

# **Local Rules of Domestic Court Judicial District 27-A**

## **Rule 1. Purpose**

In accordance with and subject to the provisions of Rule 40(a) of the North Carolina Rules of Civil Procedure and Rule 2 of the General Rules of Practice for the District Courts, the following administrative and procedural rules shall constitute the case management plan for domestic cases in the District Court of the 27-A Judicial District of the State of North Carolina. The purpose of these rules is to provide for the orderly, just, and prompt disposition of domestic matters to be heard in the District Court. They shall be at all times construed and enforced in such a manner as to avoid technical delay.

## **Rule 2. Preparation and Publication of Domestic Motion and Trial Calendars**

**2.1** The Domestic Trial Calendar for matters scheduled in courtroom 3D shall be prepared under the supervision of the Chief District Court Judge. The domestic trial calendar shall be prepared by the Trial Court Coordinator and published to the attorneys of record or an unrepresented party at least ten (10) days prior to calendar call for the domestic trial date.

**2.2** A final Domestic Motions Calendar for matters scheduled in courtroom 3C shall be prepared by the Clerk of Court's office and published the day of the hearing. They shall not be available in advance of the hearing date. It is the responsibility of the party noticing the matter before the Court to ensure that the matter is properly calendared for its inclusion on the final calendar.

## **Rule 3. Calendaring of Motions**

**3.1** Motions scheduled in Courtroom 3C, Gaston County's Domestic Motions Courtroom, shall be two (2) hours or less in duration. Should the parties need greater than two (2) hours to hear the matter, they must first obtain permission from the Presiding Judge in order to do so, or schedule the motion on the trial calendar for a hearing in Courtroom 3D.

**3.2** Domestic motions may be calendared for any session of Motions Court upon request of the parties, upon proper notice to the opposing counsel and/or parties, or by order of the Court. Motions may be calendared for and heard on Monday through Friday beginning at 9:30 a.m. Motions may not be scheduled for any other time of the day without the express prior consent of the Presiding Judge.

**3.3** All domestic motions (exclusive of domestic violence and IV-D child support actions) that can be heard in less than two (2) hours shall be heard in courtroom 3C of the Gaston County Courthouse. To properly schedule domestic motions, upon filing of the Notice of Hearing, the moving party shall place the matter on the written calendar held in the Civil Clerk of Court's office. The matter shall be placed on the proper calendar (contested actions or uncontested divorces) for that day and shall include the case name, the file number, the type of matter being heard, and the

moving attorney's name. An omission of any of this information may result in the matter not being placed on the Final Motions Calendar.

**3.4** The Trial Judge may, at his/her discretion, add motions onto an already published Final Motions Calendar.

**3.5** Other than uncontested issues, uncontested divorces, mediation referrals without contested matters, and motions to withdraw, no attorney should schedule more than three (3) separate cases on any single calendar day. The Court recognizes that it is often beyond an attorney's control when/if other attorneys schedule matters opposing an attorney for the same day without regard to an attorney already having calendared three (3) additional cases; however, it is the intention of this Rule to minimize the down-time of the Court caused by a single attorney representing multiple clients on a single day.

#### **Rule 4. Case Action Cover Sheet**

**4.1** All initial Complaints, Answers, and Counterclaims filed in domestic actions shall include, as the first page of the filing, a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts.

#### **Rule 5. Final Trial Calendars**

**5.1** A final trial calendar for matters scheduled in Courtroom 3D shall be published and distributed by the District Court Judges' staff to each attorney of record (or to the party where there is no attorney of record) ten (10) days prior to Calendar Call for the domestic trial date.

**5.2** Cases will be calendared in the order that the trial dates were chosen by the attorneys and are subject to moving up or down on the trial calendar only by the Presiding Trial Judge.

**5.3** When cases have been consolidated for trial, they will be regarded as one case for calendaring purposes, and will be listed under the oldest case number.

