

Rule 1: General

- 1.1 Purpose.** The purpose of these Rules is to provide a framework for the fair, just, and timely resolution of legal problems affecting families and children in this district, whether court intervention is initiated by a family member or a governmental agency. The Rules are to complement the North Carolina Rules of Civil Procedure, North Carolina Rules of Evidence, and General Rules of Practice for Superior and District Courts.
- 1.2 Goals.** Family Court strives to, among other things:
- incorporate administrative practices which promote fair, effective, and efficient resolution of family legal issues;
 - provide appropriate dispute resolution services as alternatives to the adversarial process;
 - ensure that participants are treated with dignity, respect, and courtesy; and
 - assure uniform delivery of professional services.
- 1.3 Application.** It is recognized that these Rules are not complete in every detail and will not cover every situation that may arise. In the event that these Rules fail to address a specific matter, they should be construed in such a manner as to avoid technical or unnecessary delay and to promote the ends of justice. The Family Court Administration Staff is authorized to act in his/her discretion subject to consultation with the presiding judge or the Chief District Court Judge in applying these Rules.
- 1.4 Compliance.** Parties and attorneys shall comply with these Rules. Although a party is not required to have an attorney, any party who is not represented by an attorney must comply with these Rules.
- 1.5 Citation.** These Rules and all amendments hereafter shall be filed with the Clerk of Superior Court of each county in the Eighth Judicial District and the Administrative Office of the Courts. These Rules may be cited accordingly as **Eighth Judicial District Family Court Rules (8FCR)**.
- 1.6 Availability of Rules.** The Family Court Administration Staff shall distribute a copy of these Rules and any subsequent amendments to each member of the Bar of the Eighth Judicial District. The Family Court Case Managers (Case Managers) will maintain a supply of Rules and associated forms to be furnished to attorneys and the public upon request.
- 1.7 Forms.** Except where specifically required herein, where local forms are required by these Rules, counsel or pro se parties may use either the forms provided or a form of their own which substantially corresponds to the specified court form.

1.8 Communication with Judges. Attorneys shall not communicate ex parte with a judge except:

- In the course of official proceedings;
- In writing, if a copy of the writing is furnished simultaneously to the other party;
- Orally, upon adequate notice to opposing party; or
- As otherwise permitted by law.

Before any ex parte communication concerning a case between an attorney and a judge, the attorney must first inform the judge of any other attorneys that might be involved in the case at hand, or in a case in another court that might have overlapping issues. In addition, attorneys shall not engage in conduct intended to disrupt a court; including but not limited to failing to comply with known local customs of courtesy or practice of the Bar or of a particular court without giving opposing counsel timely notice of the intent not to comply, and shall not engage in undignified or discourteous conduct.

1.9 Conflict in Child Custody Orders. When the court obtains jurisdiction over a juvenile as the result of a petition alleging that the juvenile is abused, neglected, or dependent:

- (1) The court in the juvenile proceeding may stay any other civil action in this State in which the custody of the juvenile is an issue.
- (2) If an order entered in the juvenile proceeding and an order entered in another civil custody action conflict, the order in the juvenile proceeding controls as long as the court continues to retain jurisdiction in the juvenile proceeding.
- (3) The court in the juvenile proceeding may order that any civil action or claim for custody filed in this judicial district be consolidated with the juvenile proceeding.
- (4) If a civil action or claim for custody has been filed in a district other than this judicial district, then the court in the juvenile proceeding may, after consulting with the court in the other district, order that the civil action or claim for custody be transferred to this judicial district or may order a change of venue in the juvenile proceeding and transfer the juvenile proceeding to the other district.
- (5) The court may establish a mechanism for determining the legal status of a juvenile after jurisdiction of the juvenile court terminates, including a determination as to who has custody of the juvenile and under what circumstances custody of the juvenile and under what circumstances custody may subsequently be changed.

Rule 2: Domestic Case Filings

- 2.1 Commencement.** No domestic matter, with the exceptions noted below, shall be filed in the Eighth Judicial District without (1) a date set for an upcoming court event (status conference, pre-trial conference, mediation orientation or hearing) as required by these Rules and (2) a judicial assignment. (The following filings shall not require either the AOC Cover Sheet or the Certification of Judicial Assignment: IV-D cases, UIFSA cases, Compliance cases [Clerk's automatic child support enforcement cases], Involuntary Commitments, and Domestic Violence matters).
- 2.2 Requirements.** The following steps are required for a party to file:
- Step 1** Meet with or contact the Case Manager to receive a court date and a judicial assignment. The Case Manager shall set a court date and assign the case to a Family Court Judge on a random basis. Those cases previously assigned to, or heard by, a Family Court Judge (including juvenile court matters) will be assigned to that Family Court Judge.
- Step 2** Complete an original and one copy of **AOC Cover Sheet** (Form 1).
- Step 3** Obtain an original and one copy of **Notice of Hearing and Certification of Judicial Assignment** (Form 2) from the Case Manager. Failure to truthfully file this Certification may result in sanctions allowed by law and deemed appropriate by the assigned Family Court Judge.
- 2.3 Filing with the Clerk.** Once steps (1), (2), and (3) above have been met, the party may file the case with the Clerk of Superior Court accompanied by the original AOC Cover Sheet (Form 1) and the Notice of Hearing and Certification of Judicial Assignment (Form 2). The party must also provide the Case Manager with the copy of the AOC Cover Sheet. The Clerk of Superior Court shall provide a case number at the time of the initial filing and place the number upon the summons. All subsequent pleadings and papers filed with the Clerk and all subsequent communications to opposing parties, attorneys, or court personnel shall contain the proper case number.

Rule 3: General Calendaring Rules

- 3.1 Case Tracking.** The Family Court Administration Staff 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 Rules as approved by the Chief District Court Judge. The Family Court Administration Staff shall schedule family court cases for court events as may be necessary and appropriate based on the issues raised in the pleadings. The Family Court Administration Staff shall inform the parties or their attorneys of scheduled events, and publish a printed calendar and distribute the calendar 10 days before the scheduled session.

- 3.2 Status or Pretrial Conferences Required.** The Case Manager shall schedule Domestic Court cases not otherwise exempted herein for the appropriate status or pretrial conferences and shall inform the parties or attorneys. The following matters do not require status or pre-trial conferences unless ordered by the Court in an individual case: uncontested divorces, hearings to show cause, hearings for temporary or emergency relief, attorney fees, domestic violence, UIFSA, IV-D, or child support enforcement.
- 3.3 Notice is Responsibility of Moving Party.** It is the responsibility of the moving party to give notice to the opposing party or counsel immediately of the date, time, and place of the event as set by the Court. The notification must be in accordance with these Rules on Notice of Hearing Form (Form 2). The moving party shall file all notices with the Clerk's Office for inclusion in the case file.
- 3.4 Upcoming Court Events.** In all actions with pending issues, there shall be scheduled a next court date for the upcoming court event that may be appropriate in the case: initial scheduling conference, status or interim pre-trial conference, pre-trial hearing, final pre-trial conference, or trial. The Case Managers will review and monitor pending actions; and in any case without a properly scheduled court event, the Case Manager shall schedule the case for a status conference or as otherwise appropriate to ensure that the Court addresses matters in a timely manner. Scheduling Orders are encouraged; however, trial dates are confirmed only when set by the assigned Judge at the final pre-trial conference.
- 3.5 Consolidated Cases.** When cases have been consolidated for trial, they will be regarded as one case for calendaring purposes and will appear under the oldest case number. A copy of the order consolidating the cases for trial shall be filed in all pertinent court files, and all pleadings or documents filed thereafter shall be captioned with the oldest file number only.
- 3.6 Required Court Appearances.** Parties and attorneys shall be present and ready to proceed as scheduled when a case is noticed for a conference, pre-trial hearing, or trial (See Rule 10 regarding continuances and conflicts). If the attorneys and parties are not present and ready to proceed and have failed to notify the court of any emergency or conflict which would preclude the attorney or party from being present, the Court may impose sanctions for failure to comply with these Rules. See Rule 12.
- 3.7 Dismissal for Missed Court Appearances.** Any case noticed for a pre-trial conference is subject to dismissal for failure to prosecute if, at the time the matter is called for hearing, the attorneys and parties are not present and ready to proceed, or have failed to notify the court of any emergency, which would preclude the attorney or party from being present.
- 3.8 Settlement of Contested Issues.** Parties are encouraged to engage in settlement discussions at every opportunity. The Family Court recognizes the importance to the family of bringing closure to these disputes and the responsibility of the Court to assist the parties in resolving these disputes. Parties and attorneys are required to appear at scheduled court events as noticed unless otherwise ordered by the Court. If a resolution of the relevant issues is reached prior to the time of court, the attorneys and the parties may, as follows:

