40th JUDICIAL DISTRICT
FAMILY COURT DOMESTIC RULES
TABLE OF CONTENTS

RULE 1:	DEFINITIONS	2
RULE 2:	GENERAL RULES	4
RULE 3:	REPRESENTATION: ATTORNEYS AND SELF-REPRESENTED PARTIES	5
RULE 4:	CASE FILINGS AND JUDICIAL ASSIGNMENT	5
RULE 5:	CALENDARING FAMILY COURT CASES	7
RULE 6:	HEARINGS	9
RULE 7:	MOTIONS	11
RULE 8:	CUSTODY AND VISITATION	
	8A. General	11
	8B. Parent Education and Custody Mediation	12
	8C. Emergency Temporary Custody	14
RULE 9:	CHILD SUPPORT	15
RULE 10:	POST SEPARATON SUPPORT AND ALIMONY	16
RULE 11:	EQUITABLE DISTRIBUTION	17
RULE 12:	DIVORCE	20
RULE 13:	ATTORNEY FEES AND/OR COST CLAIMS	21
RULE 14:	ADR IN FAMILY FINANCIAL CASES OTHER THAN ED	21
RULE 15:	CONTINUANCES	21
RULE 16:	ORDERS/JUDGMENTS	23
RULE 17:	TIME STANDARDS	24
RULE 18:	COMMUNICATIONS WITH JUDGES	24
RULE 19:	SANCTIONS	25
RULE 20:	RESERVED FOR FUTURE PURPOSES	26

RULE 1: DEFINITIONS: As used in these Rules, the following terms mean:

1.1 ***Alternative Dispute Resolution (ADR):*** *A* procedure for settling a dispute by means other than litigation before a Judge, such as arbitration, mediation, or judicial settlement conference.

1.2 ***Child Support Enforcement (CSE/IV-D):*** The Buncombe County agency that handles all IV-D child support cases. It also acts to establish paternity as well as to establish, enforce, modify, collect and disburse child support in non-IV-D cases upon request of the payee parent or upon Order of Court.

1.3 ***Child Support Guidelines:*** The formula and amount set forth by Statute that is used to determine the monthly financial obligation of each parent for their minor child or children.

1.4 ***Court:*** The District Court or a District Court Judge of the 40th Judicial District.

1.5 ***Custody Mediation:*** The process provided for by Statute, in which the parties in a dispute involving custody, visitation or other parenting issues, meet with a qualified mediator to attempt to resolve their issues and enter into a voluntary Parenting Agreement.

1.6 ***Custody Mediator:*** A neutral, skilled professional, qualified by the Administrative Office of Courts to mediate cases involving unresolved issues of custody, visitation or their parenting issues regarding their minor children.

1.7 ***Family Court Cases:*** Cases primarily involving claims under N.C.G.S. Chapter 49, Chapter 50, and Chapter 50A.

1.8 ***ED*****:** Equitable distribution.

1.9 ***ED Affidavits:*** Local forms that are required to be completed and filed in case involving equitable distribution claims.

(a) Inventory ED Affidavit (**Form 10**). An initial Affidavit listing the parties' known assets, and debts/liabilities, with their estimated amounts and proposed distribution. This Affidavit shall not be filed with the Clerk or electronically in the portal. The Affidavit shall be served by both parties no later than ten (10) days prior to the scheduled Initial Status Conference. A physical copy of the Affidavit shall be presented in Court at the scheduled conference, or hearing.

(b) Final ED Affidavit (**Form 11).** A final Affidavit listing the parties' assets and liabilities, but with final valuations and proposed distributions as opposed to the initial estimates as required in the Inventory ED Affidavit.

This Affidavit must be filed and served by both parties as set forth in the Order of Reference as rendered in their particular case.

1.10 ***Evidentiary Hearing:*** A Court hearing in which evidence is presented.

1.11 ***Ex parte Communication:*** A communication with the Court, either written or verbal, by one party without the other party being present and/or without the other party's consent.

1.12 ***Family Court Administrator (FCA):*** The Administrator for the Family Court Program.

1.13 ***Family Court Coordinator (FCC):*** A case manager for the Family Court Program. Each Judge in the Family Court Division has a FCC who schedules all Court hearing dates, manages the cases through the system, and tracks orders due and to be signed.

1.14 ***Moving party:*** The party who files an action or a motion and requests relief from the Court.

1.15 ***N.C.G.S.:*** North Carolina General Statutes.

1.16 ***Parenting Education/Mediation Orientation (PE/MO):*** A two-hour group course. The first hour gives separating and/or divorcing parents some insight to how their behavior surrounding their separation affects the children. The second hour is an introduction to and explanation of the custody mediation process. Both are designed to help parents who are separating or otherwise living apart learn how they can lessen the negative effects of their conflict on their children.

1.17 ***Self Representing Litigant / Pro se party:*** A party proceeding without attorney representation.

1.18 ***PSS:*** Post separation support.

1.19 ***Supervised Exchange:*** A provision in some custody, visitation and domestic violence orders that requires a neutral third party to oversee the exchange of a child between parents and/or caretakers.

1.20 ***Supervised Visitation:*** A provision in some custody, visitation and domestic violence orders that requires a neutral third party to observe and monitor the visits between a child or children and a parent or caretaker.

1.21 ***U.C.C.J.E.A.: Uniform Child Custody Jurisdiction and Enforcement Act***: Laws adopted by North Carolina, codified in the N.C.G.S. §50A-101 et seq., which provide a uniform set of jurisdictional rules and guidelines to avoid jurisdictional competition and conflict with courts of other States in matters of child custody, to discourage the use of the interstate system for continuing controversies over child custody and to facilitate the enforcement of custody decrees of other States.

1.22 ***U.I.F.S.A.: Uniform Interstate Family Support Act:*** Laws adopted by North Carolina, codified in the N.C.G.S. §52C-1-100 et seq., which establish procedures for the interstate establishment, enforcement and/or modification of support or a determination of parentage.

1.23 ***Trial Court:*** For purposes of these local rules only, the Trial Court refers to the District Court that hears all Family Court cases.

RULE 2: GENERAL RULES

2.1 **Purpose:** The purpose of these Rules is to provide a case management plan for the orderly, prompt and fair disposition of family domestic matters. The intent is to minimize delays and resolve cases in a less adversarial manner whenever possible.

2.2 **Construction:** The Rules are promulgated in compliance with the North Carolina Rules of Civil Procedure, and the General Rules of Practice for Superior and District Courts and are not intended to contravene or take priority over any existing North Carolina State law or prevailing North Carolina case law.

2.3 **Implementation:** These Rules may be suspended or modified in the discretion of the Trial Court, to promote the ends of justice.

2.4 **Use of Forms:** Local forms for use by attorneys/Self-Represented parties in accordance with these Rules are subject to change as legislation and/or policy dictate. Except as otherwise provided herein, where a form is specified for use by these Rules, attorneys or Self-Represented parties may use either the form provided or a form which substantially corresponds to the specified local form and contains the same information. Both the local Rules and forms are available at: http:www.nccourts.org, select "Buncombe County" and then "Local Rules".

2.5 **Prior Local Family Court Rules:** These Rules supersede all previous local Family Court Domestic Rules.

2.6 **Title:** These Rules and all amendments thereto shall be filed with the Clerk of Superior Court in the 40th Judicial District and shall be referred to and cited as the 40th Judicial District Family Court Domestic Rules (40FCDR).

2.7 **Location of Local Rules:** Copies of these Rules shall be maintained by the Family Court Administrator and made available to the public upon request. They will also be posted publicly nearby the Family Courtrooms and in the Family Court Offices. These Rules as well as the forms cited herein are available for downloading from the website of the North Carolina Administrative Office of the Courts at: http://www.nccourts.org select "Buncombe County", and then "Local Rules"

2.8 **Effective Date:** These Rules shall apply to all Family Court cases effective March 1, 2027.