#### **Rule 6. Adding Cases for Trial to Published Calendars**

Only the District Court Judge presiding, in his or her discretion, may add cases for motions or trial to their respective final calendars.

#### **Rule 7. Calendar Call When On Holidays or Preceding Weeks When Court Not In Session**

When the Calendar Call falls on a holiday, it will be conducted at a date and time at the discretion of the Presiding Judge. When Calendar Call falls on a day during a week when court is not held, Calendar Call will be held at a later date and time in the discretion of the Presiding Judge.

#### **Rule 8. Presence of Attorneys at Calendar Call, Settlement Conferences, Trials, etc.**

**8.1** When an attorney is notified to appear for the setting of a calendar, pretrial conference,

settlement conference, hearing of a motion or for trial, the attorney must, consistent with ethical requirements, appear or have present a partner, associate or another attorney familiar with the case. Unless an attorney has been excused in advance by the Judge before whom the matter is scheduled, and has given prior notice to his/her opponent, a case will not be continued.

**8.2** Should an attorney, or his/her proper designee, fail to appear at Calendar Call for any matter set on the Trial Calendar, that matter is subject to being placed as the final matter on the final Trial Calendar regardless of the position set on the initial calendar, or it may be removed from the Calendar altogether at the Presiding Judge's discretion. Should a matter be removed from the final Trial Calendar, it shall be the attorney's obligation to reschedule the matter.

**8.3** Attorneys or unrepresented parties, as an indication of their readiness for trial, may present a Certificate of Readiness to the District Court Judge's office on or before the Friday prior to Calendar Call for that matter. This will avoid the need for a personal appearance on behalf of that party.

### **Rule 9. Peremptory Case Trial Settings**

Requests for a peremptory setting for Domestic cases involving persons who must travel long distances, for cases involving numerous expert witnesses, or for cases involving other extraordinary [or statutorily mandated reasons], must be made at the same time as the Courtroom 3D date is selected. The Presiding Judge in Courtroom 3C will grant the request only for good and compelling reasons.

### **Rule 10. Calendaring Cases Not Reached or Cases Continued**

Cases not reached or continued during any session of court will be scheduled at a date set by the agreement of the attorneys or parties; however, if the attorneys or parties cannot agree, the Presiding Judge may set a date.

### **Rule 11. Equitable Distribution Discovery**

**11.1** Counsel are authorized to begin such discovery proceedings as should be utilized in each case, and are authorized to begin even before the pleadings are completed.

**11.2** No equitable distribution matter may be scheduled for trial prior to the completion of discovery. Should, after selection of a trial date, either counsel or an unrepresented party discover that additional discovery is required for the proper administration of justice, either may seek permission of the Trial Judge to allow him/her to do so. Nothing herein prevents either party from issuing subpoenas as allowed by the N.C.G.S.

**11.3** No equitable distribution matter may be scheduled for trial prior to completion of each party's equitable distribution affidavit. Should one party have properly filed his/her equitable distribution affidavit and the other party have failed to file in the time properly allowed, the Court may allow the matter to be scheduled for trial, regardless of the one party's failing to file an equitable distribution affidavit, and take the filed affidavit as controlling.

## **Rule 12. Post Separation Support (PSS) and Alimony Cases**

**12.1** In all cases involving claims for post separation support, alimony, or modification of a previous order for alimony, both parties shall file and serve an Income and Expense Affidavit.

- (a) A party seeking PSS, alimony, or modification of a prior alimony order, may attach the Affidavit of Financial Standing to his/her initial pleading.
- (b) For PSS hearings, the party noticing on the motion for hearing shall serve the opposing party with the Income and Expense Affidavit by 5:00 p.m. ten (10) calendar days before the date of the scheduled hearing. If the noticing party serves the Notice of Hearing fifteen (15) days prior to the hearing, the defending party must serve his/her Income and Expense Affidavit on the other party either (i) ten (10) days after being served with the Notice of Hearing or (ii) three (3) calendar days before the date of the scheduled hearing, whichever first occurs. However, if the Income and Expense Affidavits have not been served, and if the hearing is continued, each party shall serve his/her Income and Expense Affidavit not less than ten (10) days prior to the rescheduled hearing.
- (c) If necessary, for trials of alimony claims and motions to modify, each party shall serve the opposing party with an updated Income and Expense Affidavit by 5:00 p.m. ten (10) calendar days before the date of the scheduled trial.