- (1) Appear as scheduled and read the terms of the agreement into the record. Another court date will be scheduled and an appropriate Order shall be prepared, signed, and filed with the Court prior to or at the proceedings; or
- (2) Be released from appearance if a Memorandum of Judgment/Order has been executed and signed by the parties, their attorneys, and the assigned Judge. Another court date will be scheduled and an appropriate Order shall be prepared, signed, and filed with the Court prior to or at that proceeding; or
- (3) Be released from appearance if an appropriate Order is prepared, signed by the parties and their attorneys, and the assigned Judge, and filed prior to the time of court.

3.9 Setting Motions for Hearing. Any motion, including all discovery and non-evidentiary motions, shall be set for hearing by the Case Managers.

3.10 Motions in the Cause for Contempt. All motions for Orders to Appear and Show Cause for contempt filed with the Clerk of Superior Court shall be submitted to the assigned Judge. If the assigned Judge is not available, the other Family Court Judge in that county may hear the matter. If that Family Court Judge is not available, any District Court Judge may hear the motion. Upon issuance of the Order to Appear and Show Cause, the Case Manager shall set the case on for hearing before the assigned Judge without a pre-trial conference. Notice shall be contained in the Order to Appear and Show Cause.

3.11 Motions for *Ex Parte* Orders. Motions for *Ex Parte* orders shall be submitted only for such emergency circumstances as are allowed by the Rules of Civil Procedure, statute or other law.

- (1) Motions for *Ex Parte* orders shall be submitted in writing to the assigned Judge. Emergency matters may be heard by the judge assigned to the case regardless of the session at which the judge may be presiding. If the judge assigned to a case is not available to hear an *ex parte* or other emergency matter, the other Family Court Judge in that county may hear the matter. If that Family Court Judge is not available, the matter may be heard by any District Court Judge.
- (2) If a party is represented, reasonable steps should be taken to contact counsel for the opposing party before an *Ex Parte* motion is submitted. When seeking an *Ex Parte* ruling, parties shall inform the Court of the identity of any opposing counsel. Before considering a request for an *Ex Parte* ruling, the Court should inquire about the existence of any opposing counsel and of steps taken to advise opposing counsel in advance of the *Ex Parte* contact. *Ex Parte* Orders shall be in writing and shall include the date, time and place such order is scheduled for review within ten (10) days.

- (3) If any *Ex Parte* communication with a Judge occurs without the other party or lawyer present, then the attorney or party must promptly deliver a written copy of such communication to the opposing party or counsel by the same means used to deliver the communication to the Judge, i.e. hand delivery, facsimile, express mail or otherwise.

- 3.12 Jury.** Issues to be determined by a jury in any domestic case shall be scheduled for trial by the assigned judge at the final pre-trial conference.
- 3.13 Peremptory Hearings.** Requests for a peremptory setting for matters shall be submitted to the Case Manager in writing using the *Request for Peremptory Setting* form (Form 3) with a simultaneous copy sent or delivered to the other party or counsel. The other party or counsel shall respond to the Case Manager within seven (7) days if they oppose the request for peremptory setting or date sought. When consented to, after receiving a response from the other party or counsel, or after ten (10) days whichever comes first, the Case Manager shall place the request before the assigned Judge who shall render his or her decision. A peremptory setting shall be granted only for good and compelling reason. The Judge's decision shall be transmitted to the moving party who shall then notify the other party or counsel.
- 3.14 Sessions of Family Court.** The schedules for Family Court civil sessions shall be posted in the Case Manager's office and placed in the attorneys' mail basket in the Clerk's Office.
- 3.15 Uncontested Divorces, Contested Divorces, Divorces from Bed and Board.** After a party has met with the Case Manager and complied with Rule 2.2, the party may then file their divorce action with the Clerk of Court. If the party does not file the case ***within 10 days*** of meeting with the Case Manager, the party must notify the Case Manager of this fact. The Case Manager, in compliance with Rule 2.2(1), shall set the case for a hearing date ***within 60 days***
- 3.16 Managing and Closing Cases.** The Family Court Administrator and the Case Manager shall monitor the pending docket and manage the cases so that all issues can be expeditiously resolved. Attorneys shall cooperate in assisting the Case Manager in identifying the issues to be heard in cases in which they are involved. Therefore, attorneys and parties should be careful in using and accurately preparing the AOC Domestic cover sheets required for filings in Family Court cases.

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

- (1) The entry of a final Equitable Distribution Order shall close any request for an Interim Distribution;

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

Rule 4: Temporary or Interim Hearings

- 4.1 Temporary Hearings.** Temporary hearings shall include hearings of request for custody, visitation, temporary child support, post-separation support, reviews of *Ex Parte* Orders (except domestic violence cases) and interim partial distributions pursuant to NCGS §50-20(i1). Temporary Hearings may be heard on affidavits.
- 4.2 Parties and Their Attorneys.** Parties and their attorneys, if any, shall be present at the hearing.
- 4.3 Temporary Hearings.** Temporary hearings shall be limited to one hour. Each party shall be allocated one-half of that time [thirty (30) minutes] to be used for direct examination of the party’s witnesses, cross-examination of the other party’s witnesses, examination of affidavits, and opening and closing statements. It is anticipated that most Temporary Hearings will take approximately one hour because of the exchange of information between the parties before the hearing; however, this time limit may be extended in the discretion of the presiding Family Court Judge for good cause.
- 4.4 Affidavits.** Affidavits in cases requesting child support or temporary child support, post-separation support, or equitable distribution shall be filed and served in accordance with the requirements found in Rules 6, 7, and 8 respectively. Any rebuttal affidavits, or affidavits filed in response to previous affidavits, shall be served on the other party no later than three (3) days before the scheduled temporary hearing. These affidavits shall be filed with the Court on the date of hearing.
- 4.5 Service of Affidavits.** Service of Affidavits may be by hand delivery, fax, or mail; however, service of affidavits by mail requires an additional three (3) days. The Court may, in its discretion, postpone or waive these filing requirements. Pre-Trial Conferences are not required prior to temporary hearings unless ordered by the assigned Judge.

Rule 5: Custody and Visitation Procedures

- 5.1 New Actions, Modifications, or Any Pleading Seeking Custody/Visitation.** After a party has met with the Case Manager and complied with Rule 2.2, the party may then file the pleading with the Clerk of Court. If the party does not file the pleading ***within 10 days*** of meeting with the Case Manager, the party must notify the Case Manager of this fact. As used herein, “Custody” includes custody, visitation, and parenting issues.
- 5.2 Scheduling.** The Case Manager, in compliance with Rule 2.2(1), shall contact the Custody Mediator and schedule the Orientation to Mediation for the parties ***within 45 days***. Parties should be given notice at least ten (10) days prior to the mediation orientation.
- 5.3 Responsibility of the Moving Party at the time of filing.** After meeting with the Case Manager and receiving the date of the Orientation to Mediation, the moving party shall serve on the opposing party:
- (1) The pleading seeking child custody;
 - (2) The Order to Attend Mediation (Form A); and
 - (3) The Notice of Hearing and Certification of Judicial Assignment setting the temporary hearing date, if requested. (Form 2)

The following Rules of the Custody and Visitation Mediation Program as established by NCGS 7A-494, 7A-495, and 50-13.1, as adopted by the Eighth Judicial District, shall be followed.