RULE 3: REPRESENTATION: ATTORNEYS AND SELF-REPRESENTED PARTIES

3.1 **Attorney Contact Information:** Attorneys shall keep the Family Court Office informed at all times of any and all changes in their mailing addresses, email addresses, telephone and fax numbers. This information is for internal use only. To update their information in Odyssey, the attorney must provide their information to the state bar.

3.2 **Attorney Secured Leave Policy:** The secured leave policy of the 40th Judicial District Family Court shall be the same policy as set forth in N.C.G.S. §7A-34, Rule 26 of the General Rules of Practice for the Superior and District Courts. In addition to the requirements of Rule 26, attorneys shall submit set written designation of secure-leave to the Family Court Administrator via electronic mail.

3.3 **Self-Represented Litigants (Pro Se Parties) Contact Information:** Although no party is required to have an attorney, a party who is not represented by legal counsel must follow all Court Rules, including these Local Rules, and is presumed to know and understand them. It is the responsibility of each Self-Represented litigant to keep the Family Court Office informed at all times of their current mailing address, email address, telephone number and fax number, if any, as well as any changes thereto.

3.4 **Withdrawal of Attorneys:** Prior to an attorney filing a motion to withdraw, the attorney shall obtain a hearing date for the Form 1 to be filed simultaneously with the Motion. The attorney shall also provide the complete last known mailing address, working phone number and email address of their client, on both the motion and any subsequent Order of Withdrawal. An attorney who has made an appearance in a case is the attorney of record until such time as the Court enters an order allowing withdrawal. Unless the client has consented to the withdrawal by signature on a motion to withdraw, the attorney must serve their client as well as the opposing party. Motions to withdraw must provide a reason for the motion. Substitutions of Counsel shall include a proposed order to allow the Judge to formally remove the attorney from the case.

RULE 4: CASE FILINGS AND JUDICIAL ASSIGNMENT

4.1 **Commencement of Family Court Actions:** All Family Court cases shall be commenced by filing a Complaint with the Clerk or electronically. All initial actions, except for IV-D and U.I.F.S.A., shall be accompanied by an AOC Cover Sheet (Form **AOC-CV-750**). A case number will be assigned at the time of the initial filing (prior to the Clerk accepting the filing) and will place the number on the Complaint and/or Motion and the Summons. All subsequent pleadings and papers filed with the Clerk or electronically shall contain the assigned case number as well as the assigned Judge, if applicable.

4.2 **Form 1:** All new family court cases, except for simple absolute divorces, IV-D, and U.I.F.S.A., shall be accompanied by a Notice of Hearing and Judicial Assignment (**Form 1**). This form should be completed and signed with everything except the court dates, which will be filled out by the Family Court Coordinator (after confirming the auto assigned Judge). This form shall indicate whether there is any pending or resolved domestic, domestic violence, or juvenile case involving the same family members or issues as the case being filed. Attorneys filing an action must obtain this information from their client and provide it on Form 1. Failure to truthfully provide this information may result in sanctions allowed by law and deemed appropriate by the Chief District Court Judge or the assigned Judge. A Form 1 shall also accompany any subsequently filed pleadings which require or request a hearing. For existing cases, attorneys or parties shall contact the Family Court Coordinator to obtain a court date prior to filing the Motion and Form 1 (except for Contempt or Emergency Custody filings).

4.3 **Judicial Assignment:** All new domestic cases that require a Form 1 as set forth above shall be automatically assigned to a Family Court Judge initially on a rotation basis at the time of filing, except if there is or has been a prior case involving the same parties with other family issues, then those cases shall be assigned to the Judge who was assigned to the prior case, whenever possible. All subsequent pleadings shall contain the Judge's name as well as the assigned case number. All subsequent motions, hearings and trials, including Ex Parte and emergency matters, shall be scheduled before the assigned Judge whenever possible. Any conflicts shall be re-assigned by the Family Court Administrator.

4.4 **Litigants' Responsibilities:**

(a) **Contact with Family Court Office and Forms:** It is the responsibility of the party filing any Complaint, Counterclaim, Motion or other pleading to contact the Family Court Office, to obtain from the Family Court Office initial court dates at the time of filing and to confirm judicial assignment and to then file the Form 1 in its entirety, leaving the court dates blank for the Family Court Coordinator to fill in;

(b) **Service of Pleadings and Form 1:** The party filing any pleading and/or obtaining any court dates shall immediately serve a copy of any such pleading as well as written notice of the assigned court date(s) on the other party (parties). Any notice of hearings for any matter or other court dates shall be on a Form 1, or a notice that contains substantially the same information;

(c) **Address of Opposing Party:** The moving party shall provide the address of the opposing party (parties), at the time of filing, unless serving by publication;

(d) **Filings and Service:** The moving party shall file all pleadings and notices with the Clerk and serve a copy of same on the other party (parties); and

(e) **Subsequent Filings:** All parties filing any pleading, documents, correspondence or other written material in the court file or with Family Court shall serve copies of same upon the other party (parties).

4.5 **Multiple Cases:** When Family Court staff become aware of multiple Family Court cases pending that involve the same parties and the same or similar issues, the Family Court Administrator or Court Coordinator, in conjunction with the assigned Family Court Judge, shall determine whether to consolidate any or all of these cases, and shall inform the parties and counsel of the determination and of any resulting Court date changes by written notice. When a child support action has been filed in Family Court (or when child support is included as an issue in a Family Court case), and there has been a prior Child Support Enforcement/IV-D action involving the same parties and child/children, the Family Court Administrator or Court Coordinator, in conjunction with the assigned Family Court Judge, shall determine whether to accept a transfer of the child support issue with the CSE/IV-D case and shall inform the parties, counsel and the CSE/IV-D agency of the determination. CSE/IV-D cases will not be consolidated given the different parties but may be heard in conjunction with the family court case. When consolidated, the cases shall be consolidated into the oldest case, absent compelling reasons.

4.6 **Consolidated Cases:** When two or more cases have been consolidated, they shall be regarded as one case for calendaring purposes and shall appear under the oldest case, absent compelling reasons. A copy of the order consolidating the cases for trial shall be filed in all pertinent court files. All pleadings, notices and/or documents filed thereafter shall include both (or all) case numbers, including orders signed by a Judge.

RULE 5: CALENDARING FAMILY COURT CASES

5.1 **Calendars Maintained:** The calendars for the disposition of domestic cases shall be set and maintained by the Family Court staff in accordance with these Rules under the supervision of the Chief District Court Judge; the calendars shall show what issues are to be heard during any given term. Parties can obtain court dates and case information through the portal. It is the parties' responsibility to review the portal for upcoming calendar call dates and hearings. If a party does not attend calendar call, they shall obtain their court date by reviewing Enterprise Justice Portal twenty-four (24) hours after calendar call occurs

5.2 **Initial Court Dates Scheduled:** Upon receipt of copies of the pleading(s) filed, Family Court staff shall confirm automatic Judge assignment and schedule hearing dates or other court event(s) as required by these Rules based upon the issues raised in the Complaint or the Motion.

5.3 **Failure to Obtain Dates at Filing:** Failure to obtain dates from Family Court will result in the motion(s) or cause(s) not being set. The moving party or attorney shall serve a copy of the completed Form 1 on the opposing party or attorney no later than three (3) business days.

5.4 **Settlement of Contested Issues:** Unless agreements have been reduced to writing, signed by the parties, their attorneys (if applicable) as well as the assigned Judge prior to the scheduled court event, parties and/or counsel are required to appear at all court events as scheduled. If an agreement has been reached but not yet reduced to writing

and signed by all parties prior to a scheduled court event, the parties and counsel (if applicable) are required to appear as scheduled and either enter into a Memorandum of Judgment/Order or orally announce the terms of the Agreement to the Court. In the latter instance, the Court will then set a subsequent court date with the expectation that the final order will be prepared, signed and filed with the Court prior to or on the scheduled date. Self-Represented signatures shall be notarized. Judges may modify this requirement on a case specific basis.