**12.2** In connection with all hearings and trials, wherein a party is required to serve his/her Income and Expense Affidavit, the party shall also serve upon the other party all documents supporting his/her Income and Expense Affidavit, if intending to introduce the same into evidence. Said supporting documents shall not be filed with the Court at that time.

**12.3** If a hearing or trial is continued or otherwise not heard at the scheduled setting, and if the hearing or trial is rescheduled, then each party shall complete and file an updated Income and Expense Affidavit not less than ten (10) days before the date of the rescheduled hearing, and shall serve the opposing party with a copy of the same. However, provided there is no change in a party's income or expenses, the party need not file a new Income and Expense Affidavit. If a party fails to file an amended Income and Expense Affidavit not less than ten (10) days in advance of the hearing/trial, the Court may disallow evidence of such changes or continue the hearing/trial.

**12.4** If a Presiding Judge elects to decide a case on affidavits, as permitted by statute, both parties shall be entitled to submit affidavits within a time determined by the Presiding Judge challenging the other party's affidavit, or any portion thereof, along with his/her legal or factual arguments.

## **Rule 13. Custody and Visitation Cases**

### **General Rules**

**13.1** The information required by N.C.G.S. § 50A-209 shall be included in or attached to all initial pleadings for custody or visitation.

**13.2** The parties to all custody and visitation cases, including modification motions, shall participate in Custody Mediation prior to a trial on the issues, unless the Court waives either or both events.

**13.3** Unless Custody Mediation is waived, the parties shall participate in a group orientation and at least on (1) mediation session. The Custody Mediation program shall operate in accordance with the following rules:

- (a) All verbal or written communications from either or both of the parties to the mediator or between the parties in the presence of the mediator shall be absolutely privileged and inadmissible in Court.
- (b) Neither the mediator nor any party or other person involved in mediation under these rules shall be competent 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 or fraud.

**13.4** For good cause, on written motion of either party or on the Court's own motion, the Court may waive Custody Mediation.

**13.5** The Custody Mediation Office shall notify the Chief District Court Judge of the outcome of all mediation proceedings.

- (a) Cases that are resolved through Custody Mediation shall have parenting agreements drafted by the mediator and signed by the parties. Upon review and acceptance of the Parenting Agreement by the Court, an order will be executed adopting the Parenting Agreement as an enforceable Order of the Court.
- (b) When a case is not resolved through mediation, it shall be scheduled for hearing or trial accordingly.

**13.6** These rules shall also apply to motions to modify a prior custody or visitation order. The Custody Mediation Program may, in its discretion, excuse the parties from Mediation Orientation.

**13.7** When the Court has requested psychological evaluations for use in custody actions, the attorneys for the respective parties shall refrain from any ex parte contact with the evaluating psychologist or other professional about the case, except for the purpose of effectuating or facilitating appointments between the parties, third parties, and the psychologist. To the extent necessary, the Court shall state, by order or otherwise, the issues or concerns to be addressed by the psychologist.

#### **Rule 14. Child Support Cases**

**14.1** In all cases involving claims for temporary child support, “permanent” child support, or a modification of a child support order, both parties shall provide verification of their income to the opposing party. This verification shall include their three (3) most recent paystubs, if applicable, but is not limited to this documentation alone. Each party shall serve the opposing party with his/her income documentation by 5:00 p.m. ten (10) calendar days before the date of the scheduled hearing. However, if one party is not served with a Notice of Hearing at least fifteen (15) days prior to the scheduled hearing, that party shall serve his/her income documentation on the other party either (i) ten (10) days after being served with the Notice of Hearing or (ii) three (3) calendar days before the date of the scheduled hearing, whichever first occurs. Further, if the income documentation has not been served, and if the hearing is continued, each party shall serve his/her income documentation not less than ten (10) days prior to the rescheduled hearing. Should the parties not comply and should it become necessary to do so, regardless of either party’s compliance with these Rules, the Presiding Judge may set child support as the best interests of the minor child might dictate.

