

**LOCAL RULES FOR THE DISTRICT COURTS  
OF THE FIFTH JUDICIAL DISTRICT  
FAMILY COURT, DOMESTIC, CIVIL AND GENERAL RULES  
NEW HANOVER AND PENDER COUNTIES, NORTH CAROLINA**

Adopted November 10, 2000, by Chief District Court Judge John W. Smith

See Separate Section on Rules governing Criminal and Juvenile Courts Rule

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**LOCAL RULES FOR THE DISTRICT COURTS  
OF THE FIFTH JUDICIAL DISTRICT  
FAMILY COURT, DOMESTIC, CIVIL AND GENERAL RULES**

**RULE 1: COVER SHEETS**

Every pleading and motion filed in any action must be accompanied by a cover sheet listing all issues: All pleadings and motions and orders shall be accompanied by a cover sheet as required by Rule 5 of the General Rules of Practice for the Superior and District Courts. Attorneys filing domestic actions shall exercise special care to indicate the existence of all issues in the pleadings upon which they wish to proceed. Case management procedures required by the Family Court Pilot Project depend upon the listing of individual issues in the cover sheet and in the state computerized records. The issues indicated in the cover sheet shall govern the issues upon which the parties shall proceed; and any issue not listed in the cover sheet is deemed not properly raised and is deemed abandoned and is subject to dismissal if not cured within five days of notice. The party filing any judgment or order resolving any issue in a Family Court matter as defined in Rule 4 below must provide a copy of the order and the cover sheet to the Family Court Administrator. Reference: General Rules of Practice, Rule 5(b): “All papers filed in civil actions, special proceedings and estates 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. The Clerk of Superior Court shall not reject the filing of any paper that does not include the required cover sheet. Instead, the clerk shall file the paper, notify the filing party of the omission and grant the filing party a reasonable time not to exceed five (5) days within which to file the required cover sheet. Until such time as the party files the required cover sheet, the court shall take no further action other than dismissal in the case.”

**RULE 2: CIVIL NON-DOMESTIC MOTIONS PRACTICE**

2.1 **General Civil Non-domestic Cases** will ordinarily be heard only during the sessions established for the hearing of civil cases by the judges regularly assigned to general civil court. The Chief District Court Judge will make available in the office of the Trial Court Administrator the judicial assignments for the District. Regular Civil Sessions shall customarily be scheduled one week a month.

2.2. **Civil Non-domestic Motions** shall be filed in accordance with the Rules of Civil Procedure and the General Rules of Practice and scheduled for the first day of the sessions in which civil matters are scheduled for trial.

2.3. **Calendar Requests:** To appear on a printed, published calendar, the District Court Civil Case Manager (Diane Geary) must receive a calendar request at least five weeks before the first day of the scheduled session. A schedule of cut-off dates will be published and available in the office of the Trial Court Administrator. The calendar will be published 30 days before the beginning of the session as required by the General Rules of Practice. The District Court Civil

Case Manager will accept add-on motions from the parties through the Thursday before the beginning of the session; and will prepare a final motion calendar for use by the court.

2.4. **Calendar Responsibility:** The responsibility for distributing the published calendar shall be with the clerk as provided by law, but the Clerk may arrange with the District Court Civil Case Manager to coordinate that responsibility. For all motions added to the calendar after the cut-off date, the responsibility for notice to all attorneys and parties entitled to notice shall be with the attorney scheduling any motion after the cut-off date. Before scheduling a motion for hearing, the requesting party must obtain a hearing date from the District Court Civil Case Manager.

2.5. **Jury Requests:** Attorneys calendaring a civil matter in which a jury trial has been requested must, in the calendar request, indicate that a jury will be necessary so that the District Court Civil Case Manager can make the appropriate arrangements to have a sufficient number of jurors available for the session. If the calendar request does not indicate that a jury is required, then the opposing party receiving notice of the calendaring must immediately notify the District Court Civil Case Manager that a jury is required. Any party failing to comply with this requirement is deemed to have waived a jury for the session during which it is calendared.

2.6 **Fifteen Minute Motion Calendar:** The first day of every regular Civil Court session shall give priority to matters designated as “Fifteen Minute Motions” to accommodate parties who have short matters which can be heard expeditiously. All attorneys and parties in any matter scheduled for the “Fifteen Minute Motion” calendar shall adhere to a strict fifteen minute limitation per side. Exceeding the time limitation subjects the non-complying person to financial sanctions on a per-minute basis in the discretion of the court without further notice. Any party wishing to exempt the matter from the fifteen minute rule may give notice at the calendar call, and the matter shall be heard after all other matters on the Fifteen Minute Calendar and any other matters having priority on the regular calendar. Any attorney who begins a hearing without objecting to the time limitation shall be conclusively bound by the limit.

Any matter, whether designated technically a motion or hearing or trial, which complies with the time limitation, may be set for adjudication on the Fifteen-Minute Motion Calendar. This section of the calendar is created to convenience attorneys having short matters which can be quickly resolved, and the court will enforce the sanctions so that this expeditious procedure can be secured for their benefit.

### **RULE 3: TEMPORARY RESTRAINING ORDERS AND EMERGENCY ORDERS**

3.1. **Civil Non-domestic Restraining Orders:** Application for all non-domestic Temporary Restraining Orders and Orders to Show Cause shall be made only to a District Judge who will be available to hear the return. Unless otherwise ordered, the matter should be returned to the first day of a regular civil session of District Court. Counsel may, before applying to a judge for an ex-parte Non-Domestic Temporary Restraining Order, confer with the District Court Civil Case Manager (Diane Geary) to determine the availability of that judge to whom the

application is made, and should make an effort to apply only to a judge who will be conveniently available to hear the return of the matter within the time set by law. Any non-domestic civil order should be returnable only to the judge issuing the order unless that judge has obtained the consent of another judge to hear the matter.

**3.2. 50B Domestic Violence Orders:** To avoid confusion among clerks, courts, and law enforcement, all petitions and orders filed under chapter 50B (Domestic Violence) shall use the standardized AOC forms authorized under that statute and available in the office of the Clerk of Superior Court. The AOC forms may be supplemented with attachments or supplemental complaints as may be appropriate. An action under Chapter 50B shall be filed separately from all other actions, and shall be severable from all other issues. Emergency Orders under Chapter 50B do not require the assignment of a judge and need not be screened by the Family Court Administrator. Application may be made to any District Judge for a protective domestic violence order, and may be returned before and heard by any judge. If there are other domestic issues or actions between the parties, the case may be assigned to that judge assigned to those issues in the Family Court. All returns shall be for the next available Session established by the Chief District Court Judge (currently, on Fridays in Courtroom 301 in New Hanover and for the next available session approximately ten days away in Pender County), and will ordinarily be heard by the judge presiding following the hearing of Uncontested Divorces. The procedures for obtaining pro-se orders shall be established by the Clerk of Superior Court and the Chief District Court Judge by separate rules provided to the Clerk. In those cases where an emergency domestic violence protection order is sought at a time when no judge is available, the applicant shall be referred to a magistrate to determine whether criminal process should issue with appropriate conditions of pretrial release set as an emergency protective measure.

**3.3. Family Court Emergency Orders and Ex-Parte applications:** All applications for Family Court emergency or ex-parte orders, other than 50B domestic violence actions using AOC forms, shall be made only to the judge to whom the matter has been assigned as hereinafter provided unless that judge is not available. If a judge other than the assigned judge signs an emergency order, the return hearing should be before the assigned judge. Applications for 50B restraining orders using AOC forms may be made to any available district court judge without going through the Family Court Administrator. The fact that a particular judge heard the domestic violence action shall not require the assignment of the same judge to the Family Court action, but the Family Court Administrator may consider the fact that a particular judge heard the 50B matter in determining to whom the case should be assigned.

## **RULE 4: FAMILY COURT ACTIONS GENERALLY, CASE MANAGEMENT PLAN**

“Family Court” and “Specialized Courts:” The Fifth District has been established by the Administrative Office of the Courts as a pilot site for the Family Court program. It is the general policy within this district that one judge shall be assigned to one family to adjudicate all issues involving that family. However, for certain kinds of cases, it appears that some issues, such as child support and domestic violence, can be more effectively resolved by scheduling them for Specialized Court sessions dedicated to hear those cases. Family Court matters require screening

by the Family Court Administrator unless the case qualifies for a Specialized Court. The term “Family Court Case” includes all pleadings and all motions for modification of orders in cases assigned to Family Court.

4.1. **Family Court Cases:** The following cases shall be designated “Family Court Case” and shall be assigned to a single judge. Initial pleadings, responsive pleadings, and motions to modify any of the following issues must be reviewed by the Family Court Administrator before filing. All hearing dates must be obtained from the Family Court Administrator or the Case Manager assigned to the case.

- 4.1.1. All **Equitable Distribution** cases, including interim distributions
- 4.1.2. All **Post Separation Support** cases
- 4.1.3. All **Alimony** cases
- 4.1.4. All **Child Custody and Visitation** cases, including motions addressing a change in either
- 4.1.5. All other issues joined with the foregoing issues unless otherwise ordered.

4.2. **Specialized Courts:** The following Specialized Courts will hear the issues for which they are created. Cases qualifying for the Specialized Courts do not require review by the Family Court Administrator before filing with the clerk. Issues assigned to Specialized Courts may be heard by any judge assigned to the Specialized Court.

- 4.2.1. **Child Support Court:** All cases in which child support is the only issue, and all child support cases in which the Child Support Collection Agency is a party, shall be assigned to the specialized Child Support Court. If Child Support is an issue joined with issues in a Family Court Case, the Family Court Administrator is authorized to assign the child support issue to the Specialized Court or direct that the issue be set before the assigned judge.
- 4.2.2. **Uncontested Divorce Court:** Uncontested Divorces may be set for the Divorce Court as provided in Rule 10 below.
- 4.2.3. **Domestic Violence Court:** 50B Domestic Violence actions using AOC forms shall be scheduled at sessions specially established for the hearing of those matters.
- 4.2.4. **Juvenile Court:** Juvenile Court actions, including delinquency, undisciplined, abuse, neglect, dependency, T.P.R., and emancipations, are governed by separate rules. Juvenile actions may be assigned to a judge who is hearing other matters involving the family.
- 4.2.5. Criminal actions involving parties to family court cases shall be tried in regular criminal court and are not normally subject to the case assignment procedures. Criminal Procedures may be established by separate rules or administrative orders.

4.3. Family Court Case reviews before filing:

- 4.3.1 **Prerequisite for filing:** The clerk shall not accept for filing any pleading or motion in Family Court cases listed in Subsection 4.1 above until the documents to be filed have been reviewed by the Family Court Administrator in room 530 of the New Hanover County Judicial Building. Those cases require review by the Family Court Administrator so that a

judge can be assigned and the case can be appropriately managed. The filing party must file the Family Court Action Filing Sheet obtained from the Family Court Administrator with the documents to be filed, and the name of the assigned judge shall be recorded in the file and in the records of the clerk.

