure custody is supported by one or more of the criteria set forth in G.S. 7B-503 and
    - (c) that there is no other reasonable means available to protect the juvenile;
  - (2) whether the petitioner has presented clear and convincing evidence that no less intrusive alternative will suffice to protect the juvenile; and
  - (3) whether the petitioner has made reasonable efforts to eliminate the need for the juvenile's placement.
- E.** If the judge finds that continued non-secure custody is necessary, the judge shall review or explore with the parties the following:
  - (1) the appropriateness of the juvenile's placement and other placement options, including possible relative placements and efforts to place or keep siblings together,
  - (2) any efforts needed to ensure that a school-aged juvenile's school placement and attendance are not disrupted,
  - (3) parental visitation,
  - (4) sibling visitation,
  - (5) service needs and referrals,
  - (6) financial support for the juvenile,
  - (7) whether additional orders are needed to address the juvenile's immediate needs, such as an immediate need for medical treatment or clinical evaluation, and
  - (8) specific steps to be taken by the parties before the next hearing.
- F.** If the judge finds that continued non-secure custody is not warranted, the judge shall explore with the parties the following:
  - (1) service needs and referrals, and
  - (2) specific steps to be taken by the parties before the next hearing.
- G.** Before the conclusion of the non-secure custody hearing, the judge shall:

- (1) summarize what has occurred,
- (2) give all parties an opportunity to ask questions,
- (3) set specific dates for a pretrial conference and the adjudicatory hearing or, for good cause, another non-secure custody hearing,
- (4) explain the purpose of the pretrial conference, if applicable, and of the next hearing,
- (5) prepare and ensure that all parties have a copy of any order entered as a result of the non-secure custody hearing,
- (6) in any case in which a parent's identity or whereabouts are unknown or the paternity of the child has not been legally established, specify in the order any steps that are to be taken to identify the parent, locate the parent, or establish paternity, and
- (7) ensure that all documents introduced for consideration at the hearing become a part of the court file.

**H.** At a non-secure custody hearing, the judge may accept stipulations and approve consent orders relating to continued non-secure custody, subject to the provisions of Rule 11.13.

**I.** If an additional non-secure custody hearing is not scheduled pursuant to subsection g. of this rule, any party may request an additional non-secure custody hearing by filing a written request with the clerk, who shall calendar the hearing. The requesting party shall provide at least five days notice of the hearing to all other parties.

### **11.13 Stipulations Before Judge**

**A.** Before accepting a stipulation to findings, conclusions, or provision of an order, the judge, in open court, shall determine that the stipulating parties understand the content and consequences of the stipulation and that they voluntarily consent to the stipulation. The judge shall inquire of the parties in order to determine that the stipulation is voluntary and knowing. The judge's findings shall be set forth on the record.

### **11.14 Discovery**

**A.** Except as protected by privilege, all parties shall disclose all relevant material and information to all other parties as early as possible. This requirement applies to counsel for the parties, including the attorney advocate for the child, to any unrepresented party, and to the guardian ad litem.

**B.** Any party, including the child, may file a motion to compel discovery of specific information or material. The motion shall be heard within five working days of the date it is served.

**C.** All means of discovery permitted by the Rules of Civil Procedure shall be available. In order to coordinate the completion of discovery and to avoid unnecessary delay, however, no such discovery may be conducted without approval of the court and the establishment of expedited time lines for its completion.

**D.** The court may take any action on motions to compel authorized by G.S. 1A-1, Rule 37.

### **11.15 Pre-Adjudication Conference**

**A.** A pre-adjudication conference shall be held within **thirty days** of the filing of the petition unless the judge, for good cause, orders that it be held at a later time.

**B.** All parties and their attorneys shall attend pre-adjudication conference.

**C.** The purposes of the conference shall be to explore the possibility of settlement, to narrow the issues as much as possible, and to stipulate those facts that are not in dispute.

**D.** At or before the conference, each party shall provide to all other parties a written list of prospective witnesses and exhibits and copies of all available listed exhibits intended for use at the adjudication hearing. Any listed exhibit that is not available for distribution at or before the pre-adjudication conference shall be distributed as soon as it is available.

**E.** At the pre-trial conference, the case coordinator or judge shall assist the parties in:

- (1) sharing witness lists, exhibit lists, and exhibits,

- (2) defining the issues,
- (3) identifying matters that can be stipulated and making stipulations, and
- (4) considering any proposed consent order.

**F.** At the conclusion of the pre-adjudication conference, the judge shall enter an order reflecting the outcome of the conference and ensure that each party is provided a copy of the order.

**G.** If a parent's identity or whereabouts remain unknown or the paternity of the child has not been legally established, the judge shall specify in the order any steps that are to be taken to identify the parent, locate the parent, or establish paternity.

#### **11.16 Adjudicatory Stipulations Before Judge**

**A.** Before accepting a stipulation to findings, conclusions, or provisions of the court's adjudication order, the judge, in open court, shall determine that the stipulating parties understand the content and consequences of the stipulation, including, if applicable, the possibility that the child may be removed permanently from the home, and that they voluntarily consent to the stipulation. The judge shall inquire of the parties in order to determine that the stipulation is voluntary and knowing. The judge's findings shall be set forth on the record.

#### **11.17 Adjudication**

**A.** The adjudication hearing shall be held within **sixty (60) days** from the filing of the petition, unless the judge, for good cause, orders that it be held at a later time.

**B.** The adjudication hearing shall be held before a district court judge.

**C.** An order will be prepared by the attorney for DSS, who will distribute a draft to all parties for review, with written instructions as to the amount of time the parties have to make their suggestions for additions and corrections to the order.

**D.** A written order shall be submitted to the court within thirty (30) days of the hearing or as soon thereafter as the order can reasonably be submitted.

#### **11.18 Dispositional Stipulations**

**A.** Before accepting a stipulation relating to disposition, the judge, in open court, shall determine that the stipulating parties understand the content and consequences of the stipulation and that they voluntarily consent to it. The judge shall inquire of the parties in order to determine that the stipulation is voluntary and knowing. The judge's findings shall be set forth on the record.

**B.** The judge will not be bound by any stipulation to which fewer than all of the parties who have appeared, including the guardian ad litem, have agreed.

#### **11.19 Services from Other Public Agencies**

**A.** Any time after adjudication, if it appears that the best interest of the juvenile may require, or that a party is recommending, that the juvenile receive services from a public agency other than the Department of Social Services, the court may direct the clerk or a party to serve the director or other appropriate representative of the agency with a notice of the dispositional hearing or a subsequent hearing and of the issues to be addressed that involve the agency. If the notice is served on a County agency, other than the Department of Social Services, it also shall be served on the county attorney.

**B.** At the dispositional or subsequent hearing for which the agency has been served with notice, the court may hear evidence and enter orders relating to the level and type of services that the agency can and should provide to meet the juvenile's needs.

**C.** After proper notice, the court shall have jurisdiction to order a public agency to provide specific services to the juvenile as provided by law.



### 11.20 Disposition

- A. The dispositional hearing shall be held immediately following the adjudication or within 30 days thereafter.
- B. If the juvenile remains out of the home at that conclusion of the dispositional hearing, the judge shall specify in the order a specific time for a review hearing.
- C. At the conclusion of the dispositional hearing, the judge shall determine whether any person or agency not present or represented at the dispositional hearing needs information about the disposition in order to help meet the child's needs. The judge may order that either a copy of the dispositional order or a summary of appropriate portions of the order be provided to any such person or agency. The court also may order the parties to share specified types of information on an ongoing basis with designated persons or agencies.
- D. If a parent's identity or whereabouts remain unknown or the paternity of the child has not been legally established, the judge shall specify in the order any steps that are to be taken to identify the parent, locate the parent, or establish paternity.

### 11.21 Review Hearings

- A. When a juvenile remains out of the home following a dispositional hearing, a review hearing shall be held at a time the judge designates in the dispositional order, but in no event more than **ninety days** from the date of the dispositional hearing.
- B. When a juvenile remains out of the home following the first review hearing, the judge shall determine and specify in the review hearing order an appropriate date for the next review hearing. In no event shall the second review hearing be held more than **six months** from the date of the first review hearing. A goal of the second review hearing shall be to develop a permanent plan for the juvenile.
- C. As long as the juvenile remains out of the home, subsequent review hearings shall be held at times the judge finds appropriate, but in non event more than **six months** from the date of the previous review hearing, unless the judge orders otherwise pursuant to G.S. 7B-906(b). A goal of each review hearing shall be to develop a permanent plan for the juvenile.
- D. The DSS attorney shall deliver a written court summary to all counsel, unrepresented parties, and the Guardian ad Litem Office at least **seven (7) days** before each review hearing. The summary shall describe the progress in the case since the last hearing and include DSS's recommendations. A summary for Dispositional hearings shall not be submitted to the court until after the adjudication and when requested by the court.
- E. If a parent's identity or whereabouts remain unknown or the paternity of the child has not been legally established, the judge shall specify in the review hearing order any steps that are to be taken to identify the parent, locate the parent, or establish paternity

### 11.22 Priority of Juvenile Court

Pursuant to Rule 3.1 of the General Rules of Practice for the Superior and District Courts:

Any of the trial court matters listed in this subdivision, regardless of trial division, should prevail over any trial court matter not listed in this subdivision, regardless of trial division; there is no priority among the matters listed in this subdivision:

- any trial or hearing in a capital case;
- the trial in any case designated pursuant to Rules 2.1 of these Rules;
- the trial in a civil action that has been peremptorily set as the first case for trial at a session of superior court;
- the trial of a criminal case in superior court, when the defendant is in jail or when the defendant is charged with a Class A through E felony and the trial is reasonably expected to last for more than one week;

- the trial in an action or proceeding in district court in which any of the following is contested:
  - a. termination of parental rights,
  - b. child custody,
  - c. adjudication of abuse, neglect or dependency or disposition following adjudication
  - d. interim or final equitable distribution
  - e. alimony or post-separation support

**11.23 Maintaining Case on Court Calendar**

- A. Each case shall be maintained on the court calendar at all times as long as juvenile court jurisdiction in the case continues.
- B. At or before the conclusion of each hearing, a subsequent hearing date shall be set.

**11.24 Judicial Official Before Whom Case is Scheduled**

- A. Once a case has been heard at any stage by a judge, subsequent hearings before a judge shall be heard by the same judge, unless circumstances require otherwise.
- B. Any function that these rules assign to a case coordinator may be performed by a judge.

**11.25 Extensions of Time and Continuance**

- A. Extensions of time and continuances beyond the times specified by statute, court order, or these rules shall be granted only for good cause, even if all parties are in agreement.
- B. Orders for extensions or continuances shall appear on the record and state supporting reasons.

**RULE 12: DOMESTIC VIOLENCE**

- 12.1 Domestic Violence Incident Report Form Required in Criminal Cases.** Each party seeking to file a criminal charge involving domestic violence shall complete a *Domestic Violence Incident Report*.
- 12.2 Magistrates Office.** The Magistrates in each County shall maintain and provide a *Domestic Violence Incident Report* to a party or law enforcement officer seeking to pursue a criminal charge(s) involving domestic violence.
- 12.3 Magistrate to copy Domestic Violence Incident Report Form.** The Magistrate shall copy the *Domestic Violence Incident Report*, file the original with the Clerk to be included in the criminal file, and make the copy available to the District Attorney’s Office Victim’s First Staff.

**RULE 13: FAMILY COURT TIME STANDARDS**

- 13.1 General.** Unless otherwise specified, “days” are calendar days counted from the date of filing of the initial pleading. These time frames represent **maximum** time limits set as administrative “goals” and guidelines for Family Court.
- 13.2 (Permanent) Alimony and Equitable Distribution Matters:**

<u>Event:</u>	<u>Time from Filing of Complaint:</u>
a. Service of Complaint (or answer seeking claim)	30 days
b. Filing of Answer (or Reply)	90 days
c. First status Conference	120 days
d. Completion of ADR	210 days
e. Final Pretrial Conference	240 days

- f. Start of Trial 270 days
- g. Disposition of Case:
  - (1) in 90% of cases Within 270 days of filing
  - (2) in 100% of cases Within 365 days of filing

**13.3 Child Support:**

**Event: Time from Filing of Complaint:**

- 1. Temporary orders entered, if requested by one or both parties and do not involve paternity determinations:
  - a. in 90% of cases Within 30 days of filing\*
  - b. in 100% of cases Within 45 days of filing
- 2. Permanent orders entered:
  - a. in 75% of cases Within 90 days of service
  - b. in 90% of cases Within 180 days of service
  - c. in 100% of cases Within 270 days of service

**13.4 Post-Separation Support:**

**Event Time from Filing of Complaint:**

- Orders entered:
- (1) in 75% of cases Within 60 days of filing
  - (2) in 100% of cases Within 90 days of filing

**13.5 Child Custody:**

**Event: Time from Filing of Complaint:**

- a. Temporary 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. Mediation Orientation Session Scheduled (in 100% of cases) Within 45 days
- c. Mediation Held:
  - (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. Trials Completed:
  - (1) in 90% of cases Within 150 days
  - (2) in 100% of cases Within 180 days

### 13.6 Juvenile Delinquency/Undisciplined Cases:

- In every case, the child's best interest in the paramount goal.

<b>Event:</b>	<b>Statutorily Set Times:</b>
a. Adjudicatory Hearing	
(1) in 90% of cases	Within 60 days of service of the petition
(2) in 100% of cases	Within 90 days of service of the petition
b. Adjudicatory Order Entered for F – I Felony Charges:	
(1) in 70% of cases	Within 60 days
(2) in 90% of cases	Within 90 days
(3) in 100% of cases	Within 120 days
c. Adjudicatory Order Entered for A – E Felony Charges	
(1) in 70% of cases	Within 120 days
(2) in 90% of cases	Within 150 days
(3) in 100% of cases	Within 180 days
b. Dispositional Hearing	
(1) in 95% of cases	Within 30 days of adjudication
(2) in 100% of cases	Within 60 days of adjudication

### 13.7 Juvenile Abuse/Neglect/Dependency Cases:

**General.** Not all of the stages listed below will occur in every case; e.g., the child may not be taken into non-secure custody or the petition may be dismissed. In every case, the child's best interest is the paramount goal.

<b>Event:</b>	<b>Time from Filing of Petition:</b>
a. Non-secure custody order entered	Same day petition is filed
b. First non-secure custody hearing	7 days (second non-secure custody hearing no more the 7 days after first; subsequent non-secure custody hearings at intervals of no more than 30 days)
c. Adjudication	
(1) in 75% of cases	40 days
(2) in 100% of cases	60days
d. Disposition	
(1) in 75% of cases	60 days
(2) in 100% of cases	90 days
e. First Placement Review Hearing	150 days
f. First Permanency Planning Hearing	330 days

- g. Reunification or Implementation of Other Permanent Plan  
(other than TPR):
  - (1) in 90% of cases 330 days
  - (2) in 100% of cases 365 days
  
- h. Termination of Parental Rights (TPR):
  - (1) in 90% of cases TPR petition filed within 360 days
  - (2) in 100% of cases TPR petition filed within 390 days
  
- i. TPR Hearing:
  - (1) in 90% of cases 120 days from filing of TPR petition
  - (2) in 100% of cases 180 days from filing of TPR petition

**RULE 14: NON-DOMESTIC RELATIONS CIVIL CASES**

- 14.1 **Ready Calendar.** The Case Coordinator (or other personnel assigned by the Chief District Court Judge) shall maintain a Ready Calendar for Non-Domestic Relations civil cases. One hundred twenty (120) days after the filing of any Non-Domestic Relations civil case, the Case Coordinator shall place the case on a Ready Calendar, unless the Chief District Court Judge extends this period.
  
- 14.2 **Jury Trials.** When a complaint or other pleading is filed in which a trial by jury is requested, the phrase "Jury Trial Demanded" (or equivalent language) shall be endorsed on the face of the pleadings.
  
- 14.3 **PreTrial Orders in Jury Cases Required.** NO JURY CASE WILL BE CALENDARED FOR TRIAL UNLESS A PRE-TRIAL ORDER IS SIGNED BY A JUDGE OR SIGNED BY ALL ATTORNEYS AND PARTIES. Such order shall contain all stipulations, as well as the proposed issues for the jury, and shall be substantially the same as the form in Rule 22 of the General Rules of Practice.
  
- 14.4 **Calendar Requests.** An attorney of record may request that the case be placed upon the trial calendar by making said request (form #2B Request for Setting) in writing to the Case Coordinator in the District Court Judges' Office and delivering a copy to the opposing counsel or parties of record. The said request must be made no later than six (6) weeks before the term begins. Requests for calendaring will NOT be set unless a corresponding motion(s) has been properly filed with the Clerk of Court's office.
  
- 14.5 **Calendar Preparation and Notice.** The cases for trial will be selected from the requests and the Ready Calendar. The calendar shall be prepared and posted to the [www.nccourts.org](http://www.nccourts.org) web page at least 28 days prior to the first day of the term. Written notices shall be sent to pro-se litigants.
  
- 14.6 **Cases For Ready Calendar.** After the time for requests has ended (six (6) weeks before term) the Case Coordinator may place on the calendar any case on the Ready Calendar (cases that are more than 120 days old and for which there are no calendar requests pending) in order to schedule an appropriate number of cases for that term.

**14.7 Multiple Requests to Calendar.** If an attorney or a party submits multiple calendar request dates for the same case, the Case Coordinator shall place the case on the next available calendar that has not been filled and for which time for request has not expired. There shall be no further calendar request allowed for this case until a Judge has either tried or continued the case. This however does not prohibit an opposing party from filing a timely calendar request for any motion he/she might wish the Court to consider in that case at the session on which the Clerk has already placed the case.

**14.8 Additions to Calendar.** The said calendars thus prepared will constitute the Non-Domestic Relations Civil Calendar for the designated civil session. Any additions shall be made only with the approval of the Presiding Judge or the Chief District Judge. The Chief District Court or the presiding District Court Judge may on his/her own motion add a case to the calendar. Cases continued in open court shall be given a date by the judge. Add-on cases are not sent a written notice from the court.

**Order of Appearance on Calendar.** Unless otherwise ordered, the cases shall appear in order of age of the case. The calendar shall be prepared having motions and other issues that be heard in 10 minutes or less listed first. Non-jury cases shall be listed second and Jury trials listed last.

**14.9 Notice of Settlement.** When a case on a published calendar is settled prior to a scheduled term of Court, the Court shall be notified promptly. A memorandum signed by the parties and attorneys of record shall be presented to the Court within two (2) weeks of settlement designating the terms of the settlement and designating which attorney will prepare and present the final judgment for the Judge's signature. The final judgment shall be submitted to the Presiding Judge or the Chief District Court Judge in accordance with Rule 19 (20FCDR.). If parties announce settlement at the time of calendar call or states "nothing to be heard" both attorneys shall sign off on a settlement memorandum to be filed with the clerk.

**14.10 Jury to Report.** The jury shall call in on Monday night to see if they will be needed for the week, unless otherwise ordered by the Presiding Judge or Chief District Court Judge.

