

Civil Calendar Rules for District Court Pursuant to Rule 2
“Calendaring of Civil Cases”
Adopted by the Supreme Court of North Carolina on June 3, 1980

The District Court Civil Calendar Rules as set out herein shall be followed for District Court civil cases in the First Judicial District. A copy of these rules shall be mailed to each member of the Bar of the First Judicial District and other attorneys practicing in the District Courts of the First Judicial District and to the Clerks of Court.

The Clerk of each county shall prepare a Tentative Trial Calendar at least six weeks prior to the trial date and mail the same to each attorney of record in a case, presiding judge, and to the named parties of a case if there is no attorney of record. The Tentative Trial Calendar shall consist of at least 20 of the oldest numbered cases on the Ready Calendar together with any cases either the Chief District Court Judge or Presiding Judge or Clerk may designate. The Ready Calendar shall consist of cases having been filed five months. The Tentative Calendar shall also include any cases requested to be put on the Tentative Calendar by counsel of record. Attorneys and parties without attorneys may request that cases or matters be placed on the Tentative Calendar or Final Calendar by filing a request in proper form with the Clerk at least three days before the Tentative or Final Calendar is published. Copies of the Tentative Calendar shall be mailed by the Clerk to all counsel of record on the Tentative Calendar and to parties who have no attorney.

A Final Trial Calendar shall be made, published and copies mailed by the Clerk of Court no later than four weeks prior to the beginning of a session to counsel of record in cases appearing on the calendar, to parties who have no attorney of record and to the Judge who is scheduled to preside at the session. Cases for trial may not be added to the Final Calendar after it is published except by the Presiding Judge or Chief District Court Judge. The Clerk shall be notified within 24 hours of the settlement of any case on the Trial Calendar. The Clerk shall cause the cases on the Final Trial Calendar to be numbered 1, 2, 3, etc... The Clerk shall also note on the Final Trial Calendar the nature or type of case to be tried.

All jury cases shall be set to commence at 9:30 a.m. on the second day of court, at which time the jurors shall report for jury duty, unless directed otherwise by the Presiding Judge.

The first day of court shall be utilized by calling of the calendar, motions, pretrial conferences, non-jury matters, and arranging the Trial Calendar by the Presiding Judge. There must be a pretrial conference in every civil case in accordance with Rule 7, General Rules of Practice for the Superior and District Courts unless waived by the Presiding Judge. A proposed Final Pretrial Order shall be filed with the Clerk of Court in each case to be tried on Friday before the week of trial with a copy to the Presiding Judge. Peremptory setting for cases shall be granted only by the Chief District Court Judge. Such request should be made to the Chief District Court Judge only good and compelling reasons.

Each Final Trial Calendar shall have thereon all cases pending from six to eighteen months for inquiry as to status. This section of the calendar shall be entitled "Cases Six to Eighteen Months for Inquiry as to Status." Each attorney of record is expected to notify the court on the first day of court the status of the pending case either in person, by a partner, associate, or by letter. This shall permit cases where no service has been had or there is other defect to be recognized as cases which need immediate attention to prevent delay of trial of the case and congesting of the calendars. The Final Trial Calendar shall have on it all cases which have been filed at least 18 months or more to determine whether each case should be tried or dismissed at that particular session of court. The section of the calendar which has cases 18 months or older shall have the following wording on that part of the calendar: "Cases 18 Months or Older for Hearing to Determine Whether the Case Should be Tried or Dismissed." It is mandatory that this exact wording be used.

It is also mandatory that the following language be placed on all Final Trial Calendars:

"Attorneys and parties without counsel are expected to be personally present at the opening of court on the first day to state anticipated time required for trial and/or hearing and any other pertinent information such as settlement possibilities or other administrative matters to be taken up with the court. Counsel are to submit upon opening of court at the calendar call proposed Orders on Final Pretrial Conferences on all contested jury and non jury cases. Counsel and/or parties without counsel are responsible to monitor the court's progress during the week for the purpose of ascertaining whether or not their case will be tried earlier than scheduled during the session due to settlements, continuances, and dismissals."

The Final Trial Calendar shall have a section entitled "Motions" and a section entitled "Non jury Cases" and a section entitled "Jury Cases." Insert the following sentence on the last page of the calendar:

This Final Trial Calendar was delivered or mailed to attorneys of record and/or parties without counsel at their last known address by _____, Deputy Clerk of Court, on the ____ day of _____, 19____.

Deputy Clerk of Court

When an attorney is notified to appear for the setting of a calendar, pretrial conference, hearing of a motion or for trial, he must, consistent with ethical requirements, appear or have a partner, associate or another attorney familiar with the case present. Unless an attorney has been excused in advance by the judge before whom the matter is scheduled and had given prior notice to his opponent, a case will not be continued. [Supreme Court Rule 2(e)]

John T. Chaffin
Chief District Court Judge
Date: July 1, 1980

ORDER AND NOTICE OF LOCAL CIVIL DISTRICT COURT
CALENDAR RULES AND FORMS APPLICABLE TO
EQUITABLE DISTRIBUTION CASES IN THE FIRST
JUDICIAL DISTRICT

I. PREAMBLE

This Order is entered for the purpose of informing and directing members of the Bar and parties in litigation of the civil procedure to be followed in equitable distribution hearings and trials in the First Judicial District.