***Pender Modification:*** *Since all Pender County Family Court Cases will be assigned to the same judge unless there is a conflict, it is not necessary to have the matter reviewed before filing. However, counsel filing a Family Court case must contact the Case Manager assigned to Pender by the Family Court Administrator on the next day she is available in the county. Currently, Diane Geary is scheduled to be present in the Clerk's office on Wednesdays and Thursdays of each week. The purpose of this review is to determine whether a different judge should be assigned and to begin the scheduling of Custody Mediation, E.D. Mediation, and any other matters which need to be expedited.*

- 4.3.2. **Assignment of Judge:** The Family Court Administrator shall assign judges on a fair, rotating, or random basis. Unless an emergency situation exists or extraordinary circumstances require, no judge other than the assigned judge shall hear or consider matters involving the case once it is assigned. The judge to whom a case is assigned may designate another judge to preside where the ends of justice will be better served by doing so. In the absence of the assigned judge another judge may use discretion to act in any case where justice so requires. This general rule shall not prevent cases which are scheduled in Special Courts from being heard by any judge assigned to those special courts.

***Pender Modification:*** *All Family Court cases in Pender County will ordinarily be assigned to the judge assigned to Pender County. If there is a conflict requiring the recusal of that judge, then the Family Court Administrator shall assign another judge according to these procedures.*

- 4.3.3. **Initial Scheduling Order:** At the time the Family Court Administrator assigns a judge, the Family Court Administrator may also enter an initial scheduling order for those matters which must be scheduled under the case management plans as provided in these rules. The Chief District Court Judge hereby authorizes the administrative scheduling of those matters and a schedule established by the Family Court Administrator shall be complied with by all parties having notice thereof.

4.4. **Calendar Requests generally:** No Calendar Request in a Family Court case can be filed without first conferring with the Family Court Administrator or a Case Manager in that office. An available date for the assigned judge must be obtained from the Family Court Administrator before notice of calendaring is served on any party.

- 4.4.1. **Requests filed before the cut-off dates:** Calendar requests which are submitted at least five weeks before the beginning of the session may be presented to the Family Court Administrator without obtaining the consent of the opposing party. Calendar Request Forms are available in the office of the Family Court Administrator.

- 4.4.2. **Requests filed after the cut-off dates:** For any calendar request involving custody or visitation made after the cut-off date, the requesting party must confer and consult with the opposing party and indicate on the calendar request whether the opposing party consents or objects to the setting. If the opposing party has not consented to the setting, the consent of the presiding judge the Family Court Administrator, or that judge’s Case Manager must be obtained before the case can be added to the calendar.
- 4.4.3. **Add-on Calendar and Motions by Notice:** Motions may be set by notice as permitted by the General Rules of Practice (Rule 6) and the Rules of Civil Procedure (Rule 6); but the hearing date must be obtained from the Family Court Administrator and the responsibility for notifying all parties and counsel shall be upon the moving party.

4.5. **Fifteen Minute Motion Calendar:** The first day of every regular Family Court session shall give priority to matters designated as “Fifteen Minute Motions Hearings” to accommodate parties who have short matters which can be heard expeditiously. All attorneys and parties in any matter scheduled for “Fifteen Minute Motion Hearings” shall adhere to a strict fifteen minute limitation per side. Exceeding the time limitation subjects the non-complying person to financial sanctions on a per-minute basis in the discretion of the court without further notice. Any party wishing to exempt the matter from the fifteen minute rule may give notice at the calendar call, and the matter shall be treated as though no such designation had been made and heard at such time as the court directs. Any attorney who begins a hearing without objecting to the time limitation shall be conclusively bound by the limit. Any matter, whether designated technically a motion or hearing or trial which complies with the time limitation may be set for hearing as a Fifteen-Minute Motion. This procedure is created to convenience attorneys having short matters which can be quickly resolved, and the court will enforce the sanctions so that this expeditious procedure can be secured for their benefit.

4.6. **Motions Not Calendared Deemed Abandoned:** It is the responsibility of the moving party to obtain a hearing date from the Family Court Administrator and provide notice of the hearing date to all counsel and parties entitled to notice. Any motion filed for which there has been no request for a scheduling date for a period of at least 90 days shall be deemed abandoned and may be denied. The court may ex mero motu file a dismissal without prejudice of any motion found pending for more than 90 days which has not been scheduled at least once for hearing.

## **RULE 5: EQUITABLE DISTRIBUTION CASE MANAGEMENT PLAN**

*[Comment: Pursuant to the request of the General Assembly, the Chief Justice of the Supreme Court has mandated that Equitable Distribution cases should be managed in such a way that, unless there are extenuating circumstances, 90% of the cases should be completed within 270 days from filing; and 100% of the cases should be completed within one year after filing. The general statutes contemplate that a final affidavit of marital property should be completed within 120 days from filing unless there are*

*extraordinary circumstances. To comply with these time standards, the following case management plan is adopted.]*

Statutory Discovery Procedure NC GS 50-21. Unless another procedure is ordered, the parties shall comply with NC GS 50-21, which requires the requesting party to serve a complete property affidavit with values within 90 days of service, and the responding party to serve a complete property counter-affidavit with values 30 days thereafter. When both parties have filed their affidavits, the requesting and responding party shall compile the information from both affidavits into a single property listing with the contended values of each party; and both parties shall cooperate in preparing the final listing by eliminating duplications and ambiguities.

*§ 50-21. Procedures in actions for equitable distribution of property; sanctions for purposeful and prejudicial delay. (a) At any time after a husband and wife begin to live separate and apart from each other, a claim for equitable distribution may be filed, either as a separate civil action, or together with any other action brought pursuant to Chapter 50 of the General Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f). Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution inventory affidavit listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property. Within 30 days after service of the inventory affidavit, the party upon whom service is made shall prepare and serve an inventory affidavit upon the other party. The inventory affidavits prepared and served pursuant to this subsection shall be subject to amendment and shall not be binding at trial as to completeness or value. The court may extend the time limits in this subsection for good cause shown. The affidavits are subject to the requirements of G.S. 1A-1, Rule 11, and are deemed to be in the nature of answers to interrogatories propounded to the parties. Any party failing to supply the information required by this subsection in the affidavit is subject to G.S. 1A-1, Rules 26, 33, and 37. During the pendency of the action for equitable distribution, discovery may proceed, and the court shall enter temporary orders as appropriate and necessary for the purpose of preventing the disappearance, waste, or destruction of marital or separate property or to secure the possession thereof.*

**5.2. Pretrial Scheduling and Discovery Order:** If either party requests a variance from the statutory procedure, the Family Court Administrator shall meet with counsel or the parties and identify those issues which can not be resolved by agreement, and may schedule a discovery conference before the judge assigned to the case. The purpose of the conference is to develop a case management and discovery order using the form appearing in the appendix to these rules. Before appearing before a judge, the parties shall meet to make a good faith effort to narrow the issues upon which they can not agree. A Pretrial Scheduling and Discovery Order may also be entered following any of the Status Review conferences held by the Family Court Administrator. The order will address all of the following:



- 5.2.1 Stipulations on issues necessary or appropriate to resolve essential issues which are not contested, such as the jurisdiction over the parties and the issue, the date of marriage and the date of separation.
- 5.2.2. A discovery schedule and any appropriate discovery orders or protective orders
- 5.2.3. Appointment of any experts or referees
- 5.2.4. The date by which Mediation shall be completed
- 5.2.5. A tentative trial date
- 5.2.6. Any other issues which may be legitimately addressed in a pretrial order

5.3. **Standardized E.D. Forms:** Throughout the discovery process, the parties shall use the forms developed by the Domestic Bar Committee, copies of which will appear in the appendix to these rules, and comply with the instructions in the forms. The court or the Family Court Administrator may authorize the use of substantially similar forms where some accommodation is required by the software used by counsel involved in the litigation. The parties shall exchange the forms and information in such a manner as to produce a single listing of all property which must be classified, valued, and distributed.

5.4. **Periodic discovery reviews:** The Family Court Administrator may schedule periodic discovery review conferences for the purpose of confirming that the parties have complied with the discovery requirements as set out in these rules. If any party has not complied, the Family Court Administrator shall bring the failure to the attention of the assigned judge, who may initiate appropriate action.

5.5. **Initial 90 Day Status Conference:** The Family Court Administrator shall conduct a review of all Family Court cases approximately 90 days after filing to confirm that the parties are in compliance with the schedules established by these rules. Parties must appear personally or through counsel for the status review unless a written certification is provided satisfactory to the Family Court Administrator that the party is in full compliance with the schedules.

5.6. **Final Status Conference:** The Family Court Administrator shall require the parties and their attorneys to be present at a Final Status Conference approximately 120 days after the filing of any request for equitable distribution unless the parties file a completed pretrial order with attached Equitable Distribution Property Schedules. At the final status conference, the parties shall demonstrate that they have complied with the rules of discovery and have completed property affidavits as required by law and these rules or any scheduling order entered by the court. The Family Court Administrator may continue the conference for no more than seven days to permit the completion of the required property affidavits where there has been substantial compliance. If either party has failed to comply with the requirements to produce a final property listing by the time required in the foregoing procedures or with the provisions of a Pretrial Scheduling and Discovery Order, the Family Court Administrator shall obtain an Order to Show Cause signed by a judge, and the parties and their attorneys shall appear to show cause why sanctions should not be imposed. The minimum sanction if a violation is found shall be a \$50 fine, or such other sanctions as the law permits and justice requires. Sanctions in the form of fines may be imposed against the parties, attorneys, or both. If before or on the date of the Final Status Conference the parties present to the Family Court Administrator a completed signed

affidavit agreeing to a single property listing with contended values, they shall not be required to appear.

**5.7. Equitable Distribution Mediation:** All Equitable Distribution cases shall be referred to ED Mediation unless an order exempting the case is entered. The parties must agree upon a mediator by the time of the Initial Status Conference scheduled by the Family Court Administrator. A failure to agree upon a mediator by that day shall result in the appointment by the court of a certified mediator. The parties shall comply with the provisions of The Rules of the Supreme Court Implementing Settlement Procedures in Equitable Distribution And Family Financial Cases and the following special rules. A failure to comply with those rules or these local rules may result in sanctions which may include fines, attorney's fees, costs, orders to compel, striking pleadings, dismissal, contempt, or such other sanctions as may be appropriate.

5.7.1. **Scheduling:** The date by which mediation shall be completed will be set at the time of the selection or appointment of the mediator. The date for completion of mediation shall be at a date set approximately 150 days from filing. The parties must attend and attempt to mediate the issue in good faith. To the extent possible, mediations should be regularly scheduled during the third full week of each month. This week has been set aside by the court so that attorneys whose primary practice is domestic litigation will not have cases regularly calendared in the Family Courts and will be available for mediation.

5.7.2. **Reports and Orders:** The mediator shall deliver to the Family Court Administrator a copy of the report of the mediation within 10 days of the scheduled mediation as required by the Rules of the Supreme Court Implementing Settlement Procedures in Equitable Distribution And Family Financial Cases. If the matter is successfully mediated, the mediator should require the parties to sign a Memorandum of Consent Judgment as soon as is practical after a successful mediation, and all formal orders should be presented to the court within 30 days of the settlement.