- 5.4 Mandatory Child Custody and Visitation Mediation.** The parties to any custody and/or visitation case, including initial filings and modifications, shall participate in mandatory mediation prior to any pre-trial conference or trial of these issues, unless exempted by the Court.
- 5.5 Purpose.** The purpose of the Child Custody and Visitation Mediation program is to provide the services of a skilled Mediator to the parties involved in a custody and visitation dispute. The goal of the program is to reduce stress and anxiety experienced by children in separation and divorce by furnishing an alternate way for the parties to resolve contested custody and/or visitation issues. Ideally, an educational process begins in mediation that helps the parties focus on parenting their children during this stressful period by recognizing and planning for the needs of their children during the changes in the family structure. A successful mediation may help the parties put a Parenting Agreement in writing, assist them in resolving future problems without recourse to the courts, and reduce the stress of re-litigation of custody and visitation issues.
- 5.6 Opportunities for Parties through the Mediation Program.** Through mediation the parties have the opportunity to:
- (1) Reduce any acrimony that exists between the parties regarding the dispute of custody or visitation.

- (2) Develop custody and visitation agreements that are in the child's best interest.
- (3) Participate in a process that invites informed choices and, where possible, gives the parties the responsibility for making decisions about their child's custody and visitation.
- (4) Minimize the stress and anxiety experienced by the parties, especially the child.
- (5) Reduce the stress and expense of litigation of custody and visitation disputes.

5.7 Attendance. The parties named as the plaintiff and defendant in the filing **are required to attend (1) an orientation to mediation, (2) a Parent Education Class, and (3) at least one mediation session.** If a party fails to participate in accordance with these Rules, the case will be closed in mediation and referred to the Case Manager for a Show Cause Order. The Mediator will utilize Form E, Mediation Outcome, to update the Case Manager and attorneys.

5.8 Orientation. Prior to the mediation sessions, parties shall attend an orientation to mediation where the goals and procedures of the mediation process are explained by the mediator. Orientation lasts approximately 1½ hours (including the completion of a mediation questionnaire and the scheduling of appointments for the first mediation session). **Children are not included in the orientation session.** Once the parties have attended the orientation, they do not need to attend the orientation again, even if they return to mediation years later.

5.9 Mediation Session. Only parties named in the suit are permitted to be present in the mediation session; however, other parties may be present only with the consent of the parties involved and at the discretion of the Mediator. Generally, children are not permitted to attend the mediation session unless that is agreed to in advance by both parties and the mediator. All participants in mediation are bound by the statutory requirement of confidentiality. The Mediator shall set the rules of behavior for the presence of other parties at his/her discretion. Each mediation session lasts approximately two hours. Frequently, parents spend more than one session resolving issues centered on parenting their children. Each case is unique, but the number of mediation sessions is usually one to three. The mediator helps to provide an environment where parents can:

- (a) engage in problem-solving that focuses on the needs of their children;
- (b) utilize the strengths of all concerned in reorganizing the family;
- (c) find ways to provide continuity and stability in the child's life; and
- (d) examine their responsibility for their children.

The mediator does not decide issues, but provides a structure where parents can develop a parenting plan. Parents are not required to reach an agreement in mediation.

5.10 Discovery. No discovery regarding a custody or visitation claim shall be conducted until the mediation process is complete or has been exempted by the Court. With the exception of oral depositions of parties, discovery may proceed regarding financial considerations.

- 5.11 Subsequent Mediation Sessions.** The Mediator will schedule any subsequent mediation sessions with the parties.
- 5.12 Expedited Mediation.** In some cases, the parties may be best served by attending orientation/mediation immediately. A written request for expedited mediation (Request for Expedited Mediation - Form B) signed by both parties and/or their attorneys and forwarded to the Case Manager will waive the group orientation requirement. The attorneys or parties should contact the Case Manager to schedule an expedited appointment that will include both a mini-orientation and a mediation session.
- 5.13 Waiving the Custody Mediation Process.** In some instances, mediation may not be appropriate or in the best interest of the parties or their children. In these instances, a party may move to waive mediation for “good cause”. Good cause is defined as including, but not limited to the following as set out in General Statute 50-13.1(c): “(1) showing of undue hardship to a party; (2) an agreement between the parties for voluntary mediation, subject to court approval; (3) allegations of abuse or neglect of the minor child, (4) allegations of alcoholism, drug abuse, or spouse abuse; or (5) allegations of psychological, psychiatric, or emotional problems.” A showing by either party that the party resides more than 50 miles from the court shall be considered good cause. Parties desiring an exemption shall complete and submit a Motion to Waive Mediation (Form C) to the Case Manager for the assigned Family Court Judge to review. The assigned Family Court Judge will make a decision based on the submission without a hearing. The Court’s decision will be recorded on Form C. If exempted, the Case Manager will set the matter for hearing within 45 days.
- 5.14 Full Parenting Agreements.** If the parties are able to reach a full parenting agreement, the Mediator will prepare a draft and distribute copies to all parties and their attorneys. A time will be scheduled with the parties to return to sign the final draft, usually within 14 days. Final signed agreements shall be presented to the assigned Family Court Judge. The assigned Judge shall review each agreement signed by the parties, and, if appropriate, make the parenting agreement an order of the Court by signing the Order Approving Parenting Agreement. The Mediator will file the final order and Parenting Agreement with the Clerk of Superior Court, and distribute copies to the parties and counsel. The Mediator will update the Case Manager by utilizing Mediation Outcome (Form E).
- 5.15 Partial Parenting Agreements.** If a partial agreement is reached, the Mediator will prepare a final draft of the partial agreement and follow the process set out in Rule 5.14. The Mediator will notify the Case Manager by utilizing Mediation Outcome (Form E), identifying the issues that are to be heard by the Court.
- 5.16 Temporary Parenting Agreements.** If the parties wish to agree to temporary stipulations, the Mediator shall prepare an agreement for a specified period of time. The signing of the agreement will follow the process set out in Rule 5.14. The Temporary Parenting Agreement will address the issue of what happens when the agreement expires, according to the parties’ wishes. It is the responsibility of the parties, not the Mediator, to initiate any follow-up appointment.
- 5.17 Enforcement.** Custody orders developed through mediation shall have the same force and effect and shall be enforced as any other court order.

- 5.18 No Agreement Reached in Mediation.** If the parties fail to agree, the Mediator will notify the Case Manager and the attorneys by using Mediation Outcome (Form E). If no agreement is reached in Mediation, the Case Manager will set the matter for hearing ***within 45 days***
- 5.19 Modifications of Existing Agreements without Re-filing with the Court.** If the parties previously attended an orientation, the moving party is responsible for contacting the Case Manager to schedule a mediation appointment. The Case Manager will notify the other party and arrange for a mutually convenient time for a mediation appointment.
- 5.20 Mediation Termination.** The Mediator, in his/her discretion, may terminate the mediation if the Mediator receives information during the course of the mediation that indicates continuing mediation would be inappropriate for reasons of safety, welfare, or significant psychological dynamics. The Mediator will then report to the attorneys and Case Manager that no agreement was reached by utilizing Mediation Outcome (Form E). If mediation is terminated, the Case Manager will set the matter for hearing ***within 45 days***
- 5.21 Closure of Mediation.** A case will be considered closed in mediation once the parties have reached an agreement, attended orientation and at least one mediation session without an agreement, reached a consent order through their attorneys or voluntarily dismissed. If the case has been voluntarily dismissed, the moving party shall provide appropriate documentation to the Case Manager. The Case Manager will not calendar for court any custody or visitation complaint that has not been closed in mediation.
- 5.22 Inadmissibility.** All verbal or written communications from either or both 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 under these Rules shall be called to testify as to communications made during or in furtherance of such mediation sessions, provided there is no privilege as to communications made in furtherance of a crime, implied threat or fraud.
- 5.23 Correspondence with Attorneys.** The Mediator will deliver any written communication to attorneys by using the attorney boxes located in the courthouse. If this method is unavailable, the Mediator will forward any written correspondence by U.S. mail
- 5.24 Implementation.** Custody mediation was initiated in Wayne, Lenoir and Greene Counties on September 7, 1999.
- 5.25 Temporary Hearings.** Either party or attorney may file a Request for Setting for a temporary hearing on the issue of custody or visitation. Upon request, the Case Manager will schedule a temporary hearing ***within 30 days*** before the assigned Judge on the issue of temporary custody or visitation and inform the parties or their attorneys of the date, time, and place of the hearing. The parties will still participate with Custody Mediation.