It is generally becoming apparent to family law practitioners that the trials of equitable distribution cases will involve a large amount of factual data and will therefore in some cases be oppressively long and difficult without some organized method of efficiently accumulating and presenting the facts involved to the Court.

Careful attention to the Act (N.C. Gen. Stat. 50-20, et seq.) and to these local rules is advised. Limited court time is available and a lack of the necessary advance preparation or compliance with the procedure required may result in an unsuccessful prosecution of or defense of the claim for relief.

II. COMMENTARY

- a. It is important to note the crucial function of (a) the pre-trial conference, and (b) the affidavits.
- b. It is the intention of the Court to order a reference when it is deemed appropriate. Such a procedure would save a great deal of trial time in some cases and will, therefore, help to avoid a substantial case backlog. Such a case management device is used successfully in many other equitable distribution jurisdictions with good results.

The primary purpose of this procedure will be to assist the Court in resolving factual disputes concerning ownership of or identification of marital property or valuations of specific assets. Examples are real property, closely held corporations, or valuable personality. Some reference may have as their main purpose the appraisal of current net fair market value of assets and others may have broader fact-finder authority.

The cost of such a reference, unless otherwise agreed upon by the parties and approved by the Court, will be taxed as part of the court costs, and apportioned as deemed appropriate by the Judge. The fees of the referee, court reporter, and experts may be protected by the requirement of an advanced payment to the Clerk of Court for disbursement as directed by the Court.

Any attorney who may wish to serve as a referee should communicate such a desire to the Chief District Court Judge who will maintain a list of referees.

- c. An equitable distribution case will only be set for trial at regular civil sessions by a Judge. No trial will be set unless a pre-trial conference is held with a Judge unless otherwise ordered by a Judge. Our control of these cases will largely be accomplished through the pre-trial conference, and without such control, it is our opinion that the cases would result in much longer trial time than may be necessary because of the large amount of factual data compilation which may be involved in some cases.
- d. As custody may have a bearing on the equitable distribution award, it would probably be in the best interest of the parties to litigate the issue of custody first.
- e. The required affidavits are to be reproduced by each attorney or law firm. The “instructions” should save a great deal of the attorney’s time by not having to initially explain the mechanics of completing the affidavits to the client each time except as may be necessary for trial preparation.
- f. The Equitable Distribution Affidavit is the heart of the entire case management structure for these claims. Evidence covered by the affidavit subject, however, to the rules of evidence, should be presented by the affidavit and not orally from the witness stand. We estimate that the use of this affidavit will save a great deal of trial time.
- g. The affidavit has been drafted to carefully track the structure of the statute. It only omits data presented under N.C. Gen. Stat. 50-20 (c) (6), (9), (12), or by experts, as those areas do not fit an affidavit presentation.
- h. The Notice of Equitable Distribution Hearing and Pre-Trial Conference form is for the attorney’s use in serving notice of the hearing on the opponent.
- i. The “Part I” sheet lists the marital property and will be the second largest part of the affidavit. Likewise, it should also be reproduced in proportionately great numbers.
- j. The Part II-2” sheet lists separate property and will be the second largest part of the affidavit. Likewise, it should also be reproduced in proportionately great numbers.

- k. The completion of the affidavit is necessary before counsel will be able to appreciate what the case is about and what the disputed issues are. Therefore, it is very important that each party's affidavit be completed and served on the opponent well before the pre-trial conference.
- l. With limited exceptions solely within the trial judge's discretion and mentioned herein, except as by law required, all evidence by the party should be presented by an affidavit only. When appropriate, cross-examination of each party/affiant by the opposing party will be allowed. This will normally not be allowed where the conflicting evidence is, or should be, contained in the opposing party's own affidavit. Limited direct or cross-examination from the witness stand of the party may only be allowed if the party wishes to present relevant evidence of the factors listed in N.C. Gen. Stat. 50-20 (c) (6), (9), (10), or (12). Expert testimony may be taken orally.
- m. The affidavits and forms required and the accompanying "Instructions" will be available on a limited basis in the District Court Reporter's office. One copy will be mailed to each law firm. Each firm will then be responsible for reproducing copies for future use.
- n. Pursuant to Rule 5 of the General Rules of Practice for the Superior and District Courts, the affidavits must be printed on 8½ inches by 11 inches (standard letter size) paper. This rule became mandatory on July 1, 1982. (Please note that each affidavit will probably require several pages of "Part I" and "Part II" and therefore a proportionately greater number of those two pages should be reproduced.) Please note that the "Instructions" to the affidavit must also be reproduced and given to the client. The client will not be able to correctly complete his/her affidavit without them.
- o. These affidavits are mandatory both as to form and content. Any variation in form may not be allowed into evidence. They must be served on the opposing attorney or party not less than thirty (30) days prior to the time set for the pre-trial conference. Failure to do so may result in the tardy affidavit not being allowed into evidence.
- p. These affidavits should be studied carefully and must be executed fully and accurately. Continuances may not be granted to cure affidavit errors or omissions. After initial completion by the client and attorney, original and copies to be filed must be neatly TYPED.
- q. A certificate of service in the form required by the Rules of Civil Procedure must be executed and attached to the affidavit showing date and manner of service of your client's affidavit on your opponent. Do not "stamp" certificate of service on either of the last two pages of the affidavit as these pages may be used by the Court.
- r. An extra copy of each affidavit shall be made available for the use of the opposing party and for use by the presiding judge at the pre-trial conference and at the trial.