5.7.3. **Substitution of Mediators:** The court will allow the substitution of any mediator agreed upon by the parties upon an application timely filed with the court. An application is timely filed if it will not delay the mediation of the case. An application which is not timely filed will be entertained only if the court finds that the ends of justice will be best served by allowing the substitution.

5.7.4. **Continuances:**

5.7.4.1. The mediator may not allow a continuance beyond the deadline date shown in the order of appointment or in any order extending that date entered by the court. Any motion to continue beyond that date must be in writing, addressed to the assigned judge, delivered to the Family Court Administrator, and contain a detailed statement setting out extraordinary good cause justifying the continuance. The motion must set out whether the opposing side consents to the continuance or objects to the continuance. The fact that discovery has not been completed may not be used as a reason for continuing the mediation unless the motion is filed at least thirty days before the scheduled date.

5.7.4.2. The mediator may schedule and reschedule mediation sessions as may be appropriate though the last date shown in the order appointing the mediator or any order subsequently entered extending the date for mediation.

5.7.4.2.1. *Good Cause Motions:* A motion to continue during this discretionary period should be made at least 14 days before the scheduled mediation session and must be in writing unless all parties and the mediator agree otherwise. A motion based upon good cause may be made at any time provided the motion is made promptly upon discovering the reason necessitating the continuance. A motion based upon the failure to complete discovery must be reported by the mediator to the Family Court Administrator, and shall not constitute good cause if the moving party has not complied with the E.D. discovery schedules established by statute and these rules.

5.7.4.2.2. Motions made within 72 hours of a scheduled mediation: Any motion made for good cause which is made less than 72 hours before the date of the hearing must include an offer to reimburse the mediator for \$150 as reimbursement for expenses the mediator incurred by reason of the failure of the parties to conduct the mediation as scheduled.

5.7.4.3. If a mediator begins a hearing, but concludes that there is good cause for continuing the matter beyond the date set out in the order, the mediator may apply to the assigned judge for an order extending the date to complete the mediation.

**5.7.5. Mediator Fees:**

5.7.5.1. Unless an alternative arrangement for payment has been made, the mediator may demand payment at any time permitted by the Rules adopted by the Supreme Court. The Mediator must deliver a copy of the AOC Report required under Rule 6 of the State Rules to the Family Court Administrator within 10 days of the scheduled mediation conference, and report at that time the failure of either party to pay the fees as required.

5.7.5.2. The mediator must inform the parties that, absent alternative arrangements in advance, a failure to pay the mediator must be reported to the court immediately following the mediation; and that the Family Court Administrator is required to issue a show cause order for the failure to pay the mediation fees as required.

5.7.5.3. Upon receipt of a report from the mediator that the fees have not been paid, the Family Court Administrator shall begin contempt proceedings before the assigned judge by seeking a show cause order from the assigned judge.

5.7.5.4. The respondent may purge any contempt by payment of the fees and presenting to the Family Court Administrator proof of such payment in full provided the proof is made before the date set for the show cause hearing.

**5.7.6. Failure to Attend Mediation:**

5.7.6.1. If a mediation session is scheduled, the mediator must report to the Family Court Administrator the failure of any party or counsel or

substitute counsel for any party to appear and attend the mediation promptly at the time and place the mediation is scheduled. This report must be made whether or not the mediator believes the failure to appear was for good cause.

5.7.6.2. The Family Court Administrator is authorized to request from the assigned judge a notice of hearing for sanctions for failure of any party, counsel, or substitute counsel to appear for a scheduled mediation session. Sanctions shall include the payment of all expenses of any party and the mediator incurred because of the failure to appear for the scheduled mediation session.

5.7.7. **Local Domestic Bar Committee:** These mediation rules have been reviewed by the Domestic Bar Committee of the local bar, with representatives from both Pender and New Hanover Counties. This committee is a continuing committee available to receive suggestions and assist the court in implementing this program.

5.7.7.1. *Makeup of the Committee:* Members may be added or removed by the Chief District Court Judge after obtaining the advice and consent of the chair of the committee. The chair of the committee shall be appointed by the Chief District Court Judge after conferring with the members of the committee.

5.7.7.2. *Responsibilities of the Committee:* The committee shall be responsible for conferring with the Chief District Court Judge from time to time on issues arising in the mediation program, recommending appropriate revisions of these rules, and providing a convenient list of persons deemed appropriate by the committee to conduct Equitable Distribution Mediation in locally filed cases. The list must include the name of any person qualified by law under the rules adopted by the Supreme Court who requests to be listed, and may contain additional persons who the committee deems appropriate to mediate locally filed cases. The list, which shall be maintained by the Family Court Administrator, will be regularly up-dated and made available to the bar.

5.8. **Pretrial Orders:** A final Pretrial Order using the form appearing in the appendix to these rules shall be signed by the parties and filed at least seven days before the trial date as mandated by Rule 7 of the General Rules of Practice. If the parties can not agree upon an order, they shall notify the Family Court Administrator who shall schedule a conference or a hearing with the assigned judge. The form of the pre-trial order shall be as set out in the forms appearing in the appendix and include the property listings required in these rules.

General Rules of Practice, Rule 7. Pre-trial procedure (see Rule 16). There shall be a pre-trial conference in every civil case, unless counsel for all parties stipulate in writing to the contrary and the court approves the stipulation. Upon its own motion or upon request of any party, the court may dispense with or limit the scope of the pre-trial conference or order. In uncontested divorce, default, and magistrate cases and magistrate appeals, a pre-trial conference or order is not required. A party who has not requested a pre-trial conference may not move for a continuance on the ground that it has not been held. At least twenty-one days prior to trial date,

the plaintiff's attorney shall arrange a pre-trial conference with the defendant's attorney to be held not later than seven days before trial date. At such conference a pre-trial order shall be prepared and signed by the attorneys. If, after due diligence, plaintiff's attorney cannot arrange a conference with defendant's attorney, he may apply to the presiding judge or other judge holding court in the district (or district court judge with respect to district court cases) who shall make an appropriate order. The defense attorney may initiate pre-trial under the same rules applicable to plaintiff's attorney.

## **RULE 6: CUSTODY AND VISITATION CASE MANAGEMENT PLAN**

*[Comment: Custody and Visitation actions: The time standards adopted by the Administrative Office of the Courts for custody cases require that a temporary order be entered in 90 % of the cases within 30 days of filing and in 100% of the cases within 45 days of filing. Contested trials and final orders should be completed in 90% of the cases within 150 days and in 100% of the cases within 180 days. To comply with these goals established with the approval of the North Carolina Bar Association, the following case management plan is adopted.]*

**6.1. Mandatory Mediation and Parent Education:** All parties to any action seeking child custody or visitation or a modification of the same shall be required to attend the Custody Mediation Orientation Program and Parent Education Orientation Program established in this district. The parties shall be required to attend the Parent Education Program only once. The parties shall be required to participate in Custody Mediation each time a custody or visitation action is filed or any motion for a modification of the same is filed.

**6.2. Good Faith Required:** Counsel and all parties are required to cooperate with the Family Court Administrator and with the Custody Mediator so that attempts at mediation will occur expeditiously as soon as possible after the filing of an action or motion. Parties must attempt to mediate in good faith.

**6.3. Scheduling of Sessions:** The Family Court Administrator shall schedule the Mediation and Parent Education Orientation session at the time of the review for the appointment of a judge to the case or at the time of the filing of the action or motion. The Custody Mediator shall provide the Family Court Administrator with tentative scheduling dates and the schedule shall be publicly available. The Custody Mediator is authorized to use discretion to schedule and reschedule orientation sessions and mediation sessions at times convenient to the parties and to the courts.

**6.4. Notice and Information:** At the time of filing a custody pleading or motion, the party seeking custody or visitation shall attach to the pleading or motion and serve upon the opposing party the Notice of Referral to Custody Mediation form together with notice of the Parent Education requirement as required by these rules. All counsel as officers of the court shall assist the Family Court Administrator and the Custody Mediator in providing the parties with appropriate information about custody mediation. The forms which must be provided appear in

the appendix and the Family Court Administrator is authorized to develop and distribute a standardized “Custody Mediation and Parent Education Packet.”

6.5. **Confirmation of Appointments:** The parties shall contact the Child Custody Mediator to confirm and arrange dates for custody mediation and parent education, and the parties shall attend and participate in that program in good faith.

6.6. **Motions for Exemption:** The Custody Mediator shall be authorized to review motions for exemption from Custody Mediation and may allow the exemptions for good cause. In determining good cause, the custody mediator shall comply with the rules and procedures adopted by the Administrative Office of the Courts. Where an exemption is requested solely because of travel distance, the motion shall be denied provided the Child Custody Mediator makes reasonable efforts to accommodate the party required to travel. The mediator shall comply with the State Protocol for custody cases involving Domestic Violence issues.

6.7. **Mediation Report:** The Custody Mediator shall notify the Family Court Administrator of the outcome of mediation. The Family Court Administrator may schedule the matter for trial before the assigned judge upon being notified that mediation was not successful.

6.8. **Failure to Participate in Mediation:** The Family Court Administrator is authorized to initiate contempt proceedings against any party not participating in good faith in the Custody Mediation Program by seeking an Order to Show Cause from the assigned judge unless the party has been excused by the court from such participation.

6.9. **Emergency Hearings:** Emergency Hearings and Ex Parte relief may be applied for and heard as provided by the rule specifically addressing those applications and hearings. An ex-parte order or emergency order shall not delay or exempt any custody case from mediation unless the order specifically addresses that issue; and the court may expedite the mediation process where time is of the essence.

6.10. **State Rules for Mediation:** The Custody Mediator shall be guided by the policies adopted by the Administrative Office of the Courts and by such other rules and policies as may be adopted from time to time by the Chief District Court Judge after consulting with the Domestic Bar Committee as has been customary.

6.11. **Calendaring of Custody and Visitation Cases for Trial:** Unless a court order excuses the parties from participating in custody mediation, no custody case can be calendared for trial until the Custody Mediator notifies the Family Court Administrator that the mediation process has been completed. All calendar requests and notices for trial involving custody or visitation shall include a certification from counsel, the party, or notation by the Custody Mediator that the mediation process has been completed.

6.12. **Calendar Request Forms:** The Calendar Request Form, which appears in the appendix, shall include appropriate language so that the foregoing requirements for calendaring can be easily noted.

6.13. **Failure to appear:** The failure of any party to appear for a scheduled Child Custody Mediation Orientation Session, a Parent Education Program, or a scheduled Custody Mediation Session, shall be reported to the Family Court Administrator, and the party who fails to appear, shall be subject to the following sanctions:

6.13.1. For the first failure to attend a Child Custody Mediation Orientation Session or a Parent Education Program the Family Court Administrator or her designee is authorized to notify the person of the possible sanctions and reschedule the session.

6.13.2. For the second failure to attend a Child Custody Mediation Orientation Session or a Parent Education Program, or for the first failure to attend a scheduled mediation session the party failing to appear shall pay a fine of \$100.00 plus any expenses incurred by the other party.

6.13.3. For any subsequent failure to attend any scheduled event: A show cause order shall issue for a plenary contempt hearing before a District Court Judge, and such sanctions as may be appropriate may be imposed.

