

**27-A JUDICIAL DISTRICT
DISTRICT COURT'S DOMESTIC LOCAL RULES**

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Domestic Local Rule

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Rules Governing the Calendaring of Domestic Cases in the 27-A Judicial District

Rule 1. PURPOSE

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

Rule 2. READY CASES

2.1 The Trial Court Administrator shall establish and maintain a case tracking system pursuant to Rule 2(c), General Rules of Practice for Superior and District Courts and in accordance with these Local Rules. This system shall be used to monitor the number, age, type, and procedural status of all pending cases and provide for the calendaring of the same.

2.2 In applying these rules, it shall be the goal of the court to dispose of all contested domestic cases within 6 months of the date of filing, within 4 months for all uncontested domestic cases, and within 12 months of filing for all equitable distribution cases requiring a trial. The only cases excluded from the foregoing time standards shall be those in which the court determines exceptional circumstances exist and for which a continuing review shall occur.

Rule 3. PUBLICATION OF CALENDARS

The domestic calendars shall be prepared under the supervision of the Chief District Court Judge and in accord with the provisions of those Rules.

3.1 Courtroom “3C.” There will be a daily calendar – Monday through Thursday – in Courtroom “3C.” Any party desiring to have the following types of domestic cases placed on a calendar shall place said case in the Courtroom “3C” calendar book located in the Clerk’s Office on the desired or required date and shall provide the information required by the calendar sheet.

No party shall set the same issue for multiple settings in Courtroom “3C.” No case shall be reset for additional hearings unless and until it has appeared on a calendar and has not been reached or resolved.

The Clerk shall prepare a daily calendar based upon the cases placed upon the “3C” calendar book.

The following types of cases shall be placed on the Courtroom “3C” calendar only on the days as specified below.

Mondays and Wednesdays only:

- Uncontested Divorces
- Domestic Violence 10 Day Hearings

NOTE: During civil weeks Domestic Violence 10 Day Hearings will be scheduled on Wednesdays only.

Tuesdays and Thursday only:

- Settlement/Pre-trial conferences

*Serious and productive conferences are contemplated at this point and in preparation for a case to be placed on trial calendar if not settled.

*Pre-trial Orders will set the trial calendar date.

NOTE: Tuesday calendar will begin at 11:00 A.M. after Judge returns from Hospital Hearings.

Monday through Thursday (any day):

- Mediation Referrals
- Administrative Motions (e.g. Motions to Withdraw, Motions for Change of Venue)
- Expedited Child Support
- Contested matters with an estimated hearing time of two hours or less (e.g. modifications of child - support, post separation support).

Monday through Friday (any day):

- Domestic Violence Ex Parte hearings as Complaint and Motion filed.

*Any available Judge may hear Domestic Violence Ex Parte Orders if Courtroom “3C” is otherwise occupied with scheduled matters.

The Judge holding final pre-trial conference shall as part of the Pre-trial Order set the trial date and calendar the case for trial. If parties cannot agree with Judge on a calendar date, the Judge shall set the trial date.

A Pre-trial Order may, if requested, provide an alternate date in the event the case is assigned to the final trial calendar and is not reached for time. This alternate date would not otherwise apply.

These rules in no way affect the procedures for referrals to mediation.

Initially the weekly calendar in Courtroom “3D” shall be limited to 10 – 15 cases in the discretion of the Judge and depending upon the estimated length of hearing or of trial.

- The number of cases set on the trial calendar may be adjusted as the Court has experience with this procedure to maximize the number of cases heard and to minimize any inconvenience caused by scheduled cases not being reached for time.
- If a party has a case that he or she wishes to have heard but the maximum number of cases for the week has already been scheduled and if all parties agree to a stand-by status, the Judge holding pre-trial hearing may put the case on the calendar for hearing in the event the calendar breaks down.
- The party setting a date for hearing or the settlement/pre-trial conference date shall give notice of hearing date and time to the opposing party or parties in accordance with the Rules of Civil Procedure.

3.2 Expedited Support. A party filing an action which includes an issue of Child Support shall schedule the initial hearing for support no later than 16 days after service upon the party from whom support is sought.

If no agreement is reached or no Order setting child support is entered at the initial hearing, the parties shall re-calendar the case within 14 days of the initial hearing or, upon failure of the parties to agree upon a date, the Judge or the Trial Court Administrator shall set the date and re-calendar for second hearing.

If there is no support order in the file or if there is no agreement on the amount to be paid as Expedited Child Support at this second hearing, the Judge or the Trial Court Administrator shall set the date and re-calendar for a third hearing within 28 days after the second hearing so that the 60-day provision of G.S. 50-32 may be complied with.

At the third hearing if there is no Order in the file either setting child support or extending the time period for a maximum of 30 days and no agreement is reached, the Judge shall enter an Expedited Support Order or dismiss the action as to child support. A child support case shall not be continued beyond 60 days from the date of service unless at least an expedited child support order has been entered or an order has been entered extending the time period for a maximum of 30 days or unless paternity is at issue.