5.5 **Continuous Calendaring:** Consistent with the purpose of these Rules, that is, to keep cases moving forward to a final resolution, each pending case shall have a court date set for one of the following causes, unless and until a final order or judgment is signed and entered: Status Conference, summary/temporary matter hearing, Pretrial Conference, trial, motion hearing, or status review, which means entry of order or judgment.

5.6 **Calendar Call:**

(a) **Schedule:** Calendar Calls shall be held on Wednesday mornings at 9:00 a.m. one week prior to the two week term of the Judge, in the Family Courtroom which the Judge will be presiding in during their upcoming term, on the 3rd Floor of the Buncombe County Courthouse. Attorneys and parties may attend the Calendar Call remotely, provided a remote calendar call is being offered by the Court. Attorneys and parties are expected to keep their cameras on for the duration of Calendar Call. The calendar call shall be for the term commencing the following week. In the event of a State holiday, Judge's Conference week, holiday breaks, or other scheduling conflicts, Calendar Call may be scheduled at another time.

(b) **Inclement Weather:** In the event of inclement or severe weather, in which the Public Schools for both the City of Asheville and Buncombe County have been closed, Calendar call may be delayed until 1:30 p.m., at the discretion of the presiding Judge. In the event that the Courthouse has been closed by the Chief District Court Judge, Calendar Call will be rescheduled to the next day that Court is open.

(c) **Attendance:** Self-Represented litigants are noticed to be present for Calendar Call via the Notice of Hearing (Form 1) which states the date for Calendar Call. The Court may also announce hearings in open court during a previously scheduled time. The party may appear remotely (if offered by the Court) or in person. If they do not appear it is presumed that they are available for the entire term. Attorneys are required to appear in person, or to send a paralegal, or may appear remotely if a remote calendar call is being offered by the Court. Any attorney or party may opt to timely forward their availability by proper Availability Form (**Form 7 or as required by the individual Judge**). The information submitted shall include the case caption, file number, estimated length of hearing/trial, the dates the attorney is available and the reason **why** the attorney is <u>not</u> available on the other dates of the term. In addition, they shall state on the form if they consent or object to any continuance raised at calendar call. Absent emergency, the Availability Form shall be received by delivery, or email to the Family Court Office no later than 12:00

p.m. the Monday prior to Calendar Call or will not be considered at Calendar Call. The Family Court Coordinators can report from the timely completed form only. **It is the expectation of the Court for all attorneys or their representatives to be at Calendar Call from the beginning and to have their camera on when their case is called. The WebEx link will not be sent to attorney staff, only to attorney and pro se parties. Cases may not be called in a numerical order. The Court may not be able to accommodate late calendar corrections for cases already set.**

(d) **Hearings and trials:** All hearings and trials are presumed to be in person unless a request is made for a remote hearing, with good cause. Requests for remote hearings shall be made at calendar call and not after the hearing is set baring any special circumstances.

(e) **Short Motions and Status conferences:** Short motions and status conferences, Self-Represented may be set as remote hearings, if requested at calendar call and both sides agree.

5.7 **Dismissal for Lack of Prosecution:** Cases that have not had any pleadings filed or any action otherwise taken for six months may be dismissed without prejudice, by the presiding or Chief District Judge.

RULE 6: HEARINGS:

6.1 **Remote Hearings:** The Court may calendar in its discretion, a hearing to be held remotely via WebEx or similar remote hearing platform that may be approved by the State of North Carolina. ***Recording or live streaming, of any hearing or proceeding conducted remotely and/or via WebEx, is expressly prohibited by this Court, pursuant to the North Carolina General Rules of Practice for the Superior and District Courts, Rule 15. A violation may constitute Contempt of Court and result in a fine of up to $500 or a jail term of up to thirty (30) days.***

(a) **Witnesses in remote hearings:** If witnesses are being called to testify in a remote hearing, the party that is calling that witness is responsible to forward the WebEx invitation to their witness and for ensuring their witness can appear visually with no technical impediments. All witnesses are under the same rules of conduct as set forth below concerning spectators in remote hearings.

(b) **Testimony in remote hearings:** Witnesses should be in a room alone during testimony when feasible. If a person will be in the room with a testifying witness, the witness shall advise the Judge prior to witness testimony. No person, including an attorney, may communicate with a witness about their testimony during the testimony. Attorneys and parties may communicate privately via text or email during the hearing, provided however, parties may not communicate with counsel while they are testifying. No one may communicate with witnesses privately during the hearing without court permission. No one other than attorneys participating in the hearing shall utilize the chat feature of WebEx during the hearing, without court permission**.**

(c) **Spectators in remote hearings:** All members of the public who have accessed the hearing must have their video ON in order to view the hearing. All

spectators must have their microphone muted and they shall not speak or otherwise communicate with any party or witness during the hearing. They shall further not utilize the chat feature or in any way interfere with the hearing. Spectators shall be seated and silent. If a spectator violates these rules, they are subject to expulsion from the hearing and also subject to being held in contempt of court. The Judge may in their discretion remove spectators and additional witnesses to the "lobby" or "expel" them.

6.2 **Peremptory Hearings:** Requests for a peremptory setting using the Request for Peremptory Setting form (**Form 2**) must be communicated with the Family Court Coordinator to obtain dates of availability. Once dates have been agreed upon, the Peremptory Setting Form 2 must be uploaded through the portal as a proposed order. This form must indicate that the opposing party has consented to the peremptory setting and only then will it be submitted to the Judge for the Judge's consideration. This form must indicate the causes to be heard. A party may motion in a request to set a perempt if the parties cannot reach a consent on setting a peremptory hearing. A Judge may schedule a case for a peremptory hearing on his or her own motion at any time.

6.3 **Temporary Hearings:** Temporary hearings are those limited hearings including hearings for temporary child custody, temporary child support, post-separation support*, ex parte* returns on non-domestic violence cases, and interim partial distributions pursuant to N.C.G.S. § 50-20(i1). Temporary hearings are limited to one (1) hour. Each party shall be allocated thirty (30) minutes in total to put on their case. The allocated thirty (30 minutes) includes the time allotted to conduct all direct examination of their witnesses, cross examination of the opposing party's witnesses, examination of affidavits and documentary evidence by the presiding Judge and opening and closing statements. The presiding Judge may, in their discretions, allow for additional time in a temporary hearing if appropriate, but they are in no way required to allow for more than one (1) hour total.

(a) **Affidavits in Temporary Hearings:** Due to the time constraints of temporary hearings, parties are allowed to present evidence based upon affidavits. All affidavits shall be served upon the opposing party by 5:00 P.M. no later than three (3) business days prior to the scheduled hearing. For example, if the hearing is scheduled on Wednesday at 9:30 A.M., the party intending to use an affidavit must serve it on the opposing party by 5:00 P.M. on the preceding Friday. Rebuttal affidavits, i.e., affidavits that are to be used in response to affidavits, shall be served upon the opposing party no later than twenty-four (24) hours prior to the scheduled hearing. Affidavits shall then be presented to the Court at the time of the hearing.

6.4 **Remands:** When cases are remanded by the Appellate Division, appellant's counsel shall notify the Family Court Office within two (2) business days of receipt of the Slip Opinion in said case. The notification shall include the appellate docket number as well as the date of the Certification or Mandate pursuant to N.C. R.App. P. 32.