- s. An incomplete, inaccurate or tardy affidavit may substantially prejudice the responsible party as the distribution of ownership of assets may be based on the information provided therein.
- t. N.C. Gen. Stat. 50-20 (c) (11) provides that the factors which shall be considered by the Court in determining the division of marital property is "...the tax consequences to each party;"

This is one of the factors to be presented by the parties to the Court. It is, therefore, the responsibility of the attorney to research and know the tax consequences to his or her client and to be prepared to present that information to the presiding judge at trial. (Experts may want to prepare and present flow charts or charts showing tax consequences based on alternative percentage division of marital property or awards.) The practice in many jurisdictions is for each attorney to prepare and present to the Court at or before trial a written tax memorandum.

- u. Counsel may want to use Request for Admission after all discovery is completed for the purpose of narrowing down the issues in dispute.
- v. The District Bar may want to compile a list of experts in the First Judicial District who would be willing and qualified to testify in Equitable Distribution Cases.
- w. We ask for your cooperation in the spirit of these procedures because any other policy would cripple our ability to manage the caseload of these claims.

John T. Chaffin
Grafton G. Beaman
J. Richard Parker
District Court Judges

III. ORDER

The undersigned Chief District Court Judge of the First Judicial District by administrative authority granted by N.C. Gen. Stat. 7A-146 hereby approved and adopts the civil procedure of equitable distribution cases in the First Judicial District. The effective date shall be the 1st day of November, 1983.

This Order is entered this the 12th day of October, 1983, and is duly filed in the Office of the Clerk of Superior Court of each county in the First Judicial District.

John T. Chaffin
Chief District Court Judge

IV. EQUITABLE DISTRIBUTION RULES

- a. Pre-trial conference hearings will be required for all non-jury and jury cases unless otherwise ordered by the Presiding Judge. The attorney for the party asserting an equitable distribution claim shall obtain a pre-trial conference hearing setting from the Court by filing a Request For A Civil Action Hearing with the Chief District Court Judge.
- b. The Chief District Court Judge will set a pre-trial conference for approximately 150 days thereafter. (It is intended that the 150-day interval be used for discovery, litigating the issue of custody, and preparing for the pre-trial conference.)
- c. Thirty (30) days before the pre-trial conference, the attorney shall file with the Clerk and serve on opposing counsel (or party without counsel) Equitable Distribution Affidavits.
- d. Fourteen (14) days before the pre-trial conference, the attorney for the party asserting an equitable distribution claim shall file with the Clerk and serve on opposing counsel (or party without counsel) a memorandum listing separately each issue being raised and the proposed or desired result upon such issue.
- e. Seven (7) days before pre-trial conference, responding counsel shall file with the Clerk and serve on asserting counsel a responsive memorandum listing separately each issue being raised, removing issues which are not in dispute and the proposed or desired result upon the remaining contested issues.
- f. At the pre-trial conference at which counsel and the parties shall be present, the Court will review the affidavits, determine the need for further discovery, attempt to

settle the case, determine the need for a referee, set the date of the next event, and/or take other appropriate action.

- g. The Judge may set the case for trial at a scheduled civil session of court if the case is ready for trial but no trial setting will be granted on an ex parte basis.
- h. Notice of the pre-trial conference hearing setting must be served on the opposing attorney or party without counsel in the same manner as required by the Rules of Civil Procedure.
- i. Each party to an equitable distribution claim shall file an Equitable Distribution Affidavit with the court and the opposing party or counsel. The affidavit must be filed and served not less than thirty (30) days prior to the time set for the pre-trial conference. The affidavit to be filed must be identical in form to the affidavit attached hereto as Form FDCVD-7 and must be neatly TYPED.
- j. Failure to comply with Rule IV(i) may result in the responsible party's proffered testimony (whether written or oral) not being allowed into evidence by the Court in addition to other sanctions being imposed as by law provided.
- k. In any equitable distribution claim, the Court may in its discretion and pursuant to Rules 53 and 16(5) of the Rules of Civil Procedure, order a reference before proceeding further or before entering final judgment. The Court may provide for an apportionment of the costs of said reference to each party and determine its scope as it deems to be appropriate and in furtherance of the efficient administration of justice.
- l. Unless otherwise directed by the Presiding Judge, the proposed pre-trial order which is to be prepared by the attorney for the party asserting an equitable distribution claim shall contain the following information:

PRE-TRIAL ORDER—CONTENTS

Counsel shall be prepared to submit at the pre-trial conference hearing the information enumerated in this section.