3.3 Courtroom “3D.” All contested matters requiring an estimated hearing time of more than two hours shall be calendared for hearing in Courtroom “3D.” No case shall be placed on the Courtroom “3D” calendar except by an Order signed by a District Court Judge.

Calendar Call for Courtroom “3D.” Once calendared for a specific week, a case will be assumed ready for trial. Attorneys and “pro se” parties will be aware well in advance of the week for which the case is calendared and will be expected to make arrangements to be available during the week a case is calendared excepting only emergency or matters which cannot reasonably be foreseen.

A calendar call shall be held in Courtroom "3D" on each Wednesday at 9:00 A.M. for the upcoming week, except for the Wednesday preceding a Civil week, when, as presently, calendar call for civil calendar will be held at 1:30 P.M. on the Wednesday preceding the Civil Week. The purpose is to establish a final trial calendar and a trial order.

For each case calendared, all attorneys (or the attorney's designee with knowledge of the case and authority to represent the attorney) and any party appearing "pro se" shall be present at the calendar call unless that attorney or party "pro se" has filed prior to 12:00 Noon on the preceding Friday a Certificate of Readiness for Trial. A Certificate of Readiness so filed shall be equivalent to the attorney's appearance at calendar call and the attorney's personal statement of readiness made at calendar call. A Certificate of Readiness so filed shall indicate a readiness for any time during the week that the case is scheduled on the Final Trial Calendar.

An attorney or party filing a Certificate of readiness shall, upon filing, provide a copy to all opposing attorneys and to all parties "pro se."

Telephone calls to the Clerk, the Judge's secretary, or the Judge shall not be acceptable in lieu of attendance at calendar call.

The appearance of an attorney or party for one side only advising the Court of readiness for trial shall be sufficient to place a case on the Trial Calendar if the opposing party does not appear at calendar call.

If no one appears at calendar call for either side, the case shall be moved to the bottom of the published calendar.

3.4 Adding Cases to a Final Calendar. A Judge holding a domestic court session may in her or his discretion add cases to his or her final published calendar but not another Judge's calendar.

Immediately upon the conclusion of calendar call, the courtroom clerk will fax a copy of the Final Trial Calendar to the attorneys involved in the calendared cases. "Pro se" parties will be faxed a copy of the Final Trial Calendar provided said party has furnished the Court a fax number; otherwise, a "pro se" party shall be responsible for checking with the Clerk of Court's Office to determine their place on the Final Trial Calendar.

For all cases on a particular calendar in Courtroom "3D" which are not tried or otherwise disposed of, the Judge shall be presented with a new Pre-trial Order by the attorneys (and/or parties "pro se") before the end of the session which sets a new trial date and makes findings as to why the case was not heard or otherwise disposed of. Upon moving into the new Courthouse an amended order will be entered designating the successor courtroom to cases presently scheduled into Courtrooms "3D" and "3C."

Rule 4. MANDATORY SETTLEMENT/PRE-TRIAL CONFERENCE

4.1 All cases shall be scheduled for a mandatory settlement/pre-trial conference in Courtroom “3C.” All clients must be present in the courtroom at the time of the scheduled settlement/pre-trial conference. At any time during the settlement/pre-trial conference, the judge may proceed to trial if he or she determines that a hearing of two hours or less is required.

4.2 All documentation (e.g. equitable distribution affidavits, financial affidavits) must be filed prior to or at the time of the settlement/pre-trial conference. If required documentation is not timely filed, the judge may postpone the settlement/pre-trial conference to a date certain at which time all required documentation must be filed.

4.3 If the parties are unable to reach a settlement of any pending claims during the settlement/pre-trial conference, the matter shall be calendared for trial in Courtroom H. A pre-trial order shall be issued setting forth the issues to be tried, the estimated length of trial and the trial date. Attorneys should be familiar at all times with their time schedules, vacations, and other possible conflicts that can be anticipated in advance.

Rule 5. TRIALS

5.1 Trials will begin in Courtroom H on Monday at 9:30 a.m.

5.2 Upon request, the judge may allow the lawyers in the first contested case only, a maximum of thirty (30) minutes to discuss settlement and/or stipulations. If more than thirty (30) minutes is required, the next case for trial shall be called and the first case shall be moved to the number two position in the trial order.

Rule 6. EQUITABLE DISTRIBUTION AND FINANCIAL AFFIDAVITS

6.1 Financial Affidavits shall be required unless otherwise waived by the Court in all of the following cases:

- a. Equitable Distribution
- b. Post Separation Support
- c. Alimony
- d. Setting permanent and modification of Child Support if either party requests a variance from the child support guidelines

6.2 Failure to timely file and serve financial affidavits in conformance with Rule 4.2 may result in the responsible party’s testimony (either written or oral) not being allowed into evidence by the Court and may result in the imposition of sanctions as by law provided.

6.3 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.

6.4 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.