6.5 **Exhibits Proposed Language Revision:** If a party intends to submit exhibits at any hearing, they shall send copies of said proposed exhibits no later than 12:00 P.M. two (2) business days prior to the scheduled hearing to the opposing party. If a hearing is scheduled for Monday, then any proposed exhibits shall be sent to the opposing party no later than 12:00 P.M. on the Friday prior to the Monday hearing. Parties are responsible for bringing their proposed exhibits to the hearing and maintaining said exhibits until they are admitted into evidence. Parties may agree to the method by which they exchange exhibits in advance of a hearing, including email.

Exceptions: Specifically for Webex hearings ONLY: [NOTE: This does NOT apply to in person hearings.] ***Exhibits for Webex hearings only*** must also be submitted in person to the family court coordinator for the Judge the case is assigned to, by 12:00 P.M. two (2) days before the hearing, contemporaneously with opposing counsel. All exhibit packets must include a cover sheet, and each exhibit must be clearly marked as Defendant or Plaintiff's exhibit and numbered or alphabetized appropriately. Please remember that these are proposed exhibits only. For cases heard on Mondays, submissions should be by 12:00 P.M. on Thursday. Parties must exchange exhibits two and a half (2.5) days prior to a scheduled hearing.

The Rules of Evidence still apply, and parties are free to object to exhibits during the hearing: Thumb drives will not be accepted unless prior arrangements have been made with the Court. Unless rules are otherwise modified, proposed exhibits for family court cases are currently not to be uploaded through the electronic portal. Attorneys and parties are responsible to retrieve their non-admitted exhibits at the close of the trial, unless the record indicates preservation of the exhibit.

RULE 7: MOTIONS

7.1 **Motion for Order to Show Cause:** At the time a Motion for Order to Show Cause is filed, the moving party shall electronically file their Motion, along with a Form 1 and Order to Appear and Show Cause, on the portal, where staff will have the Motion addressed by a Judge to determine if a hearing should be scheduled. If the Order is signed, it will contain a hearing date. Said proposed order should leave a blank space for a hearing date. The moving party shall immediately serve the opposing party via Sheriff or counsel (if counsel agrees to accept service) with the Motion, Order(s) scheduling any Court dates and all other forms completed by Family Court staff.

7.2 **All Other Motions, Answers and/or Counterclaims:** At the time any Motion, Answers, and/or Counterclaims are filed, the moving party shall contact the Family Court Coordinator to obtain dates for the causes to be heard and shall then file his or her Motion, Answer or Counterclaim, together with a Form 1 (and a Form 12, if the Motion concerns a custody, visitation or parenting issue). The moving party shall immediately serve the opposing party or counsel with the Motion, Form 1 scheduling any Court dates and all other forms completed by Family Court staff.

RULE 8: CUSTODY AND VISITATION:

8A. General:

8A.1 **Definition for this Section:** "Custody" for the purpose of this Section includes custody, visitation, modification of custody and parenting issues. "Child" refers to both the singular "child" and plural "children".

8A.2 **Consent Judgments:** Child custody determinations pursuant to these Rules shall be made in accordance with N.C.G.S. Chapter 50A. Consent determinations are favored but shall be made in accordance with civil actions filed pursuant to Chapter 50A and shall not be rendered by a confession of judgment.

8A.3 **Commencement of Custody and Visitation Actions:** All actions for custody, both initial as well as modification of custody and/or visitation shall be commenced by filing a Complaint with the Clerk, or electronically; all such actions shall include the information required by N.C.G.S. §50A-209 either in (a) a verified pleading or (b) attached Affidavit. A suggested form is AOC-CV-609. All initial actions, except for IV-D and U.I.F.S.A., shall be accompanied by an AOC Cover Sheet (Form **AOC-CV-750**). Odyssey will assign a case number at the time of the initial filing (prior to the Clerk accepting the filing) and will place the number on the Complaint and/or Motion and the Summons. All subsequent pleadings and papers filed electronically shall contain the assigned case number as well as the assigned Judge.

8A.4 **Required Local Forms:** The moving party shall properly serve upon the opposing party or counsel the pleading(s) and the completed Forms 1 and 12 scheduling the upcoming court date pursuant to N.C.G.S §1A-1, Rules 4 and 5.

8A.5 **Scheduling:** At the time of the filing of a custody or visitation matter, the parties shall be scheduled by Family Court staff to attend the next available Parent Education/Mediation Orientation group session(s). Additionally, the date for the hearing for the custody/visitation issue shall be scheduled at the time of filing. The date of the hearing shall be such that there is reasonable time for the parties to complete the custody mediation process, unless custody mediation is waived pursuant to Rule 8B.7. The Custody Mediator shall schedule the individual mediation session at the Mediation Orientation.

8B. **Parent Education and Custody Mediation:** All contested actions for visitation or custody of a minor child are set for mediation unless waived by the Court pursuant to Section 8B.7. This is a program that is established by N.C.G.S. § 7A-494 and is provided at no cost to the parties. The goals of child custody mediation are as follows:

(1) To reduce any acrimony that exists between the parties to a dispute involving custody or visitation of a minor child;

(2) The development of custody and visitation agreements that are in the child's best interest;

(3) To provide the parties with informed choices and, where possible, to give the parties the responsibility for making decisions about child custody and visitation;
(4) To provide a structured, confidential, non-adversarial setting that will facilitate the cooperative resolution of custody and visitation disputes and minimize the stress and anxiety to which the parties, and especially the child, are subjected; and
(5) To reduce the relitigating of custody and visitation disputes.

8B.1 **Mandatory Attendance:** The parties to all custody and visitation cases, including modification matters, shall complete a Parent Education /Mediation Orientation and shall participate in Custody Mediation prior to a hearing or trial on the issues, except for temporary and emergency matters, unless either or both events are waived by Court Order. Additionally, if the parties have completed the Parent Education/Mediation Orientation within the previous twenty-four (24) month period, they shall return to custody mediation for their pending issue; however, the parties do not have to attend the Parent Education/Mediation Orientation session. If the parties enter into a written Consent Agreement prior to the Custody Mediation session, they do not have to attend mediation but shall still attend the Parent Education Mediation Orientation.

8B.2 **Parent Education:** A Parent Education/Mediation Orientation is offered at least twice per month by Family Court staff. Parties may fulfill the Parent Education Mediation Orientation requirement by attending this course or by attending a Parent Education course that has been approved by the Family Court Administrator. Both parties shall complete this requirement within forty-five (45) days from the date of filing the custody/visitation action, unless his or her attendance is waived by Court Order pursuant to Section 8B.7.

8B.3 **Custody Mediation:** Unless Custody Mediation is waived, the parties shall participate in the Parent Education/Mediation Orientation and at least one mediation session.

8B.4 **Settlement at Mediation:** Cases that are resolved through mediation, either entirely or partially, shall have Parenting Agreements (or Partial Agreements) drafted by the Custody Mediator, which Agreements shall be signed by the parties. Upon review and acceptance of the Agreement by the Court, an Order shall be entered adopting the Parenting Agreement (or Parenting Partial Agreement) as an enforceable Order of the Court.

8B.5 **Sanctions:** Absent waiver by Court order, if a party fails to attend the Parent Education /Mediation Orientation session and/or the mediation appointment on the scheduled or re-scheduled date, the Chief District Court Judge or assigned Judge may impose upon that party a monetary sanction of a minimum of Fifty Dollars ($50.00).

Additionally, an Order compelling compliance may be entered by the Court. If the Court finds that the party failed to attend the above events upon the advice of his or her attorney, said sanctions, including the monetary fine, may also be imposed on the non-compliant party's attorney. This sanction may also be imposed if an attorney, or party if acting pro se, fails to notify the Family Court staff of settlement or dismissal prior to the Parent Education/Mediation Orientation or a scheduled mediation appointment date.

8B.6 **Scheduling Hearing for Sanctions:** A hearing date shall be assigned by Family Court staff for determination of sanctions before the Chief District Judge or the assigned Judge when parties fail to comply with scheduled events and or any sections of Rule 8.