**14.11 Continuous Calendaring.** Any case on a calendar and not reached shall be continued to a specific term. The Judge may continue the case to another term in which a calendar has already been prepared only if the Judge is the presiding Judge at that term. Parties are then noticed in open court and a written notice will not be mailed, these are considered add-on cases.

**14.12 Temporary Restraining Orders.** Any District Court Judge of the 20B Judicial District signing a Temporary Restraining Order (TRO), which is returnable within ten (10) days as provided by Rule 65(b) of the Rules of Civil Procedure, shall set the TRO to be heard, as follows: (a) before the signing Judge within the district at an appropriate date and time, or (b) after obtaining permission from another Judge to be presiding at a session within the County, before the other Judge, or (c) after obtaining permission from the Chief District Court Judge to set the TRO before another Judge to be presiding at a session within the County, at an appropriate date and time before the other Judge.

## **RULE 15: MAGISTRATE (SMALL CLAIMS) APPEALS**

**15.1 Notice Form Requires.** The appellant in a small claims action shall complete AOC-CVM-303 (Notice of Appeal to District Court), file with the clerk's office and serve the other party. The moving party shall demand either Jury or Non-Jury on the AOC form. A copy of this form shall be sent to the Case Coordinator from the clerk's office.

- 15.2 Calendaring and Notice.** The Case Coordinator shall calendar Summary Ejectment cases the next calendar, these cases may be added to a calendar that is already prepared. The Case Coordinator shall send a written notice to all parties. Money Owed cases shall be calendared for Arbitration by the Arbitration Coordinator.
- 15.3 Pre-Trial Conference in Jury Cases Required.** If a jury trial has been requested, the Case Coordinator shall schedule the matter for a Pretrial Conference at the next available term to determine the issues for the jury and to set a trial date.
- 15.4 Motions to Re-plead.** Following the entry of notice of appeal from the magistrate, the case will be tried upon the original pleadings unless otherwise ordered, and no further pleadings should be filed without leave of court. A motion to re-plead shall be entitled to an expedited hearing, and motions to re-plead shall be freely allowed. A motion to re-plead shall state concisely the issues, which the moving party anticipates developing in the action. An order allowing re-pleading may also set a trial date and establish a requirement for Pretrial Order.

## **RULE 16: ARBITRATION**

- 16.1 Mandatory Arbitration.** All cases filed in the district court which are subject to arbitration as defined by the Supreme Court Rules, or as designated by the Chief District Court Judge, shall be directed to mandatory court-ordered arbitration. Cases will be noticed into arbitration using form AOC-CV-800.
- 16.2 Screening.** All civil filings shall be automatically screened by the Clerk of Superior Court, and if subject to arbitration, such case files shall be appropriately identified as eligible for arbitration on VCAP.
- 16.3 Assignment of Arbitrator.** Within twenty days of the last responsive pleading, the arbitration coordinator shall notify the parties that an arbitrator shall be chosen by the arbitration coordinator unless all parties stipulate to an arbitrator, sign the necessary stipulation forms, and if the arbitrator is not one who has been listed as an arbitrator in the 20B Judicial District, get the approval of the Chief District Court Judge. If there is no answer within thirty days of service, the arbitration coordinator may then proceed by notifying the parties that an arbitrator will be chosen.
- 16.4 Scheduling of Arbitration Hearing.** That within sixty days of the last responsive pleading an arbitration hearing shall be conducted in accordance with the Supreme Court rules. At least ten (10) days before the date set for the hearing, the parties shall exchange: (1) lists of witnesses they expect to testify; (2) copies of documents or exhibits they expect to offer into evidence; and (3) a brief statement of issues and their contentions on the *Pre-Arbitration Submission Form*. (Form #6) Form AOC-CV-801 will be used to notify upcoming hearings.
- 16.5 Continuances.** No case shall be continued beyond the sixty day period except upon motion and order of the Chief District Court Judge. Any motions to continue must be made not less than five (5) days prior to the end of the sixty day period, and no continuance shall be granted except upon a showing of good cause. Good cause shall not include “not ready or discovery not completed” since the purpose of this program is to resolve cases expeditiously without spending too much time or money on pretrial activity. No case shall be continued more than twenty days after the said sixty day deadline. Rescheduling of a case within the sixty day period may be granted by consent or by order of the arbitration coordinator.

- 16.6 Removal.** If prior to the setting of an arbitration hearing, all parties notify the arbitration coordinator that the case is inappropriate for arbitration, and the coordinator agrees, then the case may be removed. Once a case is set for arbitration hearing, no case may be removed from arbitration except by the arbitration coordinator or upon motion to the Chief District Court Judge, through a written motion and/or order.
- 16.7 Conducting Arbitration Hearings.** All arbitration hearings shall be conducted within one hour and in accordance with the Supreme Court rules. The arbitrator will use AOC-CV-802 to complete the award. If no request for trial de novo is made within thirty days, then a District Court Judge or Clerk shall enter judgment in accordance with the arbitrator's decision. In the event a party requests a trial de novo, the first party making such request shall pay \$150.00 to perfect his request for trial de novo. That fee may be returned only if the case is tried to verdict and the trial judge finds requesting party's position improved and orders the return of the \$150.00. If there is a trial de novo, the form AOC-CV-803, the trial judge may include the costs incurred in the arbitration, but the trial judge may deny the costs to a party who prevails at trial but did not improve his position.
- 16.8 Attendance.** If any party fails to appear, the arbitrator may proceed to hear the evidence of the parties present and make an award. Any party failing to appear may make a motion for rehearing within thirty days of the award filing date to the Chief District Court Judge. However, no rehearing shall be granted except for reasons set forth in Rule 60 of the North Carolina Rules of Civil Procedure.
- 16.9 Motions.** Pending motions may be heard by a District Court Judge or deferred to the arbitrator, if appropriate; **but pending motions shall not delay arbitration hearings unless the Chief District Court Judge so orders.**
- 16.10 Arbitration Fees.** In all cases referred to nonbinding arbitration as provided in this section, a fee of one hundred dollar (\$100) shall be assessed per arbitration, to be divided equally among the parties, to cover the cost of providing arbitrators. Fees assessed under this section shall be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the Stat Treasurer-G.S. 7A-37.1. Do not collect the arbitration fee from a party who has been granted leave under G.S. 1-110 to sue as an indigent. The new statute does not affect the \$150.00 fee for filing a request for trial de novo after arbitration. The two fees are separate and independent of each other. In all cases that are not removed from the calendar, for any reason, prior to three (3) business days of the hearing the \$100.00 fee shall be due and owing and be paid to the Clerk of Superior Court by 5:00 PM on the date of the scheduled hearing.

## **RULE 17: CONTINUANCE REQUESTS**

- 17.1 General Rule.** Domestic cases should be addressed at the earliest opportunity, including the first pretrial conference setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that will delay the resolution of the contested issues beyond the established time standards shall only be granted for extraordinary cause.
- 17.2 Conflicts.** Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall communicate with other Judges to resolve such conflicts. In resolving conflicts within District Court, **juvenile cases shall take precedence** over all other matters. Age of case and subject matter, shall be taken into consideration when resolving conflicts..



- 17.3 Motions.** All applications for continuance shall be by written *Motion for Continuance* (FORM #5) and shall be delivered to the Case Coordinator prior to the court date. The reason for requesting the continuance must be clearly stated. Motions to continue must be filed ONE (1) week before the court date, otherwise parties must appear on the scheduled date and request the continuance in open court. Oral motions may be allowed only when the reason for the continuance did not become known until immediately preceding the start of the court.
- 17.4 Notification of the Request.** All parties must be notified of a motion to continue. An unfiled copy of the motion to continue must be distributed to all counsel of record and/or un-represented parties. Once the Motion is granted or denied by the Judge, a copy of the filed motion and order to continue must be served on the counsel or record and/or un-represented parties. In addition to the service requirements set out in the statute, distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail or hand delivery.
- 17.5 Input From All Parties.** All parties should have an opportunity to be heard on a motion to continue. If the request is received within five business days of the hearing date, and there is no input regarding the opposing party's or counsel's position, the Court may be unable to address the request prior to the hearing and will address the request at the time of the scheduled hearing.
- 17.6 Responsibility of the Party Requesting the Continuance.** The burden is on the party requesting the continuance to contact the opposing counsel or party prior to submitting the motion to the Case Coordinator, and include the opposing party's/counsel's position on the request as
- Joining in the request
  - Consenting to or not objecting to the request; or
  - Opposing the request

If the opposing party cannot be reached or fails to respond, that should be noted on the request as well as a statement on the efforts made and why contact was not possible.

- 17.7 Responsibility of the Party Opposing the Request for Continuance.** A party or counsel opposing the request has the responsibility to submit a written response to the Case Coordinator immediately upon receipt of the motion for continuance.
- 17.8 Factors to be Considered.** Factors to be considered by the Court when deciding whether to grant or deny a motion for continuance should include:
- The effect on children and spouses if the issue is continued and not resolved;
  - Whether there is a temporary order dealing with the issue that is the subject of a continuance request;
  - The impact of a continuance on the safety or the parties or any other persons;
  - Whether the issue has been identified statutorily as an issue which should be addressed expeditiously, i.e., child support, post-separation support;
  - The age of the case or motion;
  - The status of the trial calendar for the session;
  - The number of previous continuances and the number, by the moving party, and grounds for previous continuances;
  - The extent to which counsel had input into the scheduling of the trial date;
  - The due diligence of counsel in promptly making a motion for continuance as soon as practicable;

- Whether the reason for continuance is a short-lived event which may resolve prior to the scheduled court date;
- Whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- The period of delay caused by the continuance request;
- The position of opposing counsel or un-represented parties;
- Whether the parties themselves consent to the continuance;
- Present or future inconvenience or unavailability of the parties, attorneys or witnesses if the case is continued;
- The grounds “the case has never before been continued,” “the opposing attorney(s) does not object,” “both sides agree,” or “the other side received a prior continuance” do not constitute meritorious cause and shall not be sufficient to grant a continuance;
- Any other factor that promotes the fair administration of justice.

If no determination of a motion to continue has been received prior to the court event, parties/attorneys shall act on the assumption that the matter will be heard as scheduled.

**17.9 New Date.** In granting a motion for continuance, the Court should reschedule the conference, hearing or trial to a specific date after receiving scheduling input from all parties.

## **RULE 18: PRETRIAL CONFERENCES**

- 18.1 Court Schedule.** The Case Coordinator and the Judge shall schedule such status conferences and/or pretrial conferences as necessary to comply with these rules.
- 18.2 Participation in and Purpose of Initial Case Conferences.** Attendance at scheduled initial case conferences are mandatory for the attorneys of record and all unrepresented parties. The purpose of an initial case conference is to set deadlines for all pending matters.
- 18.3 Participation in and Purpose of Status Conferences.** Attendance at scheduled status conferences are mandatory for the attorneys of record and all unrepresented parties. The purpose of a status conference is to ensure the exchange and submission of requested documents, to set deadlines for discovery and upcoming events, to apprise participants of the dispute resolution requirements, and to provide such other information as may be appropriate.
- 18.4 Participation in and Purpose of Pretrial Conferences.** Attendance at Pretrial Conferences are mandatory for all attorneys of record and all parties. The purpose of a pretrial conference is, as follows:
- to assist the attorneys, or parties, for trial preparation by narrowing the issues for trial or disposition of the case
  - to set deadlines for the completion of discovery
  - to determine the need for reference
  - to seriously explore the prospects of settlement of the case
  - to finalize proposed witness lists
  - to determine what facts can be stipulated and agreed upon a final pretrial order
  - to address any requests for additional discovery
  - to set a date for trial of the matter or such additional pretrial conferences as are necessary.

The presiding Judge will order a final pretrial order to be completed and submitted by a certain date. Failure of the moving party to complete the order or failure of the opposing party to cooperate with providing the appropriate information/documents to complete the order may result in the imposition of sanctions.

- 18.5 Sanctions for Failure to Participate in Status or Pretrial Conferences.** Failure to timely schedule and attend status or pretrial conferences is a serious breach of the local rules. Such failure may result in a dismissal of the responsible party's claim, limitation or exclusion of the responsible party's proffered testimony (either written or oral) being allowed into evidence by the Court, or the imposition of other sanctions as provided by Rule 37 of the North Carolina Rules of Civil Procedure.

## **RULE 19: TELEPHONE CONFERENCES**

- 19.1 Telephone Conferences.** The Court may, in its discretion, order or allow oral argument on any motion by speaker phone conference call or telephone conference call, provided that all participants to the conference can be heard by all other parties at all times during the conference call. Counsel 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.

## **RULE 20: SUBMITTING TIMELY ORDERS OR JUDGMENTS**

- 20.1 Orders and Judgments.** All Orders must be submitted to the presiding judge within 30 days following the issuance of a ruling by the Court. The presiding judge may allow additional time to present an Order following a hearing concerning equitable distribution, abuse and neglect, or termination of parental rights; however, all Orders shall be submitted not later than 30 days following the hearing. The party preparing the proposed judgment or order shall provide a copy of the proposed document to the opposing party prior to submitting the document to the Judge. If the copy is provided by actual delivery or by fax, three (3) days prior is sufficient; however, if sent by mail, six (6) days prior shall be required. All orders and/or judgments submitted by attorneys for signature shall be delivered to the Family Court office. Orders or judgments presented which do not have the appropriate Civil Action Cover Sheet and a cover letter attached shall not be signed. Every order and judgment shall be captioned with specificity as to type; for example "Temporary Custody and Child Support Order".
- 20.2 Delinquent Orders and Judgments.** Cases delinquent in the submission of Orders as required shall be identified to the Chief District Court Judge or the assigned Judge and sanctions or penalties may be imposed in such cases as deemed appropriate and

## **RULE 21: SANCTIONS**

- 21.1 Sanctions.** Failure to comply with any section of these Rules shall subject the parties, and/or their counsel to such sanctions as are allowed by law and deemed appropriate at the discretion of the presiding Judge, including but not limited to: disallowance of evidence and/or testimony; payment of a fine; payment of reasonable costs incurred by a party due to another party's noncompliance; payment of the opposing party's reasonable legal fees; dismissal by the court of any or part of any claim for relief or pleadings.

## **RULE 22: REMANDED CASES**

**22.1 Remands.** If a case is remanded to the District Court from the Appellate Court Division for hearing or other actions, appellant's counsel shall promptly notify the Case Coordinator's Office so that the case can be scheduled for a pretrial conference.

## **RULE 23: AMENDMENTS AND MODIFICATIONS**

**23.1** These rules are subject to amendment or modification as experience indicates and requires.

## **RULE 24: JUDGE'S DISCRETION**

**24.1** The Rules contained herein should not be construed as to restrict the Presiding Judge's discretion on any issue. The Presiding Judge shall retain the discretion to issue any orders, continuances, sanctions, etc., as he/she deems appropriate and not inconsistent with the Court's inherent authority.

**FORM #1**

**AOC DOMESTIC COVER SHEET**

The Clerk's office or the Case Coordinator has copies of this AOC form.

STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 20B  
COUNTY OF UNION

THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CASE NUMBER \_\_\_\_\_  
ASSIGNED JUDGE \_\_\_\_\_

\_\_\_\_\_  
Plaintiff )  
)  
)  
)  
-v- )  
)  
)  
\_\_\_\_\_  
Defendant )

**FAMILY COURT  
REQUEST FOR SETTING**

The above case is ready for and should be set for the following purpose(s):

- ALIMONY     CHILD SUPPORT     TEMPORARY CUSTODY     PERMANENT CUSTODY
- EQUITABLE DISTRIBUTION     POST-SEPARATION SUPPORT     VISITATION
- ORDER TO SHOW CAUSE     EX PARTE CUSTODY
- STATUS CONFERENCE \_\_\_\_\_  MOTION \_\_\_\_\_
- PRE-TRIAL CONFERENCE \_\_\_\_\_  OTHER \_\_\_\_\_

This matter will take approximately \_\_\_\_\_ to hear.

Requested by:    Plaintiff     Defendant     Plaintiff's Attorney     Defendant's Attorney

A copy of this document has been provided to the Family Court Case Coordinator.

**I HEREBY CERTIFY THAT A COPY OF THIS REQUEST FOR SETTING HAS BEEN SERVED IN THE FOLLOWING MANNER:**

By depositing a copy in the United States mail in a properly addressed, postpaid envelope to:

\_\_ Plaintiff at \_\_\_\_\_

\_\_ Defendant at \_\_\_\_\_

\_\_ Plaintiff's Attorney \_\_\_\_\_    \_\_ Defendant's Attorney \_\_\_\_\_

By delivering a copy personally to:    \_\_ Plaintiff    \_\_ Defendant    \_\_ Plaintiff's Attorney    \_\_ Defendant's Attorney

By Sheriff's service to:    \_\_ Plaintiff    \_\_ Defendant    \_\_ Plaintiff's Attorney    \_\_ Defendant's Attorney

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature: Attorney/Party/Case Coordinator

STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 20B  
COUNTY OF UNION

THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CASE NUMBER \_\_\_\_\_

\_\_\_\_\_  
Plaintiff )  
\_\_\_\_\_  
\_\_\_\_\_  
-v- Plaintiff's address )  
\_\_\_\_\_  
Defendant )  
\_\_\_\_\_  
Defendant's address )

REQUEST FOR SETTING  
GENERAL CIVIL

( ) JURY ( ) NON-JURY

The above case is ready for and should be set for the following purpose:

- Pre-Trial Conference  Motion \_\_\_\_\_
  - Status Conference  Order to Show Cause  Other \_\_\_\_\_
  - Small Claims Appeal  Summary Ejectment  Money Owed
  - Trial \_\_\_\_\_ has pre-trial order been signed ( ) yes ( ) no
- Describe matters for consideration: \_\_\_\_\_

Time to hear \_\_\_ days \_\_\_ hours \_\_\_ other \_\_\_\_\_  
Date(s) requested: \_\_\_\_\_  
Requested by: ( ) Plaintiff ( ) Defendant

A copy of this document has been provided to the Case Coordinator.

I HEREBY CERTIFY THAT A COPY OF THIS REQUEST FOR SETTING HAS BEEN SERVED IN THE FOLLOWING MANNER:

- By depositing a copy in the United States mail in a properly addressed, postpaid envelope to:  
 \_\_\_ Plaintiff at \_\_\_\_\_  
 \_\_\_ Defendant at \_\_\_\_\_  
 \_\_\_ Plaintiff's Attorney \_\_\_\_\_ Defendant's Attorney \_\_\_\_\_
- By delivering a copy personally to: \_\_\_ Plaintiff \_\_\_ Defendant \_\_\_ Plaintiff's Attorney \_\_\_ Defendant's Attorney
- By Sheriff's service to: \_\_\_ Plaintiff \_\_\_ Defendant \_\_\_ Plaintiff's Attorney \_\_\_ Defendant's Attorney

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature: Attorney/Party/Case Coordinator

\_\_\_\_\_  
Name

STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 20B  
COUNTY OF UNION

THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CASE NUMBER \_\_\_\_\_  
ASSIGNED JUDGE: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff )  
 )  
-V- )  
 )  
 )  
 )  
\_\_\_\_\_  
Defendant )

**MOTION AND ORDER FOR  
PEREMPTORY SETTING**

1. The undersigned moves the Court for a Peremptory Setting of the above case based upon the following reasons:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The opposing party \_\_\_\_\_ CONSENTS \_\_\_\_\_ OBJECTS to the motion for Peremptory Setting on the dates requested.