- (a) In cases where the Child Support Guidelines do not apply or where one party seeks a deviation from the Guidelines, Income and Expense Affidavits for both parties shall be completed and served upon the other party; and the party seeking the deviation shall serve a Notice of Intent to Deviate simultaneously with the Notice of Hearing, unless such motion was previously filed.
- (b) For hearings seeking a deviation from the Child Support Guidelines, the party noticing the motion for hearing shall serve the opposing party with the Income and Expense Affidavit by 5:00 p.m. ten (10) calendar days before the date of the scheduled hearing. If the noticing party serves the Notice of Hearing fifteen (15) days prior to the hearing, the defending party must serve his/her Income and Expense Affidavit on the other party either (i) ten (10) days after being served with the Notice of Hearing or (ii) three (3) calendar days before the date of the scheduled hearing, whichever first occurs. However, if the Income and Expense Affidavits have not been served and if the hearing is continued, each party shall serve his/her Income and Expense Affidavit not less than ten (10) days prior to the rescheduled hearing.

**14.2** All orders for the payment of child support may include a provision requiring payment through Centralized Collections, unless the recipient chooses not to participate in Centralized Collections or the Court has found good cause not to require payment through Centralized Collections.

**14.3** All child support orders shall comply with N.C.G.S. §110-136.3; however, in cases involving allegations of domestic violence, child abuse, and/or other facts affecting the health, safety, and well-being of a child or party, the Court may direct that the residence and mailing address of the child or the party be maintained by the Clerk and not released to the obligor.

### **Rule 15. Emergency Matters**

**15.1** An application for an emergency custody order, temporary restraining order, preliminary injunction, and the like shall be made in a written, verified pleading which sets forth the facts giving rise to the need for emergency relief. The verified pleading may be accompanied by affidavits of third parties.

**15.2** A party making an application for emergency relief may deliver the pleading to the District Court Judge presiding. Entry of emergency custody orders shall be governed by the considerations in N.C.G.S. § 50-13.5(d)(3), and by the considerations of the children's safety and availability for future hearings.

**15.3** A party making an application for emergency relief shall have his/her client present for examination by the District Court Judge presiding at the time of the application, should the Court need further testimony.

**15.4** A party making an application for emergency relief must give actual and reasonable notice of the application and any scheduled hearing to the party against whom the order is sought or to the party's attorney, except for those circumstances in which the Court makes an evidentiary finding that either:

- (a) notice of the application for such order will result in the very harm sought to be prevented; or
- (b) all reasonable means calculated to give the notice required were used but were unsuccessful.

**15.5** In the event any ex parte matter or default proceeding has been presented by any person to any judge and the requested relief is denied for any reason, such matter shall not be presented to any other judge without making full disclosure of the prior presentation.

## **Rule 16. Presentation of Orders and Judgments**

**16.1** In all domestic cases, the order or judgment shall be submitted to the Presiding Judge for signature within a reasonable time after a decision is rendered or a settlement is reported to the Court, unless otherwise ordered by the Presiding Judge.

**16.2** The Clerk of Court shall identify those orders that are delinquent and bring them to the attention of the Chief District Court Judge or an assigned judge at the Cleanup Calendar.

**16.3** No judgment or order shall be presented to a judge until the opposing attorney or party has had a reasonable time to review it and has been advised of the date when the proposed judgment/order will be presented for signature. This time is stayed during a time of approved secured leave of the attorney.