## **RULE 7: POST SEPARATION SUPPORT**

7.1. Post Separation Support hearing dates must be set by the Family Court Administrator. Motions and Claims for Post Separation Support should generally be set for the first day of a Family Court session, but the availability of that date must be confirmed with the Family Court Administrator. Priority will be given to hearing those claims which the Family Court Administrator determines require an expedited hearing.

7.2. All parties shall complete and exchange Financial Standing Affidavits and Employer Income Verifications (forms for which appear in the appendix) sufficiently in advance of the date of the hearing to afford a full and fair hearing of the issue. Unless otherwise ordered, the claimant must furnish the completed forms at the time the claim is filed; and the respondent must furnish the completed forms no later than thirty days following service or by 10:00 a.m. the Friday before the date of the hearing, whichever date is sooner.

## **RULE 8: PRETRIAL ORDERS**

8.1. Requirement for a Pretrial Order: A Pretrial Order shall be required in every civil and domestic trial upon the merits except those actions exempted below.

8.2. Exemptions: No Pretrial order shall be required in the following cases:

8.2.1. Actions for post separation support unless requested by the parties or required by court order.

8.2.2. Actions for custody, unless requested by the parties or required by court order.

8.2.3. Actions for child support.

8.2.4. Small Claims Appeals, unless the parties have been allowed to re-plead and the court so directs.

8.2.5. Matters which have been assigned to Specialized Courts (Domestic Violence, Divorce Court, Child Support, and Juvenile Court).

8.3. The responsibility for filing the proposed Pretrial Order shall be upon the plaintiff unless there is a counterclaim, in which case both parties are equally responsible. A Pretrial Order shall be filed or available for filing by the Thursday preceding a scheduled trial date.

8.4. **Procedure for optional Pretrial Conference:** If a proposed pretrial order has not been filed, the presiding judge scheduled for a session at which the matter may be heard or any judge to whom a case has been assigned may order that a Pretrial Conference be held. All parties must be present for a scheduled Pretrial Conference unless the proposed Pretrial Order has been agreed upon by the date of the Pretrial Conference. It is an affirmative duty of counsel to notify clients to be present for the Pretrial Conference if the proposed Pretrial Order has not been submitted as required in this rule. On the date scheduled for the Pretrial Conference, if the parties are still unable to agree to the form of the Pretrial Order, the court will hold a Pretrial Conference as provided by the General Rules of Practice and will enter such Order as is appropriate. The hearing may be formal or informal, recorded or off the record, and in such detail as the court determines to be appropriate considering the amount in controversy, nature of the case, complexity of the issues, and need for pretrial resolution of contested questions.

8.5. **Presence of Parties and Authority to Settle:** If a Pretrial Conference is required or scheduled, a party who is represented by counsel, and for whom a personal appearance will be unusually inconvenient because of distance, illness or other extraordinary good cause, may be available by phone. Counsel must make clear to such a party that during the time court is in session, the party must be reachable by phone at all times, and the inability to make telephone contact will be equivalent to failing to appear. If an offer or acceptance of an offer of settlement or consent to a binding stipulation requires the consent of any person or agency, then the person whose consent is necessary shall either be present or shall have provided a written delegation of authority to someone who is present. This obligation is satisfied if an attorney representing the interests of a party is present and has full authority to negotiate settlements and enter binding stipulations.

8.6. **Amendments:** A Pretrial Order entered by the court may be amended upon a showing of good cause or upon a determination that the other parties will not be prejudiced by the amendment. A proposed Pretrial Order to which all parties have consented but which has not yet been signed by the court may be freely amended by consent.

## **RULE 9: TRIAL CALENDAR MANAGEMENT**

9.1. **Calendaring by Calendar Request:** Any party may request that a case or issue be calendared for a trial on the merits. The calendar request forms employed in this district may be found in the appendix, and will be available in the office of the Civil District Court Case Manager and the Family Court Administrator.



**9.2. Calendaring by the Family Court Administrator and the District Court Civil Case Manager:** The Family Court Administrator and the Civil District Court Case Manager, in consultation with the Chief District Court Judge, shall set a sufficient number of cases from the pending docket to assure sufficient dispositions so as to meet the dispositional guidelines established by the Supreme Court. Any case may be set by the Family Court Administrator or the Civil District Court Case Manager if it appears that the ends of justice and the effective administration of the dockets will be best served. The Family Court Administrator and the Civil District Court Case Manager shall, at least twice a year, review the pending docket, and may set those cases which require a review by the court upon an Administrative Review Calendar to determine their status and arrange the setting of the calendars. When such a calendar is published, or when the case appears on a published calendar in a section designated "Administrative Review Calendar," the obligations of counsel shall be as set out in Rule 2(e) of the General Rules of Practice.

**9.3. Inactive Cases:** The Family Court Administrator or the Civil District Court Case Manager may immediately calendar or bring on for disposition any case in which service has not been obtained and no extensions of time for service have been obtained and the time for service has expired. The Family Court Administrator or the Civil District Court Case Manager may immediately calendar any case in which the time for answering has expired and no extension of time for answering has been obtained and no answer has been filed.

## **RULE 10: CALENDARING OF DIVORCES; ADDITIONS TO THE DIVORCE CALENDAR**

10.1. Published Calendar Maintained by the Family Court Administrator: To appear on a printed published calendar, Calendar Requests should be submitted to the Family Court Administrator at least five weeks in advance of the requested court dates. Uncontested Divorces will be heard in a special court session scheduled for that purpose (currently Fridays in courtroom 301 at 9:00 a.m. in New Hanover County and on the first day of the Civil Session in Pender County).

10.2. Add-on Calendar Maintained by the Clerk: If the following criteria are met, any uncontested divorce action may be added to the divorce calendar at any time up until noon on the Wednesday before the scheduled date without obtaining further leave of the court. Notice of the desire to add a case to the divorce calendar shall be given by noon on Wednesday to the courtroom clerk (not the Family Court Administrator) who will be managing the courtroom calendar. The party requesting the addition to the calendar is responsible for entering the appropriate information on the Add-On Divorce Calendar maintained by the courtroom clerk and giving notice to the opposing party as required by law. To meet the criteria for an addition to a printed, published divorce calendar, the following must be true:

- 10.2.1. Personal Appearance: Either the Plaintiff or Defendant must personally appear for the hearing;
- 10.2.2. Personal service was obtained on the defendant. Personal service may include a written acceptance or waiver of service or service by certified mail with a return receipt signed by the defendant. No case in which

service was obtained by publication or by substitute service may be added to a published calendar unless the defendant has entered an appearance and consents to the granting of the divorce and to the setting of the matter without notice.

10.2.3. An attorney must appear for the trial of the case and must, as an officer of the court, affirmatively state to the court that the attorney has made a full inquiry as to the circumstances of the case and that the divorce is uncontested.

10.3. All pro-se actions must appear on a printed, published calendar.

10.4. Motions for Summary Judgment for an uncontested divorce may be scheduled upon notice as provided by law, and they shall be noticed for the Specialized Session for the trial of uncontested divorces.

10.5. Summary Judgment not appropriate where other relief is sought: The statute allowing summary judgment for uncontested divorces does not include the additional relief of incorporation of separation agreements and custody orders. Therefore, summary judgment is not appropriate where relief other than the granting of a divorce and resumption of maiden name is sought.

## **RULE 11: EXPEDITED CHILD SUPPORT MATTERS**

11.1. **Affidavit required:** Because the legislature has adopted presumptive child support obligations based upon joint earnings of the parties, no affidavits other than the verification of pleadings shall be required at the time of filing in child support actions. However, each party, by the date of the hearing, shall complete and exchange affidavits as follows:

11.1.1. Both parties shall complete an affidavit containing income information, forms for which shall be available in the office of the Clerk, and have it available for an exchange of information by the hearing date. If the party is employed, the party must obtain a certification of earnings from the employer on a form available in the office of the Clerk. To expedite the process and obtain similar information from the other party, the moving party may attach to the pleading or motion to be served on the opposing party a blank copy of the required form which shall contain a notice of obligations created by this rule. This exchange of information shall be required as if requested and ordered under the rules of discovery, and any party failing to furnish the information by the date set for hearing shall be subject to all sanctions available for failure to comply with an order for discovery.

11.1.2. If any party contends that any amount other than the presumptive amount should be ordered upon a determination that an obligation of support exists, then the party so contending shall file an affidavit before the date of the hearing setting forth in detail the reason justifying a departure from the presumptive amount.

11.1.3. If any party contends that the needs of the child will be met by an amount different from the presumptive amount, then both parties shall file an affidavit on the most current form maintained in the office of the clerk detailing the income and expenses for the party and the child. This affidavit must be filed by the party requesting a deviation at the time the affidavit requesting a deviation is filed. The absence of such an affidavit in the file by 9:00 a.m. on the hearing date constitutes an affirmative representation to the court that all parties concede that there exists no reason to depart from the presumptive guideline amounts.

11.2. Unless a protective order is applied for and entered, any party who is self-employed and any party whose income is not verifiable through an employer shall furnish the other party with a copy of the most current Federal Tax Return by the date of the hearing. Each employed party shall furnish the other party with a copy of a current wage earning statement showing gross and net income and a copy of an employer's wage-earning certification on a form available in the office of the Clerk.

11.3. Where the relief sought is enforcement of an existing order, the moving party must have available at the hearing the payment record detailing the payments during the period for which enforcement is sought.

**11.4. Calendaring Establishment, Enforcement and Modification of Support:** Actions in which child support is the only issue and all cases in which the Child Support Collections Agency is a party must be assigned to the Specialized Child Support Court. The issues of the establishment, modification or enforcement of a child support obligation may be severed from all other Family Court issues, and may be assigned for hearing to the Specialized Child Support Court. Unless otherwise ordered in New Hanover County, Enforcement matters will be heard in Courtroom 301 on Tuesdays; and actions to establish child support and motions to modify existing orders for child support will be heard in Courtroom 301 on Wednesdays. Where the relief sought involves issues of both enforcement and modification, the matter shall ordinarily be calendared on the date set for establishment cases.

**11.5. Expedited Calendaring Procedure:** In cases assigned to the Specialized Child Support Court, the moving party, at the time of the filing of any pleading seeking child support, shall notify the clerk in the child support division that the action has been instituted and obtain a calendaring date on an expedited Child Support Calendar from the clerk. If the issue is joined with Family Court issues, the Family Court Administrator shall set the issue before the assigned judge or refer it to the Specialized Child Support Court, as may be appropriate. The moving party shall be responsible for serving notice of the hearing date unless the action was instituted by the Clerk, in which case the Clerk shall be responsible for giving notice. The clerk and the Family Court Administrator shall determine a court date so as to assure a final disposition of the matter expeditiously as required by law, and in no event more than 50 days from the date of filing.

11.6. Extensions of time to file an answer does not automatically delay the hearing of the issue of child support. Continuances are in the discretion of the court upon a showing of good cause.

11.7. **Paternity Issues:** If the issue of paternity is raised, the case may be transferred to the Family Court for further proceedings, and the Family Court Administrator shall assign a judge and oversee the scheduling of the matter for trial.