3. A **REQUEST FOR SETTING** specifying the dates that all parties and witnesses will be available and ready for trial is attached to this form.

4. A copy of this document has been provided to the Family Court Case Coordinator,

I HEREBY CERTIFY THAT A COPY OF THIS REQUEST FOR PEREMPTORY SETTING HAS BEEN SERVED ON OPPOSING PARTY IN THE FOLLOWING MANNER:

[ ] By depositing a copy in the United States mail in a properly addressed, postpaid envelope to:

\_\_\_ Plaintiff at \_\_\_\_\_

\_\_\_ Defendant at \_\_\_\_\_

\_\_\_ Plaintiff's Attorney      \_\_\_ Defendant's Attorney

[ ] By delivering a copy personally to \_\_\_ Plaintiff \_\_\_ Defendant \_\_\_ Plaintiff's Attorney \_\_\_ Defendant's Attorney

[ ] By Sheriff's service to: \_\_\_\_\_

This the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature      Attorney/Party

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address/Telephone Number

**THE REQUEST FOR PEREMPTORY SETTING IS:**      [ ] DENIED      [ ] ALLOWED

\_\_\_\_\_  
Date

\_\_\_\_\_  
Assigned Judge / Case Coordinator



STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 20B  
COUNTY OF UNION

THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CASE NUMBER \_\_\_\_\_  
ASSIGNED JUDGE \_\_\_\_\_

\_\_\_\_\_, )  
Plaintiff )  
)  
)  
-v- )  
)  
)  
\_\_\_\_\_, )  
Defendant )

**NOTICE OF HEARING**

This **NOTICE OF HEARING** hereby advises you that this case is scheduled, as follows:

**DATE:** \_\_\_\_\_  
**TIME:** \_\_\_\_\_ AM \_\_\_\_\_ PM  
**PLACE:** Civil District Courtroom \_\_\_\_\_  
Union County Judicial Center  
Monroe, NC 28110

**MATTERS FOR HEARING:** \_\_\_\_\_  
\_\_\_\_\_

A copy of this Notice has been provided to the Family Court Case Coordinator.

I HEREBY CERTIFY THAT A COPY OF THIS NOTICE OF HEARING HAS BEEN SERVED IN THE FOLLOWING MANNER:

- By depositing a copy in the United States mail in a properly addressed, postpaid envelope to:  
 Plaintiff at \_\_\_\_\_  
 Defendant at \_\_\_\_\_  
 Plaintiff's Attorney \_\_\_\_\_ Defendant's Attorney \_\_\_\_\_
- By delivering a copy personally to:  Plaintiff  Defendant  Plaintiff's Attorney  Defendant's Attorney
- By Sheriff's service to:  Plaintiff  Defendant  Plaintiff's Attorney  Defendant's Attorney

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature: Attorney/Party/Case Coordinator

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address/Telephone Number

STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 20B  
COUNTY OF UNION

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CASE NUMBER: \_\_\_\_\_  
ASSIGNED JUDGE: \_\_\_\_\_  
FEE PAID: \_\_\_\_\_

\_\_\_\_\_, )  
Plaintiff )  
 )  
-v- )  
 )  
\_\_\_\_\_, )  
Defendant )  
 )

**MOTION TO CONTINUE**

1. The above case is currently scheduled, as follows: **DATE:** \_\_\_\_\_ **TIME:** \_\_\_\_\_

**ISSUES SCHEDULED:** \_\_\_\_\_

2. The above hearing has been previously continued \_\_\_\_\_ times.

3. The undersigned is requesting a continuance by the Court for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. \_\_\_ I have contacted the opposing party/counsel, \_\_\_(name)\_\_\_\_\_ regarding this request and they \_\_\_ Consent \_\_\_ Do not object \_\_\_ Oppose

5. \_\_\_ I have attached opposing party/counsel's objection to this motion

6. I have provided the Family Court Case Coordinator with this original motion who will then present this motion to the presiding judge.

7. I understand that if no contact has been made with the opposing party/counsel concerning this motion that it will be ruled upon in open court on the date and time scheduled above.

8. I understand further that opposing party shall be afforded a reasonable time in which to object.

9. I understand that this motion must be filed and received no later than 5:00pm on the Wednesday prior to the term of court that the above captioned matter is scheduled, and that any continuance motions filed after Wednesday at 5:00pm will be heard in open court on the scheduled date.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ATTORNEY/REQUESTING PARTY  
Attorney for \_\_\_ Plaintiff \_\_\_ Defendant

STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 20B  
COUNTY OF UNION

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CASE NUMBER: \_\_\_\_\_  
ASSIGNED JUDGE: \_\_\_\_\_

\_\_\_\_\_, )  
Plaintiff )  
-v- )  
\_\_\_\_\_, )  
Defendant )  
)

**ORDER ON CONTINUANCE**

DATE OF HEARING: \_\_\_\_/\_\_\_\_/\_\_\_\_

ISSUES SCHEDULED: \_\_\_\_\_

The (Plaintiff/Defendant) in the above captioned matter filed a Motion to Continue on  
(date) \_\_\_\_\_. The opposing party/counsel has (consented/objected) to this motion.

**It is therefore ordered that the Motion to Continue is hereby:**

**DENIED**             **ALLOWED**

**HELD OPEN: TO BE HEARD** \_\_\_\_\_

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
**ASSIGNED JUDGE**

STATE OF NORTH CAROLINA  
COUNTY OF UNION

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

FILE # \_\_\_\_\_ CVD \_\_\_\_\_

\_\_\_\_\_)
(Plaintiff) )
- vs- )
\_\_\_\_\_)
(Defendant) )

**PRE-ARBITRATION SUBMISSION**

Rule 3(b) of the Arbitration Rules provide: "at least ten (10) days before the date set for the hearing, the parties shall exchange: (1) lists of witnesses they expect to testify; (2) copies of documents or exhibits they expect to offer into evidence; and (3) a brief statement of the issues and their contentions. Parties may agree in writing to rely on stipulations and/or statements, sworn or non sworn, rather than a formal presentation of witnesses and documents, for all or part of the hearing." Plaintiff/Defendant hereby states:

A. I expect to call as witnesses to testify in the arbitration hearing:

- 1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

(I have listed all that I may call. I am not required to call all the witnesses that I have listed).

B. I expect to offer as documents or exhibits into evidence:

- 1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

(I have attached copies of all the above listed documents to the Pre-Arbitration Submission. I understand that failure to provide all parties with any documents ten days prior to the hearing may be grounds for its exclusion at the hearing).

**A COPY OF ALL DOCUMENTS SHOULD BE MAILED OR DELIVERED TO ALL OPPOSING PARTIES.**

C. It is my contention that the issues involved in this matter are briefly stated as follows: \_\_\_\_\_

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

**I certify that a copy of this Submission was served by:**

\_\_\_ depositing a copy enclosed in a postpaid properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service directed to

\_\_\_ plaintiff \_\_\_ plaintiff's attorney
\_\_\_ defendant \_\_\_ defendant's attorney

\_\_\_ delivering a copy personally to

\_\_\_ plaintiff \_\_\_ plaintiff's attorney
\_\_\_ defendant \_\_\_ defendant's attorney

This is the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Signature

STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 20B  
COUNTY OF UNION

THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CASE NUMBER \_\_\_\_\_

\_\_\_\_\_)  
**Plaintiff** )  
 \_\_\_\_\_)  
 \_\_\_\_\_)  
**-v-** **Plaintiff's address** )  
 \_\_\_\_\_)  
 \_\_\_\_\_)  
**Defendant** )  
 \_\_\_\_\_)  
 \_\_\_\_\_)  
**Defendant's address**

**SETTLEMENT MEMORANDUM  
GENERAL CIVIL**

**JURY**       **NON-JURY**

---

The above case was set for hearing on \_\_\_\_\_ (date). To be heard before the  
Honorable \_\_\_\_\_.  
Parties appeared and presented to the judge that the case is settled and there is nothing to be heard.  
\_\_\_\_\_ (attorney) shall prepare the order and after all parties have  
agreed, present the order to the undersigned judge for signature.

\_\_\_\_\_ (Attorney for plaintiff signature.)

\_\_\_\_\_ (Attorney for defendant signature.)

If the order has not been presented to the undersigned judge for signature 30 days from today's date the case shall be put back on the calendar for trial.

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Honorable Judge Presiding

STATE OF NORTH CAROLINA  
20TH JUDICIAL DISTRICT  
COUNTY OF UNION

FORM #8A

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NUMBER:  
ASSIGNED JUDGE:

\_\_\_\_\_, )  
  ) )  
Plaintiff,                              ) )  
VS   ) )  
\_\_\_\_\_, ) )  
  ) )  
Defendant,                             ) )

AFFIDAVIT OF:  
 PLAINTIFF  
 DEFENDANT  
SEEKING SUPPORT  
 PSS / ALIMONY  
 CHILD SUPPORT  
FROM WHOM SUPPORT IS SOUGHT  
 PLAINTIFF  
 DEFENDANT

The affiant, having been first duly sworn as to the truthfulness and completeness of this affidavit, deposes and says that the average monthly financial needs for the support of the children in this case and/or my MONTHLY income and expenses are, as follows:

**PART I – INCOME INFORMATION**

COMPLETE PAGE 1, SIGN & NOTARIZE PAGE 3 IN ALL CASES

My name is:  
My Social Security Number is:  
I am:  
 Employed by: (first job):  
                  Employer's Address(es):  
                  Employer's Telephone(s):  
 Self-employed doing: \_\_\_\_\_.

I receive the following AVERAGE MONTHLY GROSS INCOME  
(based on 4.33 weeks or 2.165 bi-weekly periods per month) from the following sources:

A.	Wages / Salary		E.	Rent	
B.	Bonuses		F.	Business Profit	
C.	Commission		G.	Social Security	
D.	Interest / Dividends on Investments		H.	Pension / Retirement	
			I.	Other: <sup>1</sup> (Itemize):	
	SUBTOTAL	\$0.00		SUBTOTAL	
<b>GRAND TOTAL</b>					

**1. ATTACHED HERETO AND MADE A PART HEREOF ARE:**

- 1. COPIES OF MY PAY STUBS FOR THE PAST TWO (2) MONTHS (OR OTHER DOCUMENTATION OF MY INCOME),**
- 2. MY LATEST FEDERAL TAX RETURN (INCLUDING ALL SCHEDULES), W-2'S & 1099'S.**

2. I have the following average MONTHLY expenses in connection with my business profit and/or rental income (including *only* expenses [and *not* depreciation] that are deductible on Schedule "C" and/or "E" or my IRS Form 1040 income tax return):

N/A	\$ _____
	\$ _____ N/A _____
	\$ _____
Total Expenses	\$ _____ N/A _____

---

<sup>1</sup>“Other Income” includes, but is not limited to, severance pay, ownership or operation of business, partnership, trusts, annuities, capital gains, worker’s compensation benefits, unemployment insurance benefits, disability pay and insurance benefits, gifts, prizes and alimony or maintenance received from persons other than the parties to the instant action.

## PART II – CHILD SUPPORT INFORMATION – GUIDELINE CASES

COMPLETE IN CHILD SUPPORT CASES USING THE CHILD SUPPORT GUIDELINES

I have the following average MONTHLY expenses:

A.	Child support required by Court Order or Separation Agreement for my children Who are not living with me:		
B	Name (s) and date (s) of birth of children:		
C.	Responsibility for my biological or adopted children who live with me		
D.	Name (s) and date (s) of birth of biological children or adopted children who live with me:		
E.	Gross monthly income of the <u>other</u> parent responsible for children listed in B above.		
F.	Monthly work-related child care costs (100%)		
G.	Child (ren)’s portion of health insurance cost:		
H.	Extraordinary expenses for child (ren) (itemize) and list amounts:		
I.	Number of nights the child (ren) spend with me each year:		



STATE OF NORTH CAROLINA  
COUNTY OF UNION

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

**VERIFICATION**

I, \_\_\_\_\_, first being duly sworn, depose and say that I am the Plaintiff / Defendant named in the foregoing action; that I have read the foregoing and know the contents thereof and that the same is true of my own knowledge except as to those matters and things therein alleged upon information and belief and as to those, I believe to be true.

I certify that \_\_\_\_\_ personally appeared before me this day and

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principle's photograph in the form of a driver's license
- A credible witness has sworn to the identity of the principle(s);

and acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

\_\_\_\_\_  
Print Name

Sworn to and subscribed before me this the

\_\_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
Notary Public \_\_\_\_\_ (signature of Notary Public)  
( printed name of Notary Public)

My Commission Expires: \_\_\_\_\_

**IN CHILD SUPPORT CASES FOLLOWING CHILD SUPPORT GUIDELINES, STOP HERE**

## PART III

COMPLETE PART III IN SPOUSAL SUPPORT CASES AND IN NON-GUIDELINES OR DEVIATION CHILD SUPPORT CASES

**NOTE: One month equals 4.33 weeks (or 2.165 bi-weekly periods)**

A.	NET INCOME		
1.	My total <b>MONTHLY GROSS INCOME</b> (from Part I) is		

2. I have the following average monthly deductions from my gross income:			
Federal income taxes		Medical Insurance	
State income taxes		Life Insurance	
Social Security (FICA)		Retirement/401 (k)	
Medicare		Other: N/A	
COLUMN SUBTOTAL		COLUMN SUBTOTAL	
<b>TOTAL DEDUCTIONS:</b>			
<b>My average MONTHLY NET INCOME:</b>			

B. NEEDS AND EXPENSES

1. I have the following average monthly fixed needs and expenses:

	Accustomed Standard of Living	Actual Expenses		Accustomed Standard of Living	Actual Expenses
House pmt/rent			Telephone		
Property tax (excluded above)			House Maintenance		
Homeowner's/ renter's insurance			Yard Maintenance		
Electricity			Car Payment		
Heat (gas, etc)			Gasoline		
Water (WELL)			Car repairs		
Cable TV			Car insurance		
Other (specify)			Other		
SUBTOTALS			SUBTOTALS		

2. I HAVE PRORATED THE FOREGOING SUBTOTAL OF FAMILY EXPENSES BETWEEN THE CHILD (REN) AND ME AS FOLLOWS:	
Total amount for self:	
Total amount for child (ren):	
Reason (s) for method of prorating:	



**B. I HAVE THE FOLLOWING AVERAGE MONTHLY EXPENSES FOR ME AND MY CHILDREN:**

ITEM	SELF	CHILDREN (for whom I am legally responsible)
Groceries & Household Goods		
Religious Contributions		
Charitable Contributions		
School / Work Lunches		
Medical Insurance (if not withheld from earnings)		
Uninsured medical / dental		
Uninsured prescription drugs		
Uninsured therapy		
Clothing		
Grooming (hair, etc.)		
Laundry / dry cleaning		
Child Care (work related)		
Child Care (indicate nature)		
Allowances		
Activities (Y, sports, clubs)		
Entertainment / Recreation		
Meals Out		
Christmas Gifts		
Birthday Gifts		
Subscriptions / newspapers / magazines		
Life Insurance (If not on prior schedules)		
Car Insurance (If not on prior schedules)		
Car - Other (registration, etc.)		
Other Insurance (disability, etc.)		
Vacations		
Pets		
Tobacco / Alcohol		
Other:		
Other:		
Other:		
<b>SUBTOTALS</b>		
<b>TOTAL</b>		

C. SUMMARY OF EXPENSES		
	SELF	CHILDREN
Household – prorated – from Section (1)		
Individual – from Section (2)		
<b>TOTALS:</b>		

D. I AM RESPONSIBLE FOR THE FOLLOWING DEBT PAYMENTS:				
Debt	Monthly Payment	Balance Due	Named Debtor Joint/Husband/Wife	Party making pmt.
Mortgage				
Car Payment				
Car Payment				
Credit Cards (Itemize)				
Other:				
Other:				
Other:				
<b>TOTALS</b>				

<b>Gross Monthly Income (Part A(1)).</b>		<b>BALANCE</b>
<b>Minus Monthly Deductions from Paycheck (Part A(2)).</b>		
<b>Minus Fixed Needs and Expenses (Part B(1)).</b>		
<b>Minus Average Monthly Fluctuating Expenses (Part B(B)).</b>		
<b>Total Need for PSS (for Dependent Spouses) / Ending Balance (for Supporting Spouses) / Balance of Monthly Income Minus Expenses.</b>		

STATE OF NORTH CAROLINA  
COUNTY OF UNION

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

**VERIFICATION**

I, \_\_\_\_\_, first being duly sworn, depose and say that I am the Plaintiff / Defendant named in the foregoing action; that I have read the foregoing and know the contents thereof and that the same is true of my own knowledge except as to those matters and things therein alleged upon information and belief and as to those, I believe to be true.

I certify that \_\_\_\_\_ personally appeared before me this day and

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principle's photograph in the form of a driver's license
- A credible witness has sworn to the identity of the principle(s);

and acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

\_\_\_\_\_  
Print Name

Sworn to and subscribed before me this the  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public \_\_\_\_\_ (signature of Notary Public)  
\_\_\_\_\_  
(printed name of Notary Public)

My Commission Expires: \_\_\_\_\_

**THE FOLLOWING DOCUMENTATION RULES APPLY TO ALL CASES INVOLVING POST-SEPARATION SUPPORT AND ALIMONY.**

As required by the Domestic Local Rules, I have given or will give the opposing party (BUT NOT THE COURT) THE FOLLOWING on or before the Wednesday of the week before the start of the term when my case is scheduled:

- A. The full address (es) of all land in which I have any ownership interest, which are attached as Exhibit \_\_\_\_\_.
- B. For the last three (3) months, proof of all my income, including, but not limited to, copies of all pay stubs, pay and expense vouchers, employee benefits statements, stock option statements, company, financial statements and tax returns and / or Form 1040, Schedule "C" (if I am self-employed or employed by a closely-held corporation), which are attached as Exhibit \_\_\_\_\_.
- C. For the last three (3) months, statements showing all accounts in banks, credit unions, brokerage accounts, and all other financial institutions of which I have been an authorized signer, which are attached as Exhibit \_\_\_\_\_.
- D. A listing of all outstanding debts with written documentation or account statements for each creditor showing the principal balance I now owe and the terms of payment, which are attached as Exhibit \_\_\_\_\_.
- E. For the last two (2) years, all federal tax returns filed by me or for me, including all schedules and attachments (forms W-2, 1099, etc) together with all year-end tax documentation (Forms W-2, 1098, 1099, Requests for Extension, etc.) for the most recent tax year, if that return has not yet been filed. For self-employed individuals, attach copies of all business schedules, such as Schedule C, K, etc., which are attached as Exhibit \_\_\_\_\_.
- F. For the last two (2) years, all personal financial statements I gave to anyone, anywhere, which are attached as Exhibit \_\_\_\_\_.
- G. Copies of tuition schedules for work-related daycare for all children that are the subject of the action along with proof of payment of said tuition, to include receipts from the child care institution; for individuals who obtain work-related child care from non-institutional providers, please attach an affidavit from the child care provider that states the tuition and payments received, which are attached as Exhibit \_\_\_\_\_.
- H. Proof of health insurance costs, including documentation from the health insurance provider documenting amount assessed for coverage along with a schedule of premiums for individual coverage, individual + spouse, individual + child, and family, which are attached as Exhibit \_\_\_\_\_.