8B.7 **Waiver of Custody Mediation and/or Parent Education /Mediation Orientation:** In accordance with N.C.G.S. §50-13.1(c), for good cause, on written motion of either party or on the Court's own motion, the Court may waive the Custody Mediation Parent Education/Mediation Orientation. Parties (or their attorneys, if represented) requesting a waiver shall complete and file a Motion to Waive Custody Mediation (**Form 6**), shall notify the Court Coordinator to determine if a court date is required, and serve a copy on the opposing party or his/her attorney prior to the date of the Parent Education/Mediation Orientation. The parties may also be exempted from mediation based upon the Mediator's assessment that the case is inappropriate for mediation. Court Ordered waiver of Custody Mediation is not a waiver of the Parent Education session; these two requirements are separate, and the mediation itself may be waived without the waiver of the Parent Education/Mediation Orientation.

8B.8 **Confidentiality:** The mediation session shall be confidential. Except as otherwise provided by law, all verbal, non-verbal and written communications from either or both of the parties to the Mediator or between the parties in the presence of the Mediator made in a proceeding pursuant to these Rules are absolutely privileged and inadmissible in Court. Neither the Mediator nor any party or other person involved in mediation sessions may be called to testify as to communications made during or in furtherance of such mediation sessions, except that there is no privilege as to communications made in furtherance of a crime or fraud.

8C. **Emergency Temporary Custody:**

8C.1 **Application:** An application for an emergency temporary custody order, along with a Form 1 and Form 12, shall be made in a written verified pleading which sets forth the facts and statute giving rise to the need for emergency relief. The verified pleading may be accompanied by notarized affidavits of third parties. All emergency custody actions will be held person and are to be filed with the Clerk or filed electronically no later than 2:00 PM and will be heard on the same day as the filing of the emergency request. All attorneys or Self-Represented litigants filing emergency custody actions must remain available to the Court, from the time that the action is filed until the action has been fully processed and they are released by the Court. An email draft of the proposed emergency custody Order, and if requested, a

warrant must be forwarded contemporaneously with the filing of the action to the Case Coordinator, or to the Family Court Administrator if a Judge has not been assigned. If an emergency action is filed after 2:00 PM, or if a warrant is requested, the attorneys (not staff) or the self-represented litigant must be and remain physically present in the Courthouse until the action has been fully processed and they are released by the Court. If a warrant is requested, the moving party must be present.

8C.2 **Judicial Assignment:** The pleading, together with affidavits, shall be filed with the Clerk or electronically, which will automatically assign a Family Court Judge. Family Court staff will confirm judicial assignment. If a Family Court Judge is not available to hear the emergency matter, it may be heard by any available District Court Judge. If it is heard by a Family Court Judge, that Judge may determine to reassign the case at his or her discretion.

8C.3 **Notice of Request for Emergency Order and/or Hearing:** A party making application for emergency relief must give actual and reasonable notice of the application and of any scheduled hearing to the attorney of record for the non-moving party, or, if the opposing party is pro se, to the party, pursuant to law except for those circumstances in which the Court makes an evidentiary finding that either:

(a) notice of the application for such order is likely to result in the very harm sought to be prevented if the respondent is given prior notice of complainant's efforts to obtain judicial relief; or

(b) all reasonable means calculated to give the notice required were used but were unsuccessful.

8C.4 **Ex parte Temporary Custody:** Pursuant to North Carolina law, an ex parte order for custody, which changes custody or the living arrangements of the child, shall be entered upon the pleadings and hearing only if the Court finds that either:

(a) the child is exposed to a substantial risk of bodily injury or sexual abuse; or

(b) that there is a substantial risk that the child may be abducted or removed from the State of North Carolina for the purpose of evading the jurisdiction of North Carolina courts; or

(c) as otherwise allowable by law.

When an ex parte ruling is sought from the Court, the Complaint or Motion must be presented to the Court by the Attorney of record or the Self-Represented party seeking the ruling. Attorneys or Self-Represented parties seeking an ex parte ruling shall inform Family Court staff of the identity of any opposing counsel representing the other party and if they have made the opposing counsel aware of the pending motion. The Family Court staff shall make inquiry about the existence of opposing counsel before presenting the ex parte pleadings to the Court.

8C.5 **Hearing Subsequent to Entry of ex parte Custody Order:** The Judge and/or Family Court staff shall schedule ex parte orders for hearing within 10 days of the issuance of the ex parte order or will be set for the following day after service is

perfected, if a pickup warrant is issued. Notice shall be provided by the moving party to the opposing party and/or counsel by sheriff.

RULE 9: CHILD SUPPORT:

9.1 **Commencement of Child Support Actions:** All Family Court cases shall be commenced by filing a Complaint with the Clerk or electronically. A case number will be assigned at the time of the initial filing and the case number will be placed on the Complaint and/or Motion and the Summons. All subsequent pleadings and papers filed with the Clerk or electronically shall contain the assigned case number as well as the assigned Judge, if applicable. Subject to Rule 9.2, all Complaints and Motions requesting the establishment or the modification of a child support order shall be accompanied by a completed Financial Affidavit (**Form 4**) and Employer Wage Affidavit (**Form 5**) when filed. In addition, the moving party shall complete a Notice of Hearing (**Form 1**). Simultaneously with the filing of the action, the moving party shall file the pleadings and required forms with the Clerk or electronically and contact Family Court to obtain dates for the hearing(s), which will be included on Form 1.

9.2 **Local Forms Required by Moving Party:** The moving party shall then serve upon the opposing party or counsel:

(a) the pleading;
(b) his or her completed Financial Affidavits (**Forms 4 and 5**); and
(c) the completed Notice of Hearing (**Form 1**) scheduling the upcoming court date(s) and, if applicable, the Motion as set forth in section 9.1.

9.3 **Local Forms Required by Responding Party:** The responding party shall file and serve upon the opposing party or counsel his or her completed Financial Affidavits (**Forms 4** and **5)** either with his or her responsive pleading, at the Pretrial Conference, or seven (7) days prior to the commencement of the term in which child support is scheduled to be heard, whichever date is earlier.

9.4 **Scheduling:** If temporary child support is requested, Family Court staff shall set a hearing for temporary child support within forty-five (45) days. Otherwise, a hearing shall be scheduled on the assigned Judge's next available calendar. If child support is requested in conjunction with custody, the child support hearing shall be held simultaneously with the custody hearing pursuant to the scheduling procedures as set forth in Rule 8A.5.

RULE 10: POST SEPARATION SUPPORT (PSS) AND ALIMONY

10.1 **Commencement of Post-Separation Support and Alimony Actions:** All new family court cases, except for simple absolute divorces, IV-D, and U.I.F.S.A., shall be accompanied by a Notice of Hearing and Judicial Assignment (**Form 1**). This form should be completed and signed with everything except the court dates, which will be filled out by the Family Court Coordinator after confirming the auto assigned Judge. This form shall indicate whether there is <u>any</u> pending or resolved domestic, domestic violence, or juvenile case involving the same family members or issues as the case being filed.

Attorneys filing an action must obtain this information from their client and provide it on Form 1. Failure to truthfully provide this information may result in sanctions allowed by law and deemed appropriate by the Chief District Court Judge or the assigned Judge. A Form 1 shall also accompany any subsequently filed pleadings which require or request a hearing. For existing cases, attorneys or parties shall contact the Family Court Coordinator to obtain a court date prior to filing the Form 1 (except for Contempt or Emergency Custody filings). Simultaneously with the filing of the action the moving party shall file the pleadings with the Clerk or electronically and contact Family Court to obtain dates for the hearing(s), which shall be included on Form 1. The Form 4 and or Form 5 shall be served on the opposing parties within forty-five 45 days of the filing of the complaint but shall not be filed. Consistent with the Rules of Exhibits, these Forms shall be presented to the Court at the time of hearing, or at the time agreed upon if the Court is to rule by submission.