**16.4** Orders and/or judgments submitted by attorneys for signature shall be delivered to the District Court Judge's office or the Presiding Judge.

**16.5** Orders and Consent Orders to withdraw as attorney of record shall list the current address of the client. Withdrawal shall not excuse an attorney from preparing any order which he/she was previously directed to prepare and which has not been entered as of the withdrawal.

### **Rule 17. Notices of Settlement**

**17.1** When a case on a published calendar (tentative or final) is settled, all attorneys of record should notify the Clerk of Court for a matter on the Motions Calendar or the Trial Court Coordinator for a matter on the Trial Calendar within twenty-four (24) hours of the settlement and should advise as to who will prepare and present judgment.

**17.2** If a case on a published final Trial Calendar is settled, the attorneys, where feasible, should notify all counsel in the next case calendared.

### **Rule 18. Continuances**

**18.1** Domestic cases may be continued at the discretion of the Presiding Judge. All parties should have an opportunity to be heard on a motion to continue. The attorney or party seeking the continuance shall only approach the Presiding Judge for a continuance after notifying the other attorney or party of his/her intent to do so.

### **Rule 19. Subpoenas**

**19.1** In any case where a party seeks the production of records or documents from a non-party custodian by means of a subpoena (for discovery or trial) in accordance with Rule 45 of the North Carolina Rules of Civil Procedure, the following procedures shall be utilized.

*[Commentary Although Rule 45 of the North Carolina Rules of Civil Procedure authorizes “[a]ny judge of the superior court, judge of the district court, [or] magistrate” to issue and sign a subpoena, the Rule also expressly authorizes an “attorney, as officer of the court,” to issue and sign a subpoena. To avoid any appearance of impropriety or ex parte communication, judges should not be asked to sign a subpoena on behalf of a represented party. Judges have the authority to sign their own subpoenas (ex mero motu), of course, or may be asked to sign a subpoena on behalf of a pro se litigant, but should not be involved where an attorney wishes to subpoena documents or testimony from a prospective witness, as that judge may be later called upon to rule on the discoverability or admissibility of the records or testimony, in the event of an objection, motion to quash or motion for protective order is interposed.*

- (a) Attorneys for the parties shall sign their own subpoenas in accordance with the provisions of N.C.G.S. § 1A-1, Rule 45.
- (b) A subpoena issued for the protection of records and/or for testimony at deposition or trial shall allow a minimum of ten (10) days after service thereof in which to appear or produce, and permit the inspection and copying of records, books, papers,

documents, electronically stored information, and/or tangible things, unless a shorter period of time is ordered by the Court for good cause shown.

- (c) Where a subpoena commands the production of records, books, papers, documents, electronically-stored information, and/or tangible things that may be subject to a statutory or common law privilege, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending, by registered or certified mail or by personal delivery on or before the time specified in the subpoena, certified copies of the records requested, together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect.

## **Rule 20. Scheduling Conflicts**

**20.1** Attorneys will assist Trial Judges in resolving calendar conflicts so that cases may be tried without delay.

## **20.2 General Rules of Practice For The Superior and District Courts Supplemental To The Rules Of Civil Procedure.**

- (a) In resolving scheduling conflicts when an attorney has conflicting engagements in different courts, the following priorities should ordinarily prevail:
1. Appellate courts should prevail over trial courts.
  2. 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:
      - termination of parental rights,
      - child custody,

- adjudication of abuse, neglect or dependency or disposition following adjudication,
- interim or final equitable distribution,
- alimony or post-separation support.

3. When none of the above priorities apply, priority shall be given in order as follows: superior court, then district court, and then magistrate's court.