**THE FOLLOWING DOCUMENTATION RULES APPLY TO ALL CASES INVOLVING CHILD SUPPORT WHERE:**

**- Either side has filed a Motion to Deviate from the North Carolina Child Support Guidelines, in all Child Support cases where the combined gross income of the parties exceeds \$300,000, and in all Child Support cases where EITHER OR BOTH parties is not a W-2 employee, I have given or will give the opposing party (BUT NOT THE COURT) THE FOLLOWING on or before the Wednesday of the week before the start of the term when my case is scheduled:**

- A. The full address (es) of all land in which I have any ownership interest, which are attached as Exhibit \_\_\_\_\_.**
- B. For the last three (3) months, proof of all my income, including, but not limited to, copies of all pay stubs, pay and expense vouchers, employee benefits statements, stock option statements, company, financial statements and tax returns and / or Form 1040, Schedule "C" (if I am self-employed or employed by a closely-held corporation), which are attached as Exhibit \_\_\_\_\_.**
- C. For the last three (3) months, statements showing all accounts in banks, credit unions, brokerage accounts, and all other financial institutions of which I have been an authorized signer, which are attached as Exhibit \_\_\_\_\_.**
- D. A listing of all outstanding debts with written documentation or account statements for each creditor showing the principal balance I now owe and the terms of payment, which are attached as Exhibit \_\_\_\_\_.**
- E. For the last two (2) years, all federal tax returns filed by me or for me, including all schedules and attachments (forms W-2, 1099, etc) together with all year-end tax documentation (Forms W-2, 1098, 1099, Requests for Extension, etc.) for the most recent tax year, if that return has not yet been filed. For self-employed individuals, attach copies of all business schedules, such as Schedule C, K, etc., which are attached as Exhibit \_\_\_\_\_.**
- F. For the last two (2) years, al personal financial statements I gave to anyone, anywhere, which are attached as Exhibit \_\_\_\_\_.**
- G. Copies of tuition schedules for work-related daycare for all children that are the subject of the action along with proof of payment of said tuition, to include receipts from the child care institution; for individuals who obtain work-related child care from non-institutional providers, please attach an affidavit from the child care provider that states the tuition and payments received, which are attached as Exhibit \_\_\_\_\_.**
- H. Proof of health insurance costs, including documentation from the health insurance provider documenting amount assessed for coverage along with a schedule of premiums for individual coverage, individual + spouse, individual + child, and family, which are attached as Exhibit \_\_\_\_\_.**

**In cases involving Child Support calculated pursuant to the North Carolina Child Support Guidelines where both parties are W-2 employees, I have attached the documents required in Form #8A ONLY.**

STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 20B  
COUNTY OF UNION

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CASE NUMBER: \_\_\_\_\_  
ASSIGNED JUDGE: \_\_\_\_\_

\_\_\_\_\_, )  
                  **PLAINTIFF,** )  
                                  ) )  
-V-                                  ) )  
                                  ) )  
\_\_\_\_\_, )  
                  **DEFENDANT.** )

**EMPLOYER WAGE AFFIDAVIT**

I, \_\_\_\_\_, an officer of \_\_\_\_\_  
[name of the company], being duly sworn, submit to the Court, as follows:

1. That \_\_\_\_\_ [name of Plaintiff or Defendant] in the  
above entitled action is an employee of said company;
2. That the records attached hereto of \_\_\_\_\_'s [Plaintiff/Defendant]  
earnings, deductions, company benefits and length of employment is true and correct  
to the best of affiant's information and belief.

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Affiant [officer of the company]

\_\_\_\_\_  
Title

Subscribed and sworn before me  
this the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:

VS

Plaintiff,

Defendant,

CHILD CARE PROVIDER TUITION AFFIDAVIT

The undersigned, \_\_\_\_\_, does hereby state, after first being duly sworn and under penalty of perjury, the following statements which are true and correct to the best of his/her knowledge, unless stated upon information and belief, and as to those things, he/she believes them to be true and correct to the best of his/her knowledge:

1. I, \_\_\_\_\_, am the owner operator  
individual day care provider for the following children:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_

2. That the Plaintiff Defendant pays me for work-related daycare for the above-named children in the following amount(s):

- |             |                                 |  |
|-------------|---------------------------------|--|
| 1. \$ _____ | <input type="checkbox"/> weekly | <input type="checkbox"/> monthly for child number 1; |
| 2. \$ _____ | <input type="checkbox"/> weekly | <input type="checkbox"/> monthly for child number 2; |
| 3. \$ _____ | <input type="checkbox"/> weekly | <input type="checkbox"/> monthly for child number 3; |
| 4. \$ _____ | <input type="checkbox"/> weekly | <input type="checkbox"/> monthly for child number 4; |
| 5. \$ _____ | <input type="checkbox"/> weekly | <input type="checkbox"/> monthly for child number 5; |
| 6. \$ _____ | <input type="checkbox"/> weekly | <input type="checkbox"/> monthly for child number 6; |

3. That the attached is a record generated by me of actual amounts paid by the  Plaintiff Defendant for my services in caring for the above named children;

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Affiant

I certify that \_\_\_\_\_ personally appeared before me this day and

- I have personal knowledge of the identity of the principal(s)
- I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principle's photograph in the form of a driver's license
- A credible witness has sworn to the identity of the principle(s);

and acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Sworn to and subscribed before me this the

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Printed Name of Notary)

Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
 JUDICIAL DISTRICT 20B  
 COUNTY OF UNION

IN THE GENERAL COURT OF JUSTICE  
 DISTRICT COURT DIVISION  
 CASE NUMBER \_\_\_\_\_  
 ASSIGNED JUDGE \_\_\_\_\_

\_\_\_\_\_, )  
 )  
**Plaintiff** )  
 )  
 v. )  
 )  
 \_\_\_\_\_, )  
 )  
**Defendant** )

**PRE TRIAL CONFERENCE ORDER  
 (NON-EQUITABLE DISTRIBUTION CASES)**

**THIS CAUSE**, coming on to be heard and being heard before the Presiding District Court Judge assigned to the Domestic Proceeding, upon the parties’ pretrial conference on the issue(s) of \_\_\_\_\_

**WHEREAS** it appearing that the Plaintiff and Defendant were present and represented by counsel and voluntarily executed this pretrial conference order and agreed to the following:

- I. A) There are no further pre-trial matters to be addressed and the case is ready for trial. This matter shall be scheduled for trial on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ am / pm without further notice.
  - B) The issues to be tried are as follows: \_\_\_\_\_
  - C) The parties shall notify the Court if they have settled by \_\_\_\_\_.
  - D) The final formal pre-trial Order shall be submitted by the Plaintiff by \_\_\_\_\_.
  - II. There are further per-trial matters to be addressed; therefore, it is hereby directed, as follows:
    - A) The parties shall exchange their witness list/exhibit list by \_\_\_\_\_.
    - B) All discovery shall be completed by \_\_\_\_\_.
    - C) The affidavits of financial standing will be exchanged \_\_\_\_\_.
    - D) Any stipulations shall be filed by \_\_\_\_\_.
    - E) \_\_\_\_\_
    - F) The next Pre-Trial Conference shall be on \_\_\_\_\_.
    - G) A formal Pre-Trial Order shall be submitted by the Plaintiff by \_\_\_\_\_.
- This the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
 PLAINTIFF

\_\_\_\_\_  
 DEFENDANT

\_\_\_\_\_  
 PLAINTIFF’S ATTORNEY

\_\_\_\_\_  
 DEFENDANT’S ATTORNEY

\_\_\_\_\_  
 DISTRICT COURT JUDGE

STATE OF NORTH CAROLINA  
JUDICIAL DISTRICT 20B  
COUNTY OF UNION

IN THE DISTRICT COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CASE NO. \_\_\_\_\_  
ASSIGNED JUDGE: \_\_\_\_\_

\_\_\_\_\_, )  
Plaintiff, )  
-v- )  
\_\_\_\_\_)  
Defendant )

ADMINISTRATIVE DISCOVERY ORDER  
[ ] EQUITABLE DISTRIBUTION  
[ ] NON-ED

**THIS CAUSE HAVING COME** before the undersigned judge presiding for a discovery conference, the Court now orders that the parties comply with the following schedule:

- \_\_\_ All discovery requests shall be served no later than: \_\_\_\_\_
- \_\_\_ All discovery responses shall be served no later than: \_\_\_\_\_
- \_\_\_ All supplemental discovery requests shall be served no later than: \_\_\_\_\_
- \_\_\_ All responses to supplemental discovery shall be served no later than: \_\_\_\_\_
- \_\_\_ All experts shall be disclosed by: \_\_\_\_\_
- \_\_\_ All other witnesses shall be disclosed by: \_\_\_\_\_
- \_\_\_ All experts and other witnesses shall be deposed by: \_\_\_\_\_
- \_\_\_ All experts and other witnesses shall be deposed by: \_\_\_\_\_
- \_\_\_ All rebuttal experts shall be disclosed by: \_\_\_\_\_
- \_\_\_ All rebuttal experts shall be deposed by: \_\_\_\_\_
- \_\_\_ All appraisals shall be completed by: \_\_\_\_\_
- \_\_\_ All ED Affidavits shall be exchanged by: \_\_\_\_\_
- \_\_\_ Parties shall meet to prepare the Pretrial Order by: \_\_\_\_\_
- \_\_\_ Parties shall complete the Pretrial Order by: \_\_\_\_\_
- \_\_\_ Other: \_\_\_\_\_

A pre-trial conference shall be held on \_\_\_\_\_ at \_\_\_\_\_ AM/PM.

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge Presiding

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Plaintiff's Attorney

\_\_\_\_\_  
Defendant's Attorney

**MEMORANDUM OF JUDGEMENT / ORDER**

The Clerk's office or the Case Coordinator has copies of this AOC form.

NORTH CAROLINA  
20TH JUDICIAL DISTRICT  
COUNTY OF UNION

FORM # 14  
IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CASE NUMBER \_\_\_\_\_  
ASSIGNED JUDGE \_\_\_\_\_

\_\_\_\_\_) )  
Plaintiff, ) )  
-vs- ) )  
\_\_\_\_\_) )  
Defendant. ) )

**EQUITABLE DISTRIBUTION  
INVENTORY AFFIDAVIT  
OF PLAINTIFF  
AND  
CERTIFICATE OF SERVICE**

**NOW COMES** the Plaintiff, or responding party, and itemizes what he/she alleges to be the marital, divisible, and separate property of the parties, as well as the marital debts of the parties, all as set out in the schedules, which are attached. Plaintiff certifies that he/she has made a full and complete disclosure of all marital and separate property known to him/her.

**This is to further certify that the undersigned has this day filed the original of this affidavit and all attachments with the Clerk, and has served a copy of this affidavit and all attachments to opposing counsel, or opposing party if unrepresented, by depositing a copy in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department, properly addressed as follows:**

This the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature: Attorney/Party/Case Coordinator

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address/Telephone Number

## Equitable Distribution Inventory Affidavit

### PURPOSE

The Plaintiff and the Defendant were married, and they accumulated some property. Now someone has asked the Judge to fairly, or equitably, divide this property.

The purpose of this affidavit is to give the Judge the information he or she will need to equitably divide the property. The Judge will need to know this information because at trial the Judge must determine the fair market value (value) of each item of property and whether each item of property is Marital or Separate (classification), and the Judge must then decide who gets each item of property (distribution).

So, you must carefully list each item of property which either of you owned or had any interest in as of the day of separation, no matter in whose name the property was titled, and no matter who had possession of the property. List everything, and if you believe that the property is not Marital, show that the item as "Separate".

### MEANINGS

As used in these schedules, the following abbreviations have the following meanings:

**DOM** means the "date of marriage of the parties", which plaintiff contends to be \_\_\_\_\_ and which defendant contends to be \_\_\_\_\_, and which the Court finds to be \_\_\_\_\_.

**DOS** means the "date separation of the parties", which plaintiff contends to be \_\_\_\_\_ and which defendant contends to be \_\_\_\_\_, and which the Court finds to be \_\_\_\_\_.

**FMV** means "fair market value". What a willing buyer and a willing seller would pay without the need to sell.

**LIEN** means "a lien on property", whether created by a mortgage, deed of trust, security agreement, or otherwise (i.e., a debt).

**PROPERTY** means anything you can own (not just land and house, but also other things like bank accounts and retirement accounts: anything you can own).

**SEPARATE PROPERTY** means Property that either of you received either before the marriage or after the DOS, or that either of you received during the marriage by gift or inheritance.

**MARITAL PROPERTY** means Property that is not Separate Property, no matter whose name it is in, that either of you received between the date of your marriage and the DOS.

**SEE INSTRUCTIONS ON EACH PAGE**



**SCHEDULE I  
REAL PROPERTY AND MOBILE HOMES**

**This includes land, houses, anything permanently attached to land, and mobile homes.**

PROPERTY DESCRIPTION	VALUE		CLASSIFICATION Is the Property Marital or Separate?		POSSESSION Who has the property now?		DISTRIBUTION Who gets the property?	
	Plaintiff DOS FMV -debt owed	Defendant DOS FMV - debt owed	Plaintiff M/S	Defendant M/S	Plaintiff	Defendant	Plaintiff	Defendant
1.								
2.								
3.								

**INSTRUCTIONS:** Give property description including physical address of property, value as of the date of separation, the amount (if any) of any debt owed, indicate if the property is marital or separate, who has the property now, and who you want to have the property.

**SCHEDULE II  
MOTOR VEHICLES/BOATS**

PROPERTY DESCRIPTION	VALUE		CLASSIFICATION Is the Property Marital or Separate?		POSSESSION Who has the property now?		DISTRIBUTION Who gets the property?	
	Plaintiff DOS FMV -debt owed	Defendant DOS FMV - debt owed	Plaintiff M/S	Defendant M/S	Plaintiff	Defendant	Plaintiff	Defendant
4.								
5.								
6.								
7.								

**INSTRUCTIONS:** List year, make, and model for each vehicle, value as of date of separation, the amount (if any) of any debt, indicate if the property is marital or separate, who has it and who you want to have it.

**YOU MUST ALSO LIST ANY DEBT AMOUNT INCLUDED ON SCHEDULE I AND II ON SCHEDULE X**

**SCHEDULE III  
HOUSEHOLD FURNISHINGS, COLLECTIBLES**

		VALUE		CLASSIFICATION Is the property marital or separate? (M/S)		POSSESSION Who has the property now? (P/D)		DISTRIBUTION Who gets the property? (P/D)	
PROPERTY DESCRIPTION	ROOM OR LOCATION BEFORE DOS	Plaintiff DOS FMV	Defendant DOS FMV	Plaintiff M/S	Defendant M/S	Plaintiff	Defendant	Plaintiff	Defendant
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									
18.									
19.									
20.									

**INSTRUCTIONS:** Describe the item as fully as possible, state the room or location the item was in before date of separation, value as of date of separation, whether the item is marital or separate, who has the property now and who you want to have the property.

**RESPONDING PARTY:** Use same corresponding numbers as the moving party, if item is not listed, please add to end of schedule.

**SCHEDULE IV  
MISCELLANEOUS PERSONAL PROPERTY  
(Tools, Guns, Lawn Equipment, Jewelry, Animals)**

		VALUE		CLASSIFICATION Is the property marital or separate? (M/S)		POSSESSION Who has the property now? (P/D)		DISTRIBUTION Who gets the property? (P/D)	
PROPERTY DESCRIPTION	ROOM OR LOCATION BEFORE DOS	Plaintiff DOS FMV	Defendant DOS FMV	Plaintiff M/S	Defendant M/S	Plaintiff	Defendant	Plaintiff	Defendant
21.									
22.									
23.									
24.									
25.									
26.									
27.									
28.									
29.									
30.									
31.									
32.									
33.									

**INSTRUCTIONS:** Describe the item as fully as possible, state the room or location the item was in before date of separation, value as of date of separation, indicate whether the item is marital or separate, who has the property now, and who you want to have the property.

**RESPONDING PARTY:** Use same corresponding numbers as the moving party, if item is not listed, please add to end of schedule.

**SCHEDULE V  
ACCOUNTS  
(Checking, Savings, CD's)**

PROPERTY DESCRIPTION	VALUE		CLASSIFICATION Is the Property Marital or Separate?		POSSESSION Who has the property now?		DISTRIBUTION Who gets the property?	
	Plaintiff DOS FMV	Defendant DOS FMV	Plaintiff M/S	Defendant M/S	Plaintiff	Defendant	Plaintiff	Defendant
34.								
35.								
36.								
37.								

**INSTRUCTIONS:** List Financial Institution Name, last 4 digits of the account number, type of account, amount as of date of separation, if it is marital or separate, who has it, and who you want to have it.

**ATTACHMENTS:** Attach the bank statement for date of separation or the statement that is closest to the date of separation for each account listed. Also attach the Certificate of Service and serve on the opposing party.

**SCHEDULE VI  
BUSINESSES AND STOCKS**

PROPERTY DESCRIPTION	VALUE		CLASSIFICATION Is the Property Marital or Separate?		POSSESSION Who has the property now?		DISTRIBUTION Who gets the property?	
	Plaintiff DOS FMV	Defendant DOS FMV	Plaintiff M/S	Defendant M/S	Plaintiff	Defendant	Plaintiff	Defendant
38.								
39.								
40.								

**INSTRUCTIONS:** List the name of business, stock company, or brokerage account, the last 4 digits of the account number, the value as of the date of separation, if it is marital or separate, who has it and who you want to have it.

**ATTACHMENTS:** Attach the statement for date of separation or the statement that is closest to the date of separation for each account listed in Schedule VI. Also attach the Certificate of Service and serve on the opposing party.

**SCHEDULE VII  
RETIREMENT  
(Pension, 401(k), Profit-Sharing, IRA, SEP)**

PROPERTY DESCRIPTION	VALUE		CLASSIFICATION Is the Property Marital or Separate?		POSSESSION Who has the property now?		DISTRIBUTION Who gets the property?	
	Plaintiff DOS FMV -debt owed	Defendant DOS FMV -debt owed	Plaintiff M/S	Defendant M/S	Plaintiff	Defendant	Plaintiff	Defendant
41.								
42.								
43.								
44.								

**INSTRUCTIONS:** List the name of the plan, address, value as of date of separation, if it is marital or separate, who has it and who you want to have it. If there is a debt against a retirement plan, you must also list on Schedule X and include copies of the loan statements.