6.5 The inventory affidavits so prepared and served shall be subject to amendment and shall not be binding at trial as to completeness or value. The Court may extend the time limits herein otherwise established for good cause shown.

6.6 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 in the affidavit is subject to G.S. 1A-1, Rules 26, 33, and 37.

6.7 The final pre-trial conference shall be conducted pursuant to the Rules of Civil Procedure and the General Rules of Practice in the applicable district or superior court, adopted pursuant to G.S. 7A-34. The Court shall rule upon any matters reasonably necessary to effect a fair and prompt disposition of the case in the interests of justice.

6.8 The purpose of the mandatory final pre-trial conference in equitable distribution cases is four fold:

1. Narrow the issues for trial;
2. Assist in settling the case and allow better use of attorney and trial time;
3. Establish a firm trial date;
4. All other matters that will help expedite the disposition of the case.

6.9 The Equitable Distribution Affidavit to be filed must be identical in form to the affidavit attached as Form 27A-6. For good cause shown, affidavits may be amended, prior to and during trial, in the Trial Judge's discretion.

6.10 Failure to timely serve the Equitable Distribution Affidavit as herein provided may result in the responsible party's proffered testimony (either written or oral) not being allowed into evidence by the Court and may result in the imposition of sanctions as provided for.

[Commentary: The above changes with respect to domestic cases that have been in effect since November 15, 1996 have been arrived at after much discussion and debate. The changes are an attempt to deal with the scheduling headaches that have traditionally plagued domestic court.]

The intent of these changes is to permit a more accurate assessment of how long complicated cases really take to try and to more effectively allocate court time for those matters. They contemplate that efforts to settle a case will be exhausted at the pre-trial level

and before calendaring for trial in Courtroom 3D. These changes will not be effective if the mandatory settlement/pre-trial conference is not taken seriously and so utilized.]

Rule 7. MOTIONS FOR CONTINUANCE

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 case 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.]

7.1 Appropriate Court Official. All applications for continuance shall be made only to the District Court Judge presiding over the session of court for which the case is calendared, or his or her designee. 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, or his or her designee.

7.2 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 court conflict(s) as soon 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 should be given priority over other District Court matters where practicable.

[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.]

7.3 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.

[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.]

7.4 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, 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.]

7.5 Objections to Motion for Continuance. 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 (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.

When a motion to continue is made within seven (7) working days of the trial term (other than an oral motion as provided in Rule 3.3, above), 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.]

7.6 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, the moving party, and the 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 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;
- 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 and fair evaluation of the motion.

7.7 Case Rescheduling. Prior to granting a motion for continuance, the appropriate judicial official should reschedule the trial or pre-trial of the contested issues to a specific date after receiving scheduling input from all parties.

When a domestic case must be continued, it shall be continued to a specific date. This applies both to cases scheduled in Courtroom “3C” and Courtroom “3D.”

1. In Courtroom “3D,” in accord with existing policy, once a case is calendared for trial during a specific week, it will be presumed ready for trial and if not tried or otherwise disposed of, the Judge shall be presented with a new pre-trial order before the end of the session, said order a) set a new trial date and b) include findings as to why the case was not heard or disposed of.
 2. In Courtroom “3C,”
 - a. when a case calendared for a session must be continued, it shall be continued to a specific date as expeditiously as possible after receiving scheduling input from all counsel and/or unrepresented parties. The reasons for continuance shall be stated.
 - b. A case once calendared for a session shall not be continued outside of court simply by the attorneys advising the courtroom clerk that the case is to be continued, but may by consent be continued only to a date certain, which date shall be within thirty (30) days of the scheduled date. The reason for continuance shall be stated.
- (A) Existing rules contemplate serious and productive settlement/pre-trial conferences in preparation for a case not settled to be placed on a trial calendar.
- a. The settlement/pre-trial conference is mandatory and barring exceptional circumstances all clients must be present; all documentation (e.g. equitable distribution affidavits, etc) must be filed prior to or at the same time of conference.
 - b. If settlement is not reached and the presiding Judge is satisfied that the attorneys and parties have held serious pre-trial discussions and have exhausted efforts to reach an out-of-court settlement of all pending issues, a

pre-trial order shall issue calendaring case for trial in Courtroom "3D" or the remaining unresolved issues.

- c. If settlement is not resolved and the presiding Judge is not satisfied that the attorneys and parties have exhausted efforts to reach an out-of-court settlement of all pending issues, a pre-trial order shall issue setting a date for further pre-trial conferences and specify what needs to be done by or on behalf of the parties prior to the next scheduled date.

7.8 Time Standards. All domestic cases should be disposed of within 18 months of filing with 90% disposed within 6 months. 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.

[Commentary: These are the time standards adopted by the Supreme Court of North Carolina in the Caseflow Management Plan approved 1 May 1996 to the General Assembly, pursuant to Chapter 333 of the 1995 Session Laws.]