10.2 **Local Forms Required by Moving Party:** The moving party who files for post-separation support and/or alimony shall serve upon the opposing party or counsel the pleading, his or her completed Financial Affidavits (**Forms 4 and 5**), and the completed Notice of Hearing (**Form 1**).

10.3 **Local Forms Required by Responding Party:** The responding party shall file and serve upon the opposing party or counsel his or her responsive pleadings (if any). In addition, his or her completed Financial Affidavit (**Form 4**) and Employer Wage Affidavit (**Form 5)** shall be served either with his or her responsive pleading, at the Pretrial Conference or seven (7) days prior to the commencement of the term in which alimony and/or PSS is scheduled to be heard, whichever date is earlier.

10.4 **Additional Required Form by Both Parties:** Both parties must serve on the opposing party or counsel a completed Affidavit in Support of (or in Response to) Claim for PSS/Alimony and Attorney Fees **(Form 4)** either five (5) days prior to the temporary hearing, at the Pretrial Conference, or seven (7) days prior to the commencement of the term in which alimony or PSS and/or alimony is scheduled to be heard, whichever date is earlier.

10.5 **Scheduling/Post Separation Support:** At the time of filing a PSS claim, Family Court staff shall set a hearing within ninety (90) days, or at the Court's next available term.

10.6 **Scheduling/Alimony:** At the time of filing an alimony claim, Family Court staff shall schedule an Initial Status Conference within one hundred twenty (120) days, per the Family Court time standards or at the Court's next available term.

RULE 11: EQUITABLE DISTRIBUTION:

11.1 **Commencement of ED Action and Initial Court Dates:** At the time a Complaint for equitable distribution is filed, the moving party shall file the pleading with the Clerk or electronically, together with a Notice of Hearing (**Form 1)**, and the Family Court staff will set a date for an Initial Status Conference no later than one hundred twenty

(120) days from the date of filing. Additionally, if a request has been made for an interim distribution pursuant to N.C.G.S. §50.20 (i1), at the time of filing, Family Court staff will set a date for a hearing on the interim distribution on the assigned Judge's next available calendar, which hearing date shall be obtained from the Court Coordinator, and included on the Form 1, when filed.

11.2 **Equitable Distribution Inventory Affidavit:** Each party shall serve an ED Inventory Affidavit (**Form 10**) on the opposing party or attorney. The Affidavit must be served no later than ten (10) days prior to the scheduled date of the Initial Status Conference. The Equitable Distribution Inventory Affidavit shall be subject to amendment and shall not be binding at trial as to completeness or value.

11.3 **Initial Disclosure:** In addition to Form 10, copies of the following documents that are in each party's possession shall be served on the other party no later than ten (10) days prior to the scheduled Initial Status Conference unless otherwise agreed in writing. "Serve" means hand-deliver, FAX, email or other means whereby copies of the documents reach the opposing party by the deadline. For all required documents that are not produced, a party shall indicate the reason they were not produced and the location of such documents, if known. The required documents are:

(a) **Financial Account Statements**: All financial account statements, including but not limited to: checking, savings, money market, certificate of deposits, stocks, bonds and mutual funds, from the statements closest to the date of separation through the most recent statement(s);

(b) **Pensions and Retirement Benefits**: (1) All statements relating to pension and/or retirement accounts from the period prior to the date of separation (usually the calendar year end) through the most recent statement(s), and (2) a copy of the summary plan description;

(c) **Marital Debt**: All account statements showing the amount of marital debt existing on the date of separation through the current date, including but not limited to: credit card statements, lines of credit, notes or other evidence of indebtedness;

(d) **Realty**: All deeds for real property, appraisals, deeds of trust, notes relating to the deeds of trust (or mortgages), and amortization schedules;

(e) **Transportation**: All certificates of title for vehicles, boats, etc. and copies of documents relating to loans on same that are due and owing or that have been paid off in the past eighteen (18) months; and

(f) **Proof of Income and Earnings**: Financial Affidavit (**Form 4),** Employer Wage Affidavit (**Form 5**), the prior year's Federal and State income tax returns, and pay stubs for the two (2) months prior to filing the Financial Affidavit.

11.4 **Initial Status Conference:** Attendance at the Initial Status Conference is mandatory for lawyers and Self-Represented parties, unless specifically excused by the Court. The purpose of the Initial Status Conference is to ensure that the case is proceeding toward resolution in a timely and orderly fashion, to ensure the exchange and submission of required and requested documents, to set deadlines for discovery and to schedule upcoming Court dates. At the Initial Status Conference, the Judge may:

(a) review each party's Financial Affidavit; and
(b) issue an Order of Reference that:
(1) sets the method of ADR to be employed, the neutral who will conduct it, the deadline for its completion and allocates the cost thereof;
(2) addresses any other discovery or miscellaneous issues that have been raised;
(3) sets the date for the Final Pretrial Conference; and
(4) sets the date of the trial.

Once the deadlines for discovery and dates for court events are set, such dates can only be modified by Court order thereafter.

11.5 **Alternative Dispute Resolution (ADR):** The parties shall participate in an ADR procedure as set forth in the Order of Reference or other Court Order, which process shall be completed by the Court-ordered due date unless the parties enter into a Consent Order resolving all equitable distribution issues prior to the Court-ordered ADR due date.

11.6 **Final Equitable Distribution Affidavit:** Each party shall serve a copy of their Final ED Affidavit on the opposing party or attorney by the dates as set forth in the Order of Reference, unless the parties enter into a Consent Judgment resolving all equitable distribution issues prior to the Court-ordered due date. The ED Affidavits are binding on the parties at trial unless an amendment is allowed by Court Order.

Pursuant to NCGS § 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 and adjudicated, 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 ninety (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 thirty (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 N.C.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 N.C.G.S. 1A-1, Rules 26, 33, and 37.

11.7 **Final Pretrial Conference:** A Final Pretrial Conference shall be held in every ED case not resolved through ADR; the date shall be set at the Initial Status Conference

or in the Order of Reference issued on or about the scheduled date of the Initial Status Conference. At the Final Pretrial Conference, the parties shall present a completed Equitable Distribution Pretrial Order **(Form 9)** signed by the parties and attorneys. If the attorneys or Self-Represented litigants wish to use a different format for the proposed order, they must seek leave of the Court to do so and they must furnish the proposed format in a word format to the Court Coordinator prior to the final pretrial conference. If the ED Pretrial Order is not signed by the parties and attorneys, the Judge may request acknowledgment thereon before a Notary Public or upon oath before the Clerk at the time of the Final Pretrial conference. Failure of the parties to complete the Equitable Distribution Pretrial Order may result in the imposition of sanctions. In addition, the Court may enter its own final pretrial order where consent is not reached. At the Final Pretrial Conference, the trial date shall be confirmed or a new trial date, as well as any additional deadlines, shall be set. **Both attorneys and parties shall be present at the Final Pretrial Conference unless excused by Court Order**.

11.8 **Sanctions:** Failure to timely complete and serve the Equitable Distribution Inventory Affidavit (**Form 10**), the Final Equitable Distribution Affidavit (**Form 11**), the required initial ED disclosure pursuant to Rule 11.3 or to attend the scheduled Status and/or Pretrial Conferences (unless waived by these Rules or prior Court Order) may result in sanctions including but not limited to: a monetary sanction of a minimum of fifty dollars ($50.00**), disallowing of evidence at trial**, attorney fees and costs when allowed by Statute and/or other sanctions as provided by the North Carolina Rules of Civil Procedure or Statutes. The Court may extend the time limits in this section for good cause shown.

RULE 12: DIVORCE:

12.1 **Commencement of Absolute Divorces.** Divorce actions shall be commenced by filing a Complaint and obtaining a Summons for service of process in the Clerk's Office or by filing the documents electronically.