- 1. Acceptance of and intention to comply with the First Judicial District Equitable Distribution Rules.
- 2. Marital History:
 - a. Date of marriage
 - b. Date of separation
 - c. Date of divorce
 - d. Names and ages of minor children of marriage

- e. Alimony and ages of minor children of marriage
 - f. Previous marriage of Plaintiff or Defendant and any support obligations there under
3. Personal Information—Plaintiff and Defendant:
- g. Age
 - h. Present residence—address and brief description
 - i. Health, including any physical or emotional-mental illness, handicaps, or disabilities
 - j. Education—institutions attended, dates of attendance and/or graduation, degrees obtained
 - k. Vocational skills
 - l. Employment history—places of employment, dates, gross income on a yearly basis (total is less than one year), current employment
4. Current monthly gross income of Plaintiff and Defendant, monthly deductions and business expenses (specify children’s portion or percentage for that party having custody.)

AS TO THE INFORMATION CONTAINED IN THE FOREGOING PARAGRAPHS, IT SHOULD BE DESIGNATED STIPULATED OR DEEMED STIPULATED IF NOT SO DESIGNATED AND NO CONTRA CONTENTION OR OBJECTION OF THE OPPOSING PARTY AREAS.

5. Status of Discovery by Plaintiff and Defendant:
- m. State if completed
 - n. If not completed, state additional discovery desired by each party
6. Witnesses of Plaintiff and Defendant:
- a. Names and addresses
 - b. Expert witnesses—note area of expertise and nature of testimony
7. Exhibits of Plaintiff and Defendant:
- c. Listing of those to be admitted without objection
 - d. Listing of those objected to and a statement of the grounds therefore
8. Estimated Length of Trial for Plaintiff’s Case and for Defendant
9. Pre-Trial Affidavit of Each Party:
- e. Prepared
 - f. Approved as to form, as to completeness, as to accuracy
 - g. Sanctions imposed on either Plaintiff or Defendant, if any

10. Stipulations:
 - v. Date of determination of whether specific property is marital or separate property
 - w. Date of determination of valuation of specific items of property
 - x. Date of distribution
 - y. Designation of specific items of property as marital or separate property
 - z. Valuation of specific items of either marital or separate property
 - aa. Ownership of items of separate property
 - bb. Waiver of jury trial
 - cc. Equitable equals equal
 - dd. Other (occupancy and/or ownership of family residence, contributions to development of career potential, etc.)

11. Issues:
 - a. Claims of each party as to specific items of property contested as being either marital or separate property and a detailed statement of what evidence each expects to introduce in support of each claim
 - b. Claims of each party as to specific items of property contested as to valuation and a detailed statement of what evidence each expects to introduce in support of each claim
 - c. If there is no stipulation that an equal distribution would be equitable, a listing of what factors under N.C.G.S. 50-20(c) each party contends ought to be considered by the Court and a detailed statement of what evidence each party expects to introduce in each category
 - d. If no waiver of jury trial, a specific statement of the issues each side contends should be submitted to the jury as well as requested jury instructions

12. Order:
 - a. Date terminating discovery
 - b. Appointment of Reference; appointment of costs
 - c. Sanctions, is any
 - d. Scheduling of further events in the case, including trial date
 - e. Other
 - f. A presiding judge may amend or modify the schedule of events as may be necessary for appropriate application to pending cases.

V. FLOW CHART ON SCHEDULE OF EVENTS FROM FILING TO TRAIL

- Step 1 CASE FILED BY COMPLAINT
OR ANSWER WITH CLERK
- Step 2 FILE FORM REQUEST FOR CIVIL
ACTION HEARING WITH
CHIEF DISTRICT COURT JUDGE
TO OBTAIN A PRE-TRIAL CONFERENCE
HEARING SETTING
- Step 3 THE CHIEF JUDGE SETS A DATE FOR
PRE-TRIAL CONFERENCE
150 DAYS FROM ASSERTING CLAIM * Whether you file an
Equitable Distribution
Complaint or file an
Answer asserting it, you must
secure a pre-trial conference
setting from the Chief Judge
- Step 4 150 DAYS INTEREVAL TO BE USED FOR
DISCOVERY, LITIGATING THE ISSUE OF
CUSTODY AND PREPARING FOR THE
PRE-TRIAL CONFERENCE HEARING
- Step 5 EXCHANGE AFFIDAVITS 30 DAYS BEFORE PRE-TRIAL CONFERENCE
HEARING
- PRE-TRIAL CONFERENCE HEARING
- Step 7 PRE-TRIAL CONFERENCE OCCURS
150 DAYS AFTER FILING COMPLAINT
OR ANSWER ASSERTING CLAIM **Counsel and parties are
required to appear
at this conference
- Step 8 CASE ROUTED TO SETTLEMENT,
DISCOVERY REFERENCE, OR SET FOR
FURTHER HEARING OR TRIAL BY JUDGE
- Step 9 EQUITABLE DISTRIBUTION TRIAL

VI. FORMS

- (a) NOTICE OF EQUITABLE DISTRIBUTION HEARING - FDCVD-5
- (b) INSTRUCTIONS – FDCVD-6
- (c) EQUITABLE DISTRIBUTION AFFIDAVITS – FDCVD-7

STATE OF NORTH CAROLINA
COUNTY OF _____

File # _____
IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

Plaintiff

vs.