Rule 8. PEREMPTORY CASE TRIAL SETTINGS

Requests for peremptory trial settings will only be granted for good and compelling reasons. Requests should be made in writing and addressed to the Chief District Court Judge or the Trial Court Administrator only. The Chief District Court Judge may set a case peremptorily on his own motion with the scheduling procedure herein adopted, such action would be taken only in extraordinary situations.

Rule 9. SETTLEMENT

9.1 Notices of Settlement. When a case on a published calendar (tentative or final) is settled, all attorneys of record must notify the Trial Court Administrator within twenty-four (24) hours of the settlement and advise who will prepare and present judgment, and when.

9.2 Memorandum of Order. Counsel for all parties shall promptly notify the Trial Court Administrator's office of a settlement of any calendared case and shall file either a proposed judgment or Memorandum of Order prior to the date the case is calendared for trial. The terms of the settlement shall be set forth in the Memorandum of Order.

9.3 Support Provisions. The Memorandum of Order shall clearly set forth the date on which child support and alimony payments are to begin, whether the payments are to be paid into the office of the Clerk of Court, when further payment or payments is or are due, and distinguish between regular or arrearage payment or payments where applicable.

Rule 10. DISCOVERY

Counsel are required to begin promptly such discovery proceedings as should be utilized in each case, and are authorized to begin even before the pleadings are completed. Counsel are not permitted to wait until the pre-trial conference is imminent to initiate discovery. In the discretion of the Chief District Court Judge, specific limits on discovery may be established.

Rule 11. REQUESTS FOR WITHDRAWAL OF COUNSEL

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

Rule 12. CALENDARING OF MOTIONS

Motions may be calendared and heard as provided in Rule 6.

Rule 13. CASE ACTION COVER SHEET

All pleadings filed in any domestic action with the Clerk of Superior Court shall be accomplished by a completed AOC approved Case Action Cover Sheet. The Clerk of Superior Court shall forward a copy of the completed Case Action Cover Sheet to the Trial Court Administrator.

Rule 14. DELINQUENT ORDERS OR JUDGMENTS

14.1 Delinquency Defined. Cases or motions which are announced as settled shall be considered delinquent if the Order or Judgment of disposition is not filed within twenty (20) working days, unless otherwise directed by the presiding judge.

14.2 Dismissal of Case for Delinquent Judgment. Cases delinquent for Final Orders or Judgment of disposition may be dismissed by the Chief District Court Judge, or designee(s), upon Motion of the party against whom the judgment or order was to be taken, or by the Clerk of Court or Trial Court Administrator bringing the case to the Judge's attention.

Rule 15. DEPARTMENT OF SOCIAL SERVICES CHILD SUPPORT

15.1 All cases where the absent parent is represented by an attorney will be pre-tried according to notice of hearing, pre-trial order, or by agreement of the attorneys.

15.2 The absent parent's attorney and the DSS attorney can agree to a later court date if the issues in controversy are too great for the day first scheduled.

15.3 The DSS attorney will present all relevant court orders to the appropriate judge and will file them.

15.4 Increases, decreases and initial settings of support for pro se absent parents will also be pre-tried according to notice of hearing, pre-trial order, or by agreement of the Department of social services attorney and the self-represented parent.

15.5 Failure to comply with the pre-trial requirement will subject the parties and attorneys to appropriate sanctions by the presiding judge. It is the responsibility of attorneys with conflicts on the pre-trial date to contact the DSS attorney to either pre-try the case at another time or to continue the case.

[Commentary: The foregoing procedures related to DSS court cases have been in practice for some time. Hopefully they have enabled attorneys to talk to the DSS attorney before their case is being tried and should enable both attorneys representing the putative payor and the DSS attorney to more effectively dispose of these matters. Since Courtroom "C" is extremely busy on DSS mornings with support matters it has become impossible for attorneys to just come in to court and negotiate with the DSS attorney.]

Rule 16. TELEPHONE CONFERENCES

The court may, in its discretion, order or allow oral argument on any motion by speaker telephone conference call, or regular telephone conference call, provided that all conversations of all parties are audible to each participant and the judge. Counsel shall schedule such calls at a time convenient to all parties and the judge. The judge may direct which party shall pay the cost of the call.

Rule 17. ADMINISTRATIVE DISPOSITIONS

17.1 Inactive Cases. Domestic cases inactive for six (6) months shall be eligible for removal by order. This removal shall be without prejudice.

17.2 Dismissal of Inactive Cases. Cases will be removed by orders prepared by the Clerks or the Trial Court Administrator upon review of the files and after consultation with counsel, if

necessary. The order will be signed by the Chief District Court Judge, or designee(s) and filed with the Clerk, with copies sent to counsel by the Clerk.

Rule 18. EX PARTE MATTERS

18.1 Ex Parte Orders when sought, are first to be taken to the Judge assigned to Courtroom "3C". If that judge is unavailable or in the middle of a trial, the attorney is then to go to the Judge assigned to Courtroom "3D". If that Judge is also unavailable then the attorney is free to seek any available Judge for the signing of the Order. Any party aggrieved by an Ex Parte Order may add the action to any day of a Courtroom "3C" Domestic Calendar falling within 10 days of the Ex Parte Order.