5.26 Family Court Time Standards. The Family Court time standards are rules as established by the Family Court Advisory Committee under the direction of the North Carolina Supreme Court. The following time frames represent maximum time limits that are “goals” for custody matters. Unless otherwise specified “days” are calendar days.

<u>Event</u>	<u>Time from Filing of Complaint</u>
a. Temporary Custody Orders, if requested by one or both parties:	
(1) in 90% of cases	Within 30 days*
(2) in 100% of cases	Within 45 days
b. Mediation Orientation Session Scheduled:	
(1) in 100% of cases	Within 45 days
c. Mediation Held:	
(1) in 90% of cases	Within 90 days
(2) in 98% of cases	Within 120 days
(3) in 100% of cases	Within 150 days
d. Trials Completed:	
(1) in 90% of cases	Within 150 days
(2) in 100% of cases	Within 180 days

* (This 30-day deadline does not match the recommendations of the Futures Commission, which on page 47 of the Commission report states a temporary hearing should be held in 14 days.

“While early intervention may not be possible in every case, certain cases – such as *child custody, child support and spousal support* [emphasis added] – must receive prompt attention. If ADR will not occur for more than two weeks after the filing of complaints in these cases, a Family Court Judge should conduct a brief hearing within the 14-day period. The judge should then enter temporary orders that would last until the selected processes are completed.”

However, this 14-day time limit was based upon the New Jersey Family Courts’ ability to issue temporary orders in these cases through the use of full-time child support hearing officers. Until such additional resources are available in North Carolina, the family courts cannot meet this 14-day expectation.)

Rule 6: Child Support Procedures

- 6.1 New Actions, Modifications, or Any Pleading Seeking Child Support.** After a party has met with the Case Manager and complied with Rule 2.2, the party may then file the pleading with the Clerk of Court. If the party does not file the pleading *within 10 days* of meeting with the Case Manager, the party must notify the Case Manager of this fact. The Case Manager, in compliance with Rule 2.2(1), shall set the case for a conference or hearing date *within 30 days*
- 6.2 Compliance with Federal and North Carolina Regulations.** A temporary child support order shall be entered in each case *within 60 days* of service of the pleadings requesting child support.
- 6.3 Hearing on Affidavit for Temporary Child Support.** Either party may file a Request for Setting for a hearing on affidavits on the issue of temporary child support. Upon request, the Case Manager will schedule a hearing on affidavits on the issue of temporary child support before the assigned judge and inform the parties or their attorneys of the date, time, and place of the hearing. Temporary hearings for child support shall be limited to one hour. Each party shall be allocated one half hour to be used for examination of affidavits, examination of the other party, and opening and closing statements. It is anticipated that most temporary hearings will take approximately one hour because of the exchange of information between the parties before the hearing; however, this time limit may be extended in the discretion of the presiding Family Court Judge for good cause.
- 6.4 Mandatory Use of Financial Affidavits.** It shall be mandatory that financial affidavits be used in cases seeking to establish or modify child support.
- 6.5 Responsibility of the Moving Party at the Time of Filing.** The party filing a complaint or motion for modification of an existing order, or any pleading seeking child support must attach a completed Child Support Financial Affidavit (Form 6) to the complaint. After receiving the date for hearing for the child support issue from the Case Manager, the moving party must serve the other party with the following:
- (1) the pleading seeking child support;
 - (2) their completed Child Support Financial Affidavit (Form 6);
 - (3) A blank Child Support Financial Affidavit (Form 6);
 - (4) A blank Employer Wage Affidavit (Form 5); and
 - (5) Notice of Hearing and Certification of Judicial Assignment setting the hearing date (Form 2).
- 6.6 Responsibilities of Moving Party Before the Hearing.** Prior to the hearing, the moving party must:
- (1) Serve the opposing party with the completed Employer Wage Affidavit (Form 5) at least 10 working days prior to the hearing.

- 6.7 Responsibilities of Moving Party at the Hearing.** At the hearing for child support, the moving party must:
- (1) File with the Court the completed Employer Wage Affidavit.
- 6.8 Responsibility of the Opposing Party Before the Hearing.** Prior to the hearing, the opposing party must:
- (1) Serve the moving party with the completed Child Support Financial Affidavit (Form 6) at least 10 working days prior to the hearing.
 - (2) Serve the moving party with the completed Employer Wage Affidavit (Form 5) at least 10 working days prior to the hearing.
- 6.9 Service of Affidavits.** Service of affidavits may be by hand delivery, fax, or mail; however, *service by mail requires an additional 3 days* and both parties should make allowance for this in order to comply with Rule 6.6 and 6.8 requiring service at least 10 working days prior to the hearing.
- 6.10 Responsibility of the Opposing Party at the Hearing.** At the hearing for child support, the opposing party must:
- (1) File with the Court the completed Child Support Financial Affidavit. (Form 6)
 - (2) File with the Court the completed Employer Wage Affidavit. (Form 5)
- 6.11 Presence Required.** Both the parties and their attorneys, if any, shall be present at the hearing.
- 6.12 Establishment of a Permanent Child Support Order.** If at the hearing both parties and the presiding judge agree, the Court may proceed with the establishment of a permanent order of child support.
- 6.13 Pre-Trial Conferences.** Pre-Trial Conferences are not required prior to a temporary child support hearing unless ordered by the assigned Family Court Judge.
- 6.14 Case Manager.** The Case Manager will schedule a pre-trial conference for cases involving issues of permanent child support which remain pending 60 days after the initial filing of the pleading seeking the establishment of child support or the modification of an existing order for child support.
- 6.15 Family Court Time Standards.** The Family Court time standards are rules as established by the Family Court Advisory Committee under the direction of the North Carolina Supreme Court. The following time frames represent maximum time limits that are “goals” for child support matters. Unless otherwise specified “days” are calendar days.

<u>Event</u>	<u>Time from Filing of Complaint</u>
a. Temporary Child Support Orders entered, if requested by one or both parties, and do not involve paternity determinations:	
(1) in 90% of cases	Within 30 days of filing*
(2) in 100% of cases	Within 45 days of filing
b. Permanent Orders entered:	
(1) in 75% of cases	Within 90 days of service
(2) in 90% of cases	Within 180 days of service
(3) in 100% of cases	Within 270 days of service

* (This 30-day deadline does not match the recommendations of the Futures Commission, which on page 47 of the Commission report states a temporary hearing should be held in 14 days.

“While early intervention may not be possible in every case, certain cases – such as *child custody, child support and spousal support* [emphasis added] – must receive prompt attention. If ADR will not occur for more than two weeks after the filing of complaints in these cases, a Family Court Judge should conduct a brief hearing within the 14-day period. The judge should then enter temporary orders that would last until the selected processes are completed.”

However, this 14-day time limit was based upon the New Jersey Family Courts’ ability to issue temporary orders in these cases through the use of full-time child support hearing officers. Until such additional resources are available in North Carolina, the family courts cannot meet this 14-day expectation.)