- (b) When an attorney learns of a scheduling conflict between matters in the same priority category, the attorney shall promptly give notice to opposing counsel and the appropriate judges in all cases, stating therein the circumstances relevant to resolution of the conflict under these guidelines, if necessary.
- (c) In resolving scheduling conflicts with reference to matters in the same priority category, the presiding judges should give consideration to the following:
  - the comparative age of the cases;
  - the order in which the trial dates were set by published calendar, order or notice;
  - the complexity of the cases;
  - the estimated trial time;
  - the number of attorneys and parties involved;
  - whether the trial involves a jury;
  - the difficulty or ease of rescheduling;
  - the availability of witnesses, especially a child witness, an expert witness or a witness who must travel a long distance;
  - whether the trial in one of the cases had already started when the other was scheduled to begin.
- (d) When settlement proceedings have been ordered in superior or district court cases, only trials, hearings upon dispositive motions, and hearings upon motions scheduled for counties with less than one (1) court session per month shall have precedence over settlement proceedings.
- (e) When a mediator, attorney, other neutral party, or unrepresented party learns of a scheduling conflict between a court proceeding and a settlement proceeding, the mediator, attorney, other neutral party, or unrepresented party shall **promptly** give written notice to the appropriate judges and request them to resolve the conflict; stating therein the circumstances relevant to a determination under (d) above.
- (f) Nothing in these guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.

**Rule 21. Default**

**21.1** Any party seeking default is requested to give five (5) business days written notice to any party making an appearance in the case before entry of default. A copy of the letter should be sent to the Clerk of Court for filing.

## **Rule 22. Administrative Dispositions**

**22.1** Listed below are three (3) categories of cases deemed to be not pending for trial. Cases in these categories shall be eligible for removal by order from the list of pending cases. This removal shall be without prejudice:

1. Cases in bankruptcy (accompanied by a copy of stay order from Bankruptcy Court)
2. Defendants making payments.
3. Removal for any other reason.

**22.2** Cases will be removed by orders prepared by the Clerk of Court upon review of the files and after consultation with counsel, if necessary. The Order will be signed by the Chief District Court Judge, or his/her designee, and filed with the Clerk.

**22.3** If, at some later date, trial or other action becomes necessary, a motion may be filed requesting the case be returned to active status.

**22.4** Counsel with valid objections to such an administrative disposition of one of their cases should address those objections to the Trial Court Coordinator and appropriate action will be taken.

## **Rule 23. Alternative Dispute Resolution (ADR)**

**23.1 Equitable Distribution Cases.** All parties to Equitable Distribution Actions filed on or after December 1, 1995 must mutually select from the four mandatory alternative dispute resolution programs.

The four alternative dispute resolution programs are:

1. Mediated Settlement Conferences
2. Private Mediation
3. Judicial Settlement Conferences
4. Arbitration

**23.2 Other Family Law Cases.** In cases involving disputes about the following matters, the Court shall require the parties to participate in an ADR procedure prior to the trial of the case. For good cause, on written motion of either party submitted to the Chief District Court Judge, the Court may waive ADR procedures in disputes involving the following matters:

1. alimony claims, unless joined with equitable distribution claims;
2. prenuptial agreements;
3. post nuptial agreements;

4. separation agreements;
5. retroactive child support; and
6. child support cases which exceed the current guideline maximum with regard to income or number of children

**23.3** The Rules for Alternative Dispute Resolution (ADR) in Equitable Distribution and Other Family Financial Cases are incorporated herein by reference.

**23.4** If a family financial case is settled at a judicial settlement conference, the Memorandum of Judgment and also the final Order should be submitted to the Settlement Judge for signature.

#### **Rule 24. Arbitration Program**

**24.1 Length of Hearings.** Arbitration Hearings are limited to one (1) hour unless the parties mutually agree that more time is necessary. A written request for enlargement of the time for a hearing must be filed with the Trial Court Coordinator's office at or before the time of mutual selection of an arbitrator within twenty-one (21) days of notice placing the case in the Civil Arbitration Program. The request must state the expected length of the hearing and that the parties agree to pay the arbitrator's hourly fee exceeding the first (1st) hour. The arbitrator's fee shall be paid in equal portions by the parties. Payment shall be due upon completion of the hearing.