18.2 An application for a temporary restraining order, preliminary injunction, emergency child custody order, or protective order pursuant to the Domestic Violence Act must be made in a written, verified pleading which sets forth the facts giving rise to the need for extraordinary relief. The verified pleading may be accompanied by affidavits of third parties. Should Rule 65 relief be asked for, it is expected that the requirements of Rule 65 will be complied with.

18.3 An attorney making an application for a temporary restraining order, preliminary injunction, or emergency child custody order may shall request a hearing from the Judge assigned to Courtroom "3C". If for any reason said Judge is not available, the attorney may seek assistance from any Judge available, and after getting a hearing time leave with the Judge the case file, where there is a case history, the verified pleading upon which the application is based, and any supporting affidavits. An attorney shall not tell the Judge facts about the case or parties which are not contained in the file, pleading, or supporting affidavits. In addition, all requests for ex parte orders shall comply with the requirements of G.S. 50B.

No order shall be entered unless a ten day court date is set therein. Hearings on these orders shall be calendared as a separate category. Complaints in cases seeking an ex parte custody order shall set forth the specific facts and circumstances showing what the pattern of custody and visitation has in the past been.

18.4 In addition to the requirements of 18.2 and 18.3 the attorney seeking relief shall have available to the Court live testimony at the time a request for ex parte relief it sought. A request for ex parte relief is to be heard at the discretion of the Judge.

18.5 Applications for domestic violence protective orders pursuant to the Domestic Violence Act shall be made as provided in Rule 3.

18.6 Ex Parte Communications With Judges. Unless otherwise specifically requested by a judge, ex parte communications with a Judge shall be limited to the following circumstances:

- a. scheduling of a hearing, trial or conference with a Judge;
- b. tendering to a Judge a proposed Order for her or his consideration;

- c. objecting to the form of and or requesting specific changes to a proposed Order previously tendered to a Judge;
- d. inquiring about the status of an Order; and
- e. request for permission to submit additional legal authority or make additional legal arguments.

None of the communications identified above shall include any arguments regarding the merits of the case. Counsel is specifically prohibited from attempting to argue, re-argue, insert correspondence into the court file, or submit additional legal authority regarding the merits of a case unless specifically requested or permitted by the Judge.

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

All written communications with a judge shall be contemporaneously served on the opposite counsel or opposing party (if she or he is unrepresented) in the same manner that it is sent to the Judge. Provided, communications tendered to a Judge by hand delivery may be served simultaneously on opposing counsel via facsimile.

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

Rule 19. CONTEMPT / ENFORCEMENT

19.1 In an action for contempt for failure to pay child support or spousal maintenance, the respondent shall bring to the hearing:

- a. His or her federal and state income tax return for the past year.
- b. Wage statements from all employment for at least the past six (6) months.
- c. Any other document or information which the Court has ordered the party to provide or which a court order directs the party to bring to Court.
- d. Any other documents which may be relevant to prove the issues before the Court.

19.2 Where a party seeks to enforce an outstanding support order, the motion should specifically request each type of relief the party seeks; for example, to reduce an arrearage to judgment or for an assignment of wages.

19.3 Where a party seeks to invoke the Court's contempt power, compliance with Chapter 5A of the General Statutes is mandatory.

Rule 20. REFEREES/CUSTODY AND VISITATION MEDIATION/PSYCHOLOGICAL EVALUATIONS

20.1 In any Equitable Distribution claim, the Court may, in its discretion and pursuant to Rule 53 and 16(5) of the Rules of Civil Procedure order a reference before proceeding further or entering final judgment. The Court may provide for an apportionment of the costs of said reference and its scope as it deems to be in furtherance of the efficient administration of justice.

20.2 Attorneys or persons desiring to be referees are to complete and submit an Equitable Distribution Referee Application, Form 27A-7, to the Trial Court Administrator who will maintain a list of all referees and applicants.

20.3 The Trial Court Administrator, upon notification of request for reference by the Court or counsel of record, will prepare a list of five (5) referees to be sent to all counsel of record. For each referee included on the list is to be a brief biographical sketch which will include the referee's name, occupation, education, community activities and other relevant information. The information of referees is not to include their address or identify their company or business name.

20.4 Counsel of Record will rank the five potential referees in order of preference from one (highest preference) to five (lowest preference) and return to the Trial Court Administrator. The Trial Court Administrator will select the referee using the least common denominator method. The ranking of each of the five potential referees from all counsel will be added together, from which the potential referee having the lowest sum will be selected as the referee for the action.

20.5 The Trial Court Administrator will notify the referees selected in writing, in addition to the name of the referee selected, to all counsel.

20.6 The referee will consult with counsel to determine a date and time (preferably after 5:00 p.m.). The meeting(s) is to be held within 20 days of notice of appointment. Meetings may be held in the business office of the referee.