Defendant

**NOTICE OF EQUITABLE
DISTRIBUTION HEARING AND PRE-
TRIAL CONFERENCE**

The Plaintiff Defendant is hereby notified that a pre-trial conference or
 _____ will be heard at the
_____ County Courthouse, in _____, NC, at
_____ - am pm, on _____ the _____ day of
_____, 2____. (*Location of the hearing in the courthouse may be obtained from the Clerk of
Court on the morning of the conference.*)

This hearing will be before a District Court Judge and it is mandatory that both parties and both attorneys be present. The equitable distribution affidavits must be filed with the Clerk of Court and served on the opposing party or counsel not later than 30 days prior to the pre-trial conference. Also the issue memorandum must be filed with the Clerk of Court and served on the opposing party or counsel prior to the aforesaid conference. Attached hereto are the affidavit and instructions.

This the _____ day of _____, 2____.

Signature

Typed Name

Attorney for: _____

Address and Telephone No.

FDCVD-5
9/83

Attach Sheriff's Return or Certificate of Service

INSTRUCTIONS

For completion of Equitable Distribution Financial Affidavit

1. **READ THESE INSTRUCTIONS CAREFULLY.** The affidavit must be fully and accurately prepared. Your interests in this lawsuit may be adversely affected if your affidavit does not all contain all the information required and is not **accurate**. Do **not** guess or estimate as to any figures or dates.
2. If you have questions, or are unsure how to list certain information, ask your attorney first so that your affidavit will be complete and correct before it is placed in final typed form. Failure to comply with these instructions may result in your affidavit not being allowed into evidence by the court.
3. The affidavit, when filed with the Clerk of Court, must be **neatly typed**. There must be at least three (3) **typed** or reproduced copies.
4. Each individual item must be listed separately.
5. **Only** “marital property” should be listed in Part I. Be certain that you understand from your attorney what is and is not “marital property.”
6. Addressing the mechanics of filling out the Part I affidavit, you will note the caption line beginning with the words “AFFIDAVIT OF.” Fill in this line with your name; designate yourself as the plaintiff or defendant; list the page number of this sheet and the file number.
7. The order in which you list each asset should follow the same order as listed below. A failure to sequentially follow the classification scheme suggested will result in the Court and counsel needlessly consuming time as they compare the plaintiff’s and defendant’s Equitable Distribution Affidavits for information concerning the same asset. Due to the amount of information required, this could mean shifting from page two of one affidavit to page 50 of another to secure information about the same asset. You will begin the affidavit completion process by filling in the “ITEM NUMBER” block with the classification of your asset, or “Real Property – resident” is “I.(A)”; place I.(A) in the “ITEM NUMBER” column and list the Description and Present Location of that piece of property. Proceed from asset description to asset description omitting and adding the facts required under the “Description of “Asset column, list numerically each item in that classification.

ITEM NUMBER

DESCRIPTION OF ASSET

I. REALTY

- A. Real property - Resident
- B. Real property – Rental
- C. Real property – Commercial/Business
- D. Real property – Recreational
- E. Real property – Time Share
- F. Real property - Other

II. TRANSPORTATION PERSONALTY

- A. Automobiles
- B. Trucks
- C. Vans
- D. Motorcycles
- E. Boats
- F. Airplanes
- G-Z et seq. Others

III. STOCKS AND BONDS

- A. Stocks (closely held)
- B. Stocks (other)
- C. Bonds
- D. Debentures
- E. Money Market Accounts
- F. Stock options
- G. Options
- H. Futures
- I. Other

IV. BANK ACCOUNTS

- A. Checking Accounts
- B. Savings Accounts
- C. Certificates of Deposit
- D. Safe Deposit Boxes
- E. Cash in hand or held by another
- F. Other

V. METALS AND COLLECTIONS

- A. Gold
- B. Silver
- C. Guns
- D. Coins
- E. Other

VI. MISCELLANEOUS NOTES AND INCOME-PRODUCING ASSETS

- A. Promissory Notes
- B. Annuities
- C. IRA Accounts, Deferred Compensation Accountns
- D. Trust Income

VI. METALS AND COLLECTIONS

- A. Gold
- B. Silver
- C. Guns
- D. Coins
- E. Other
- F. Real property - Other

VIII. ANTIQUES

- A. Antique Furniture (not listed under "Furniture: below)
- B. Antique Firearms
- C. Antique Coins
- D. Coins (Other)
- E. Paintings (not listed under "Paintings" below)
- F. Other

VIII. JEWELRY (itemize)_

IX. ANIMALS

- A. Dogs
- B. Cats
- C. Horses
- D. Cattle
- E. Hogs
- F. Other

X. PATENTS, COPYRIGHTS

XI. BUSINESS INTERESTS

- A. Partnership Interest
- B. Sole Proprietorship Interest
- C. Unincorporated Association Interest

XII. NON-ANTIQUA HOUSEHOLD GOODS

- A. Furniture (not listed in Antiques)
- B. Furniture in bedrooms of children
- C. Paintings (not listed in Antiques)
- D. Furnishings
- E. Dishwasher
- F. Washing Machine
- G. Dryer
- H. Outdoor Furniture
- I. Televisions
- J. Radios
- K. Stereos
- L. Children's Books, Toys
- M. Sporting Goods
- N. Tools
- O. Lawnmowers
- P. Other