12.2 **Forms to be Filed by Moving Party.** The filing party shall serve the opposing party with the Complaint and Summons and shall submit the following documents to the Clerk's office or file the documents electronically:

(a1) a Civil Summons with certified return of service by a deputy sheriff OR
(a2) other proof of service, including return receipt card, if applicable, AND an Affidavit of Service by Certified Mail or Affidavit of Service by Publication;
(b) the Certificate of Absolute Divorce (Vital Statistics form); and
(c) the proposed Judgment of Divorce.

12.3 **Summary Judgment Divorces:** Summary Judgment divorces are held in person. Divorces are heard on Mondays on the fourth floor (4^{th}) of the older part of the Courthouse. Attorney Divorces shall be heard from 9:00 am to 9:30 am. Any attorney who is not present by 9:30 am may not be heard and, if required, shall notice the matter back in for a future date.

12.4 **Final Judgment/Hearing:** After all pleadings have been properly served and all required documents submitted to the Clerk or electronically filed, and after opposing party has either filed a responsive pleading or the period of time in which to file same has expired, the divorce shall be scheduled to be heard before a District Court Judge in the Family Court Division, or before the Clerk in the case of certain uncontested simple absolute divorce actions, according to the procedures established for the same by Statute, the Clerk and the Chief District Court Judge. All absolute divorces should be completed by obtaining a Judgment for Divorce no later than ninety (90) days after service has been obtained. If a divorce has not been completed within that time, it shall be placed on a calendar by Family Court staff.

12.5 **Pro Se Divorces:** Pro Se Divorce actions shall be commenced by filing a Complaint and obtaining a Summons for service of process in the Clerk's Office or by filing the documents electronically. Pro Se Divorces are heard on Mondays, at 2:00 PM on the fourth floor (4^{th}) of the older part of the Courthouse.

12.6 **Forms to be Filed by Moving Party:** The filing party shall serve the opposing party with the Complaint and Summons and shall submit the following documents to the Clerk's office or file the documents electronically:

(a1) a Civil Summons with certified return of service by a deputy sheriff OR

(a2) other proof of service, including return receipt card, if applicable, AND an Affidavit of Service by Certified Mail or Affidavit of Service by Publication;

(b) the Certificate of Absolute Divorce (Vital Statistics form); and

(c) the proposed Judgment of Divorce.

RULE 13: ATTORNEY FEES AND/OR COST CLAIMS:

13.1 **Affidavit Required:** In all cases in which an attorney seeks an award of fees and/or costs, the attorney shall present an appropriate Affidavit and sealed billing to the Family Court Coordinator by email and serve the Affidavit on opposing counsel within ten (10) days from the conclusion of the trial. If either party wishes to be heard further on attorneys' fees and /or costs they shall provide a Form 1 within ten (10) days from service and contact the Family Court to obtain dates for the hearing(s), which will be included on Form 1.

13.2 **Dismissal:** All attorney fees and costs claims are subject to dismissal unless the moving party presents their argument and any required Affidavit for such claims within ten (10) days from the conclusion of said hearing.

RULE 14: ALTERNATIVE DISPUTE RESOLUTION (ADR) IN FAMILY FINANCIAL CASES OTHER THAN EQUITABLE DISTRIBUTION:

14.1 **Purpose:** The North Carolina Supreme Court has promulgated Rules to implement a system of settlement and encourages District Courts to initiate local rules to focus parties' attention on settlement rather than on trial preparation and to provide a structured opportunity for settlement negotiations to take place.

14.2 **Types of Cases:** In addition to ADR being mandatory in ED cases, the following types of Family Court cases may be referred to alternative dispute resolution procedures at the discretion of the assigned Judge with the filing of a Motion for An Order to Use Settlement Procedure Other Than Mediated Settlement Conference or Judicial Settlement Conference in Family Financial Case (AOC-CV-826) to address the following causes below:

(a) alimony;
(b) child support, including retroactive support;
(c) post separation support;
(d) separation agreements;
(e) post nuptial agreements; and
(f) prenuptial agreements.

RULE 15: CONTINUANCES:

15.1 **Application with Notice:** Motions to Continue that are foreseeable shall be ***in writing*** (**Form 3)** and either:

(a) the moving party shall file their Motion with the Clerk or electronically, in which event the moving party shall electronically serve the opposing party or counsel with the Motion and shall be addressed at calendar call; or

(b) the moving party shall electronically serve their Motion on the opposing party or attorney a minimum of five (5) days prior to Calendar Call to be heard at Calendar Call.

The written Motion shall be considered by the assigned Judge as soon as practicable after hearing from opposing counsel or party. In the situation set forth in (a), the Judge shall render a written ruling on the Motion to Continue. In the situation set forth in (b), absent extraordinary cause, the Court shall wait two (2) business days to allow opposing party or attorney to file a written objection. If an objection is not presented within the two (2) days, it shall be assumed that the opposing party or attorney does not object to the request, and an Order on the Motion shall be entered. Otherwise, the moving party will need to appear in Court for their scheduled court date so that the Judge may rule on the Motion to Continue.

15.2 **Continuances Heard at Calendar Call:** Motions to Continue not specifically scheduled for a Court term shall be presented at Calendar Call. Oral Motions may be allowed when the reason for the continuance was not foreseeable and therefore did not permit notice as required by Rule 15.1. If an objection is not presented at Calendar Call, and the opposing party or attorney is present, it shall be assumed that the opposing party or attorney does not object to the request. The presiding Judge shall rule on the request at Calendar Call.

15.3 **Continuance Requests Arising After Calendar Call:** Motions to Continue that arise after Calendar Call shall be filed with the Clerk or electronically and shall be electronically served (**Form 3**) on the opposing party or attorney. The Motion shall contain clear language that the moving party has contacted the opposing party or

attorney and indicate with specificity that party's consent or objection to the continuance.

15.4 **Opposition to a Motion to Continue:** A party or counsel opposing the Motion has the burden of either submitting a written response within two (2) business days to the Family Court Office or, if applicable, appearing at Calendar Call to orally oppose the Motion.

15.5 **Grounds for Continuances:** Absent meritorious cause, exigent or unforeseeable circumstances, continuances shall not be granted. Party unavailability, witness unavailability and incomplete discovery shall be considered on a case-by-case basis. The timeliness of identifying and addressing these issues will be a major determinant in any ruling. Requests based upon personal conflicts such as vacations and family commitments shall be made as soon as possible after such conflict arises. Inquiry as to whether "Secure Leave" was timely and properly filed will be considered in ruling upon continuance motions based on personal conflicts where appropriate. Rulings regarding professional conflicts shall be governed by the Guidelines for Resolving Scheduling Conflicts, Rule 3.1 of the General Rules of Practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure.

15.6 **New Date:** Upon granting a Motion to Continue, the Judge or Family Court staff shall reschedule the court event to a new term. The party or attorney who requested the continuance shall prepare the Form 1 accordingly unless the matter is continued by an Order prepared by the Court when the ruling is rendered.

RULE 16: ORDERS/JUDGMENTS:

16.1 **Method and Time for Submission:** Unless otherwise directed by the presiding Judge, orders and judgments shall be prepared by the party directed to do so by the Court and submitted to opposing counsel (or opposing party) no later than seven (7) business days after completion of the hearing or trial. The opposing party shall make written response of any objections, modifications or additions to the proposed Order within five (5) business days from the date the proposed Order was transmitted. If no such changes are communicated to the preparer of the proposed Order, the Order shall be submitted by email in WORD version for the Judge's review. It is the expectation of the Court that these will have already been carefully proofed and checked for errors before submission as an expression of competence and professionalism of the attorney and respect for Court professionals.