11.8. **Pretrial Conference:** In every action, whether to initially establish or enforce or modify child support, the parties shall conduct a Pretrial Conference before the matter is tried to determine whether the matter can be resolved by consent. This Pretrial Conference may be brief and informal, and shall be used to assure that the required affidavits and documentation have been exchanged, determine whether there is agreement or disagreement as to the presumptive amount which should be ordered as provided by law, to narrow the issues about which agreement cannot be reached, to prepare worksheets reflecting the contentions of the parties as to how the support obligation should be computed, and to settle the obligation in the most expeditious manner.

11.9. **ADR:** The court may, if deemed to be in the best interest of justice, refer the issue of child support to an appropriate Alternative Dispute Resolution program, including mediation and arbitration.

## **RULE 12: MAGISTRATE (SMALL CLAIMS) APPEALS**

12.1. **All Eligible Matters are Assigned:** All matters eligible for assignment to the Small Claims Court are hereby assigned unless specifically exempted or un-assigned by order of the court.

12.2. **Notice and Calendaring:** The appellant in a small claims appeal to District Court shall be responsible for completing and filing a Cover Sheet and a Small Claims Notice of Calendaring Form at the time notice of appeal is entered or perfected; and the matter shall be set with the priority established by law for the first day of the next available term for which a calendar is to be published for the trial of civil actions. The case shall be calendared for the first day of the next civil session. The Civil District Court Case Manager shall provide the Small Claims Magistrates and Clerks with a listing of available dates for the setting of appeals for trial. Summary ejectment appeals may be set by notice to opposing parties at the next available Monday beginning a civil term provided adequate notice is served. The Appellant shall serve a copy of the "Special Calendaring Notice of Small Claims Appeal" upon all opposing parties, and this notice shall constitute sufficient notice of the calendaring of the matter for hearing. If a jury trial has been requested, the matter shall be scheduled for a Pretrial Conference at the next available Monday. The purpose of the Pretrial Conference in jury cases is to determine the issues for the jury and set a trial date.

12.3. **Motions to Re-plead Required:** 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 unless the time for filing pleadings has not expired under the regular rules of civil procedure. 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 Orders. The issue of summary ejection may be severed from other issues by the court on the court's own motion if justice so requires. No Pretrial Order shall be required in magistrate appeal cases unless a motion to re-plead has been made and the court so orders.

12.4. Reference: GS § 7A-220. No required pleadings other than complaint: There are no required pleadings in assigned small claim actions other than the complaint. Answers and counterclaims may be filed by the defendant in accordance with G.S. 7A-218 and G.S. 7A-219. Any new matter pleaded in avoidance in the answer is deemed denied or avoided. On appeal from the judgment of the magistrate for trial de novo before a district judge, the judge shall allow appropriate counterclaims, cross claims, third party claims, replies, and answers to cross claims, in accordance with G.S. 1A-1, et seq.

### **RULE 13: ARBITRATION**

13.1. The Fifth Judicial District is a jurisdiction covered by the Rules adopted by the Supreme Court for Court-Ordered Arbitration in certain civil cases wherein the amount in controversy does not exceed \$15,000. Unless otherwise ordered, all cases qualifying shall be referred to arbitration at the time of filing, or as soon thereafter as is practicable. Notice of referral shall be given to the parties by the Arbitration Coordinator. Cases appealed from the Magistrate's Small Claims Court which qualify shall be referred at the time of the filing of the notice of appeal. Other cases may be referred for arbitration by order of the court and by consent of the parties. The rules and procedures shall be as set out in the "Rules For Court-Ordered Arbitration in North Carolina" promulgated by the Supreme Court pursuant to GS 7A-37.1, and such additional rules as may be promulgated by the Chief District Court Judge.

13.2. Unless otherwise ordered, the referral of a case for arbitration shall not delay hearings on motions filed by any party. However, hearings on motions for summary judgment shall ordinarily not be heard until after arbitration is completed. A motion to exclude a case from arbitration shall be entitled to an expedited hearing.

### **RULE 14: MANAGING ISSUES AND CLOSING CASES**

14.1. The Family Court Administrator and the Civil District Court Case Manager shall monitor the pending docket and manage the cases so that all issues can be expeditiously resolved. Attorneys shall cooperate in assisting the Case Managers in identifying the issues to be heard in cases in which they are involved. Therefore, attorneys and parties should be careful in using and accurately preparing the AOC Domestic cover sheets required for filings in Family Court cases. Attorneys who prepare proposed orders should include as a final provision in the order or judgments a statement that the order or judgment either resolves all issues or identify those issues which remain to be heard in the case.

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

- 14.2.1. The entry of a final Equitable Distribution Order shall close any request for an Interim Distribution;
- 14.2.2. The entry of an Alimony order shall close any request for Post Separation Support;
- 14.2.3. The entry of a Divorce Judgment shall close a request for Divorce from Bed and Board, whether the Divorce is entered in the main action or in a collateral action between the parties. To complete the record, the Clerk may place a certified copy of the Divorce Judgment in the case in which the Divorce From Bed and Board is pending if the Divorce was granted in a separate action;
- 14.2.4. A final Custody Order shall close any request for Temporary Custody;
- 14.2.5. Orders or Judgments resolving all other issues shall close any request for “Such other relief as may be appropriate” or similar requests for unspecified additional relief.

14.3. Submission of Proposed Orders and Judgments:

- 14.3.1. All proposed orders prepared by counsel must be presented to the court within 30 days from the announcement of the decision of the court or at such other time as the court may designate. The court shall set a date certain for the submission of the proposed order at the time the decision is announced, and may schedule the matter on a calendar for the entry of the order or judgment.
- 14.3.2. Unless an alternative schedule is set by the trial judge, the attorney or party whose responsibility it is to draft the proposed order shall deliver a copy of the proposed order to opposing counsel or parties fifteen days after the announcement of the decision; and the other party shall deliver any proposed changes within 10 days thereafter. If the parties can not resolve their differences in the proposed draft to be presented to the court within five days, counsel or any pro-se party shall appear at a time and place to be set by the court for the court to consider the positions and determine what action should be taken.
- 14.3.3. The presentation by counsel of a letter or faxed copy showing that the exchange of proposed drafts occurred within the times established by these rules shall constitute prima facie evidence of compliance with this rule.
- 14.3.4. Unless an extension of the time for exchanging or submitting the proposed order has been obtained from the court before the date the proposed order is due, all counsel shall appear on the scheduled date to show cause why the automatic sanctions provided for herein should not be imposed. The submission of a proposed order in final form agreed to

be appropriate for signing before a sanction is imposed shall constitute full compliance.

- 14.3.5. Absent a showing of good cause, if the person responsible for exchanging or filing the proposed order has failed to present the order by the time set, the person or persons held responsible shall be subject to the sanction of a \$50 fine for each failure to comply.

*[Comment: This method of resolving the manner by which orders should be prepared within the thirty day time standards established for the Pilot Family Court Project was arrived at after lengthy discussion among the members of the District Domestic Bar Committee. This procedure was preferred by the domestic law attorneys over the simpler option of merely establishing the time limit without allocating the relative responsibilities of the parties.]*

## **RULE 15: CONTINUANCES AND CONFLICTS**

15.1. General Continuance Rules: To be considered timely made, a motion to continue a case which has been calendared must be filed in writing, directed to the judge assigned to preside with a copy delivered to the Family Court Administrator in Family Court Actions or Civil District Court Case Manager in Civil Actions; and must, absent good cause, be filed by 9:00 a.m. on the Thursday before the beginning of the term at which the case is set. The Case Managers will maintain an updated calendar and record thereon the status of cases, including special circumstances which will enable other parties to determine which cases have been continued or settled. The procedure for obtaining a continuance depends upon the age of the case as follows:

- 15.1.1. **Cases Pending under 120 days:** Any matter which has been calendared with the consent of all parties may be continued by the consent of all parties if the case has been pending for 120 days or less, provided the consent to the continuance is in writing and delivered to the Family Court Administrator or the Civil District Court Case Manager by 9:00 a.m. on the Thursday before the beginning of the term.
- 15.1.2. **Cases Pending between 120 and 180 days:** Cases which have been pending more than 120 days but less than 180 days may ordinarily be continued by consent; however, notice and an opportunity for the Family Court Administrator or Civil District Court Case Manager to object to the continuance shall be given by 9:00 a.m. of the preceding Thursday. If the Family Court Administrator or the Civil District Court Case Manager objects, then a conference shall be scheduled with the trial judge and the court will enter such order as is appropriate.
- 15.1.3. **Cases Pending more than six months:** Cases which have been pending for more than 180 days and which have been set by the Family Court Administrator or the Civil District Court Case Manager may not be continued without the consent of the Family Court Administrator or the Civil District Court Case Manager unless ordered by a judge. Requests for continuances shall be submitted in writing to the Family

Court Administrator in Domestic Actions and the Civil District Court Case Manager in regular Civil Actions, and the Case Managers shall inform counsel promptly whether the request has been granted or denied. If any party objects to the action of the Case Manager, a written request that the court review the action of the Case Manager must be promptly delivered to the judge who is scheduled to preside over the term. The request for a review of the Case Manager's action must state in detail the reason why the action should be modified.

15.2. Duty to inform of Conflicts: All attorneys appearing in any calendared case have an affirmative duty to notify the Family Court Administrator or the Civil District Court Case Manager promptly upon learning of any potential conflicts. Court scheduling conflicts shall be resolved in accordance with the General Rules of Practice, Rule 3; and the "Guidelines for Resolving Scheduling Conflicts" adopted by the State-Federal Judicial Council. Attorneys may not rely upon conflicts as a ground for continuance unless prompt notice of the potential conflict was given so that the Case Manager might have an opportunity to assist in resolving the conflict. Within the District Courts, Juvenile adjudicatory and dispositional hearings shall have priority over other District Court matters unless otherwise ordered. Local CaseFlow Management Plan: The Following supplemental rules were adopted pursuant to the Local Case Management Plan as required by the Supreme Court:

*Preamble:* Whereas the Legislature of the State of North Carolina requested by statute that the Supreme Court adopt procedures for caseflow management and continuance policies; and Whereas the Supreme Court in response to that request has directed the Chief District Court Judges of the state to consider a model continuance policy developed by a committee appointed to comply with the request of the General Assembly; and Whereas that model policy has been reviewed by local committees consisting of representatives of the local bar which have made recommendations appropriate to the needs of this district; and Whereas the undersigned Chief District Court Judge has considered those recommendations and has amended the model policy as appropriate to local needs; IT IS THEREFORE ORDERED and the undersigned Chief District Court Judge hereby adopts as a local rule the following policy and procedures on continuances within the District Court Division of the General Court of Justice for the Fifth Judicial District.