20.7 In matters relating to custody/visitation mediation the parties should have the decision making authority in all matters. This decision making process should be carried out after consultation with all attorneys, the mediator and with any other persons the parties choose to consult. In order to best serve their respective clients, attorneys should advise their clients as to areas which they feel need to be addressed. The client is then responsible for either relaying these concerns to the mediator or choosing to disregard those areas of concern. Attorneys shall have no direct contact with the mediators, except to report that the agreement is acceptable or unacceptable, or that the parties are to return to mediation.

20.8 When the Court has requested psychological evaluations for use in custody actions, the attorneys for the respective parties shall refrain from any ex parte contact with the evaluating psychologist or other professional about the case, except for the purpose of effectuating or

facilitating appointments between the parties, third parties, and the psychologist. To the extent necessary, the Court shall state, by order or otherwise, the issues or concerns to be addressed by the psychologist.

Rule 21. AWARD OF FEES

In all cases in which an attorney seeks an award of fees, the attorney should file an appropriate affidavit or present live testimony at the time the Court considers the motion for attorney fees.

Rule 22. CHILD SUPPORT PAYMENTS

22.1 Attorneys preparing an order for the payment of child support must include a provision requiring payment through the office of the Clerk of Superior Court unless the recipient chooses not to participate in the Court's automatic child support enforcement program and the Court approves. All orders involving payments through the Clerk's Office must contain the recipient's name, address, and case number, and social security number, unless this information had previously been provided to the Clerk's Office.

22.2 In accord with the provisions of G.S. 110.136.3 all child support orders, civil or criminal, shall include a provision ordering income withholding to take effect immediately unless one of the exceptions provided for applies.

Rule 23. COURT APPOINTED EXPERTS

23.1 The Court may in its discretion or on motion of either party appoint any expert witnesses pursuant to Rule 706 of the North Carolina Rules of Evidence.

23.2 The Court shall award reasonable compensation to expert witnesses. The compensation shall be paid by the parties in equal proportion unless otherwise ordered by the Court, and is to come out of the settlement of the estate, if an estate is in issue.

Rule 24. RIGHT TO SUSPEND

Any Trial Judge may suspend any of these Local Rules for good cause shown.

Rule 25. SANCTIONS

Failure to comply with any section of these rules may subject an action to dismissal or other sanctions allowed by law and deemed appropriate at the discretion of the trial Judge, including the allowance of a reasonable attorney fee.

Without limiting the foregoing, the Court may sanction the following conduct:

- Counsel's attempts to inject scandalous, defamatory, irrelevant, or inadmissible material or substantive evidence, including correspondence, into the court file; or
- Counsel's improper arguments, including personal comments directed at opposing attorneys.

Rule 26. MANDATORY PARTICIPATION AMONG FOUR ALTERNATIVE DISPUTE RESOLUTION PROGRAMS

26.1 All parties to District Court domestic actions claiming equitable distribution, alimony, permanent child support and post separation support filed on or after January 1, 1999 must mutually select from the four mandatory alternative dispute resolution programs, listed in the following, within twenty-one (21) days from written notification to select among domestic alternative dispute resolution programs.

The four alternative dispute resolution programs are:

1. Domestic Arbitration
2. Mediated Settlement Conferences
3. Neutral Evaluation
4. Private Mediation or Arbitration
 - (a) Domestic Violence (50-B Protection Order) Cases Exempt. Any case in which domestic violence has been alleged and in which a 50-B protection order has been issued is exempted from participation in the four alternative dispute resolution programs.
 1. Parties claiming this exemption are to notify the Trial Court Administrator's Office of the 50-B protection order case number and the case number(s) of other cases involving the same family members.
 2. By written consent of all parties and their attorneys, a case in which a domestic violence 50-B protection order has been issued may waive the exemption from participation in the domestic alternative dispute resolution programs.
 - (b) The Trial Court Administrator is to provide written notice to all attorneys and unrepresented parties after 90 days from initial filing of the complaint, informing them of the four mandatory alternative dispute resolution programs from which they are to select and the date by which their mutual selection must be received in the Trial Court Administrator's office by.

26.2 Failure of Parties to Designate a Selection of Alternative Dispute Resolution Programs. Should the parties fail to select an alternative option within twenty-one (21) days from the sending the "Notice to Select Among Domestic Alternative Dispute Resolution Programs," the parties are considered to affirmatively agree, and the court to have approved, the case being placed in the Domestic Arbitration Program.

Rule 27. CALENDARING FOR TRIAL ACTIONS EXEMPTED FROM PARTICIPATION AMONG FOUR ALTERNATIVE DOMESTIC DISPUTE RESOLUTION PROGRAMS

Cases exempted or removed from participation in the four (4) alternative dispute resolution programs are to be scheduled for trial in accordance with Rule 3.