**ATTACHMENTS:** Attach the statement for date of separation or the statement that is closest to the date of separation for each account listed in Schedule VII. Also attach the Certificate of Service and serve on the opposing party.

**SCHEDULE VIII  
LIFE INSURANCE POLICIES**

PROPERTY DESCRIPTION	VALUE		CLASSIFICATION Is the Property Marital or Separate?		POSSESSION Who has the property now?		DISTRIBUTION Who gets the property?	
	Plaintiff DOS FMV	Defendant DOS FMV	Plaintiff M/S	Defendant M/S	Plaintiff	Defendant	Plaintiff	Defendant
45.								
46.								
47.								

**INSTRUCTIONS:** List the name of the policy, the agent that currently holds the policy and agent's address, value as of date of separation, if it is marital or separate, who has it and who you want to have it. **USE THE CASH VALUE OF YOUR POLICY FOR THIS SCHEDULE.**

**ATTACHMENTS:** Attach the most recent statement for each policy that is listed. Also attach the Certificate of Service and serve on the opposing party or counsel.



**INSTRUCTIONS:** Describe the item as fully as possible, value as of date of separation, indicate if the property is marital or separate, who has it, who you want to have it.

**SCHEDULE X  
DEBTS WHICH ARE SECURED**

CREDITOR	PROPERTY SECURING DEBT	VALUE		CLASSIFICATION Is the debt marital or separate? (M/S)		POSSESSION Who is paying debt now? (P/D)		DISTRIBUTION Who will pay debt? (P/D)	
		Plaintiff DOS FMV	Defendant DOS FMV	Plaintiff M/S	Defendant M/S	Plaintiff	Defendant	Plaintiff	Defendant
66.									
67.									
68.									

**INSTRUCTIONS:** List the name and address of each creditor, the last 4 digits of the account number, state what property is the collateral for the debt, the amount of debt as of date of separation, marital or separate, who is paying now, and who you want to pay.

**RESPONDING PARTY:** Use same corresponding numbers as the moving party, if item is not listed, please add to end of schedule.

**SCHEDULE XI  
DEBTS WHICH ARE NOT SECURED**

CREDITOR	VALUE		CLASSIFICATION Is the Debt Marital or Separate?		POSSESSION Who is paying debt now?		DISTRIBUTION Who will pay debt?	
	Plaintiff DOS FMV -debt	Defendant DOS FMV -debt	Plaintiff M/S	Defendant M/S	Plaintiff	Defendant	Plaintiff	Defendant
69.								
70.								
71.								

**INSTRUCTIONS:** List the name and address of each creditor, the last 4 digits of the account number, the amount of debt as of date of separation, marital or separate, who is paying now, and who you want to pay.

**RESPONDING PARTY:** Use same corresponding numbers as the moving party, if item is not listed, please add to end of schedule.

**ATTACHMENTS FOR SCHEDULE X AND XI: Attach copies of mortgage payoff, statements, or documentation indicating debt as of date of separation. Attach statement for credit cards or other loans. Attach the Certificate of Service and serve on opposing party or counsel.**



**SCHEDULE XII  
DIVISIBLE PROPERTY  
Itemize on separate sheet as needed**

FACTORS	PLAINTIFF CONTENTIONS	DEFENDANT CONTENTIONS
1. Appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution. Do not include here appreciation or diminution in value, which is the result of post-separation actions or activities of a spouse.		
2. Property, property rights, or any portion thereof received after the date of separation but before the date of distribution that was acquired as a result of the efforts of either spouse during the marriage and before the date of separation, including, but not limited to, commissions, bonuses, and contractual rights.		
3. Passive income from marital property received after the date of separation, including, but not limited to, interest and dividends.		
4. Increases in marital debt and financing charges and interest related to marital debt.		

**SCHEDULE XIII**  
**FACTORS JUSTIFYING AN UNEQUAL DISTRIBUTION**  
**Itemize on separate sheet as needed**

FACTORS	PLAINTIFF CONTENTIONS	DEFENDANT CONTENTIONS
(1) The income, property, and liabilities of each party at the time the division of property is to become effective;		
(2) Any obligation for support arising out of a prior marriage;		
(3) The duration of the marriage and the age and physical and mental health of both parties;		
(4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;		
(5) The expectation of pension, retirement, or other deferred compensation rights, that are not marital property;		
(6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse		
(7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;		
(8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;		
(9) The liquid or non-liquid character of all marital property and divisible property;		
(10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;		
(11) The tax consequences to each party;		
(11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert the marital or divisible property, or both, during the period after separation of the parties and before the time of distribution; and		
(8, 11a, 12) Payments on marital debts since separation.		
(8, 11a, 12) Repairs or improvements to marital assets since separation.		
(12) Any other factor which the court finds to be just and proper.		
(12) Separate property was used for the purchase price of a marital asset.		
(12) Party's family paid the purchase price of a marital asset.		

STATE OF NORTH CAROLINA  
COUNTY OF UNION

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO.:

Plaintiff, )  
vs )  
Defendant. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE FOR  
EQUITABLE DISTRIBUTION  
AFFIDAVIT AND ATTACHMENTS**

**Evidentiary attachment for schedules:**

- Loan statements for real property
- Loan statements for vehicles
- Bank statements for checking accounts
  - savings accounts
  - money market/CD
  - IRA/retirement
  - other account \_\_\_\_\_
- Stock certificates/bonds

**Debt:**

- Mortgage balance/payoff for real property
- Credit card statement(s) including DOS balance and current balance
  - other unsecured debt statement(s)

**Miscellaneous attachments:**

Other: \_\_\_\_\_

(please list which documents correspond to the appropriate to numbers on the Affidavit)

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature: Attorney/Party/Case Coordinator

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address/Telephone Number

STATE OF NORTH CAROLINA  
COUNTY OF UNION

FORM #16  
IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
\_\_\_\_\_-CVD-\_\_\_\_\_

\_\_\_\_\_,  
Plaintiff  
-VS

**INITIAL CASE CONFERENCE  
ORDER**

- Equitable Distribution**
- Child Custody**
- Child Support**
- Alimony**
- Post Separation Support**

\_\_\_\_\_,  
Defendant

THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES THAT this case is scheduled to be heard for the following issues and on the following dates:

	Child Custody	Child Support	PSS	ED	Alimony
<b>Discovery Due</b>					
<b>Mediation Due</b>					
<b>Pre-Trial Date</b>					
<b>Trial Date</b>					

**This case is scheduled for the above dates in open court and shall be heard as scheduled without any continuances. Receipt of this order shall serve as Notice of Hearing.**

This the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Presiding Judge

**Served in Open Court on the Plaintiff and the Defendant.**

**This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.**

\_\_\_\_\_  
Clerk  
White: File      Green: Plaintiff      Pink: Defendant

NORTH CAROLINA  
JUDICIAL DISTRICT 20B  
COUNTY OF UNION

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CASE NUMBER \_\_\_\_\_  
ASSIGNED JUDGE \_\_\_\_\_

\_\_\_\_\_  
Plaintiff,  
-vs-  
\_\_\_\_\_  
Defendant.

**STATUS CONFERENCE ORDER**

THIS MATTER COMING ON TO BE HEARD before the undersigned Judge Presiding on the date shown below for a status conference concerning the pending claim or claims for equitable distribution.

1. The Plaintiff appeared through counsel, \_\_\_\_\_, and the Defendant also appeared through counsel, \_\_\_\_\_.

2. This is an action for equitable distribution filed by the \_\_\_\_ Plaintiff/ \_\_\_\_ Defendant (herein referred to as "Moving Party").

Based upon a review of the file, and after hearing the contentions and position of the parties through counsel, the Court determines that the interests of justice and the expeditious handling of this matter require the entry of the following Order.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. Moving Party \_\_\_\_ has/ \_\_\_\_ has not filed an equitable distribution affidavit.

If not, Moving Party is Ordered to file and serve an equitable distribution affidavit by

\_\_\_\_\_.

2. Opposing party \_\_\_\_ has/ \_\_\_\_ has not filed an equitable distribution affidavit.

If not, opposing party is Ordered to file and serve an equitable distribution affidavit by

\_\_\_\_\_.

3. The parties \_\_\_\_ have/ \_\_\_\_ have not agreed to an ADR procedure.

\_\_\_\_\_ is hereby appointed as \_\_\_\_\_ in this case and the parties and counsel are Ordered to complete the ADR process no later than

\_\_\_\_\_.

4. A proposed Pretrial Order \_\_\_\_ has/\_\_\_\_ has not been filed. If not, Moving Party is Ordered to file and serve a proposed Pretrial Order, accurately incorporating the contentions of the parties as set forth in their equitable distribution affidavits by \_\_\_\_\_.

5. A Pretrial Order \_\_\_\_ has/\_\_\_\_ has not been entered. If not, a pretrial conference is scheduled for the \_\_\_\_\_. Parties and counsel are directed to appear at such time, prepared to submit for inclusion in the Pretrial Order their final contentions, to be binding upon the parties at the trial, unless the parties otherwise agree to an amendment prior to trial or the Court at such time allows amendment for good cause shown.

6. The trial of this cause \_\_\_\_ has/\_\_\_\_ has not been scheduled. If not, this matter is \_\_\_\_ tentatively / \_\_\_\_ specifically scheduled for trial on \_\_\_\_\_. Parties and counsel are directed to appear at such time for trial without further notice.

Made and entered, this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
DISTRICT COURT JUDGE PRESIDING

STATE OF NORTH CAROLINA            IN THE GENERAL COURT OF JUSTICE  
COUNTY OF UNION                    DISTRICT COURT DIVISION  
FILE NUMBER \_\_\_\_\_

\_\_\_\_\_  
Plaintiff,

**INITIAL EQUITABLE DISTRIBUTION  
PRETRIAL CONFERENCE, SCHEDULING  
AND DISCOVERY ORDER**

Vs.

\_\_\_\_\_  
Defendant.

**THIS CAUSE** being heard before the undersigned Judge for an Initial Pretrial Scheduling and Discovery Conference in the above-captioned equitable distribution matter; and it appearing to the Court that counsel for the parties and the parties were present and have reached agreement concerning certain matters;

**NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

1. Marriage. The parties stipulate that they are husband and wife, having been married on \_\_\_\_\_.

2. Date of Separation. The parties stipulate that they separated on \_\_\_\_\_ and this shall be the date of separation for purposes of equitable distribution.

- or -

3. Date of Separation. Plaintiff contends that the date of separation is \_\_\_\_\_, and defendant contends that the date of separation is \_\_\_\_\_. Court will conduct an evidentiary hearing and will make a finding regarding the date of separation with such hearing to be held on \_\_\_\_\_.

4. Service of Equitable Distribution Affidavits. From the Record, the Court finds that each party's ED Affidavit was timely filed and served.

- or -

5. Service of Equitable Distribution Affidavits. \_\_\_\_\_'s ED affidavit was not timely filed and served and (may be filed and served no later than \_\_\_\_\_) (will be excluded from evidence).

6. Amendments to ED Affidavits. The parties may file and serve amendments to their ED Affidavits, which amendments shall be received by the opposing party, by the Wednesday prior to the first Monday of the trial term. The parties shall update their affidavits as they acquire additional pertinent information. The Final Pretrial Order shall be deemed to constitute an amendment to each party's ED Affidavit.

7. Discovery Issues. The following discovery issues have been identified:
- a.
  - b.
  - c.
8. Discovery Schedule. The following plan will be adhered to by the parties, with all discovery to be completed and received by the opposing party by the Wednesday prior to the first Monday of the trial term:
- a.
  - b.
  - c.
9. Agreed Upon Experts. The parties have agreed to the following Court-appointed expert to value the \_\_\_\_\_. The following rules shall apply:
- a. The parties will cooperate in furnishing information and making premises available to the expert.
  - b. The expert will furnish a report simultaneously to plaintiff and defendant.
  - c. The expert shall value the property as of the date of separation and as of the present time.
  - d. Neither party is bound by the expert's report.
  - e. The expert's report may be received into evidence without further authentication or without the expert being present in Court.
  - f. Either party may contradict or impeach the expert's report and may cross-examine the expert about the report. The party wishing to cross examine the expert about the report will be responsible for issuing a subpoena for his/her appearance at trial and arranging for his/her appearance.
  - g. With respect to the cost of the expert, the following shall apply:
    - (1) The initial retainer for the expert of \$ \_\_\_\_\_ shall be paid by \_\_\_\_\_ .
    - (2) All additional costs of the expert shall be paid by \_\_\_\_\_ .  
The Court may, in its discretion, tax the cost of the expert to either party.
10. Exchange of Other Expert Reports. Either party may wish to offer testimony of expert witnesses at trial with regard to various matters at issue including valuation of assets. A written report of any such expert shall be exchanged by the Final Pretrial Conference, and each party shall be permitted to depose the other party's expert witness(es).
11. Court Appointed Experts Pursuant to Rule 706. Motions pursuant to Rule 706 and Orders to Show Cause shall be filed and issued by \_\_\_\_\_, with all such motions to be heard on or before \_\_\_\_\_.
12. Alternative Dispute Resolution. The parties and the counsel have discussed



and have agreed upon the following alternative dispute resolution procedure to be done by the following neutral:

- a. Mediated Settlement Conference: \_\_\_\_\_
- b. Arbitration: \_\_\_\_\_
- c. Judicial Settlement Conference \_\_\_\_\_

The alternative dispute resolution procedure shall be completed prior to the Final Pretrial Conference.

13. Final Pretrial Conference. A final pretrial conference shall be scheduled on \_\_\_\_\_. On or before the Final Pretrial Conference, the parties shall file a Final Pretrial Order with the attached schedules.

14. Final Pretrial Order. At the Final Pretrial Conference, the parties shall submit to the Court a Final Pretrial Order in a form approved by the Chief District Court Judge, with attached schedules listing all items of property and debts which are the subject of the ED claims and designating the areas of agreement and disagreement concerning the classification, valuation, and distribution of such property and debts.

15. Other Orders. Other orders are made as follows:

- a.
- b.
- c.

16. Trial. This matter shall be set for trial during the week of \_\_\_\_\_.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
District Court Judge Presiding

**TO THE FOREGOING WE CONSENT:**

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Attorney for Defendant

**NORTH CAROLINA  
JUDICIAL DISTRICT 20B  
COUNTY OF UNION**

**IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
CASE NUMBER \_\_\_\_\_  
ASSIGNED JUDGE \_\_\_\_\_**

\_\_\_\_\_  
Plaintiff,  
-vs-  
\_\_\_\_\_  
Defendant.

**EQUITABLE DISTRIBUTION  
PRETRIAL ORDER**

**THIS MATTER COMING ON TO BE HEARD** upon pre-trial conference before the undersigned Presiding Judge upon pleadings seeking an equitable distribution of the marital property of the parties;

**AND IT APPEARING** that the parties have reached agreement on certain facts and on certain issues and have set forth the areas of agreement and disagreement and their contentions as to such matters of disagreement;

**AND IT APPEARING** that by their signatures affixed hereto, each party stipulates that he or she agrees that the matters at issue between the parties are accurately stated, that he or she voluntarily agrees that the court may accept into evidence the stipulations contained herein;

**AND IT APPEARING** that by their signatures affixed hereto, each party stipulates that the stipulations and contentions of the parties as set forth herein are binding on the parties at trial, unless an amendment by the Judge is allowed;

**AND IT FURTHER APPEARING** that each party by signing this Pre-Trial Order swears that he or she has disclosed the existence of all property, both separate and marital, to which he or she may have had a claim to at the date of separation of the parties or since such date, regardless of to whom such property may be titled or in whom actual ownership may be designated, and each party further swears that such disclosure has been full and honest and is free from taint of fraud, and each party stipulates that if such disclosure is found not to have been full and honest, the Court shall have the authority, based upon such, to classify, value and distribute any item of property whose existence was not accurately disclosed in this Pre-Trial Order or otherwise modify any Order entered in reliance upon this Pre-Trial Order;

**IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED** as follows:

1. The Court has jurisdiction over the parties and subject matter of this action.
2. The Plaintiff and Defendant were married on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

3. Plaintiff and Defendant are the parents of \_\_\_\_ children more than eighteen (18) years of age at this time; they are (also) the parents of \_\_\_\_ minor children whose names and birthdates are as follows:

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4. The Plaintiff and Defendant last separated on \_\_\_\_\_, \_\_\_\_\_, which is the date of valuation.

5. An equal division is \_\_\_\_\_ / is not \_\_\_\_\_ an equitable division in this case.

6. Schedule I is a list of REAL PROPERTY AND MOBILE HOMES.

7. Schedule II is a list of MOTOR VEHICLES.

8. Schedule III is a list of HOUSEHOLD FURNISHINGS, COLLECTIBLES.

9. Schedule IV is a list of MISCELLANEOUS PERSONAL PROPERTY.

10. Schedule V is a list of ACCOUNTS.

11. Schedule VI is a list of BUSINESSES AND STOCKS.

12. Schedule VII is a list of RETIREMENT (401 (k), IRA, Pension, Profit-Sharing, Plans.)

13. Schedule VIII is a list of LIFE INSURANCE POLICIES.

14. Schedule IX is a list of PROPERTY ACQUIRED AFTER DOS.

15. Schedule X is a list of DEBTS, WHICH ARE SECURED.

16. Schedule XI is a list of DEBTS, WHICH ARE NOT SECURED.

17. Schedule XII is a list of DIVISIBLE PROPERTY.

18. Schedule XIII is a list of FACTORS JUSTIFYING AN UNEQUAL DISTRIBUTION.

19. Appraisals have been prepared by expert witnesses and exchange by the parties, and information made available for inspection, including copies of all materials submitted to the expert. Noted is whether there is any objection to the appraisal(s) being admitted into evidence without the expert being present at the trial to testify. **IF THE PARTY RECEIVING AN APPRAISAL DOES NOT OBJECT THE APPRAISAL MAY BE RECEIVED INTO EVIDENCE AT THE TRIAL WITHOUT THE NECESSITY OF HAVING THE PREPARER OF SUCH APPRAISAL PRESENT TO TESTIFY.**

20. The trial Judge shall rule on any unresolved issues of classification and valuation, and shall rule on an equitable distribution:

This the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

---

Judge Presiding

CONSENTED TO:

---

Plaintiff

---

Defendant

---

Attorney for Plaintiff

---

Attorney for Defendant

Plaintiff's Expert Appraisals:

1. \_\_\_\_\_ Exhibit Number \_\_\_\_\_ Object \_\_\_\_\_
2. \_\_\_\_\_ Exhibit Number \_\_\_\_\_ Object \_\_\_\_\_

Defendant's Expert Appraisals:

1. \_\_\_\_\_ Exhibit Number \_\_\_\_\_ Object \_\_\_\_\_
2. \_\_\_\_\_ Exhibit Number \_\_\_\_\_ Object \_\_\_\_\_

**DOMESTIC VIOLENCE INCIDENT REPORT**

The Clerk's office, D.A.'s office, or the Case Coordinator has copies of this form.

NORTH CAROLINA  
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

File No. \_\_\_\_\_-CVD-\_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs.