*[Official Commentary and Introduction: In order to utilize the resources of North Carolina's judicial system more effectively and efficiently, it is incumbent upon all judicial districts within the state to apply uniform standards of calendar management and evaluation of continuance requests in a fair and consistent manner. To assist the key court officials in each district, these model continuance policies were created by a committee of District Court Judges, District Attorneys, Public Defenders and private attorneys. It is the recommendation of this committee that each judicial district consider enacting this model policy as a portion of the local rules of that district.]*



*[Local Commentary: The following rules consist of the model rules promulgated by the drafting committee together with changes and local modifications recommended by committees of the local bar associations.]*

**15.3. Motions for Continuance—Domestic Cases:** Domestic cases should be disposed at the earliest opportunity, including the first trial 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. *[Commentary: Domestic cases can involve disputes that directly impact children (especially their living arrangements and support) and that prevent the parties and their family members from moving on with their lives. Therefore, they should be resolved expeditiously.]*

- 15.3.1. **Appropriate Court Official:** All applications for continuance shall be made to the Family Court Administrator or the Case Manager assigned to the District Court Judge presiding over the session of court for which the case is calendared. The Family Court Administrator is the appropriate court official to whom motions should be initially addressed before the calendar call at the beginning of any session, and the Family Court Administrator shall make a recommendation to the presiding judge for the session.
- 15.3.2. **Court Conflicts**
  - 15.3.2.1. The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.
  - 15.3.2.2. Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all other matters unless otherwise agreed among the presiding judges. *[Commentary: All attorneys are reminded of the requirements of Rule 2(e) of the General Rules of Practice regarding their appearance, or the appearance of a partner, associate, or another attorney familiar with the case, if there is another court that requires his or her presence in court simultaneously.]*
- 15.3.3. **Documentation of Continuance:** All requests for continuance shall be by written motion. However, oral motions may be allowed when the reason for the continuance did not become known until immediately preceding the start of court. While no specific form for either the motion or order is required, forms may be developed for the convenience of the bar and will be available in the office of the Family Court Administrator or Clerk of Superior Court. *[Commentary: This proviso for an oral motion is only for emergency situations, such as severe family illness or death of a party, one of the attorneys, or critical witnesses, and the*

absence of that person will make it impossible for the trial or hearing to proceed.]

- 15.3.4. **Notification of Opposing Counsel/Unrepresented Parties/Witnesses:** All parties must be notified of a motion to continue. A copy of the motion to continue must be distributed to all counsel of record and/or unrepresented parties prior to ruling on the motion. 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. [Commentary: The burden is on the moving party to advise the court and opposing counsel of any motion for a continuance. The goal of this provision is to avoid any continuance surprises and to provide notice as expeditiously as possible to the court and to the opposing party and/or their counsel.]
- 15.3.5. **Objections to Motion for Continuance**
- 15.3.5.1. All parties should have an opportunity to be heard on a motion to continue. When a motion to continue is made more than seven (7) working days prior to trial, opposing counsel and/or unrepresented parties shall have a period of four (4) working days, following completion of distribution, to communicate objections to the motion for continuance to the moving party and the Family Court Administrator. Objections not raised in writing within this time period are deemed waived.
- 15.3.5.2. When a motion to continue is made within seven (7) working days of the trial term (other than an oral motion in open court), the moving party shall include in the written motion a statement that the opposing counsel or party has been contacted and a short statement on opposing party's position on the motion (including whether the opposing party or counsel consents or objects, and whether or not he or she desires to be heard on the motion). If the moving party is unable to contact the opposing counsel or unrepresented parties, the motion shall state what efforts were made and why contact was not possible. [Commentary: *The writing requirement of this rule may be in the form of a letter.*]
- 15.3.6. **Evaluation of Motions for Continuance:** Factors to be considered by the appropriate court official 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 in effect a temporary order dealing with the issue that is the subject of the continuance request; the impact of a continuance on the safety of 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 OR the number, 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 would resolve prior to the scheduled trial 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 requested; the position of opposing counsel or unrepresented parties; whether the parties themselves consent to the continuance; present or future inconvenience or unavailability of witnesses/parties; consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued: and any other factor that promotes the fair administration of justice.

15.3.7. Case Rescheduling: Prior to granting a motion for continuance, the Family Court Administrator should reschedule the Trial or pre-trial of the contested issues to a specific date after receiving scheduling input from all parties

15.3.8. **Time Standards**

15.3.8.1. All domestic cases should be disposed of within 18 months of filing, with 90% disposed within six months. Equitable Distribution cases should be managed in such a way that, unless there are extenuating circumstances, 90% of the cases should be completed within 270 days from filing; and 100% of the cases should be completed within one year after filing.

15.3.8.2. Issues of child support should be resolved and a temporary or permanent order entered within 60 days of service. Post-disposition issues, such as contempt and motions to modify existing orders, should be resolved within 60 days of the filing of such actions (subject to the following local modifications).

15.3.8.3. Post-disposition issues which are properly scheduled under the local rules for a hearing and which usually require one hour or less to resolve, such as contempt and simple motions to modify existing orders, should be resolved within 60 days of the filing of such motion.

15.3.8.4. Post-disposition issues which require a relitigation of major contested issues more properly placed on a regular trial calendar (as, for example, a change of custody) should be disposed of within 120 days of service of the motion, or such time as the complexity or lack thereof may justify. [Commentary: These are the standards adopted by the Supreme Court of North Carolina in the caseflow management plan provided 1 May 1996 to the General Assembly, pursuant to Chapter 333 of the 1995 Session Laws.] *[Local Commentary: These rules contain local modifications adopted following a consideration of the model rules by a committee of the local bar associations.]*

**15.4. Motions for Continuance:** General Civil and Magistrate Appeal Cases: Civil cases should be disposed of at the earliest opportunity, including the first trial 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 case beyond the established time standards shall only be granted for extraordinary cause.

- 15.4.1. **Appropriate Court Official:** All applications for continuance shall be made to the Civil District Court Case Manager (Currently Diane Geary) for the District Court Judge presiding over the session of court for which the case is calendared. If the trial judge is not known at the time the request is made, the application should be addressed to the Chief District Court Judge. The Civil District Court Case Manager is the appropriate court official to whom motions should be initially addressed before the calendar call at the beginning of any session, and she shall make a recommendation to the presiding judge for the session.
- 15.4.2. **Court Conflicts:** The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts. Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all matters unless otherwise agreed among the presiding judges. [Commentary: All attorneys are reminded of the requirements of Rule 2(e) of the General Rules of Practice regarding their appearance, or the appearance of a partner, associate, or another attorney familiar with the case, if there is another court that requires his or her presence in court simultaneously.]
- 15.4.3. **Documentation of Continuance:** All requests for continuance shall be by written motion. However, oral motions may be allowed when the reason for the continuance did not become known until immediately preceding the start of court. While no specific form for either the motion or order is required, forms may be developed for the convenience of the bar and will be available in the office of the Trial Court Administrator or Clerk of Superior Court. [Commentary: This proviso for an oral motion is only for emergency situations, such as severe family illness or death of a party, one of the attorneys, or critical witnesses; and the absence of that person will make it impossible for the trial or hearing to proceed.]
- 15.4.4. **Notification of Opposing Counsel/Unrepresented Parties/Witnesses:** All parties must be notified of a motion to continue. A copy of the motion to continue must be distributed to all counsel of record and/or unrepresented parties prior to ruling on the motion. 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. [Commentary: *The burden is on the moving party to advise the court and opposing counsel of any motion for a continuance. The goal of this provision is to avoid any continuance surprises and to provide notice as expeditiously as possible to the court and to the opposing party and/or their counsel.*]

- 15.4.5. **Objections to Motion for Continuance**
- 15.4.6. All parties should have an opportunity to be heard on a motion to continue. When a motion to continue is made more than seven (7) working days prior to trial, opposing counsel and/or unrepresented parties shall have a period of four (4) working days, following completion of distribution, to communicate objections to the motion for continuance to the moving party and the presiding District Court Judge or his/her designee. Objections not raised in writing within this time period are deemed waived.
- 15.4.7. When a motion to continue is made within seven (7) working days of the trial term (other than an oral motion made in open court), the moving party shall include in the written motion a statement that the opposing counsel or party has been contacted and a short statement on opposing party's position on the motion (including whether the opposing party or counsel consents or objects, and whether or not he or she desires to be heard on the motion). If the moving party is unable to contact the opposing counsel or unrepresented parties, the motion shall state what efforts were made and why contact was not possible. *[Commentary: The writing requirement of this rule may be in the form of a letter.]*
- 15.4.8. Evaluation of Motions for Continuance: Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include: the impact of a continuance on the safety of the parties or any other persons; the age of the case; the status of the trial calendar for the session; the order in which the case appears on the trial calendar, including whether the case is peremptorily scheduled; the number of previous continuances; the extent to which counsel had input into the scheduling of the trial date; the due diligence of counsel in promptly filing a motion for continuance as soon as practicable; whether the reason for continuance is a short-lived event which would resolve prior to the scheduled trial 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 requested; the position of opposing counsel or unrepresented parties; the availability of witnesses for the present session, or for a future session; whether the parties themselves consent to the continuance; present or future inconvenience or unavailability of witnesses/parties; consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued; compliance with any law relating to the scheduling and trial of civil cases (such as, summary ejectment appeals); and any other factor that promotes the fair administration of justice.
- 15.4.9. Case Rescheduling: Upon granting a motion for continuance, the judge should reschedule the case to a specific trial date after receiving input from all parties.
- 15.4.10. Time Standards: All general civil and magistrate appeal cases should be disposed within 24 months of filing, with 90% of all cases disposed

within 12 months of filing. *[Commentary: These are the standards adopted by the Supreme Court of North Carolina in the caseflow management plan provided I May 1996 to the General Assembly, pursuant to Chapter 333 of the 1995 Session Laws.]*

## **RULE 16: COURT SCHEDULING AND JUDGE ASSIGNMENTS**

16.1. **Delegation of General Authority:** The Chief District Court Judge shall prepare courtroom assignments for each judge and designate those matters to which each Judge should give primary emphasis. Each District Court Judge is hereby authorized by the Chief District Court Judge, subject to further orders, to hear all matters within the jurisdiction of the District Court Division, in session or out of session, including in-chambers matters, temporary restraining orders, injunctions, and any other matter which can be delegated, authorized or assigned. The court assignment is intended to designate those matters to which the assigned judge shall give primary attention. The conduct of the court, once assigned, is solely within the discretion of the presiding judge. All assignments are subject to change, and a judge assigned to any court has full authority to hear matters assigned to other courts upon conferring with the judge having primary authority over the matter, and all judges are authorized to preside over any session, and may open and operate such courtroom sessions as may be appropriate to dispose of all pending matters in the most expeditious manner. Any judge assigned to any court is free to exchange courts with any other judge; and one judge may substitute for another, either for a session or to preside temporarily until the assigned judge reassumes the bench. No actions of any judge shall be subject to collateral attack or jurisdictionally challenged for the reason that authority was not delegated or assigned by the Chief District Judge, it being the intent of this provision to fully confer such jurisdiction as may be allowed by law, unless and until such authority is divested by a specific order subsequently entered.

16.2. **Delegation of Authority to Act in Absence of Chief Judge:** In the absence of the Chief District Court Judge from the district, the duties of the Chief Judge may be performed by the next most senior judge available in the county in which the issue to be considered is pending; and if no judge is available in that county, then the next most senior judge who is available within the district.