XIII. Any Other Item Not Listed Above

- 8. Some types of information do not apply to certain assets. For example, the savings accounts listed will not have an "Amount of Outstanding Mortgage/Lien" entry.
- 9. If you need more sheets than originally given you, obtain them from your attorney. Do **not** fill out blank sheets on your own and attach them to the sheets provided you.
- 10. Remember to accurately computer the "Total" in the columns that require a total.
- 11. Remember that the property to be listed in Part II, Section 2 of the affidavit, is "separate property" only. Be certain you under from your attorney what is "separate property." The items of "separate property" should be listed in the same order as shown in paragraph 7 of these instructions.
- 12. When you are given the affidavit by your attorney, you should complete is and return it to him or her as soon as possible. It is the responsibility of the attorney to supervise and oversee the preparation of the affidavit in proper form for presentation to the court.
- 13. If you are not represented by an attorney, the rules of Court apply equally to you, and it is your responsibility to fully comply with these instructions. You must file the typed original of your affidavit with the Clerk of Court at least thirty (30) days prior to the date your case is set for pre-trial conference in court. You must also deliver, in person or by mail, a filed copy of the original to the attorney representing the opposing party at least thirty (30) days prior to the date your case is set for a pre-trial conference in court.

14. Omissions or misstatements of fact in your affidavit may constitute perjury and may subject you to sanctions by the Court.

Note: Affidavit is a separate document, FDCVD-7, 9/83.

TO: Attorneys and Clerks of Court of the First Judicial District

FROM: John T. Chaffin, Chief District Court Judge
Grafton G. Beaman, District Court Judge, and
J. Richard Parker, District Court Judge

DATE: July 26, 1982

SUBJECT MATTER: Order Amending Calendar Rules and Local Rules in the First Judicial District for the Hearing of Alimony Pendente Lite, Child Support, and Custody Cases

Enclosed please find the following:

- (1) Order Amending Calendar and Local Rules in the First Judicial District for the Hearing of Alimony Pendente Lite, Child Support, and Custody Cases entered the 19th day of July, 1982. (FDCVD-1)
- (2) Form of Affidavit of Financial Standing of Party Seeking Support. (FDCVD-2)
- *3) Form of Affidavit of Financial Needs of Party Seeking Support and/or Affidavit of
(4) Financial Needs of Minor Child(ren). (FDCVD-3)
- (5) Form of Affidavit of Financial Standing of Party From Whom Support Is Sought. (FDCVD-4)
- (6) Form of Request for a Civil Action Hearing and Order of Assignment.

It is suggested that counsel and clerks keep the enclosed originals in order that copies may be photocopied as needed. Copies may also be obtained from the District Court Reporter.

Due to mailing costs, only one set of the enclosures is sent to a law firm and we, therefore, ask that the same be circulated to all members of the firm.

THE CIVIL CALENDAR RULES AND LOCAL RULES IN THE FIRST JUDICIAL DISTRICT FOR THE HEARING OF ALIMONY PENDENTE LITE, CHILD SUPPORT, AND CUSTODY CASES ADOPTED BY ORDER DATED JANUARY 24, 1978, AND MADE EFFECTIVE MARCH 1, 1978, ARE HEREBY AMENDED AS SHOWN HEREIN.

This Order is entered for the purpose of informing and directing members of the Bar and parties in litigation of the civil procedure to be followed in filing and scheduling hearings in domestic actions in civil District Court of the First Judicial District whereby the issues of alimony pendente lite and/or child support and custody are in dispute.

The undersigned Chief District Court Judge off the First Judicial District by administrative authority granted by N.C. Gen. Stat. 7A-146 hereby approves and adopts the civil procedure herein provided as to the calendaring of domestic cases for hearing.

- (1) All parties instituting any domestic civil action wherein the above stated support is sought shall file in the Office of the Clerk of Court along with the Complaint and Summons, or if reopening a case by Motion in the Cause, an “Affidavit of Financial Standing of Party Seeking Support” and an “Affidavit of Financial Needs of Party Seeking Support” and/or “Affidavit of Financial Needs of Minor Children.”
- (2) At the same time that the Summons or Notice and/or Motion is issued to the Sheriff for service of process, a true copy of each of said affidavit(s) shall also be attached for service. There shall also be served upon the opposing party three copies of the form entitled “Affidavit of Financial Standing of Party from Whom Support Is Sought” along with a copy of this Order.
- (3) One copy of each form may be obtained from the Clerk’s Office or from the District Court Reporter.
- (4) The responding party, as soon as possible, shall complete and file said affidavit with the Clerk and serve a copy upon the opposing party.
- (5) All financial affidavits are required to be filed in the Clerk’s office at least three business days prior to the scheduled hearing. Failure to do so may result in the tardy affidavit not being allowed into evidence or the hearing being cancelled.

(6) An extra copy of each affidavit shall be made available for use by the opposing party and for use by the presiding judge at the time the original affidavit is received into evidence at the hearing.

(7) These affidavits are mandatory both as to form and content. Any variation in form may not be allowed into evidence.

(8) An incomplete, inaccurate or tardy affidavit may substantially prejudice the responsible party's case. These affidavits should be studied carefully and must be executed fully and accurately. Continuances may not be granted to cure affidavit errors or omissions. After initial completion by the client or attorney, the original and required copies to be filed must be neatly TYPED.