**24.2 Sanctions for Failure to Pay Arbitrator's Fee.** Failure of a party to make timely payment of his or her portion of the arbitrator's fee shall constitute contempt of court and may result in the imposition of any or all lawful sanctions by a District Court Judge presiding.

**24.3 Failure of an Arbitrator to Comply with District Court Arbitration Rules and Local Rules.** The Chief District Court Judge reserves the right to withhold future appointments of any arbitrator who does not fully comply with the requirements of the "Rules for Court-Ordered Arbitration in North Carolina" or Rule 25 of these Local Rules.

**24.4 Appeal of an Arbitration Award.** The timely filing of a "Request for Trial De Novo" and payment of the filing fee by any one party will result in the entire case being appealed.

**24.5 Scheduling of Trial for Arbitration Cases Appealed.** Cases in which the arbitration award was appealed, the case is to be set for trial on the next trial calendar on or after ninety (90) days from the day the case was appealed. The trial may be scheduled on an earlier date with the mutual agreement of all parties.

#### **Rule 25. Mediated Settlement Conferences**

##### **25.1 Selection of Mediator.**

- (a) **Appointment of Mediator by the Court.** The District Court Judge presiding will appoint the next mediator on the certified mediator list provided by the Dispute Resolution Commission. The Presiding Judge retains the discretion to depart from the procedure for such circumstances as the appointment of a mediator to a case, or

to withhold a mediator from appointment pursuant to “Rules Implementing Mediated Settlement Conferences”.

*[Commentary: Form AOC-CV-825.]*

- (b) The Chief District Court Judge may, in his/her discretion, appoint a retired or emergency judge or justice of the district, superior or appellate court as mediator, whether or not such judge has been certified as a mediator.
- (c) **Disqualification of a Mediator by Judge.** If the District Court Judge presiding orders a mediator disqualified, the moving party must provide a copy of the Order to the Trial Court Coordinator within two (2) days of the date of the order.
- (d) **Self-disqualification of Mediator.** A mediator may disqualify himself/herself upon written notice to the District Court Judge issuing the appointment and counsel for the parties, or the parties themselves, if unrepresented.

**25.2 Reporting Full or Partial Settlement Agreement During the Conference.** Upon reaching a full or partial settlement agreement during the conference, including any recess of the conference, the parties and others with settlement authority shall provide a copy of the Report of Mediator in Family Financial Case to the Clerk of Court’s Office and the Trial Court Coordinator in a timely manner.

*[Commentary: Forms AOC-CV-827 and AOC-CV-834]*

**25.3 Failure of a Mediator to Comply with Supreme Court Settlement Conference Rules and Local Rules.** The Chief District Court Judge reserves the right to withhold future appointments of any mediator who does not fully comply with the requirements of the “Rules Implementing Mediated Settlement Conferences” or Rule 26 of these Local Rules.

#### **25.4 Compensation of Mediator**

- (a) **Payment without Conference or in Recess.** If no conference is held or a conference is recessed without resuming, compensation to an appointed mediator shall be submitted with the written full or partial settlement agreement.
- (b) **Indigent Cases.** If any party contends that he or she is indigent and cannot pay his or her portion of the mediator’s fee, the party must file a motion to be relieved from payment of such fee on an approved “Petition and Order for Relief from Obligation to Pay Mediator’s Fee” form available in the office of the Clerk of Court prior to the initial settlement conference.

*[Commentary: Form AOC-CV-828]*

- (c) **Sanctions for Failure to Pay Mediator’s Fee.** Failure of a party to make timely

payment of his or her portion of the mediator's fee, or if a party contending indigent status fails to timely submit the Petition form, it shall constitute contempt of court and may result in the imposition of any or all lawful sanctions by a District Court Judge presiding.