**NOTICE FOR CUSTODY/VISITATION  
MEDIATION ORIENTATION  
& PARENTING APART PROGRAM**

\_\_\_\_\_  
Defendant

**TO THE PARTIES OR THEIR ATTORNEYS OF RECORD:  
IT IS ORDERED, pursuant to G.S. 50-13.1, that the child custody and/or visitation issues in this case  
be referred to mediation.**

Notice is hereby given that the parties named above are to appear:

Date: \_\_\_\_\_  
Time: starting at 3:00 PM and lasting until 5:00 PM  
Place: Union County Judicial Center, Monroe, NC.  
Courtroom #5 (3<sup>rd</sup> Floor)

All named parties are required to be present at this time to participate in an orientation program detailing the mandatory mediation of child custody, visitation and parenting issues. This will not be a mediation session; your mediation session will be scheduled during orientation for another date.

**PARTIES WHO FAIL TO COMPLY WITH THIS NOTICE WILL BE SUBJECT TO THE CONTEMPT  
POWERS OF THE COURT.**

**QUESTIONS MAY BE DIRECTED TO THE CUSTODY MEDIATOR.  
704-698-3225**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief District Court Judge

**CERTIFICATE OF SERVICE**

I certify a copy of this Notice was served:

\_\_\_\_\_ By depositing a copy enclosed in a postpaid properly addressed envelope in a post office or official depository under the exclusive care and custody of the U.S. Postal service directed to:

\_\_\_\_\_ Plaintiff    \_\_\_\_\_ Defendant    \_\_\_\_\_ Plaintiff's Attorney    \_\_\_\_\_ Defendant's Attorney

\_\_\_\_\_ Delivering a copy personally to:

\_\_\_\_\_ Plaintiff    \_\_\_\_\_ Defendant    \_\_\_\_\_ Plaintiff's Attorney    \_\_\_\_\_ Defendant's Attorney

NORTH CAROLINA  
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
File No. \_\_\_\_\_-CVD-\_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs.

**ORDER FOR CUSTODY/VISITATION  
MEDIATION ORIENTATION &  
PARENTING APART PROGRAM**

\_\_\_\_\_  
Defendant

**TO THE PARTIES OR THEIR ATTORNEYS OF RECORD:  
IT IS ORDERED, pursuant to G.S. 50-13.1, that the child custody and/or visitation issues in this case be referred to mediation.**

Notice is hereby given that the parties named above are to appear on:

Date: \_\_\_\_\_  
Time: starting at 3:00 PM and lasting until 5:00 PM  
Place: Union County Judicial Center, Monroe, NC.  
Courtroom #5 (3<sup>rd</sup> Floor)

All named parties are required to be present at this time to participate in an orientation program developed by the Court. The orientation will last approximately two hours. This will not be a mediation session; your mediation session will be scheduled for another date during orientation.

**PARTIES WHO FAIL TO COMPLY WITH THIS NOTICE WILL BE SUBJECT TO THE CONTEMPT POWERS OF THE COURT. THIS IS YOUR SECOND AND FINAL ORDER TO ATTEND ORIENTATION.**

QUESTIONS MAY BE DIRECTED TO THE CUSTODY MEDIATOR.  
704-698-3225

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief District Court Judge

CERTIFICATE OF SERVICE

I certify a copy of this Order was served:

\_\_\_\_\_ By depositing a copy enclosed in a postpaid properly addressed envelope in a post office or official depository under the exclusive care and custody of the U.S. Postal service directed to:

\_\_\_\_ Plaintiff    \_\_\_\_ Defendant    \_\_\_\_ Plaintiff's Attorney    \_\_\_\_ Defendant's Attorney

\_\_\_\_\_ Delivering a copy personally to:

\_\_\_\_ Plaintiff    \_\_\_\_ Defendant    \_\_\_\_ Plaintiff's Attorney    \_\_\_\_ Defendant's Attorney

NORTH CAROLINA  
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

File No. \_\_\_\_-CVD-\_\_\_\_\_

\_\_\_\_\_) )  
 Plaintiff ) )  
 ) )  
 vs. ) )  
 ) )  
 ) )  
 \_\_\_\_\_) )  
 Defendant ) )

**STIPULATION FOR  
EXPEDITED MEDIATION**

The Plaintiff and Defendant, by and through their attorneys of record, hereby stipulate that the parties waive the normal 45-day waiting period as set out in Rule 5 of the MANDATORY CHILD CUSTODY AND VISITATION MEDIATION RULES for the 20<sup>th</sup> Judicial District and request that mediation be expedited.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Plaintiff or Plaintiff's Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant or Defendant's Attorney

Attorneys, please call 704-698-3225 to notify the Mediator of this request.

**THIS FORM SHALL BE FILED WITH THE CLERK'S OFFICE AND A COPY SHALL BE DEPOSITED IN THE CUSTODY MEDIATOR'S BOX IN THE CLERK'S OFFICE.**



NORTH CAROLINA  
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

File No. \_\_\_\_-CVD-\_\_\_\_\_

\_\_\_\_\_) )  
Plaintiff ) )  
 ) )  
vs. ) )  
 ) )  
\_\_\_\_\_) )  
Defendant ) )

**MOTION FOR EXEMPTION  
FROM MEDIATION AND THE  
PARENTING APART PROGRAM**

Pursuant to G.S. 50-13.1, the undersigned attorney/party request a waiver of court ordered custody/visitation mediation and the Parenting Apart Program based upon the following reason(s):

- \_\_\_\_\_ 1. The parties have agreed to voluntary private mediation.
- \_\_\_\_\_ 2. The party resides more than 75 miles from the court. City & State: \_\_\_\_\_
- \_\_\_\_\_ 3. There are allegations of abuse or neglect of the minor child.
- \_\_\_\_\_ 4. There are allegations of alcoholism, drug abuse, or domestic violence.
- \_\_\_\_\_ 5. There are allegations of severe psychological, psychiatric or emotional problems.
- \_\_\_\_\_ 6. Other good cause

**The facts upon which this request for waiver is based are as follows (must be completed):**

This is the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Date Signature of Filing Party

Copy to: \_\_\_\_\_ Plaintiff or Plaintiff's Attorney \_\_\_\_\_ Custody Mediator  
\_\_\_\_\_ Defendant or Defendant's Attorney \_\_\_\_\_ Case Manager

Original shall be filed with the Clerk's Office. Copy given to Mediator and Family Court Case Manager.

NORTH CAROLINA  
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

File No. \_\_\_\_-CVD-\_\_\_\_\_

\_\_\_\_\_) )  
Plaintiff ) )  
 ) )  
vs. ) )  
 ) )  
\_\_\_\_\_) )  
Defendant ) )

**ORDER AS TO EXEMPTION  
FROM MEDIATION AND THE  
PARENTING APART PROGRAM**

THIS CAUSE came before the undersigned Judge upon the motion for exemption from mediation and the Parenting Apart Program, and the court finds and concludes that said mediation and the Parenting Apart Program:

\_\_\_\_\_ should be waived for good cause shown

\_\_\_\_\_ should not be waived

IT IS THEREFORE ORDERED that mediation in this case:

\_\_\_\_\_ is hereby waived

\_\_\_\_\_ is not waived

It is so ordered this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
CHIEF DISTRICT COURT JUDGE  
JUDICIAL DISTRICT 20B  
NORTH CAROLINA

THIS FORM SHALL BE FILED WITH THE CLERK'S OFFICE AND A COPY SHALL BE DEPOSITED IN THE CUSTODY MEDIATOR'S BOX IN THE CLERK'S OFFICE.

**VISITATION**  
**CUSTODY**

\_\_\_\_\_  
\_\_\_\_\_

**MEDIATION OUTCOME**

Family Court Case Manager:

Case Number:                -CVD-

Plaintiff:

Attorney:

Defendant:

Attorney:

\_\_\_\_\_ Reached Full Agreement/  
Judge signed *Order Approving Parenting Agreement*

\_\_\_\_\_ Partial Agreement  
Unresolved issues:

\_\_\_\_\_ Temporary Agreement  
Expected Return Date: \_\_\_\_\_

\_\_\_\_\_ No Agreement

\_\_\_\_\_ Failure to Appear – Plaintiff / Defendant / Both  
Initiate Show Cause Order for Plaintiff / Defendant / Both

\_\_\_\_\_ Exempt

\_\_\_\_\_ Other

\_\_\_\_\_  
Custody Mediator

\_\_\_\_\_  
Date

NORTH CAROLINA  
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
File No. \_\_\_\_-CVD-\_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs.

**NOTICE OF MOTION TO  
MODIFY  
CUSTODY / VISITATION**

\_\_\_\_\_  
Defendant

The \_\_\_\_ plaintiff \_\_\_\_ defendant has filed a Motion to Modify in the above case.

All parties have attended Child Custody Mediation Orientation and Parenting Apart Program on or about \_\_\_\_\_ (date)

Plaintiff's address: \_\_\_\_\_

Plaintiff's phone numbers: (home) \_\_\_\_\_  
(cell) \_\_\_\_\_

Defendant's address: \_\_\_\_\_

Defendant's phone numbers: (home) \_\_\_\_\_  
(cell) \_\_\_\_\_

QUESTIONS MAY BE DIRECTED TO THE CUSTODY MEDIATOR.  
704-698-3225

\_\_\_\_\_  
Date

\_\_\_\_\_  
Filing party or attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT A COPY OF THIS NOTICE OF MOTION TO MODIFY BEEN SERVED IN THE FOLLOWING MANNER:

- [ ] By depositing a copy in the United States mail in a properly addressed, postpaid envelope to:  
\_\_ Plaintiff at \_\_\_\_\_  
\_\_ Defendant at \_\_\_\_\_  
\_\_ Plaintiff's Attorney  
\_\_ Defendant's Attorney

CC: Mediator

NORTH CAROLINA  
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

File No. \_\_\_\_-CVD-\_\_\_\_\_

\_\_\_\_\_) )  
Plaintiff ) )  
 ) )  
 ) )  
vs. ) )  
 ) )  
 ) )  
\_\_\_\_\_) )  
Defendant ) )

**NOTICE OF CUSTODY  
MEDIATION CONFERENCE**

In accordance with the law, the above case has been set for mandatory mediation of all custody and visitation issues.

Notice is hereby given to appear on:

Date: \_\_\_\_\_ Time: \_\_\_\_\_  
**Please allow two (2) hours for this session.**

Place: District Court Judges Office, Union County Courthouse, 4<sup>th</sup> Floor

**ALL PARTIES WHO FAIL TO COMPLY WITH THIS NOTICE WILL BE SUBJECT TO THE  
CONTEMPT POWERS OF THE COURT.**

The mediator will seek to promote a workable and mutually acceptable agreement between the parties, working towards a resolution of the issues that will best serve the interests of the child. Please be advised that this is not a proceeding before the Court, therefore, counsel will not participate in the discussions. Counsel will have an opportunity to review any parenting agreement prior to the signing appointment.

Mediation is an efficient, economical alternative to traditional litigation and provides for a prompt resolution of disputes. Mediation is often better than the courtroom as a way to resolve emotional issues involved in custody and visitation cases.

**QUESTIONS MAY BE DIRECTED TO THE CUSTODY MEDIATOR.  
704-698-3225**

\_\_\_\_\_  
Custody Mediator

\_\_\_\_\_  
Date

# In the Supreme Court of North Carolina

## **Order Adopting Amendments to the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases**

WHEREAS, section 7A-38.4 of the North Carolina General Statutes establishes a statewide system of court-ordered mediated settlement conferences to facilitate the settlement of equitable distribution and other family financial cases, and

WHEREAS, N.C.G.S. § 7A-38.4(c) provides for this Court to implement section 7A-38.4 by adopting rules and amendments to rules concerning said mediated settlement conferences,

NOW, THEREFORE, pursuant to N.C.G.S. § 7A-38.4(c), the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases are hereby amended to read as in the following pages. These amended Rules shall be effective on the 1st day of March, 2006, except that districts have not yet implemented the Family Financial Settlement Program may have up until one year from the above effective date of these amendments to comply with Rule 1.C.(1) mandating referral of all eligible family financial cases to mediated settlement.

Adopted by the Court in conference the 26th day of January, 2006. The Appellate Division Reporter shall promulgate by publication as soon as practicable the portions of the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases amended through this action in the advance sheets of the Supreme Court and the Court of Appeals.

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For the Court

Witness my hand and the seal of the Supreme Court of North Carolina, this the 26<sup>th</sup> day of January, 2006.

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Christie Speir Cameron  
Clerk of the Supreme Court

**RULES OF THE NORTH CAROLINA SUPREME COURT  
IMPLEMENTING SETTLEMENT PROCEDURES IN  
EQUITABLE DISTRIBUTION AND OTHER  
FAMILY FINANCIAL CASES**

**RULE 1. INITIATING SETTLEMENT PROCEDURES**

**A. PURPOSE OF MANDATORY SETTLEMENT PROCEDURES.**

**Pursuant to G.S. 7A-38.4A, these Rules are promulgated to implement a system of settlement events which are designed to focus the parties' attention on settlement rather than on trial preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time before or after those ordered by the Court pursuant to these Rules.**

**B. DUTY OF COUNSEL TO CONSULT WITH CLIENTS AND OPPOSING COUNSEL CONCERNING SETTLEMENT PROCEDURES.**

In furtherance of this purpose, counsel, upon being retained to represent any party to a district court case involving family financial issues, including equitable distribution, child support, alimony, post-separation support action, or claims arising out of contracts between the parties under G.S. 50-20(d), 52-10, 52-10.1 or 52 B shall advise his or her client regarding the settlement procedures approved by these Rules and, at or prior to the scheduling conference mandated by G.S. 50-21(d), shall attempt to reach agreement with opposing counsel on the appropriate settlement procedure for the action.

**C. ORDERING SETTLEMENT PROCEDURES.**

- (1) Equitable Distribution Scheduling Conference.** At the scheduling conference mandated by G.S. 50-21(d) in ~~an~~ all equitable distribution actions in all judicial districts, or at such earlier time as specified by local rule, the Court shall include in its scheduling order a requirement that the parties and their counsel attend a mediated settlement conference or, if the parties agree, other settlement procedure conducted pursuant to these rules, unless excused by the Court pursuant to Rule 1.C.(6) or by the Court or mediator pursuant to Rule 4.A.(2). The court shall dispense with the requirement to attend a mediated settlement conference or other settlement procedure only for good cause shown.
- (2) Scope of Settlement Proceedings.** All other financial issues existing between the parties when the equitable distribution settlement proceeding is ordered, or at any time thereafter, may be discussed, negotiated or decided at the proceeding. In those districts where a child custody and visitation mediation program has been established pursuant to G.S. 7A-494, child custody and visitation issues may be the subject of settlement proceedings ordered pursuant to these Rules only in those cases in which the parties and the mediator have agreed to include them and in which the parties have been exempted from, or have fulfilled the program requirements. In those districts where a child custody and visitation mediation program has not been established pursuant to G.S. 7A-494, child custody and visitation issues may be the subject of settlement proceedings ordered pursuant to these Rules with the agreement of all parties and the mediator.

- (3) **Authorizing Settlement Procedures Other Than Mediated Settlement Conference.** The parties and their attorneys are in the best position to know which settlement procedure is appropriate for their case. Therefore, the Court shall order the use of a settlement procedure authorized by Rules 10-12 herein or by local rules of the District Court in the county or district where the action is pending if the parties have agreed upon the procedure to be used, the neutral to be employed and the compensation of the neutral. If the parties have not agreed on all three items, then the Court shall order the parties and their counsel to attend a mediated settlement conference conducted pursuant to these Rules.

The motion for an order to use a settlement procedure other than a mediated settlement conference shall be submitted on an AOC form at the scheduling conference and shall state:

- (a) the settlement procedure chosen by the parties;
  - (b) the name, address and telephone number of the neutral selected by the parties;
  - (c) the rate of compensation of the neutral;
  - (d) that all parties consent to the motion.
- (4) **Content of Order.** The Court's order shall (1) require the mediated settlement conference or other settlement proceeding be held in the case; (2) establish a deadline for the completion of the conference or proceeding; and (3) state that the parties shall be required to pay the neutral's fee at the conclusion of the settlement conference or proceeding unless otherwise ordered by the Court. Where the settlement proceeding ordered is a judicial settlement conference, the parties shall not be required to pay for the neutral.

The order shall be contained in the Court's scheduling order, or, if no scheduling order is entered, shall be on an AOC form. Any scheduling order entered at the completion of a scheduling conference held pursuant to local rule may be signed by the parties or their attorneys in lieu of submitting the forms referred to hereinafter relating to the selection of a mediator.

- (5) **Court-Ordered Settlement Procedures in Other Family Financial Cases.** Any party to an action involving family financial issues not previously ordered to a mediated settlement conference may move the Court to order the parties to participate in a settlement procedure. Such motion shall be made in writing, state the reasons why the order should be allowed and be served on the non-moving party. Any objection to the motion or any request for hearing shall be filed in writing with the Court within 10 days after the date of the service of the motion. Thereafter, the Judge shall rule upon the motion and notify the parties or their attorneys of the ruling. If the Court orders a settlement proceeding, then the proceeding shall be a mediated settlement conference conducted pursuant to these Rules. Other settlement procedures may be ordered if the circumstances outlined in subsection (3) above have been met.
- (6) **Motion to Dispense With Settlement Procedures.** A party may move the Court to dispense with the mediated settlement conference or other settlement procedure. Such motion shall be in writing and shall state the reasons the relief is sought. For good cause shown, the Court may grant the motion. Such good cause may include, but not be limited to, the fact that the parties have participated in a settlement procedure such as non-binding arbitration or early neutral evaluation prior to the court's order to participate in a mediated settlement conference or have elected to resolve their case through arbitration under the Family Law Arbitration Act (G.S. 50-41 et seq.) or that one of the parties has alleged domestic violence. The Court may



also dispense with the mediated settlement conference for good cause upon its own motion or by local rule.

## **RULE 2. SELECTION OF MEDIATOR**

**A. SELECTION OF CERTIFIED FAMILY FINANCIAL MEDIATOR BY AGREEMENT OF THE PARTIES.** The parties may select a certified family financial mediator certified pursuant to these Rules by agreement by filing with the Court a Designation of Mediator by Agreement at the scheduling conference. Such designation shall: state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.

In the event the parties wish to select a mediator who is not certified pursuant to these Rules, the parties may nominate said person by filing a Nomination of Non-Certified Family Financial Mediator with the Court at the scheduling conference. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience, or other qualifications of the mediator; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation, if any. The Court shall approve said nomination if, in the Court's opinion, the nominee is qualified to serve as mediator and the parties and the nominee have agreed upon the rate of compensation.

Designations of mediators and nominations of mediators shall be made on an AOC form. A copy of each such form submitted to the Court and a copy of the Court's order requiring a mediated settlement conference shall be delivered to the mediator by the parties.

**B. APPOINTMENT OF CERTIFIED FAMILY FINANCIAL MEDIATOR BY THE COURT.** If the parties cannot agree upon the selection of a mediator, they shall so notify the Court and request that the Court appoint a mediator. The motion shall be filed at the scheduling conference and shall state that the attorneys for the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree on a mediator. The motion shall be on a form approved by the Administrative Office of the Courts.