Rule 28. DOMESTIC ARBITRATION PROGRAM

28.1 Selection of Arbitrator.

- (a) **Selection by Agreement.** The Trial Court Administrator is to provide written notice to all attorneys and unrepresented parties that they have within twenty (20) days of the Order placing the case in the Arbitration Program to, by agreement, select a certified domestic arbitrator from the list of certified arbitrators maintained by the Trial Court Administrator's Office. Within twenty (20) days of the Order placing the case in the Arbitration Program, the Trial Court Administrator's Office is to be notified of the mutual selection of the certified arbitrator, or the failure of the parties to agree on an arbitrator.
- (b) **Appointment of Arbitrator by the Court.** The Trial Court Administrator will appoint the next arbitrator on the certified arbitrator list maintained by the Trial Court Administrator's office. The Chief District Court Judge or the Trial Court Administrator retains the discretion to depart from the procedure for such circumstances as the appointment of an arbitrator to a case, or to withhold an arbitrator from appointment.
- (c) **Court Appointment of Judge or Justice.** The Chief District Court Judge or Trial Court Administrator may, in their discretion, appoint a retired or emergency judge or justice of the district, district, superior or appellate court as arbitrator, whether or not such judge has been certified as an arbitrator.
- (d) **Disqualification of Arbitrator by Judge.** If a District Court Judge orders an arbitrator disqualified, the moving party must provide a copy of the order to the Trial Court Administrator within two (2) days of the date of the order.
- (e) **Self-disqualification of Arbitrator.** An arbitrator may disqualify themselves upon written notice to the Chief District Court Judge, Trial Court Administrator and the parties.

28.2 Length of Hearings. Arbitration Hearings are limited to one hour unless the parties mutually agree that more time is necessary. A written request for enlargement of the time for a hearing must be filed with the Trial Court Administrator's office at or before the time of mutual selection of an arbitrator within twenty (20) days of notice placing case in Domestic Arbitration Program. The request must state the expected length of the hearing and that the parties agree to pay the arbitrator's hourly fee exceeding the first hour. The arbitrator's fee shall be paid in equal portions by the parties. Payment shall be due upon completion of the hearing.

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

28.4 Failure of an Arbitrator to Comply with Supreme Court "Rules Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases" and Local Rules. The Chief District Court Judge and the Trial Court Administrator reserve the right to withhold future appointments of any arbitrator who does not fully comply with the requirements of the "Rules for Court-Ordered Arbitration in North Carolina."

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

28.6 Scheduling of Trial for Arbitration Cases Appealed. Cases in which the arbitration award was appealed are to be scheduled for trial in accordance with Rule 3.

28.7 Communication with Court. All communications concerning arbitration conferences in this judicial district should be addressed to:

Arbitration Coordinator
325 N. Marietta Street
Gastonia, NC 28052
Telephone Number (704) 852-3170
Fax Number (704) 852-3125

Rule 29. MEDIATED SETTLEMENT CONFERENCES

29.1 Selection of Mediator.

- (a) **Selection by Agreement.** The Trial Court Administrator is to provide written notice to all attorneys and unrepresented parties that they have within twenty-one (21) days of the Order placing the case in the Mediated Settlement Conference Program from which they are, by agreement, select a certified domestic mediator or nominate a non-certified mediator to conduct their mediated settlement conference. Within twenty (21) days of the Order placing the case in the Mediated Settlement Conference Program, the Trial Court Administrator's Office is to be notified of the mutual selection of the certified mediator or nomination of non-certified mediator, or the failure of the parties to agree on a mediator. The Trial Court Administrator will maintain a list of certified domestic mediators.
- (b) **Appointment of Mediator by the Court.** The Trial Court Administrator will appoint the next mediator on the certified mediator list provided by the Dispute Resolution Commission.. The Chief District Court Judge or the Trial Court Administrator retains the discretion to depart from the procedure for such circumstances as the appointment of a mediator to a case, or to withhold a mediator from appointment.

- (c) **Court Appointment of Judge or Justice.** The Chief District Court Judge or Trial Court Administrator may, in their discretion, appoint a retired or emergency judge or justice of the district, district, superior or appellate court as mediator, whether or not such judge has been certified as an arbitrator.
- (d) **Disqualification of a Mediator by Judge.** If a District Court Judge orders a mediator disqualified, the moving party must provide a copy of the order to the Trial Court Administrator within two (2) days of the date of the order.
- (e) **Self-disqualification of Mediator.** A mediator may disqualify themselves upon written notice to the Chief District Court Judge, Trial Court Administrator and the parties.

29.2 Reporting Full or Partial Settlement Agreement Before or During the Conference.

Upon reaching a full or partial settlement agreement before or during the conference, including any recess of the conference, the parties and others with settlement authority shall provide a copy of the executed written agreement to the mediator within five days of such settlement. The mediator shall attach a copy of the written agreement to the report of mediator and mail both to the Trial Court Administrator within seventy-two (72) hours. Failure to provide a copy of the written agreement to the mediator on a timely basis may result in sanctions as for failure to attend.

When a case has reached a full or partial settlement agreement, the attorneys of record or unrepresented party must notify the Trial Court Administrator within seventy-two (72) hours of the settlement agreement.