*[Commentary: Forms AOC-CV-815 and AOC-CV-816.]*

**25.5 Communication with Court.** All communications concerning mediated settlement conferences in this judicial district should be addressed to:

District Court Judge's Office  
325 Marietta Street Gastonia, NC 28052  
Telephone Number (704) 852-3117  
Fax Number (704) 852-3125

### **Rule 26. Private Mediation or Arbitration**

**27.1 Selection.** At any time prior to trial and if all parties agree, they may select to place the case before a private arbitrator or mediator not a part of the court's supervised arbitration or mediated settlement conference programs. The selection of a private arbitrator or mediator may be made at any time before the case is tried. All arrangements of details for obtaining the private service, such as the payment of the arbitrator or mediator, determination of the date, time and location, and other details are left to the sole responsibility of the parties.

*[Commentary: Form AOC-CV-824.]*

### **Rule 26. Requests for Withdrawal of Counsel**

**28.1** No attorney who has entered an appearance in any domestic action shall withdraw his appearance, or have it stricken from the record, except on order of the Court. Once a client has employed an attorney who has entered a formal appearance, the attorney may not withdraw or abandon the case without (1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court.

**28.2** Once a matter is scheduled on the Domestic Trial Calendar, an attorney of record may not withdraw from the case within sixty (60) days from the date of the trial without the permission of the Trial Judge.

### **Rule 28. Communications with Judges**

**29.1** Rule 3.5(a) of the Revised Rules of Professional Conduct prohibits all *ex parte* communications with a judge except in the following situations:

- (a) As allowed in the course of official proceedings;
- (b) In writing, if the lawyer *simultaneously* delivers a copy of the writing to opposing counsel;

- (c) Orally, upon adequate notice to the opposing counsel; or
- (d) As otherwise authorized by law.

Because an *ex parte* communication may influence the outcome of a case, a lawyer should avoid such communications, unless the opposing party receives adequate notice or the communication is allowed by law. A lawyer may only initiate an *ex parte* communication with the judge on administrative matters such as continuances or scheduling after a good faith effort is made to notify the opposing lawyer of the communication, in order to allow him/her to be present. The lawyer shall then disclose to the Court:

- (a) that they are about to engage in an *ex parte* communication;
- (b) why it is necessary to speak to the judge *ex parte*;
- (c) the authority that permits the *ex parte* communication; and
- (d) the status of the attempts to notify opposing counsel or the opposing party if unrepresented.

If these disclosures are made, the Judge may decide whether the *ex parte* discussion with the lawyer is appropriate.

*[Commentary: 97 Formal Ethic Opinion 3 and 98 Formal Ethics Opinion 12]*

**29.2** Unless otherwise specifically requested by the Judge, written communications with the Judge shall be limited to the following circumstances:

- (a) scheduling of a hearing, trial or conference with the Judge;
- (b) tendering to the Judge a proposed order for her or his consideration;
- (c) objecting to the form of and/or requesting specific changes to a proposed order previously tendered to the Judge;
- (d) inquiring about the status of an order; and
- (e) requesting permission to submit additional legal authority or make additional legal arguments.

**29.3** None of the communications identified above shall include any arguments regarding the merits of the case. Parties are specifically prohibited from attempting to argue, re-argue, or submit additional legal authority regarding the merits of a case unless specifically requested or permitted by the Judge.

**29.4** In the event a request for permission to submit additional legal authority or to make additional legal arguments is granted, the Judge shall set a timetable and parameters for hearing additional arguments or receiving the additional legal authority.

**29.5** All written communications with the Judge shall be contemporaneously served on the opposing party in the same manner that it is sent to the Judge. Communications tendered to the Judge by hand delivery may be served simultaneously on opposing party via facsimile.

**29.6** Non-compliance with this rule will result in the correspondence being returned unread or subject the offending party to sanctions as allowed by law and deemed appropriate in the discretion of the Assigned Judge.

**Rule 30. Suspension of These Rules**

**30.1** Any District Court Judge may suspend these Rules for good cause shown.

*These Local Rules and plan for the calendaring of domestic cases shall be effective on April 13, 2015.*