Upon receipt of a motion to appoint a mediator, or failure of the parties to file a Notice of Selection with the court, the Court shall appoint a family financial mediator, certified pursuant to these Rules, who has expressed a willingness to mediate actions within the Court's district.

In making such appointments, the Court shall rotate through the list of available certified mediators. Appointments shall be made without regard to race, gender, religious affiliation, or whether the mediator is a licensed attorney. Certified mediators who do not reside in the judicial district, or a county contiguous to the judicial district, shall be included in the list of mediators available for appointment only if, on an annual basis, they inform the Judge in writing that they agree to mediate cases to which they are assigned. The District Court Judges shall retain discretion to depart in a specific case from a strict rotation when, in the judge's discretion, there is good cause to do so.

The Dispute Resolution Commission shall furnish to the District Court Judges of each judicial district a list of those certified family financial mediators requesting appointments in that district. That list shall contain the mediators' names, addresses and telephone numbers and shall be provided both in writing and electronically through the Commission's website. The Commission shall promptly notify

the District Court Judges of any disciplinary action taken with respect to a mediator on the list of certified mediators for the judicial district.

- C. MEDIATOR INFORMATION DIRECTORY.** To assist the parties in the selection of a mediator by agreement, the Chief District Court Judge having authority over any county participating in the mediated settlement conference program shall prepare and keep current for such county a central directory of information on all mediators certified pursuant to these Rules who wish to mediate in that county. Such information shall be collected on loose leaf forms provided by the Dispute Resolution Commission and be kept in one or more notebooks made available for inspection by attorneys and parties in the office of the Clerk of Court in such county and the office of the Chief District Court Judge or Trial Court Administrator in such county or, in a single county district, in the office of the Chief District Court Judge or said judge's designee.
- D. DISQUALIFICATION OF MEDIATOR.** Any party may move a Court of the district where the action is pending for an order disqualifying the mediator. For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to Rule 2. Nothing in this provision shall preclude mediators from disqualifying themselves.

### **RULE 3. THE MEDIATED SETTLEMENT CONFERENCE**

- A. WHERE CONFERENCE IS TO BE HELD.** The mediated settlement conference shall be held in any location agreeable to the parties and the mediator. If the parties cannot agree to a location, the mediator shall be responsible for reserving a neutral place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and *pro se* parties.
- B. WHEN CONFERENCE IS TO BE HELD.** As a guiding principle, the conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date. The mediator is authorized to assist the parties in establishing a discovery schedule and completing discovery.

The Court's order issued pursuant to Rule 1.C.(1) shall state a deadline for completion of the conference which shall be not more than 150 days after issuance of the Court's order, unless extended by the Court. The mediator shall set a date and time for the conference pursuant to Rule 6.B.(5).

- C. REQUEST TO EXTEND DEADLINE FOR COMPLETION.** A party, or the mediator, may move the Court to extend the deadline for completion of the conference. Such motion shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the motion, said party shall promptly communicate its objection to the Court.

The Court may grant the request by entering a written order setting a new deadline for completion of the conference, which date may be set at any time prior to trial. Said order shall be delivered to all parties and the mediator by the person who sought the extension.

- D. RECESSES.** The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set during the conference, no further notification is required for persons present at the conference.

**E. THE MEDIATED SETTLEMENT CONFERENCE IS NOT TO DELAY OTHER PROCEEDINGS.** The mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.

**RULE 4. DUTIES OF PARTIES, ATTORNEYS AND OTHER PARTICIPANTS IN MEDIATED SETTLEMENT CONFERENCES**

**A. ATTENDANCE.**

(1) The following persons shall attend a mediated settlement conference:

(a) **Parties.**

(b) **Attorneys.** At least one counsel of record for each party whose counsel has appeared in the action.

(2) Any person required to attend a mediated settlement conference shall physically attend until such time as an agreement has been reached or the mediator, after conferring with the parties and their counsel, if any, declares an impasse. No mediator shall prolong a conference unduly.

Any such person may have the attendance requirement excused or modified, including allowing a person to participate by phone, by agreement of both parties and the mediator or by order of the Court. Ordinarily, attorneys for the parties may be excused from attending only after they have appeared at the first session.

(3) **Scheduling.** Participants required to attend shall promptly notify the mediator after selection or appointment of any significant problems they may have with dates for conference sessions before the completion deadline, and shall keep the mediator informed as to such problems as may arise before an anticipated conference session is scheduled by the mediator. After a conference session has been scheduled by the mediator, and a scheduling conflict with another court proceeding thereafter arises, participants shall promptly attempt to resolve it pursuant to Rule 3.1 of the General Rules of Practice for the Superior and District Courts, or, if applicable, the Guidelines for Resolving Scheduling Conflicts adopted by the State-Federal Judicial Council of North Carolina June 20, 1985.

**B. FINALIZING AGREEMENT.**

(1) If an agreement is reached on any or all issues at the conference, The essential terms of the parties' agreement shall be reduced to writing as a summary memorandum at the conclusion of the conference unless the parties have reduced their agreement to writing, have signed it and in all other respects have complied with the requirements of Chapter 50 of the General Statutes. The parties and their counsel shall use the summary memorandum as a guide to drafting such agreements and orders as may be required to give legal effect to its terms. In the event the parties fail to agree on the wording or terms of a final agreement or court order, the mediator may schedule another session if the mediator determines that it would assist the parties.

(2) If the agreement is upon all issues at the conference, the person(s) responsible for filing closing documents with the court shall also sign the mediator's report to the court. The parties shall give a copy of their signed memorandum of agreement, agreement, consent judgment or

voluntary dismissals to the mediator and all parties at the conference and shall file their consent judgment or voluntary dismissal with the court within thirty (30) days or before expiration of the mediation deadline, whichever is longer.

- (3) If an agreement is reached upon all issues prior to the conference or finalized while the conference is in recess, the parties shall reduce its terms to writing, sign it along with their counsel and file the consent judgment or voluntary dismissal(s) with the court within thirty (30) days or before the expiration of the mediation deadline, whichever is longer.
- (4) When a case is settled upon all issues, all attorneys of record must notify the Court within four business days of the settlement and advise who will file the consent judgment or voluntary dismissal(s), *and when*.

**C. PAYMENT OF MEDIATOR'S FEE.** The parties shall pay the mediator's fee as provided by Rule 7.

### **DRC Comments to Rule 4.**

#### **DRC Comment to Rule 4.B.**

N.C.G.S. § 7A-38.4A(j) provides that no settlement shall be enforceable unless it has been reduced to writing and signed by the parties. When a settlement is reached during a mediated settlement conference, the mediator shall be sure its terms are reduced to writing and signed by the parties and their attorneys before ending the conference.

Cases in which agreement on all issues has been reached should be disposed of as expeditiously as possible. This rule is intended to assure that the mediator and the parties move the case toward disposition while honoring the private nature of the mediation process and the mediator's duty of confidentiality. If the parties wish to keep confidential the terms of their settlement, they may timely file with the court closing documents which do not contain confidential terms, i.e., voluntary dismissal(s) or a consent judgment resolving all claims. Mediators will not be required by local rules to submit agreements to the court.

### **RULE 5. SANCTIONS FOR FAILURE TO ATTEND MEDIATED SETTLEMENT CONFERENCES**

If any person required to attend a mediated settlement conference fails to attend without good cause, the Court may impose upon that person any appropriate monetary sanction including, but not limited to, the payment of attorneys fees, mediator fees, expenses and loss of earnings incurred by persons attending the conference.

A party to the action seeking sanctions, or the Court on its own motion, shall do so in a written motion stating the grounds for the motion and the relief sought. Said motion shall be served upon all parties and on any person against whom sanctions are being sought. If the Court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law. (See also Rule 7.F. and the Comment to Rule 7.F.)

### **RULE 6. AUTHORITY AND DUTIES OF MEDIATORS**

#### **A. AUTHORITY OF MEDIATOR.**

- (1) **Control of Conference.** The mediator shall at all times be in control of the conference and the procedures to be followed. However, the mediator's conduct shall be governed by standards of conduct promulgated by the Supreme Court which shall contain a provision prohibiting mediators from prolonging a conference unduly.
- (2) **Private Consultation.** The mediator may communicate privately with any participant during the conference. However, there shall be no *ex parte* communication before or outside the conference between the mediator and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this rule prevents the mediator from engaging in *ex parte* communications, with the consent of the parties, for the purpose of assisting settlement negotiations.

## **B. DUTIES OF MEDIATOR.**

- (1) The mediator shall define and describe the following at the beginning of the conference:
  - (a) The process of mediation;
  - (b) The differences between mediation and other forms of conflict resolution;
  - (c) The costs of the mediated settlement conference;
  - (d) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement;
  - (e) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
  - (f) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
  - (g) The inadmissibility of conduct and statements as provided by G.S. 7A-38.4A(j);
  - (h) The duties and responsibilities of the mediator and the participants; and
  - (i) The fact that any agreement reached will be reached by mutual consent.
- (2) **Disclosure.** The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- (3) **Declaring Impasse.** It is the duty of the mediator to determine in a timely manner that an impasse exists and that the conference should end. To that end, the mediator shall inquire of and consider the desires of the parties to cease or continue the conference.
- (4) **Reporting Results of Conference.**

- (a) The mediator shall report to the court on an A.O.C. form within 10 days of the conference whether or not an agreement was reached by the parties.

The mediator's report shall inform the court of the absence of any party or attorney known by the mediator to be absent from the mediated settlement conference without permission. If partial agreements are reached at the conference, the report shall state what issues remain for trial. The Dispute Resolution Commission or the Administrative Office of the Courts may require the mediator to provide statistical data for evaluation of the mediated settlement conference program. Local rules shall not require the mediator to send a copy of the parties' agreement to the court.

- (b) If an agreement upon all issues was reached, the mediator's report shall state whether the action will be concluded by consent judgment or voluntary dismissal(s), when it shall be filed with the court, and the name, address and telephone number of the person(s) designated by the parties to file such consent judgment or dismissal(s) with the court as required by Rule 4.B.2. If an agreement upon all issues is reached at the conference, the mediator shall have the person(s) designated sign the mediator's report acknowledging acceptance of the duty to timely file the closing documents with the court.

Mediators who fail to report as required pursuant to this rule shall be subject to the contempt power of the court and sanctions.

- (5) **Scheduling and Holding the Conference.** The mediator shall schedule the conference and conduct it prior to the conference completion deadline set out in the Court's order. The mediator shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the mediator shall select a date and time for the conference. Deadlines for completion of the conference shall be strictly observed by the mediator unless changed by written order of the Court.
- (6) **Informational Brochure.** Before the conference, the mediator shall distribute to the parties or their attorneys a brochure prepared by the Dispute Resolution Commission explaining the mediated settlement conference process and the operations of the Commission.
- (7) **Evaluation Forms.** At the mediated settlement conference, the mediator shall distribute a mediator evaluation form approved by the Dispute Resolution Commission. The mediator shall distribute one copy per party with additional copies distributed upon request. The evaluation is intended for purpose of self-improvement and the mediator shall review returned evaluation forms.

## **RULE 7. COMPENSATION OF THE MEDIATOR AND SANCTIONS**

- A. BY AGREEMENT.** When the mediator is selected by agreement of the parties, compensation shall be as agreed upon between the parties and the mediator.
- B. BY COURT ORDER.** When the mediator is appointed by the Court, the parties shall compensate the mediator for mediation services at the rate of \$125 per hour. The parties shall also pay to the mediator a one-time, per case administrative fee of \$125, which accrues upon appointment and shall be paid if the case settles prior to the mediated settlement conference or if the court approves the substitution of a mediator selected by the parties for a court appointed mediator.
- C. PAYMENT OF COMPENSATION BY PARTIES.** Unless otherwise agreed to by the parties or ordered by the Court, the mediator's fee shall be paid in equal shares by the parties. Payment shall be due and payable upon completion of the conference.
- D. INABILITY TO PAY.** No party found by the Court to be unable to pay a full share of a mediator's fee shall be required to pay a full share. Any party required to pay a share of a mediator fee pursuant to Rule 7.B. and C. may move the Court to pay according to the Court's determination of that party's ability to pay.

In ruling on such motions, the Judge may consider the income and assets of the movant and the outcome of the action. The Court shall enter an order granting or denying the party's motion. In so ordering, the Court may require that one or more shares be paid out of the marital estate.

Any mediator conducting a settlement conference pursuant to these rules shall accept as payment in full of a party's share of the mediator's fee that portion paid by or on behalf of the party pursuant to an order of the Court issued pursuant to this rule.

**E. POSTPONEMENTS AND FEES.**

- (1) As used herein, the term "postponement" shall mean reschedule or not proceed with a settlement conference once a date for a session of the settlement conference has been scheduled by the mediator. After a settlement conference has been scheduled for a specific date, a party may not unilaterally postpone the conference.
- (2) A conference session may be postponed by the mediator for good cause beyond the control of the moving participant(s) only after notice by the movant to all parties of the reasons for the postponement and a finding of good cause by the mediator.
- (3) Without a finding of good cause, a mediator may also postpone a scheduled conference session with the consent of all parties. A fee of \$125 shall be paid to the mediator if the postponement is allowed, or if the request is within five (5) business days of the scheduled date the fee shall be \$250. The postponement fee shall be paid by the party requesting the postponement unless otherwise agreed to between the parties. Postponement fees are in addition to the one time, per case administrative fee provided for in Rule 7.B.
- (4) If all parties select or nominate the mediator and they contract with the mediator as to compensation, the parties and the mediator may specify in their contract alternatives to the postponement fees otherwise required herein.

**E. SANCTIONS FOR FAILURE TO PAY MEDIATOR'S FEE.** Willful failure of a party to make timely payment of that party's share of the mediator's fee (whether the one time, per case administrative fee, the hourly fee for mediation services, or any postponement fee) or willful failure of a party contending indigent status or the inability to pay his or her full share of the fee to promptly move the Court for a determination of indigency or the inability to pay a full share, shall constitute contempt of court and may result, following notice, in a hearing and the imposition of any and all lawful sanctions by the court.

**DRC COMMENTS TO RULE 7**

**DRC Comment to Rule 7.B.**

Court-appointed mediators may not be compensated for travel time, mileage, or any other out-of-pocket expenses associated with a court-ordered mediation.

**DRC Comment to Rule 7.C.**

If a party is found by the Court to have failed to attend a family financial settlement conference without good cause, then the Court may require that party to pay the mediator's fee and related expenses.

**DRC Comment to Rule 7.E.**

Non-essential requests for postponements work a hardship on parties and mediators and serve only to inject delay into a process and program designed to expedite litigation. As such, it is expected that mediators will assess a postponement fee in all instances where a request does not appear to be absolutely warranted. Moreover, mediators are encouraged not to agree to postponements in instances where, in their judgment, the mediation could be held as scheduled.

#### **DRC Comment to Rule 7.F.**

If the Family Financial Settlement Program is to be successful, it is essential that mediators, both party-selected and court-appointed, be compensated for their services. FFS Rule 7.F. is intended to give the court express authority to enforce payment of fees owed both court-appointed and party-selected mediators. In instances where the mediator is party-selected, the court may enforce fees which exceed the caps set forth in 7.B. (hourly fee and administrative fee) and 7.E. (postponement/cancellation fee) or which provide for payment of services or expenses not provided for in Rule 7 but agreed to among the parties, for example, payment for travel time or mileage.

### **RULE 8. MEDIATOR CERTIFICATION AND DECERTIFICATION**

The Dispute Resolution Commission may receive and approve applications for certification of persons to be appointed as family financial mediators. For certification, a person must have complied with the requirements in each of the following sections.

#### **A. Training and Experience.**

1. Be an Advanced Practitioner member of the Association for Conflict Resolution who is subject to requirements equivalent to those in effect for Practitioner Members of the Academy of Family Mediators immediately prior to its merger with other organizations to become the Association for Conflict Resolution; and possess a four-year college degree from an accredited institution, except that the four-year degree requirement shall not be applicable to mediators certified prior to January 1, 2005.

2. Be an attorney and/or judge for at least five years who is either:

**(a)** a member in good standing of the North Carolina State Bar, pursuant to Title 27, N.C. Administrative Code. The N.C. State Bar, Chapter 1, Subchapter A, Section .0201(b) or Section .0201(c)(1), as those rules existed January 1, 2000; or

**(b)** a member similarly in good standing of the Bar of another state and a graduate of a law school recognized as accredited by the North Carolina Board of Law Examiners; demonstrates familiarity with North Carolina court structure, legal terminology and civil procedure; and provides to the Dispute Resolution Commission three letters of reference as to the applicant's good character, including at least one letter from a person with knowledge of the applicant's practice as an attorney;

and who has completed either:



(c) a 40 hour family and divorce mediation training approved by the Dispute Resolution Commission pursuant to Rule 9; or

(d) a 16 hour supplemental family and divorce mediation training approved by the Dispute Resolution Commission pursuant to Rule 9, after having been certified as a Superior Court mediator by that Commission.

- B.** If not licensed to practice law in one of the United States, have completed a six hour training on North Carolina legal terminology, court structure and civil procedure provided by a trainer certified by the Dispute Resolution Commission; and have observed with the permission of the parties as a neutral observer two mediated settlement conferences ordered by a Superior Court, the North Carolina Office of Administrative Hearings, Industrial Commission or the US District Courts for North Carolina, and conducted by a certified Superior Court mediator.
- C.** Be a member in good standing of the State Bar of one of the United States as required by Rule 8.A. or have provided to the Dispute Resolution Commission three letters of reference as to the applicant's good character and experience.
- D.** Have observed with the permission of the parties two mediated settlement conferences as a neutral observer which involve custody or family financial issues and which are conducted by a mediator who is certified pursuant to these rules, who is an Advanced Practitioner Member of the Association for Conflict Resolution and subject to requirements equivalent to those in effect for Practitioner Members of the Academy of Family Mediators immediately prior to its merger with other organizations to become the Association for Conflict Resolution, or who is an A.O.C. mediator.
- E.** Demonstrate familiarity with the statutes, rules, and standards of practice and conduct governing mediated settlement conferences conducted pursuant to these Rules.
- F.** Be of good moral character and adhere to any standards of practice for mediators acting pursuant to these Rules adopted by the Supreme Court. Applicants for certification and recertification and all certified family financial mediators shall report to the Commission any criminal convictions, disbarments or other disciplinary complaints and actions as soon as the applicant or mediator has notice of them. Any current or former attorney who is disqualified by the attorney licensing authority of any state shall be ineligible to be certified under this Rule.
- G.** Submit proof of qualifications set out in this section on a form provided by the Dispute Resolution Commission.
- H.** Pay all administrative fees established by the Administrative Office of the Court in consultation with the Dispute Resolution Commission.
- I.** Agree to accept as payment in full of a party's share of the mediator's fee as ordered by the Court pursuant to Rule 7.