Rule 7: Post-Separation Support and Alimony Procedures

- 7.1 Actions for Post-Separation Support and Alimony.** After a party has met with the Case Manager and complies with Rule 2.2, the party may then file the pleading for post-separation support and alimony with the Clerk of Court. If the party does not file the case ***within 10 days*** of meeting with the Case Manager, the party must notify the Case Manager of this fact. The Case Manager shall set the issue of post-separation support for hearing ***within 45 days*** of the filing of the pleading. The Case Manager shall set alimony issues for a Status Conference ***within 120 days*** of the filing of the pleading.
- 7.2 Mandatory Use of Financial Affidavits.** It shall be mandatory that financial affidavits be used in cases seeking post-separation support and/or alimony.

- 7.3 Responsibility of the Moving Party at the Time of Filing.** The party filing a pleading for post-separation support and/or alimony must attach a completed Post-Separation Support/Alimony Financial Affidavit (Form 7) to the complaint. After receiving the date for hearing for the post-separation support issue from the Case Manager, the moving party must serve the other party with the following:
- (1) the pleading seeking post-separation support and/or alimony;
 - (2) their completed Post-Separation Support/Alimony Financial Affidavit (Form 7);
 - (3) a blank Post-Separation Support/Alimony Financial Affidavit (Form 7);
 - (4) a blank Employer Wage Affidavit (Form 5); and
 - (5) Notice of Hearing and Certification of Judicial Assignment setting the hearing date (Form 2).
- 7.4 Responsibilities of Moving Party before the Post-Separation Support Hearing.** Prior to the post-separation support hearing, the moving party must:
- (1) Serve the opposing party with the completed Employer Wage Affidavit (Form 5) at least 10 working days prior to the hearing.
- 7.5 Responsibilities of Moving Party at the Post-Separation Support Hearing.** At the hearing for post-separation support, the moving party must:
- (1) File with the Court the completed Employer Wage Affidavit. (Form 5)
- 7.6 Responsibility of the Opposing Party Before the Post-Separation Support Hearing.** Prior to the hearing, the opposing party must serve:
- (1) The moving party with the completed Post-Separation Support/Alimony Financial Affidavit (Form 7) at least 10 working days prior to the hearing.
 - (2)
 - (3) The moving party with the completed Employer Wage Affidavit (Form 5) at least 10 working days prior to the hearing.
- 7.7 Service of Affidavits.** Service of affidavits may be by hand delivery, fax, or mail; however, ***service by mail requires an additional 3 days*** and both parties should make allowance for this in order to comply with Rules 7.4 and 7.6 requiring service on the other party at least 10 working days prior to the temporary hearing.
- 7.8 Responsibility of the Opposing Party at the Post-Separation Support Hearing.** At the hearing, the opposing party must:
- (1) File with the Court the completed Post-Separation Support/Alimony Financial Affidavit. (Form 7)
 - (2) File with the Court the completed Employer Wage Affidavit. (Form 5)

7.9 Admission of Employer Wage Affidavit. The receiving party shall notify the submitting party within 7 days if there is any objection to the Employer Wage Affidavit being admitted into evidence without the employer being present at the hearing to testify. Unless the submitting party is notified of the objection, the Employer Wage Affidavit may be admitted into evidence at the hearing without the employer being present.

7.10 Presence Required. Both the parties and their attorneys, if any, shall be present at the hearing.

7.11 Establishment of Alimony. If at the post-separation support hearing both parties and the presiding Family Court Judge agree, the parties may proceed with a hearing for the establishment of an order for alimony.

7.12 Family Court Time Standards. The Family Court time standards are rules as established by the Family Court Advisory Committee under the direction of the North Carolina Supreme Court. The following time frames represent maximum time limits that are “goals” for post separation and support matters. Unless otherwise specified “days” are calendar days.

<u>Event</u>	<u>Time from Filing of Complaint</u>
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Post Separation Support Matters:

- | | |
|----------------------|----------------|
| (1) in 75% of cases | Within 60 days |
| (2) in 100% of cases | Within 90 days |

7.13 Family Court Time Standards. The Family Court time standards are rules as established by the Family Court Advisory Committee under the direction of the North Carolina Supreme Court. The following time frames represent maximum time limits that are “goals” for Permanent Alimony matters. Unless otherwise specified “days” are calendar days.

<u>Event</u>	<u>Time from Filing of Complaint</u>
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Permanent Alimony matters:

- | | |
|----------------------------------|---------------------------|
| (1) Service of Complaint | 30 days |
| (2) Filing of Answer | 90 days |
| (3) First Status Conference | 120 days |
| (4) Initial Pre-Trial Conference | 210 days |
| (5) Final Pre-Trial Conference | 240 days |
| (6) Start of Trial | 270 days |
| (7) Disposition of Case: | |
| ▪ in 90% of cases | Within 270 days of filing |
| ▪ in 100% of cases | Within 365 days of filing |

Rule 8: Equitable Distribution Procedures

8.1 Equitable Distribution. After a party has met with the Case Manager and complied with Rule 2.2, the party may then file the pleading with the Clerk of Court. If the party does not file the pleading ***within 10 days*** of meeting with the Case Manager, the party must notify the Case Manager of this fact. The Case Manager, in compliance with Rule 2.2(1), shall set the case for a **Status Conference *within 120 days*** of the filing of the pleading.

8.2 Responsibility of Moving Party upon Filing an Equitable Distribution (E.D.) Claim. The moving party must serve the opposing party with the following:

- (1) the pleading asserting E.D.;
- (2) the Notice of Hearing and Certification of Judicial Assignment setting the Status Conference (Form 2);
- (3) the Alternative Dispute Resolution (ADR) packet, which will be provided to the moving party by the Case Manager; and
- (4) a blank E.D. Inventory Affidavit Form (Form 8).

8.3 Equitable Distribution Inventory Affidavit: Responsibility of the Parties.

Moving Party. Within 90 days of filing the request for ED, the moving party shall:

- (1) Serve his or her E.D. Inventory Affidavit (Form 8) on the opposing party or attorney.

Opposing Party. Within 30 days of being served the moving party's E.D. Inventory Affidavit, the opposing party shall:

- (1) Serve his or her E.D. Inventory Affidavit on the moving party. (Form 8)

(The E.D. Inventory Affidavit is intended to aid the parties and the Court in determining the net marital and separate estates of the parties. ***Each party must state a value for each item of property. If a party states the value to be "unknown", that party shall not be allowed to state an opinion as to the value of that item at the E.D. Trial; however, that party will not be prohibited from offering evidence through the use of documents, a third party or an appraiser concerning the value of that item of property.***)

8.4 Interim Distribution. If a party moves for an Interim Distribution pursuant to NCGS 50.20(i1), the party shall contact the Case Manager who will schedule an Interim Distribution Hearing before the assigned Judge ***within 45 days*** of the filing. It is the responsibility of the moving party seeking an interim distribution to serve the opposing party or attorney with a **Notice of Hearing and Certification of Judicial Assignment (Form 2)** and a copy of the pleading seeking the interim distribution.

8.5 The E.D. Status Conference (also referred to as E.D. Scheduling Conference). The purpose of the E.D. Status Conference is to ensure that the case is proceeding toward resolution in a timely and orderly fashion. At the E.D. Status Conference the Court or Case Manager will:

- (1) Confirm that each party has completed and filed his or her E.D. Inventory Affidavit.
- (2) Enter an Order of Reference designating:
 - (a) the method of Alternative Dispute Resolution (ADR) to be employed. (See Rule 8.14 through 8.25 for settlement procedures in E.D. and other Family Financial Cases);
 - (b) the Neutral who will conduct the ADR and the method the Neutral will be paid;
 - (c) the deadline for the completion of the ADR process within 90 days of the E.D. Status Conference;
 - (d) an Appraisal Schedule, if any is needed, and a deadline for completion of the appraisals;
 - (e) a Discovery Schedule, if any is needed, and a deadline for completion of the discovery;
 - (f) the date for an Initial Pre-Trial Conference shall be set approximately 90 days following the E.D. Status Conference (210 days from filing of the complaint);
 - (g) the date for the Final Pre-Trial Conference shall be set approximately 120 days following the E.D. Status Conference (240 days from filing of the complaint);
 - (h) the E.D. Trial Date shall be set approximately 150 days following the E.D. Status Conference. (270 days after filing of the complaint); and
 - (i) for good cause shown the Judge may extend the above deadlines.