29.3 Failure of a Mediator to Comply with Supreme Court “Rules Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases” and Local Rules. The Chief District Court Judge and the Trial Court Administrator reserves the right to withhold future appointments of any mediator who does not fully comply with the requirements of the “Rules Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases.”

29.4 Compensation of Mediator.

- (a) **Payment without Conference or in Recess.** If no conference is held or a conference is recessed without resuming, compensation to an appointed mediator shall be submitted with the written full or partial settlement agreement.
- (b) **Indigent Cases.** If any party contends that he or she is indigent and cannot pay his or her portion of the mediator’s fee, the party must file a motion to be relieved from payment of such fee on an approved “Petition and Order for relief from Obligation to Pay Mediator’s Fee” form available in the office of the Trial Court Administrator prior to the initial settlement conference.
- (c) **Sanctions for Failure to Pay Mediator’s Fee.** Failure of a party to make timely payment of his or her portion of the mediator’s fee, or if a party contending indigent status fails to timely submit the Petition form, it shall constitute contempt of court and may result in the imposition of any or all lawful sanctions by a District Court Judge.

29.5 Scheduling Unsettled Cases for Trial. Cases not fully settled during the mediated settlement conference process are to be scheduled for trial in accordance with Rule 3.

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

Trial Court Administrator
325 N. Marietta Street
Gastonia, NC 28052
Telephone Number (704) 852-3122
Fax Number (704) 852-3125

Rule 30. NEUTRAL EVALUATION

30.1 Selection of Neutral.

- (a) **Selection by Agreement.** The Trial Court Administrator is to provide written notice to all attorneys and unrepresented parties that they have within twenty-one (21) days of the Order placing the case in the Neutral Evaluation Program from which they are, by agreement, select any person whom they believe can assist them with the settlement of their case. The parties are to notify the Trial Court Administrator's Office of the neutral's selection or of their failure to agree on a neutral evaluator.
- (b) **Failure to Select.** Failure of the parties to agree on a neutral or fail to notify the Trial Court Administrator's Office within the 21 day deadline, will result in the Court denying the motion for authorization to use another alternative dispute resolution program and the Court shall order the parties to attend the domestic arbitration program and the Trial Court Administrator's Office to randomly assign an arbitrator to conduct the hearing.

30.2 Reporting Full or Partial Settlement Agreement Before or During the Conference.

Upon reaching a full or partial settlement agreement before or during the conference, including any recess of the conference, the parties and others with settlement authority shall provide a copy of the executed written agreement to the neutral within five days of such settlement. The neutral shall attach a copy of the written agreement to the report of neutral and mail both to the Trial Court Administrator within seventy-two (72) hours. Failure to provide a copy of the written agreement to the neutral on a timely basis may result in sanctions as for failure to attend.

When a case has reached a full or partial settlement agreement, the attorneys of record or unrepresented party must notify the Trial Court Administrator within seventy-two (72) hours of the settlement agreement.

30.3 Failure of a Neutral to Comply with Supreme Court "Rules Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases" and Local Rules. The Chief District Court Judge and the Trial Court Administrator reserves the

right to withhold future appointments of any neutral who does not fully comply with the requirements of the "Rules Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases".

30.4 Compensation of Neutral.

- (a) **Neutral's Compensation.** A neutral's compensation shall be paid in an amount agreed to among all parties and the neutral. Time spent reviewing materials in preparation for the neutral evaluation, conducting the proceeding, and making and reporting the award shall be compensable time.
- (b) **Indigent Cases.** If any party contends that he or she is indigent and cannot pay his or her portion of the neutral's fee, the party must file a motion to be relieved from payment of such fee on an approved "Petition and Order for relief from Obligation to Pay Neutrals Fee" form available in the office of the Trial Court Administrator prior to the initial settlement conference.
- (c) **Sanctions for Failure to Pay Neutral's Fee.** Failure of a party to make timely payment of his or her portion of the neutral's fee, or if a party contending indigent status fails to timely submit the Petition form, it shall constitute contempt of court and may result in the imposition of any or all lawful sanctions by a District Court Judge.

30.5 Scheduling Unsettled Cases for Trial. Cases not fully settled are to be scheduled for trial in accordance with Rule 3.

30.6 Communication with Court. All communications concerning neutral settlement conferences in this judicial district should be addressed to:

Trial Court Administrator
325 N. Marietta Street
Gastonia, NC 28052
Telephone Number (704) 852-3122
Fax Number (704) 852-3125

Rule 31. PRIVATE MEDIATION OR ARBITRATION

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

31.2 Reporting Selection of Private Arbitrator or Mediator. When all parties to a case have decided to obtain the services of a private arbitrator or mediator, the attorneys must notify the Trial Court Administrator within twenty-four (24) hours of the decision.

Rule 32. AMENDMENTS AND MODIFICATIONS

These Rules are subject to amendment and modification as experience indicates and requires.

Rule 33. EFFECTIVE DATE OF THESE RULES

These Local Rules and Plan for the calendaring of domestic cases shall be effective on July 1, 1999.