16.3. **Request for Judge from Outside District:** All motions or requests for assigning an out-of district judge to hear any matter shall be made to the Chief District Court Judge.

16.4. **Courtroom Designations:** The Chief District Court Judge shall from time to time designate the terms of court and types of cases to be assigned to the various District Court courtrooms. The current New Hanover County courtroom utilization policies for the District Courts are as set forth in the appendix.

16.5. **Judicial Assignments:** Judges shall have primary assignments as set out in the appendix and in the monthly calendars published by the Chief District Court Judge, which shall be available in the office of the Chief District Court Judge. The monthly assignments do not limit the jurisdiction of any judge, but the judges shall give primary attention to the matters assigned

and shall defer appropriate matters to the judges primarily assigned to hear the matters in question.

## **RULE 17: DELEGATION OF AUTHORITY TO RECALL ORDERS AND PROCESS**

17.1. **Recall of Orders to Show Cause or Orders of Arrest in Child Support Cases:** Any judge may recall Orders to Show Cause or Orders for Arrest upon a showing of good cause. If the director of the Child Support Collections Agency determines that good cause exists for the recall of an Order to Show Cause or Order for Arrest, then the Clerk is authorized to make a notation of the reason for the recall and direct the recall of the Order. If the Child Support Case has been assigned to the Clerk for enforcement, and the Clerk of Superior Court verifies that the Order should be recalled, the clerk is authorized to recall the Order after making a notation of the reasons for the recall. In any case, the Clerk may confer with any District Court Judge about the matter before or after recalling the Order.

17.2. Special Circumstances justifying a limitation on the authority to recall: Any order for arrest issued by any judge may include a provision that it is not to be recalled except by that judge, and all other District Court Judges and all clerks shall honor such a request or order.

## **RULE 18: ELIEF UPON A SHOWING OF GOOD CAUSE**

The purpose of these local rules is to establish appropriate procedures which balance the need for the orderly and efficient administration of justice with the rights of the parties to access to justice. Where the enforcement of any rule would lead to an unjust result or bestow an unfair advantage, the court may exercise its sound discretion to excuse or relieve any party of the burden of these rules.

### **ORDER**

The foregoing Local Rules are hereby adopted and published for the District Courts of the Fifth Judicial District and are immediately effective throughout the district until amended or replaced by subsequently issued rules. Previously issued special rules and administrative orders for the Criminal Courts and Juvenile Courts not inconsistent with these rules remain in full force and effect.

This November 10, 2000

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John W. Smith  
Chief District Court Judge

## **DOMESTIC BAR COMMITTEE**

The members of the Domestic Bar Committee at the time these rules were adopted were: James Lea, Chairman; Carter Lambeth; Carlton Prickett, Ellen Kiernan, John Burns; Sam Ryan, Lori Gaines, and Robert H. Corbett. Anyone interested in serving on this committee should contact the Chairman or the Chief District Court Judge.

### **Contacting the Family Courts or Judicial Staff**

The names and phone numbers for the District Court staff are as follows:

			Phone	Fax
Family Court	Main Office	Room 530	342-2401	342-2419
Family Court Administrator	Susan Sutton	Room 530	342-2402	
Case Manager (Smith)	Susan Sutton	Room 350	342-2402	
Case Manager (Corpening)	Pat Laney	Room 530	342-2403	
Case Manager (Holt)	Katrina Francisco	Room 530	342-2401	
Case Manager (Pender Co.)	Diane Geary	Pender Clerk	259-1229	259-1292
Child Custody Mediator	Myra Peele	Room 500	341-4138	341-4367
District Court Civil Case Manager	Diane Geary	Room 500	772-7981	341-4367
Arbitration Coordinator	Susan Greer	Room 500	341-4380	341-4367
Judicial Assistant	Wanda Poole	Room 519	341-4416	341-4071



**LOCAL RULE**  
**DISTRICT COURT TRIAL COURT CONTINUANCE POLICY**  
**FOR THE CRIMINAL AND JUVENILE COURTS**

(See separate section for Domestic, Family Court and Civil Rules)

Whereas the Legislature of the State of North Carolina requested by statute that the Supreme Court adopt procedures for caseload management and continuance policies; and Whereas the Supreme Court in response to that request has directed the Chief District Court Judges of the state to consider a model continuance policy developed by a committee appointed to comply with the request of the General Assembly; and Whereas that model policy has been reviewed by local committees consisting of representatives of the local bar which have made recommendations appropriate to the needs of this district; and Whereas the undersigned Chief District Court Judge has considered those recommendations and has amended the model policy as appropriate to local needs;

IT IS THEREFORE ORDERED and the undersigned Chief District Court Judge hereby adopts as a local rule the following policy and procedures on continuances within the District Court Division of the General Court of Justice for the Fifth Judicial District.

*[Official Commentary and Introduction: In order to utilize the resources of North Carolina's judicial system more effectively and efficiently, it is incumbent upon all judicial districts within the state to apply uniform standards of calendar management and evaluation of continuance requests in a fair and consistent manner. To assist the key court officials in each district, these model continuance policies were created by a committee of District Court Judges, District Attorneys, Public Defenders and private attorneys. It is the recommendation of this committee that each judicial district consider enacting this model policy as a portion of the local rules of that district.] [Local Commentary: The following rules consist of the model rules promulgated by the drafting committee together with changes and local modifications recommended by committees of the local bar associations.]*

**Rule 1: Motions for Continuance: Criminal Cases**

**Rule 2: [Removed to the General Local Rules as Rule 15] Motions for Continuance: General Civil and Magistrate Appeal Cases**

**Rule 3: [Removed to the General Local Rules as Rule 15]Motions for Continuance: Domestic Cases**

**Rule 4: Motions for Continuance: Juvenile Cases Criminal Cases**

## **Rule 1: Motions for Continuance—Criminal Cases**

Criminal cases and infractions should be disposed at the earliest opportunity, including the first trial 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. It is recognized that continuances may be necessary for a fair and impartial administration of justice. Requests for continuances that are made after 90 days from the first calendaring before a judge shall only be granted for extraordinary cause.

**1.1. Appropriate Court Official:** Rulings on any request for continuance made on the day of court for the session in which the case is calendared shall be the responsibility of the presiding trial judge of that court, subject to the delegations of authority specifically authorized in these rules. The Chief District Court Judge shall establish a written policy identifying the appropriate court official to address the motions for continuance made prior to the session of court during which the case is calendared or before the case is called for trial. Pending further orders, those procedures shall be as follows:

- 1.1.1. Before any motion to continue is granted, the appropriate court official shall determine whether the matter is one in which a written record concerning counsel needs to be made. If required, the appropriate court official shall take such action as is necessary to resolve the issue of counsel and insure that the record affirmatively reflects that either counsel has entered an unlimited appearance for the District Courts, court-appointed counsel has been waived, or application for court-appointed counsel has been made.
- 1.1.2. The District Attorney may develop a listing of minor traffic offenses and infractions which he agrees may be initially continued by the Clerk of Superior Court. For motions in the list of offenses approved by the district attorney which are made at least three days before the date of the first setting, the Clerk of Superior Court (including authorized deputy or assistant clerks) is authorized to allow a motion to continue under rules or procedures approved by the District Attorney (This specifically does NOT include Impaired Driving offenses or other matters in which a written record concerning counsel is required).
- 1.1.3. For motions made within 90 days of the first setting and which are made on or before the day the case is calendared for trial, the Assistant District Attorney regularly assigned to the courtroom where the case is to be tried is the appropriate court official to whom the motion should be addressed, and the assistant district attorney is authorized to allow the motion for good cause satisfactory to the district attorney without further intervention by the trial judge.
- 1.1.4. For all motions made after 90 days from the first calendaring, the judge presiding in the courtroom to which the case has been assigned is the appropriate court official to whom the motion should be addressed. However, if any one of the following reasons are certified by the prosecutor and the defendant or the defendant's attorney, then the motion may be allowed without further intervention by the trial judge for a reasonable time to a date certain, but for a period of not more than 30 days:

- a. The defendant, defendant’s attorney, or victim is hospitalized or is shown by a doctor’s certificate to be unable to attend the proceeding;
  - b. The officer or an essential witness will be unavailable for the trial date, provided a written certification shall state in detail the precise reason for such unavailability and, if the witness is not the arresting officer or victim, the general nature of the necessary testimony.
  - c. The defendant or victim is subject to a conflicting military duty assignment which can not easily be rescheduled;
  - d. The defendant’s attorney has a conflict with the appellate courts or is actively engaged in a trial in the Superior Court on the scheduled court date;
  - e. The defendant’s attorney will be engaged in a capital trial in the superior court which has been specifically scheduled to begin or is likely to be in progress within one week of the scheduled trial date;
  - f. The case could not be reached, but only after informing the trial judge specifically that the case is being continued for that reason and allowing the trial judge the opportunity to avoid the continuance;
  - g. A prosecutor signs a certification that the prosecutor has examined the grounds for the motion, which must be specific and in writing, and that the prosecutor agrees and represents to the court that there exists “extraordinary circumstances” which justify the continuance;
  - h. The case has been designated an “Exceptional Case” as set out in these rules, in which event the matter may be continued as permitted under these rules;
  - i. The court has authorized a continuance by previous order which has been entered in the record and the resetting of the matter is consistent with that order.
- 1.1.5. For any contested motion or for any motion to which the clerk or district attorney can not consent as authorized herein above, the motion must be directed to and heard by any judge presiding in the courtroom to which the case has been assigned for trial; and if no judge is presiding at the time the motion needs to be heard, it must be directed to the Chief District Court Judge, or in his absence, to the Acting Chief District Court Judge. There shall be no ex-parte approaches to any judge for a continuance without written authorization by the opposing party.
- 1.1.6. It is recognized that under some extraordinary circumstances, criminal offenses and occasionally infractions may not fairly or reasonably be disposed of within the time standards established for routine cases. Therefore, the parties may by stipulation, with the approval of any judge presiding over the courtroom to which the case has been assigned or the Chief District Court Judge, designate a case an Exceptional Case. Once designated an Exceptional Case, the matter may be set as the order may specify. Applications for a designation of a case as an Exceptional Case should be in writing, state truthfully and candidly the reasons for the designation, and set a date certain for a final disposition of the matter. The burden of preparing the motion and a proposed order shall be upon the

moving party. The court, on its own motion and for good cause stated, may designate a case an Exceptional Case and enter such order as may be appropriate, consistent with the philosophy of these rules. *[Commentary: This section recognizes the authority and responsibility of the trial judge to address all matters which are set before him or her, and also recognizes the demands and realities of North Carolina's 39 district court judicial districts: urban or rural, multi-county or single-county, daily sessions of court or non-daily sessions of court. The policy should clearly state to whom applications should be made prior to the court session and the parameters under which continuances should and should not be granted.] [Local Commentary: The final paragraph was requested by a committee of the New Hanover County Bar Association, and forms may be drafted and made available in the District Attorney's office.]*

**1.2. Court Conflicts:** The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts. Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts among the district courts, juvenile cases shall take precedence over all other matters in all other district courts unless otherwise agreed among the presiding judges.