8.6 Attendance at the E.D. Status Conference. Attendance at the E.D. Status Conference is mandatory unless the parties in advance of the E.D. Status Conference certify to the Court and the Court determines that:

- (1) Each party has completed, filed with the Court, and served on the other party their E.D. Inventory Affidavit.

- (2) Each party has signed and submitted to the Court a written document setting forth their chosen method of ADR; the name of the Neutral, and the date by which the ADR will be completed.
- (3) Each party has submitted a signed Consent Order, approved by the Court which sets forth a Discovery and Appraisal Schedule which conforms with the deadlines as established in Rule 8.5 above.

8.7 Failure to Properly Complete and Exchange E.D. Inventory Affidavits or Attend the E.D. Status Conference. The failure to properly complete and exchange E.D. Inventory Affidavits or attend the E.D. Status Conference may result in an immediate hearing before the assigned Judge. At the hearing, the Judge may impose sanctions as permitted by law against the non-conforming party or parties, or attorneys of record, and may order the limitation or exclusion of the responsible party's proffered testimony (either written or oral) from being allowed into evidence by the Court.

8.8 Reference. In any equitable distribution claim, the Court may in its discretion, and pursuant to Rule 53 and Rule 16(a)(5) of the North Carolina Rules of Civil Procedure, order a reference before proceeding further or before entering final judgment. The Court may provide for the apportionment of the cost of said references, filing deadlines, and scope as it deems to be in furtherance of the disposition of the claim.

8.9 Amendments or Supplements to E.D. Inventory Affidavits. If any party deems it necessary to amend or supplement their equitable distribution inventory affidavit, they shall file and serve such amendments or supplements no later than 14 days prior to the Initial Pre-Trial Conference.

8.10 Initial Pre-Trial Conference. At the Initial Pre-Trial Conference, the moving party shall serve on the opposing party a proposed E.D. Pre-Trial Order and file it with the Court. Attendance by the parties and the attorneys at the Initial Pre-Trial Conference is mandatory. At the Initial Pre-Trial Conference, the Court will:

- (1) Confirm that the ADR settlement procedures have been completed.
- (2) Confirm that all discovery has been completed.
- (3) Confirm that all appraisals have been completed and copies have been served on the opposing party.
- (4) Set a deadline for the responding party to provide the moving party with any changes to the proposed E.D. Pre-Trial Order.
- (5) Set a date for the Final Pre-Trial Conference approximately 30 days following the Initial Pre-Trial Conference.

8.11 Final Pre-Trial Conference. At the Final Pre-Trial Conference, the Judge shall resolve any disputes concerning the E.D. Pre-Trial Order, and shall enter the Final Pre-Trial Order and set the case for the E.D. Trial approximately 30 days following the Final Pre-Trial

Conference. Attendance by the parties and the attorneys at the Final Pre-Trial Conference is mandatory.

8.12 Mandatory Appearances. Failure to attend the Initial or Final Pre-Trial Conferences and/or failure to properly complete amendments or supplements to the E.D. Inventory Affidavit may result in an immediate hearing before the assigned Family Court Judge. At the hearing the judge may impose sanctions as permitted by law against the nonconforming parties, or attorneys of record and may order the limitation or exclusion of the responsible parties proffered testimony (either written or oral) from being allowed into evidence by the Court.

8.13 Family Court Time Standards. The Family Court time standards are rules as established by the Family Court Advisory Committee under the direction of the North Carolina Supreme Court. The following time frames represent maximum time limits that are “goals” for Equitable Distribution matters. Unless otherwise specified “days” are calendar days.

<u>Event</u>	<u>Time from Filing of Complaint</u>
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Equitable Distribution matters:

(1) Service of Complaint	30 days
(2) Filing of Answer	90 days
(3) First Status Conference	120 days
(4) Initial Pre-Trial Conference	210 days
(5) Final Pre-Trial Conference	240 days
(6) Start of Trial	270 days
(7) Disposition of Case:	
▪ in 90% of cases	Within 270 days of filing
▪ in 100% of cases	Within 365 days of filing

The following Rules of the North Carolina Supreme Court implementing settlement procedures in equitable distribution and other family financial cases, as adopted by the Eighth Judicial District, shall be followed.

8.14 Initiating Settlement Procedures.

A. Purpose of Mandatory Settlement Procedures. Pursuant to G.S. 7A-38.4, these Rules are promulgated to implement a system of settlement events which are designed to focus the parties’ attention on settlement rather than on trial preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time before or after those ordered by the Court pursuant to these Rules, including binding or non-binding arbitration as permitted by law.

B. Duty of Counsel to Consult with Clients and Opposing Counsel Concerning Settlement Procedures. In furtherance of this purpose, counsel, upon being retained to represent any party in an equitable distribution, child support, alimony, or post-

separation support action, shall advise his or her client regarding the settlement procedures approved by these Rules and, at or prior to the status conference mandated by G.S. 50-21(d), shall attempt to reach agreement with opposing counsel on the appropriate settlement procedure for the action.

C. Ordering Settlement Procedures:

- (1) E.D. Status Conference (also referred to as E.D. Scheduling Conference). At the status or scheduling conference mandated by G.S. 50-21(d) in an equitable distribution action, or at such earlier time as specified by local rule, the Court shall include in its scheduling order a requirement that the parties and their counsel attend a mediated settlement conference or, if the parties agree, other settlement procedure conducted pursuant to these rules, unless excused by the Court pursuant to Rule 8.14C(6) or by the Court or Mediator pursuant to Rule 8.17A(2).
- (2) Scope of Settlement Proceedings. All other financial issues existing between the parties when the equitable distribution settlement proceeding is ordered, or at any time thereafter, may be discussed, negotiated or decided at the proceeding. In those districts where a child custody and visitation mediation program has been established pursuant to G.S. 7A-494, child custody and visitation issues may be the subject of settlement proceedings ordered pursuant to these Rules only in those cases in which the parties and the mediator have agreed to include them and in which the parties have been exempted from the program.
- (3) Authorizing Settlement Procedures other than Mediated Settlement Conference. The parties and their attorneys are in the best position to know which settlement procedure is appropriate for their case. Therefore, the Court shall order the use of a settlement procedure authorized by Rules 8.23 – 8.25 herein or by local rules of the District Court in the county or district where the action is pending if the parties have agreed upon the procedure to be used, the neutral to be employed and the compensation of the neutral. If the parties have not agreed on all three items, then the Court shall order the parties and their counsel to attend a mediated settlement conference conducted pursuant to these Rules.

The motion for an order to use a settlement procedure other than a mediated settlement conference shall be submitted on an AOC form at the scheduling conference and shall state:

- (a) the settlement procedure chosen by the parties;
- (b) the name, address and telephone number of the neutral selected by the parties;
- (c) the rate of compensation of the neutral; and

(d) that all parties consent to the motion.

- (4) **Content of Order.** The Court's order shall (1) require the mediated settlement conference or other settlement proceeding be held in the case; (2) establish a deadline for the completion of the conference or proceeding; and (3) state that the parties shall be required to pay the neutral's fee at the conclusion of the settlement conference or proceeding unless otherwise ordered by the Court. Where the settlement proceeding ordered is a judicial settlement conference, the parties shall not be required to pay for the neutral.

The order shall be contained in the Court's scheduling order or, if no scheduling order is entered, the order shall be on an AOC form. Any scheduling order entered at the completion of a scheduling conference held pursuant to local rule may be signed by the parties or their attorneys in lieu of submitting the forms referred to hereinafter relating to the selection of a mediator.