(9) The affidavits must be printed or typed on 8-1/2 by 11 inch (standard letter size) paper. By North Carolina Supreme Court Rules of Practice, this procedure became mandatory July 1, 1982.

(10) Noncompliance with these rules may result in the hearing being canceled or the responsible party's proffered testimony (whether written or oral) not being allowed into evidence by the Court, in addition to other sanctions provided for in the North Carolina Rules of Civil Procedure.

(11) If the above documents are not initially served as stated, it will then be the responsibility of the moving party to have said papers served upon the opposing party at his own expenses.

(12) Should the responding party fail to complete, file and serve the required affidavits, the Court upon motion of the moving party may order that these documents be completed and filed forthwith.

(13) Counsel should give their clients the following instructions in writing.

READ THESE INSTRUCTIONS CAREFULLY

- a. The affidavits must be fully and accurately prepared. Your interests in this lawsuit may be adversely affected if your affidavits do not contain all the information required and are not accurate. Do not guess or estimate as to any figures.
- b. If you have questions, or are unsure how to list certain information, ask your attorney first so that your affidavit will be complete and correct before it is placed in final typed form. Failure to comply with these instructions may result in your affidavit not being allowed into evidence by the Court.
- (c) The affidavits, when filed with the Clerk of Court, must be **typed**.

(14) If the claim for relief is based on the theory of law of substantial change in financial affidavits are required. The first set would reflect financial needs and standing at the commencement of the period of time (first judgment date or separation agreement date) in question and the second set would reflect financial needs and standing at the present time.

(15) Evidence usually obtained by direct examination may be presented by affidavits, however, to the rules of evidence. It is the intent of the judges not to use the information contained in the affidavits introduced into evidence as the sole basis of consideration in arriving at decisions in that other pertinent, relevant, material, and competent evidence will be given due consideration along with the affidavits. Further, each party at the hearing has the right to reasonable cross-examination of any affiant as to the contents of and matters raised by the affidavits. The 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 as to the matters stated therein.

(16) The judges as requested by the First District Bar Association in a Resolution dated the 1st day of December, 1977, will exert firm judicial control over the admission of repetitious and irrelevant evidence and testimony offered at such hearings.

(17) It is recommended that counsel for both parties schedule a conference in the office of the attorney for the alleged dependent spouse, unless another place is otherwise agreed to, for the purpose of exchanging financial affidavits and for the further purpose of reducing to writing the issues to be tried at the hearing in order to eliminate issues of fact which are not in dispute.

(18) If good cause is shown by either party, the presiding judge may provide otherwise as to these affidavits and rules.

(19) The rules contained in this Order shall become effective on the 1st day of September, 1982, and are applicable to all cases filed on or after said date.

This Order is entered this the 19th day of July, 1982, and duly filed in the Office of the Clerk of Superior Court in each county of the First Judicial District.

John T. Chaffin
Chief District Court Judge



**General Court of Justice
1st Judicial**

JOHN T. CHAFFIN
CHIEF DISTRICT COURT JUDGE

DISTRICT COURT JUDGES
GRAFTON G. BEAMAN
J. RICHARD PARKER

MEMORANDUM

To: Attorneys

From: District Court Division
First Judicial District

Date: March 26, 1985

RE: Equitable Distribution Affidavit Forms of the Equitable Distribution Rules adopted by the First Judicial District

The Equitable Distribution Affidavit Forms on pages 18, 20, 21 and 23 refer to "current fair market value"; however, pursuant to N.C. Gen. Stat. 50-21(b) "the marital property shall be valued as of the date of separation as determined under G.S. 50-6" except as otherwise stated in this section.

Subsection (b) was added and became effective August 1, 1983, and valuations in the Equitable Distribution Affidavits should reflect this modification in the statute.



**General Court of Justice
1st Judicial District**

JOHN T. CHAFFIN
CHIEF DISTRICT COURT JUDGE

DISTRICT COURT JUDGES
GRAFTON G. BEAMAN
J. RICHARD PARKER

MEMORANDUM

To: Clerks of Superior Court, Attorneys and IV-D Agents

From: John T. Chaffin
Chief District Court Judge

Date: August 28, 1985

Subject: Civil Cases on District Criminal Days

It has become imperative to set forth an exact policy for calendaring civil cases on criminal court days in District Court. Needless to say criminal cases have priority on such days and any civil case calendared at that time is a matter of courtesy to attorneys and clients and others. If strict compliance is not adhered to as set forth herein, no civil cases will be permitted to be calendared on criminal court days.

Three uncontested divorce cases on the ground of one-year separation shall be permitted to go on a civil calendar when the relief sought is solely a divorce and the plaintiff is represented at all times by an attorney duly licensed in North Carolina. Any other matter such as custody, visitation, support or incorporation of a separation agreement, shall be scheduled at regular civil sessions of District Court or at other scheduled hearing dates.

In addition to three uncontested divorce cases as set out above, three URESA cases may be placed on the civil calendar at a criminal District Court Session.