If the parties submit a Consent Order, the Consent Order shall be uploaded in Odyssey and the parties shall inform the Court Coordinator. The Court Coordinator shall present it to the Judge, and once signed, shall remove the matter from the Court's docket. In the event of competing orders, where matters are taken under advisement, a copy of the proposed Orders and a written explanation of the disputed issues shall be emailed to the Court Coordinator for the Court's review as well as to opposing counsel. These competing orders shall be in a WORD format, but the parties may also submit a PDF form in addition if they wish.

Any Consent Order/Judgment that is submitted to the Court which carries the signature of a Self-Represented litigant, shall be notarized prior to submission to the Court. **No Order submitted to the Court shall be formatted in a manner such that the Judge's signature line is on a page by itself. If Consent orders have multiple signature pages submitted the entire document shall be paginated with the Judge's signature to occur on the last signature page.**

Orders Due: Orders due will be scheduled for a date certain, for submission to the Court. If a proposed Order is not submitted to the Court prior to the scheduled date, the attorney of record must report to the Judge in Court at the scheduled due date and time as to the status of the order due.

16.2 **Delinquent Orders and Judgments:** Cases that have orders and/or judgments identified as being delinquent pursuant to this Rule may have at the discretion of the Chief District Court Judge or the assigned Judge, sanctions or penalties imposed as deemed appropriate and allowed by law.

RULE 17: TIME STANDARDS:

General Time Standards for Domestic Cases It is the goal of the Family Court that all domestic relations cases are disposed of within twelve (12) months of filing. Judges may allow additional time in complex cases.

RULE 18: COMMUNICATION WITH JUDGES REGARDING PENDING CASES:

18.1 **Written Communications in General:** Unless otherwise specifically requested by a Judge, written communications regarding a case, with a Judge, shall be through that Judges' Court Coordinator. All written communication with a Judge shall be contemporaneously served on the opposing party or counsel in the same manner that it is sent to the Court Coordinator. Said communication 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 their consideration;

(c) objecting to the form of an/or requesting specific changes to a proposed Order previously tendered to a Judge;

(d) inquiring about the status of an Order; and

(e) requesting permission to submit additional legal authority or make additional legal arguments.

18.2 **Ex Parte Communication:** Neither Self-Represented parties nor attorneys shall have or attempt to have ex parte communication concerning a case with the Judge assigned to hear that matter unless specifically authorized by these Rules or by Statute. The assigned Judge will not return telephone calls, listen to recorded telephone messages or read mail or other communication which is deemed ex parte communication. The assigned Judge will not open mail that does not contain the name and return address of the sender. Any information that is suspected to be ex parte shall be given to the Court Administrator or

Court Coordinator to open and return, if ex parte. Violations of the ex parte communication rule may, in the discretion of the assigned Judge, subject the offending party to sanctions or other action deemed appropriate.

Attorneys and/or parties shall not include the Court Coordinators in settlement discussions via email.

18. 3 **Telephone conferences:** The Court may, in its discretion, order or allow oral argument on any motion by speaker phone conference call or telephone conference call, provided that all participants to the conference can be heard by all other parties during the conference call. Counsel shall schedule such conference calls at a time convenient to all parties and the presiding Judge. The Judge may direct which party or parties shall bear the cost of the conference call. Telephone conferences may be held in the Courtroom and recorded.

18.4 **Deposition Communication:**

Depositions, Rule 30(d) of the Rules of Civil Procedure in 1A-1-30; During Courthouse hours, attorneys or self-represented litigants may contact the Court through the Court coordinator for the assigned Judge via email when there is a motion to terminate or limit examination during a deposition. The person contacting the Court shall leave a phone number where the parties can be reached. A Judge will reach out to the parties to provide a quick decision on the issues raised. If the deposition is during non-courthouse hours, the parties can agree on how to proceed or shall suspend the line of questioning until the Court can address the issue when the Courthouse is next open.

RULE 19: SANCTIONS:

19.1 **General:** Failure to comply with any section of these Rules may subject the parties, and/or their counsel, to sanctions deemed appropriate at the discretion of the presiding Judge, including but not limited to: dismissal of any claim or part of any claim for relief; disallowance of evidence and/or testimony; monetary fines; payment of costs and/or legal fees when allowed by Statute and/or other sanctions as provided by North Carolina Rules of Civil Procedure and applicable Statutes. The specific monetary sanctions set forth herein below do not preclude the Court from ordering discretionary sanctions pursuant to this Section, either instead of or in addition to such monetary sanction(s).

19.2 **Custody Mediation Fines:** The Court may order a fine of a **minimum of fifty dollars ($50.00)** against a party (including a party represented by counsel) or an attorney $50.00 for a violation of these Rules, including but not limited to:

(a) failure to attend the mandatory Parent Education/Mediation Orientation;

(b) failure to attend the mandatory Parent Education/Mediation Orientation session and any scheduled mediation sessions in cases involving visitation and/or custody.

If a party fails to attend the above events upon the advice of his or her attorney, said sanctions, including the monetary fine, may also be imposed on the non-compliant party's attorney.

19.3 **Discretionary Fines:** The Court, in its discretion, may order a fine of a **minimum of one hundred dollars ($100.00)** against a party (including a party represented by counsel) and/or an attorney of record, for a violation of these Rules, including but not limited to:

(a) failure to provide accurate required information on a completed Form as required by Rule 4.2;

(b) failure to appear in Court, without prior notice and good cause, at Calendar Call or a scheduled Initial Status Conference, Pretrial Conference, hearing and/or trial as required;

(c) failure to attend a Final Pretrial Conference, absent excusal by Court Order or by these Rules;

(d) failure to promptly report to the Court at the time designated by the Court, as to issues settled out of court but not drawn up by the time of the scheduled court date as required by Rule 5.4;

(e) failure to serve on the opposing party or counsel a completed Financial Affidavit (**Form 4**) and/or a completed Employer Wage Affidavit (**Form 5**) as required by Rules 9.1, 9.2, 9.3, 10.1, 10.2 and 10.3, 10.4;

(g) failure of the moving party to obtain and notice the mandatory Parent Education/Mediation Orientation session date and serve all parties with timely notice to attend the mandatory session (**Form 12**) in cases involving custody and/or visitation as required by Rule 8A.3 and 8A.4;

(h) failure to serve on the opposing party or counsel a completed Equitable Distribution Inventory Affidavit (**Form 10**) as required by Rule 11.2;

(i) failure to serve on the opposing party or counsel the initial disclosure as required by Rule 11.3;

(j) failure to serve on the opposing party or counsel a completed Final Equitable Distribution Affidavit (**Form 11**) required by Rule 11.8;

(k) failure to meet and fulfill other discovery requirements and/or deadlines provided in these Rules and/or Court Order;

(l) failure of the prevailing party to timely prepare and submit proposed Orders or Judgments to the Court as required by Rule 17.1 and/or Court Order;

(m) failure to notify the Family Court staff of settlement or dismissal of issues prior to court-scheduled events regarding these issues;

(n) failure to adhere to any Rules herein or to abide by Court Orders.

19.4 **Orders for Sanctions:** The Court may issue a warning to an offending party or attorney for failure to abide by these Rules, however sanctions as set forth herein may

be imposed automatically and are binding absent a showing of extraordinary cause. If sanctions are imposed, the Court shall enter an Order that specifically sets forth the specific violation, the party responsible for such violation and the sanction for such violation.

19.5 **Payment of Monetary Sanctions:** Any and all fines imposed pursuant to this section shall be tendered to the Clerk of the Superior Court of Buncombe County by the violating party no later than 5:00 p.m. on the seventh (7^{th}) business day such order is entered absent specific Court order to the contrary entered by the presiding Judge.

19.6 **Repeated Violations:** Repeated violations by a party may result in the imposition of higher fines and/or additional sanctions as deemed appropriate by the Court.

RULE 20: RESERVED FOR FUTURE PURPOSES.