- (5) **Court-Ordered Settlement Procedures in Other Family Financial Cases.** Any party to an action involving family financial issues not previously ordered to a mediated settlement conference may move the Court to order the parties to participate in a settlement procedure. Such motion shall be made in writing, state the reasons why the order should be allowed and be served on the non-moving party. Any objection to the motion or any request for hearing shall be filed in writing with the Court within 10 days after the date of the service of the motion. Thereafter, the Judge shall rule upon the motion and notify the parties or their attorneys of the ruling. If the Court orders a settlement proceeding, then the proceeding shall be a mediated settlement conference conducted pursuant to these Rules. Other settlement procedures may be ordered if the circumstances outlined in subsection (3) above have been met.
- (6) **Motion to Dispense with Settlement Procedures.** A party may move the Court to dispense with the mediated settlement conference or other settlement procedure. Such motion shall be in writing and shall state the reasons the relief is sought. For good cause shown, the Court may grant the motion. Such good cause may include, but not be limited to; the fact that the parties have submitted the action to arbitration or that one of the parties has alleged domestic violence. The Court may also dispense with the mediated settlement conference for good cause upon its own motion or by local rule.

8.15 Selection of Mediator.

- A. Selection of Certified Mediator by Agreement of the Parties.** The parties may select a mediator certified pursuant to these Rules by agreement by filing with the Court a Designation of Mediator by Agreement at the scheduling conference. Such

designation shall: state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.

In the event the parties wish to select a mediator who is not certified pursuant to these Rules, the parties may nominate said person by filing a Nomination of Non-Certified Mediator with the Court at the scheduling conference. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience, or other qualifications of the mediator; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation, if any. The Court shall approve said nomination if, in the Court's opinion, the nominee is qualified to serve as mediator and the parties and the nominee have agreed upon the rate of compensation.

Designations of mediators and nominations of mediators shall be made on an AOC form. A copy of each such form submitted to the Court and a copy of the Court's order requiring a mediated settlement conference shall be delivered to the mediator by the parties.

- B. Appointment of Certified Mediator by the Court.** If the parties cannot agree upon the selection of a mediator, they shall so notify the Court and request that the Court appoint a mediator. The motion shall be filed at the scheduling conference and shall state that the attorneys for the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The motion shall be on an AOC form.

Upon receipt of a motion to appoint a mediator, or in the event the parties have not filed a designation or nomination of mediator, the Court shall appoint a mediator certified pursuant to these Rules under a procedure established by said Judge and set out in local order or rule.

The Dispute Resolution Commission shall furnish for the consideration of the District Court Judges of any district where mediated settlement conferences are authorized to be held, the names, addresses and phone numbers of those certified mediators who request appointments in said district.

- C. Mediator Information Directory.** To assist the parties in the selection of a mediator by agreement, the Chief District Court Judge having authority over any county participating in the mediated settlement conference program shall prepare and keep current for such county a central directory of information on all mediators certified pursuant to these Rules who wish to mediate in that county. Such information shall be collected on loose-leaf forms provided by the Dispute Resolution Commission and be kept in one or more notebooks made available for inspection by attorneys and parties in the office of the Case Manager in such county.

- D. Disqualification of Mediator.** Any party may move the Court of the district where the action is pending for an order disqualifying the mediator. For good cause, such

order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to Rule 8.15A and B. Nothing in this provision shall preclude mediators from disqualifying themselves.

8.16 The Mediated Settlement Conference.

- A. Where Conference is to be Held.** The mediated settlement conference shall be held in any location agreeable to the parties and the mediator. If the parties cannot agree to a location, the mediator shall be responsible for reserving a neutral place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and *pro se* parties.
- B. When Conference is to be Held.** As a guiding principle, the conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date. The mediator is authorized to assist the parties in establishing a discovery schedule and completing discovery.

The Court's order issued pursuant to Rule 8.14C(1) shall state a deadline for completion of the conference which shall be not more than 150 days after issuance of the Court's order, unless extended by the Court. The mediator shall set a date and time for the conference pursuant to Rule 8.19B(5).

- C. Request to Extend Deadline for Completion.** A party, or the Mediator, may move the Court to extend the deadline for completion of the conference. Such motion shall state the reasons the extension is sought and shall be served by the moving party upon the other party and the Mediator. If any party does not consent to the motion said party shall promptly communicate its objection to the Court.
- D. Recesses.** The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set during the conference, no further notification is required for persons present at the conference.
- E. The Mediated Settlement Conference is not to Delay other Proceedings.** The mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.

8.17 Duties of Parties, Attorneys and Other Participants in Mediated Settlement Conference.

A. Attendance.

- (1) The following persons shall attend a mediated settlement conference:
 - (a) Parties.
 - (b) Attorneys. At least one counsel of record for each party whose counsel has appeared in the action.

- (2) Any person required to attend a mediated settlement conference shall physically attend until such time as an agreement has been reached or the mediator, after conferring with the parties and their counsel, if any, declares an impasse. No mediator shall prolong a conference unduly. Any such person may have the attendance requirement excused or modified, including allowing a person to participate by phone, by agreement of both parties and the mediator or by order of the Court. Ordinarily, attorneys for the parties may be excused from attending only after they have appeared at the first session.

B. Finalizing by Notarized Agreement, Consent Order and/or Dismissal. The essential terms of the parties' agreement shall be reduced to writing as a summary memorandum at the conclusion of the conference unless the parties have executed final documents. The parties and their counsel shall use the summary memorandum as a guide to drafting such agreements and orders as may be required to give legal effect to the terms. Within 30 days of reaching agreement at the conference, all final agreements and other dispositive documents shall be executed by the parties and notarized, and judgments or voluntary dismissals shall be filed with the Court by such persons as the parties or the Court shall designate. In the event the parties fail to agree on the wording or terms of a final agreement or court order; the mediator may schedule another session if the mediator determines that it would assist the parties.

C. Payment of Mediator's Fee. The parties shall pay the mediator's fee as provided by Rule 8.20.

8.18 Sanctions for Failure to Attend Mediated Settlement Conferences. If any person required to attend a mediated settlement conference fails to attend without good cause, the Court may impose upon that person an appropriate monetary sanction including, but not limited to, the payment of attorneys fees, mediator fees, expenses and loss of earnings incurred by persons attending the conference.

A party to the action seeking sanctions, or the Court on its own motion, shall do so in a written motion stating the grounds for the motion and the relief sought. Said motion shall be served upon all parties and on any person against whom sanctions are being sought. If the Court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law.

8.19 Authority and Duties of Mediators.

A. Authority of Mediator.

- (1) **Control of Conference.** The mediator shall at all times be in control of the conference and the procedures to be followed. However, the mediator's conduct shall be governed by standards of conduct promulgated by the Supreme Court upon the recommendation of the Dispute Resolution Commission, which shall contain a provision prohibiting mediators from prolonging a conference unduly.

- (2) Private Consultation. The mediator may communicate privately with any participant during the conference. However, there shall be no *ex parte* communication before or outside the conference between the mediator and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this rule prevents the mediator from engaging in *ex parte* communications, with the consent of the parties, for the purpose of assisting settlement negotiations.

B. Duties of Mediator.

- (1) Description of Duties. The mediator shall define and describe the following at the beginning of the conference:
 - (a) The process of mediation;
 - (b) The differences between mediation and other forms of conflict resolution;
 - (c) The costs of the mediated settlement conference;
 - (d) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement;
 - (e) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
 - (f) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
 - (g) The inadmissibility of conduct and statements as provided by G.S. 7A-38.1(1), which states:

Evidence of statements made and conduct occurring in a settlement proceeding shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No neutral shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a settlement proceeding in any civil proceeding for any purpose, except proceedings for sanctions under this section, disciplinary proceedings of the State Bar, disciplinary proceedings of any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse.

- (h) The duties and responsibilities of the mediator and the participants; and
- (i) The fact that any agreement reached will be reached by mutual consent.