Should there be no divorce cases as aforesaid, then up to three IV-D matters for the judge's signature only may be placed on the civil calendar. Should there be no divorce cases and no URESA cases, then up to six IV-D matters for the judge's signature only may be placed on the civil court calendar at a criminal court session. Any IV-D matters other than for the judge's signature only shall be calendared for regular IV-D court days.

In any event, no more than six civil matters as aforesaid shall be on any civil calendar at a regular criminal session of District Court.

Uncontested divorce cases shall not be calendared unless a case is ready in every respect to be tried. This means in effect that all papers that are necessary in the proceeding before judgment must be in the file before the case is calendared. There are no exceptions. This requirement is mandatory.



**General Court of Justice
1st Judicial District**

**JOHN T. CHAFFIN
CHIEF DISTRICT COURT JUDGE**

**DISTRICT COURT JUDGES
GRAFTON G. BEAMAN
J. RICHARD PARKER**

MEMORANDUM

To: Clerk of Court and Attorneys of the First Judicial District

From: John T. Chaffin, Chief District Court Judge

Date: December 18, 1979

1. Recently, problems have arisen regarding appointment of counsel in indigent cases, and juvenile matters, when counsel knows at the time of appointment that he cannot be present in court on the date of trial. As a consequence, unnecessary delays are occurring. In one particular case this year, a DUI case was delayed several months under such circumstances. Henceforth, the Clerk of Court or a member of the Clerk's staff shall, before counsel is appointed for indigent defendants or juveniles in District Court, confer with the attorney to be appointed before appointment is made. Should that attorney be in a position that he cannot appear with the indigent defendant or juvenile on the trial date, then in that event another attorney that can appear on the trial date should be consulted and appointed for the indigent defendant or juvenile.

2. At criminal sessions of District Court, the only civil matters to be heard will be three uncontested divorce cases unless otherwise set by a District Court Judge. In the uncontested divorce cases heard at criminal sessions of District Court, child support, custody, alimony and custody jurisdiction will not be heard. Separation agreements by incorporation or otherwise shall not be included in an uncontested divorce judgment at a criminal session of District Court. The policy of allowing three uncontested divorce cases to be tried at the criminal session is for the convenience of attorneys and their clients as we do not have frequent civil terms in the First District. The policy might be changed or modified unless attorneys comply with the rules.

3. Attorneys should note that out-of-state personal service by a person requires under G.S. 1-75.10 an affidavit showing place, time and manner of service, the person's qualifications to make service, that he knew the person served to be the party mentioned in the summons and delivered to and left with him a copy and if the defendant was not personally served, the person

shall set in such affidavit when, where and with whom such copy was left, as well as the Clerk of Court's certification that the person is qualified to serve process.

4. All requests for hearings, other than hearings and matters heard or required to be heard at regular terms of District Court, shall be directed to the Chief District Court Judge for assignment of Judge and date of hearing. The request shall be on a form as enclosed. Each attorney should make photostat copies of the form for his use so that he might have an ample supply of same. Once an Order of Assignment is executed, requesting counsel should then proceed to serve notice of hearing, date and place on opposing party and send a copy to the assigned Judge.

Counsel requesting the hearing after receiving Assignment of Judge and time of hearing shall be responsible for reserving a courtroom for the hearing. Should a courtroom not be available, requesting counsel should notify the Chief District Court Judge so that rescheduling and reassignment might be made.

In the event an assigned hearing is not heard, that hearing will be cancelled and requesting counsel shall fill out a new form for a new hearing. In exceptional cases, upon recommendation of the Assigned Judge and requesting counsel and opposing counsel the Chief District Court Judge may continue a case until a definite date and may reassign the matter to another Judge.

All attorneys should bear in mind that as of July 1, 1979, in all custody matters AOC Form 350 (affidavit for court to determine jurisdiction) should be filled out and filed with other papers required to be filed (motion, complaint, etc.) before a hearing date is requested. AOC Form 350 may be obtained from the Clerk's office. Also, it will be required that an attorney must file an affidavit that he has examined on the hearing date the Registry of out-of-state custody decrees and proceedings. (See G. S. 50A-6 and 50A-16).

If counsel has not complied with the rules, the hearing may be cancelled by the Presiding Judge and counsel will then be required to request a new hearing from the Chief District Court Judge.

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
File No. _____

Plaintiff

Counsel for Plaintiff

vs.

Defendant

Counsel for Defendant

Nature of Request:

Motion _____ Pre-Trial _____ Hearing _____

Other Non-Jury Disposition _____--

Nature of Action: _____

Probable Number of Witnesses: _____

Estimated Time for Hearing: _____

Has Case been called for Pre-Trial? _____

I hereby request that the above named case be set for hearing. To the best of my knowledge, the case is ready for hearing, and I do not know of any reason why it will have to be continued.

Date of Request

Attorney requesting hearing

Address and Telephone Number

ORDER OF ASSIGNMENT

The above request for hearing was received on the _____ day of _____ ,
and the above case is hereby assigned to Judge _____ , for hearing
on the _____ day of _____ , 2____ , at _____
or as soon thereafter as may be heard, _____ .

This the _____ day of _____ , 2____ .

Chief District Court Judge

Cc: Clerk of Superior Court
Sheriff's Department
Requesting Attorney
Assigned Judge