Comply with the requirements of the Dispute Resolution Commission for continuing mediator education or training. (These requirements may include advanced divorce mediation training, attendance at conferences or seminars relating to mediation skills or process, and consultation with other family and divorce mediators about cases actually mediated. Mediators seeking recertification beyond one year from the date of initial certification may also be required to demonstrate that they have completed 8 hours of family law training, including tax issues relevant to divorce and property

distribution, and 8 hours of training in family dynamics, child development and interpersonal relations at any time prior to that recertification.) Mediators shall report on a Commission approved form.

Certification may be revoked or not renewed at any time if it is shown to the satisfaction of the Dispute Resolution Commission that a mediator no longer meets the above qualifications or has not faithfully observed these rules or those of any district in which he or she has served as a mediator. Any person who is or has been disqualified by a professional licensing authority of any state for misconduct shall be ineligible to be certified under this Rule.

Certification of mediators who have been certified as family financial mediators by the Dispute Resolution Commission prior to the adoption of these Rules may not be revoked or not renewed solely because they do not meet the experience and training requirements in Rule 8.

### **RULE 9. CERTIFICATION OF MEDIATION TRAINING PROGRAMS**

Certified training programs for mediators certified pursuant to Rule 8.A.2.(c) shall consist of a minimum of forty hours of instruction. The curriculum of such programs shall include the subjects in each of the following sections:

- (1) Conflict resolution and mediation theory.
- (2) Mediation process and techniques, including the process and techniques typical of family and divorce mediation.
- (3) Communication and information gathering skills.
- (4) Standards of conduct for mediators including, but not limited to the Standards of Professional Conduct adopted by the Supreme Court.
- (5) Statutes, rules, and practice governing mediated settlement conferences conducted pursuant to these Rules.
- (6) Demonstrations of mediated settlement conferences with and without attorneys involved.
- (7) Simulations of mediated settlement conferences, involving student participation as mediator, attorneys and disputants, which simulations shall be supervised, observed and evaluated by program faculty.
- (8) An overview of North Carolina law as it applies to custody and visitation of children, equitable distribution, alimony, child support, and post separation support.
- (9) An overview of family dynamics, the effect of divorce on children and adults, and child development.
- (10) Protocols for the screening of cases for issues of domestic violence and substance abuse.
- (11) Satisfactory completion of an exam by all students testing their familiarity with the statutes, rules and practice governing family financial settlement procedures in North Carolina.

Certified training programs for mediators certified pursuant to Rule 8.A.2.(d) shall consist of a minimum of sixteen hours of instruction. The curriculum of such programs shall include the subjects listed in Rule 9.A. There shall be at least two simulations as specified in subsection (7).

- C. A training program must be certified by the Dispute Resolution Commission before attendance at such program may be used for compliance with Rule 8.A. Certification need not be given in advance of attendance.

Training programs attended prior to the promulgation of these rules or attended in other states or approved by the Association for Conflict Resolution (ACR) with requirements equivalent to those in effect for the Academy of Family Mediators immediately prior to its merger with other organizations to become the Association for Conflict Resolution may be approved by the Dispute Resolution Commission if they are in substantial compliance with the standards set forth in this rule. The Dispute Resolution Commission may require attendees of an ACR approved program to demonstrate compliance with the requirements of Rule 9.A.(5) and 9.A.(8). either in the ACR approved training or in some other acceptable course.

- D. To complete certification, a training program shall pay all administrative fees established by the Administrative Office of the Courts in consultation with the Dispute Resolution Commission.

## **RULE 10. OTHER SETTLEMENT PROCEDURES**

### **A. ORDER AUTHORIZING OTHER SETTLEMENT PROCEDURES.**

Upon receipt of a motion by the parties seeking authorization to utilize a settlement procedure in lieu of a mediated settlement conference, the Court may order the use of those procedures listed in Rule 10.B. unless the Court finds: that the parties did not agree upon the procedure to be utilized, the neutral to conduct it, or the neutral's compensation; or that the procedure selected is not appropriate for the case or the parties. Judicial settlement conferences may be ordered only if permitted by local rule.

### **B. OTHER SETTLEMENT PROCEDURES AUTHORIZED BY THESE RULES.**

In addition to mediated settlement conferences, the following settlement procedures are authorized by these Rules:

- (1) **Neutral Evaluation** (Rule 11), in which a neutral offers an advisory evaluation of the case following summary presentations by each party.
- (2) **Judicial Settlement Conference** (Rule 12), in which a District Court Judge assists the parties in reaching their own settlement, if allowed by local rules.
- (3) **Other Settlement Procedures** described and authorized by local rule pursuant to Rule 13.

The parties may agree to use arbitration under the Family Law Arbitration Act (G.S. 50-41 et seq.) which shall constitute good cause for the court to dispense with settlement procedures authorized by these rules (Rule 1.C.6).

### **C. GENERAL RULES APPLICABLE TO OTHER SETTLEMENT PROCEDURES.**

- (1) **When Proceeding is Conducted.** The neutral shall schedule the conference and conduct it no later than 150 days from the issuance of the Court's order or no later than the deadline for completion set out in the Court's order, unless extended by the Court. The neutral shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the neutral shall select a date and time for the conference. Deadlines for completion of the conference shall be strictly observed by the neutral unless changed by written order of the Court.

- (2) **Extensions of Time.** A party or a neutral may request the Court to extend the deadlines for completion of the settlement procedure. A request for an extension shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the neutral. The Court may grant the extension and enter an order setting a new deadline for completion of the settlement procedure. Said order shall be delivered to all parties and the neutral by the person who sought the extension.
- (3) **Where Procedure is Conducted.** Settlement proceedings shall be held in any location agreeable to the parties. If the parties cannot agree to a location, the neutral shall be responsible for reserving a neutral place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and *pro se* parties.
- (4) **No Delay of Other Proceedings.** Settlement proceedings shall not be cause for delay of other proceedings in the case, including but not limited to the conduct or completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.
- (5) **Inadmissibility of Settlement Proceedings.** Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:
- (a) In proceedings for sanctions under this section;
  - (b) In proceedings to enforce or rescind a settlement of the action;
  - (c) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or
  - (d) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this subsection, the term “neutral observer” includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this section or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties and in all other respects complies with the requirements of Chapter 50 of the General Statutes. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding under this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators; or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse.

- (6) **No Record Made.** There shall be no stenographic or other record made of any proceedings under these Rules.

**(7) Ex Parte Communication Prohibited.** Unless all parties agree otherwise, there shall be no *ex parte* communication prior to the conclusion of the proceeding between the neutral and any counsel or party on any matter related to the proceeding except with regard to administrative matters.

**(8) Duties of the Parties.**

**(a) Attendance.** All parties and attorneys shall attend other settlement procedures authorized by Rule 10 and ordered by the Court.

**(b) Finalizing Agreement.**

**(i)** If agreement is reached on all issues at the neutral evaluation, judicial settlement conference, or other settlement procedure, the essential terms of the agreement shall be reduced to writing as a summary memorandum unless the parties have reduced their agreement to writing, signed it and in all other respects have complied with the requirements of Chapter 50 of the General Statutes. The parties and their counsel shall use the summary memorandum as a guide to drafting such agreements and orders as may be required to give legal effect to its terms. Within thirty (30) days of the proceeding, all final agreements and other dispositive documents shall be executed by the parties and notarized, and judgments or voluntary dismissals shall be filed with the Court by such persons as the parties or the Court shall designate.

**(ii)** If an agreement is reached upon all issues prior to the neutral evaluation, judicial settlement conference, or other settlement procedure or finalized while the proceeding is in recess, the parties shall reduce its terms to writing and sign it along with their counsel, shall comply in all respects with the requirements of Chapter 50 of the General Statutes, and shall file a consent judgment or voluntary dismissals(s) disposing of all issues with the Court within thirty (30) days, or before the expiration of the deadline for completion of the proceeding, whichever is longer.

**(iii)** When a case is settled upon all issues, all attorneys of record must notify the Court within four business days of the settlement and advise who will sign the consent judgment or voluntary dismissal(s), *and when*.

**(c) Payment of Neutral's Fee.** The parties shall pay the neutral's fee as provided by Rule 10.C.(12), except that no payment shall be required or paid for a judicial settlement conference.

**(9) Sanctions for Failure to Attend Other Settlement Procedures.** If any person required to attend a settlement proceeding fails to attend without good cause, the Court may impose upon that person any appropriate monetary sanction including, but not limited to, the payment of fines, attorneys fees, neutral fees, expenses and loss of earnings incurred by persons attending the conference.

A party to the action, or the Court on its own motion, seeking sanctions against a party or attorney, shall do so in a written motion stating the grounds for the motion and the relief sought. Said motion shall be served upon all parties and on any person against whom sanctions are

being sought. If the Court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law.

**(10) Selection of Neutrals in Other Settlement Procedures.**

**Selection By Agreement.** The parties may select any person whom they believe can assist them with the settlement of their case to serve as a neutral in any settlement procedure authorized by these rules, except for judicial settlement conferences.

Notice of such selection shall be given to the Court and to the neutral through the filing of a motion to authorize the use of other settlement procedures at the scheduling conference or the court appearance when settlement procedures are considered by the Court. The notice shall be on an AOC form as set out in Rule 2 herein. Such notice shall state the name, address and telephone number of the neutral selected; state the rate of compensation of the neutral; and state that the neutral and opposing counsel have agreed upon the selection and compensation.

If the parties are unable to select a neutral by agreement, then the Court shall deny the motion for authorization to use another settlement procedure and the court shall order the parties to attend a mediated settlement conference.

**(11) Disqualification of Neutrals.** Any party may move a Court of the district in which an action is pending for an order disqualifying the neutral; and, for good cause, such order shall be entered. Cause shall exist, but is not limited to circumstances where, if the selected neutral has violated any standard of conduct of the State Bar or any standard of conduct for neutrals that may be adopted by the Supreme Court.

**(12) Compensation of Neutrals.** A neutral's compensation shall be paid in an amount agreed to among the parties and the neutral. Time spent reviewing materials in preparation for the neutral evaluation, conducting the proceeding, and making and reporting the award shall be compensable time. The parties shall not compensate a settlement judge.

**(13) Authority and Duties of Neutrals.**

**(a) Authority of Neutrals.**

**(i) Control of Proceeding.** The neutral shall at all times be in control of the proceeding and the procedures to be followed.

**(ii) Scheduling the Proceeding.** The neutral shall make a good faith effort to schedule the proceeding at a time that is convenient with the participants, attorneys and neutral. In the absence of agreement, the neutral shall select the date and time for the proceeding. Deadlines for completion of the conference shall be strictly observed by the neutral unless changed by written order of the Court.

**(b) Duties of Neutrals.**

**(i)** The neutral shall define and describe the following at the beginning of the proceeding:

**(a)** The process of the proceeding;

**(b)** The differences between the proceeding and other forms of conflict resolution;

- (c) The costs of the proceeding;
  - (d) The inadmissibility of conduct and statements as provided by G.S. 7A-38.1(l) and Rule 10.C.(6) herein; and
  - (e) The duties and responsibilities of the neutral and the participants.
- (ii) **Disclosure.** The neutral has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- (iii) **Reporting Results of the Proceeding.** The neutral evaluator, settlement judge, or other neutral shall report the result of the proceeding to the Court in writing within ten (10) days in accordance with the provisions of Rules 11 and 12 herein on an AOC form. The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the neutral to provide statistical data for evaluation of other settlement procedures.
- (iv) **Scheduling and Holding the Proceeding.** It is the duty of the neutral to schedule the proceeding and conduct it prior to the completion deadline set out in the Court's order. Deadlines for completion of the proceeding shall be strictly observed by the neutral unless said time limit is changed by a written order of the Court.

## **RULE 11. RULES FOR NEUTRAL EVALUATION**

- A. NATURE OF NEUTRAL EVALUATION.** Neutral evaluation is an informal, abbreviated presentation of facts and issues by the parties to an evaluator at an early stage of the case. The neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, providing a candid assessment of the merits of the case, settlement value, and a dollar value or range of potential awards if the case proceeds to trial. The evaluator is also responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.
- B. WHEN CONFERENCE IS TO BE HELD.** As a guiding principle, the neutral evaluation conference should be held at an early stage of the case, after the time for the filing of answers has expired but in advance of the expiration of the discovery period.
- C. PRE-CONFERENCE SUBMISSIONS.** No later than twenty (20) days prior to the date established for the neutral evaluation conference to begin, each party shall furnish the evaluator with written information about the case, and shall at the same time certify to the evaluator that they served a copy of such summary on all other parties to the case. The information provided to the evaluator and the other parties hereunder shall be a summary of the significant facts and issues in the party's case, and shall have attached to it copies of any documents supporting the parties' summary. Information provided to the evaluator and to the other parties pursuant to this paragraph shall not be filed with the Court.
- D. REPLIES TO PRE-CONFERENCE SUBMISSIONS.** No later than ten (10) days prior to the date established for the neutral evaluation conference to begin, any party may, but is not required to, send additional written information to the evaluator responding to the submission of an opposing party. The response furnished to the evaluator shall be served on all other parties and the party sending such response shall certify such service to the evaluator, but such response shall not be filed with the Court.

**E. CONFERENCE PROCEDURE.** Prior to a neutral evaluation conference, the evaluator, if he or she deems it necessary, may request additional written information from any party. At the conference, the evaluator may address questions to the parties and give them an opportunity to complete their summaries with a brief oral statement.

**F. MODIFICATION OF PROCEDURE.** Subject to approval of the evaluator, the parties may agree to modify the procedures required by these rules for neutral evaluation.

**G. EVALUATOR'S DUTIES.**

**(1) Evaluator's Opening Statement.** At the beginning of the conference the evaluator shall define and describe the following points to the parties in addition to those matters set out in Rule 10.C.(2)(b):

(a) The fact that the neutral evaluation conference is not a trial, the evaluator is not a judge, the evaluator's opinions are not binding on any party, and the parties retain their right to trial if they do not reach a settlement.

(b) The fact that any settlement reached will be only by mutual consent of the parties.

**(2) Oral Report to Parties by Evaluator.** In addition to the written report to the Court required under these rules, at the conclusion of the neutral evaluation conference the evaluator shall issue an oral report to the parties advising them of his or her opinions of the case. Such opinion shall include a candid assessment of the merits of the case, estimated settlement value, and the strengths and weaknesses of each party's claims if the case proceeds to trial. The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefor. The evaluator shall not reduce his or her oral report to writing and shall not inform the Court thereof.

**(3) Report of Evaluator to Court.** Within ten (10) days after the completion of the neutral evaluation conference, the evaluator shall file a written report with the Court using an AOC form, stating when and where the conference was held, the names of those persons who attended the conference, and the names of any party or attorney known to the evaluator to have been absent from the neutral evaluation without permission. The report shall also inform the court whether or not any agreement was reached by the parties. If partial agreement(s) are reached at the evaluation conference, the report shall state what issues remain for trial. In the event of a full or partial agreement, the report shall state the name of the person(s) designated to file the consent judgment or voluntary dismissals with the court. Local rules shall not require the evaluator to send a copy of any agreement reached by the parties to the court.

**H. EVALUATOR'S AUTHORITY TO ASSIST NEGOTIATIONS.** If all parties at the neutral evaluation conference request and agree, the evaluator may assist the parties in settlement discussions. If the parties do not reach a settlement during such discussions, however, the evaluator shall complete the neutral evaluation conference and make his or her written report to the Court as if such settlement discussions had not occurred. If the parties reach agreement at the conference, they shall reduce their agreement to writing as required by Rule 10.C.(8)(b).

**RULE 12. JUDICIAL SETTLEMENT CONFERENCE**



**A. Settlement Judge.** A judicial settlement conference shall be conducted by a District Court Judge who shall be selected by the Chief District Court Judge. Unless specifically approved by the Chief District Court Judge, the District Court Judge who presides over the judicial settlement conference shall not be assigned to try the action if it proceeds to trial.

**B. Conducting the Conference.** The form and manner of conducting the conference shall be in the discretion of the settlement judge. The settlement judge may not impose a settlement on the parties but will assist the parties in reaching a resolution of all claims.

**Confidential Nature of the Conference.** Judicial settlement conferences shall be conducted in private. No stenographic or other record may be made of the conference. Persons other than the parties and their counsel may attend only with the consent of all parties. The settlement judge will not communicate with anyone the communications made during the conference, except that the judge may report that a settlement was reached and, with the parties' consent, the terms of that settlement.

**REPORT OF JUDGE. WITHIN TEN (10) DAYS AFTER THE COMPLETION OF THE JUDICIAL SETTLEMENT CONFERENCE, THE SETTLEMENT JUDGE SHALL FILE A WRITTEN REPORT WITH THE COURT USING AN AOC FORM, STATING WHEN AND WHERE THE CONFERENCE WAS HELD, THE NAMES OF THOSE PERSONS WHO ATTENDED THE CONFERENCE, AND THE NAMES OF ANY PARTY OR ATTORNEY KNOWN TO THE SETTLEMENT JUDGE TO HAVE BEEN ABSENT FROM THE SETTLEMENT CONFERENCE WITHOUT PERMISSION. THE REPORT SHALL ALSO INFORM THE COURT WHETHER OR NOT ANY AGREEMENT WAS REACHED BY THE PARTIES. IF PARTIAL AGREEMENT(S) ARE REACHED AT THE SETTLEMENT CONFERENCE, THE REPORT SHALL STATE WHAT ISSUES REMAIN FOR TRIAL. IN THE EVENT OF A FULL OR PARTIAL AGREEMENT, THE REPORT SHALL STATE THE NAME OF THE PERSON(S) DESIGNATED TO FILE THE CONSENT JUDGMENT OR VOLUNTARY DISMISSALS WITH THE COURT. LOCAL RULES SHALL NOT REQUIRE THE SETTLEMENT JUDGE TO SEND A COPY OF ANY AGREEMENT REACHED BY THE PARTIES TO THE COURT.**

### **RULE 13. LOCAL RULE MAKING**

The Chief District Court Judge of any district conducting settlement procedures under these Rules is authorized to publish local rules, not inconsistent with these Rules and G.S. 7A-38.4, implementing settlement procedures in that district.

### **RULE 14. DEFINITIONS**

**A.** The word, Court, shall mean a judge of the District Court in the district in which an action is pending who has administrative responsibility for the action as an assigned or presiding judge, or said judge's designee, such as a clerk, trial court administrator, case management assistant, judicial assistant, and trial court coordinator.

**B.** The phrase, AOC forms, shall refer to forms prepared by, printed, and distributed by the Administrative Office of the Courts to implement these Rules or forms approved by local rule which contain at least the same information as those prepared by AOC. Proposals for the creation or modification of such forms may be initiated by the Dispute Resolution Commission.

**C.** The term, Family Financial Case, shall refer to any civil action in district court in which a claim for equitable distribution, child support, alimony, or post separation support is made, or in which

there are claims arising out of contracts between the parties under GS 50-20(d), 52-10, 52-10.1 or 52B.

**RULE 15. TIME LIMITS**

Any time limit provided for by these rules may be waived or extended for good cause shown. Time shall be counted pursuant to the Rules of Civil Procedure.