**1.3. Documentation of Continuance:** All orders for continuance shall be documented in or on the file, and shall include the name of the moving party, any objections to the continuance, and the basis for the continuance. If the motion is heard by a judge, the judge may direct the entry of the appropriate notations and findings by the clerk or any other officer of the court. For continuances permissible under these rules which do not require the intervention of judge, it shall be the responsibility of the prosecutor to document by appropriate notations and understandable symbols the following:

- a. The identify of the moving party;
- b. The fact that the continuance was consented to or notations as to any objections if the continuance is not consented to;
- c. If required by these rules, the reason for the continuance.

In addition to or in lieu of written motions and orders placed in the file, the following examples will suffice for a sufficient written record under these rules:

*[Official Commentary: It may be appropriate for judicial districts to include in local rules conditions in which written motions are required, e.g., requests for continuance beyond 90 days from the first calendar date before a judge.]*

**1.4. Notification of Opposing Counsel/Unrepresented Parties/Witnesses:** All applications for continuance shall be made as soon as a conflict is identified, and all impacted — opposing counsel, unrepresented parties, subpoenaed witnesses, or court staff charged with subpoenaing witnesses — shall be notified as soon as possible by the moving party.

1.5. **Objections to Motion for Continuance:** All parties should have an opportunity to be heard on a motion to continue.

1.6. **Evaluation of Motions for Continuance:** Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- the opportunity to exercise the right to effective assistance of counsel;
- the age of the case and seriousness of the charge;
- the incarceration status of the defendant;
- the effect on children and spouses if the issue is continued and not resolved;
- the impact of a continuance on the safety of the parties or any other persons;
- the status of the trial calendar for the session;
- the number, moving party, and grounds for previous continuances;
- the due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- the period of delay caused by the continuance requested;
- the presence of witnesses, including the defendant;
- the availability of witnesses for the present session, or for a future session;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the availability of counsel;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued: and
- any other factor that promotes the fair administration of justice.

1.7. **Case Rescheduling:** Upon granting a motion for continuance, the judge or appropriate court official should reschedule the case, taking into consideration the availability of counsel, defendant, and witnesses.

1.8. **Time Standards:** Unless there are extraordinary circumstances or the case has been designated an “Exceptional Case” under these rules, all criminal and motor vehicle cases should be disposed within 120 days from the first appearance in District Court.

*[Commentary: Meeting this deadline may not be possible in instances in which a defendant fails to appear and is “called and failed.” In these matters, it is the responsibility of the district attorney to determine when it is appropriate to dismiss these matters.]*

**Rule 2: Motions for Continuance: General Civil and Magistrate Appeal Cases** [these rules now appear in the District Court Local Rules for the Fifth District as Rule 15)

**Rule 3: Motions for Continuance: Domestic Cases** [these rules now appear in the District Court Local Rules for the Fifth District as Rule 15]

## **Juvenile Cases**

### **Rule 4. Motions for Continuance - Juvenile Cases**

For an abused or neglected child, the courts are his or her source of protection and the source of services. For a delinquent child or youth, the courts provide the opportunity for rehabilitation. The goal of a case management plan for juvenile court is to put the courts in the best position to ensure the safety of children, and to give them the best possible chance of living in stable, permanent families. Therefore continuances should be allowed only when it serves the child's best interest. Participants must come to court prepared to meet each statutory obligation that is required for resolution of these matters. Accordingly, juvenile cases, including motions for review in neglect and abuse matters, should be disposed at the earliest opportunity, including the first setting for hearing. Requests for continuances that are made after the first setting for hearing on the merits of the case shall only be granted for extraordinary cause.

4.1. **Appropriate Court Official:** All applications for continuance shall be made to the District Court Judge presiding over the session of court for which the case is calendared. If the trial judge is not known at the time the request is made or is unavailable, the application should be addressed to the Chief District Court Judge, or his or her designee. To facilitate the processing of motions, the court designates the following officers of the court to review and oversee the implementation of this continuance policy as it applies to juvenile proceedings; and the designee shall be responsible for insuring that the guiding principles articulated herein are applied:

- 4.1.1. In matters where a juvenile is alleged to be delinquent or undisciplined, the District Attorney or his assistant assigned to manage the docket for the scheduled court date;
- 4.1.2. In matters where a juvenile is alleged to be abused, neglected, or dependent, the Attorney for the Department of Social Services.

4.2. **Court Conflicts**

- 4.2.1. The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.

4.2.2. Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts among the district courts, juvenile cases shall take precedence over all other matters in all other district courts unless otherwise agreed among the presiding judges.

4.3. **Documentation of Continuance and Continuances by Consent**

4.3.1. All orders for continuance shall be documented in writing, and shall include the name of the moving party, any objections to the continuance, and the basis for the continuance. While no specific form for either the motion or order is required, forms may be developed for the convenience of the bar and will be available in the office of the Juvenile Court Clerk.

4.3.2. the motion to continue is made before the time standard for the disposition of the case has expired, then the motion can be handled and ruled upon without the parties appearing in court before a judge provided all parties consent. If any party wishes to be heard or object, the moving party shall provide all appropriate information in a written motion, including the identity of the objecting party and the reason stated for the objection, and shall arrange for a hearing before the appropriate judge so that all parties who wish to be heard can be heard. If there is any objection to the continuance, the motion must set forth the continuance history of the case, the date originally scheduled, and a proposed new hearing date. Any proposed date to which the case is to be continued must be discussed with all parties before the hearing on the motion.

4.3.3. Any motion which will result in a failure to dispose of the matter within the time standards stated below must be heard and ruled upon by a judge. [Commentary: It may be appropriate for judicial districts to include in local rules conditions in which written motions are required.]

4.4. **Notification of Opposing Counsel/Unrepresented Parties/Witnesses:** All applications for continuance shall be made as soon as a conflict is identified, and all impacted—opposing counsel, unrepresented parties, subpoenaed witnesses, or court staff charged with subpoenaing witnesses—shall be notified as soon as possible by the moving party.

4.5. **Objections to Motion for Continuance:** All parties should have an opportunity to be heard on a motion to continue.

4.6. **Evaluation of Motions for Continuance:** Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:

- the best interest of the child;
- the opportunity to exercise the right to effective assistance of counsel;
- the age of the case and seriousness of the charge;
- the incarceration status of the juvenile;
- the effect on children and spouses if the issue is continued and not resolved;

- the impact of a continuance on the safety of the parties or any other persons;
- the status of the trial calendar for the session;
- the number, moving party, and grounds for previous continuances;
- the due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- the period of delay caused by the continuance requested;
- the presence of witnesses, including the juvenile;
- the availability of witnesses for the present session, or for a future session;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the availability of counsel;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued: and
- any other factor that promotes the fair administration of justice.

4.7. **Case Rescheduling:** Upon granting a motion for continuance, the judge shall reschedule the case for a specified date, taking into consideration the availability of counsel, parties, and witnesses. In cases of abuse, neglect or dependency, the statutory review date should be set at the time of adjudication.

4.7A First Settings for Juvenile Delinquency Cases in New Hanover County. The following local rule shall apply to New Hanover County only:

4.7.1. To expedite the efficient organization of the Delinquency trial calendar, to assure that there is meaningful contact between the juveniles' court-appointed attorneys and the juveniles, and to avoid requiring the attendance of witnesses unnecessarily, there shall be a First Appearance before a District Court Judge scheduled for each juvenile delinquency case. At the First Appearance, all officers of the court shall assure that arrangements are made for a meaningful conference between the juvenile and the juvenile's attorney; and between the attorney and the district attorney. This first appearance is compulsory, and may not be waived unless the attorney for the juvenile certifies in writing that the meaningful conferences with the juvenile and district attorney have occurred and the parties are ready for trial. The juvenile may, but is not required to, enter a plea. If the juvenile does not enter an admission on the record, a trial date will be scheduled. If, due to conflicts or other compelling circumstances the First Appearance can not be held on the scheduled date, the matter will be scheduled for trial on the assumption that the merits will be contested unless counsel contacts the court and parties with substantial reasons why the matter should not be scheduled for trial. The court shall issue any orders necessary or appropriate to assure that the matter will not be delayed due to inadequate or insufficient contact between counsel and the juvenile. This local procedure is implemented for the benefit of the juvenile and the attorney for the juvenile, and is not to be construed to be a critical stage of the proceeding. The procedure applies to both misdemeanor and felony



charges. No written record is required to be maintained of the First Appearance and witnesses shall not be required to attend absent special circumstances.

4.7.2. In all Felony cases in which the juvenile is placed in secure custody, the First Appearance shall occur at the next session of District Court as required by statute. First Appearances in Felony cases may not be waived.

**4.8. Time Standards**

4.8.1. All undisciplined cases should be disposed within 30 days of service of the petition. All delinquency cases involving misdemeanor offenses should be disposed within 90 days of service of the petition and those involving felony offenses within 120 days of service of the petition.

4.8.2 All adjudication of neglect and abuse cases should be heard within 60 days of service of the petition. All terminations of parental rights (TPR's) should be disposed within 120 days after service of the petition..

4.8.3. These time standards are subject to all other statutory time requirements for the scheduling of hearings for review of secure and non-secure custody orders.

*[Commentary: These are the standards recommended by juvenile experts who served on Juvenile Task Force on Case Flow Management, part of the Court Improvement Project.]*

Originally adopted in 1998. The Civil and Domestic Court Rules were removed and republished in the General Local Rules. These Rules Governing the Criminal Courts and the Juvenile Courts remain in effect. This 10th day of November, 2000.

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John W. Smith  
Chief District Court Judge

## APPENDIX

### Forms

All forms may be obtained from the office of the Trial Court Administrator or Family Court Administrator. The rules and forms will also be available on disk in Word format.

#### General

Contacting The Court: Phone Numbers (see previous page)  
Summary of Family Court, Specialized Courts, and Civil Assignments  
Courtroom Usage Diagram  
Summary of Family Court Calendar Organization  
Domestic Cover Sheet, AOC form 750  
Civil Action Cover Sheet, AOC form 751  
Family Court Action Filing Sheet: Judicial Assignment and Scheduling Sheet (N.H.)  
Family Court Action Filing Sheet: Judicial Assignment and Scheduling Sheet (Pender)  
Calendar Request: New Hanover  
Calendar Request: Pender  
Memorandum of Consent Judgment

#### Custody

Initial Notice Cover Sheet about Parent Education and Mediation  
Letter to Parent about Parent Education Course and Mediation  
Request for Exemption from Mediation  
Notice of Assignment to Mediation  
Order For Parties to Engage in Court-Ordered Child Custody Mediation  
Notice to Parties Following Mediation  
Motion to Adopt Parenting Agreement  
Order Adopting Parenting Agreement

#### Child Support (PSS)

Child Support Affidavit  
Employer's Certification of Wages  
Affidavit of Expenses

Equitable Distribution (Revisions being considered by Domestic Bar Committee)  
Selection or Appointment of E.D. Mediator: AOC form CV-825  
Order appointing mediator from list tendered by parties  
Report of Mediator: AOC form CV-827  
Worksheet for Scheduling and Discovery Order  
Pretrial Order Form for E.D.  
Property Listing Schedules A through Z