- (2) Disclosure. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- (3) Declaring Impasse. It is the duty of the mediator to determine in a timely manner that an impasse exists and that the conference should end. To that end, the mediator shall inquire of and consider the desires of the parties to cease or continue the conference.
- (4) Reporting Results of Conference. The mediator shall report to the Court, or its designee, using an AOC form, within 10 days of the conference, whether or not an agreement was reached by the parties. If the case is settled or otherwise disposed of prior to the conference, the mediator shall file the report indicating the disposition of the case. If an agreement was reached at the conference, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the persons designated to file such consent judgment or dismissals. If partial agreements are reached at the conference, the report shall state what issues remain for trial. The mediator's report shall inform the Court of the absence without permission of any party or attorney from the mediated settlement conference. The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the mediator to provide statistical data in the report for evaluation of the mediated settlement conference program.
- (5) Scheduling and Holding Conference. The mediator shall schedule the conference and conduct it prior to the conference completion deadline set out in the Court's order. The mediator shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the mediator shall select a date and time for the conference. Deadlines for completion of the conference shall be strictly observed by the mediator unless changed by written order of the Court.
- (6) Informational Brochure. Before the conference, the mediator shall distribute to the parties or their attorneys a brochure prepared by the Dispute Resolution Commission explaining the mediated settlement conference process and the operations of the Commission.

8.20 Compensation of the Mediator.

- A. By Agreement.** When the mediator is selected by agreement of the parties, compensation shall be as agreed upon between the parties and the mediator.
- B. By Court Order.** When the mediator is appointed by the Court, the parties shall compensate the mediator for mediation services at the rate of \$125.00 per hour. The

parties shall also pay to the mediator a one-time, per case administrative fee of \$125.00, which accrues upon appointment.

- C. Payment of Compensation by Parties.** Unless otherwise agreed by the parties or ordered by the Court, the mediator's fee shall be paid in equal shares by the parties. Payment shall be due and payable upon completion of conference.
- D. Inability to Pay.** No party found by the Court to be unable to pay a full share of a mediator's fee shall be required to pay a full share. Any party required to pay a share of a mediator fee pursuant to Rule 8.20B and C may move the Court to pay according to the Court's determination of that party's ability to pay.

In ruling on such motions, the Judge may consider the income and assets of the movant and the outcome of the action. The Court shall enter an order granting or denying the party's motion. In so ordering, the Court may require that one or more shares be paid out of the marital estate.

Any mediator conducting a settlement conference pursuant to these rules shall accept as payment in full of a party's share of the mediator's fee that portion paid by or on behalf of the party pursuant to an order of the Court issued pursuant to this rule.

8.21 Mediator Certification and De-certification. The Dispute Resolution Commission may receive and approve applications for certification of persons to be appointed as mediators. For certification, a person must have complied with the requirements in each of the following sections:

- A. Training and Experience.
 - 1. Be a practitioner member of the Academy of Family Mediators; or
 - 2. Be certified as a Superior Court mediator prior to December 31, 1998, and have family law or family mediation experience and be recommended by a regular District Court Judge in the applicant's district who has familiarity with the applicant's competence and qualifications in the area of family law or family mediation; or
 - 3. Have completed a 40 hour family and divorce mediation training approved by the Dispute Resolution Commission pursuant to Rule 8.22 and have additional experience as follows:
 - (a) as a licensed attorney and/or judge of the General Court of Justice for at least four years; or
 - (b) as a licensed psychologist, licensed family counselor, licensed pastoral counselor or other licensed mental health professional for at least four years; or
 - (c) as a mediator having mediated in a community center or other supervised setting at least 5 cases each year for four years after

- first having completed a 20 hour mediation training program;
 - or
 - (d) as a certified Superior Court mediator having mediated at least 10 cases in the past two years which may include family mediations, cases in state or federal courts or cases before state or federal administrative agencies; or
 - (e) as a certified public accountant for at least four years.

- B. If not licensed to practice law in one of the United States, have completed a six-hour training on North Carolina legal terminology, court structure and civil procedure provided by a trainer certified by the Dispute Resolution Commission.

- C. Be a member in good standing of the State Bar of one of the United States or have provided to the Dispute Resolution Commission three letters of reference as to the applicant's good character and experience as required by Rule 8.21A.

- D. Have observed as a neutral observer with the permission of the parties three mediations involving custody or family financial issues conducted by a mediator who is certified pursuant to these rules, or who is a practitioner member of the Academy of Family Mediators, or who is an AOC mediator.

- To be certified pursuant to these rules within six months of the adoption of these rules, a person may satisfy the observation requirements of this section by satisfactorily demonstrating that he/she has served as mediator with divorcing parties having custody or family financial disputes in at least 5 cases or for 50 hours.

- E. Demonstrate familiarity with the statutes, rules, and standards of practice and conduct governing mediated settlement conferences conducted pursuant to these Rules.

- F. Be of good moral character and adhere to any standards of practice for mediators acting pursuant to these Rules adopted by the Supreme Court.

- G. Submit proof of qualifications set out in this section on a form provided by the Dispute Resolution Commission.

- H. Pay all administrative fees established by the Administrative Office of the Courts in consultation with the Dispute Resolution Commission.

- I. Agree to accept as payment in full of a party's share of the mediator's fee as ordered by the Court pursuant to Rule 8.20.

- J. Agree to be placed on at least one district's mediator appointment list and accept appointments, unless the mediator has a conflict of interests which would justify disqualification as a mediator.
- K. Comply with the requirements of the Dispute Resolution Commission for continuing mediator education or training. (These requirements may include advanced divorce mediation training, attendance at conferences or seminars relating to mediation skills or process, and consultation with other family and divorce mediators about cases actually mediated. Mediators seeking re-certification beyond one year from the date of initial certification may also be required to demonstrate that they have completed 8 hours of family law training, including tax issues relevant to divorce and property distribution, and 8 hours of training in family dynamics, child development and interpersonal relations at any time prior to that re-certification.)

Certification may be revoked or not renewed at any time if it is shown to the satisfaction of the Dispute Resolution Commission that a mediator no longer meets the above qualifications or has not faithfully observed these rules or those of any district in which he or she has served as a mediator. Any person who is or has been disqualified by a professional licensing authority of any state for misconduct shall be ineligible to be certified under this Rule.

8.22 Certification of Mediation Training Programs.

- A. Certified Training Programs. Certified training programs for mediators certified pursuant to these rules shall consist of a minimum of 40 hours of instruction. The curriculum of such programs shall include the subjects in each of the following sections:
 - (1) Conflict resolution and mediation theory.
 - (2) Mediation process and techniques, including the process and techniques typical of family and divorce mediation.
 - (3) Knowledge of communication and information gathering skills.
 - (4) Standards of conduct for mediators.
 - (5) Statutes, rules, and practice governing mediated settlement conferences conducted pursuant to these Rules.
 - (6) Demonstrations of mediated settlement conferences with and without attorneys involved.
 - (7) Simulations of mediated settlement conferences, involving student participation as mediator, attorneys and disputants, which simulations shall be supervised, observed and evaluated by program faculty.
 - (8) An overview of North Carolina law as it applies to custody and visitation of children, equitable distribution, alimony, child support, and post separation support.
 - (9) An overview of family dynamics, the effect of divorce on children and adults, and child development.
 - (10) Protocols for the screening of cases for issues of domestic violence and substance abuse.

- (11) Satisfactory completion of an exam by all students testing their familiarity with the statutes, rules and practice governing mediated settlement conferences in North Carolina.
- B. **The Training Program.** A training program must be certified by the Dispute Resolution Commission before attendance at such program may be used for compliance with Rule 8.21A. Certification need not be given in advance of attendance.

Training programs attended prior to the promulgation of these rules or attended in other states or approved by the Academy of Family Mediators may be approved by the Dispute Resolution Commission if they are in substantial compliance with the standards set forth in this rule. The Dispute Resolution Commission may require attendees of an AFM approved program to demonstrate compliance with the requirements of Rule 8.22A(5) and 8.22A(8) either in the AFM approved training or in some other acceptable course.
- C. **Fees.** To complete certification, a training program shall pay all administrative fees established by the Administrative Office of the Courts in consultation with the Dispute Resolution Commission.

8.23 Other Settlement Procedures.

- A. **Order Authorizing Other Settlement Procedures.** Upon receipt of a motion by the parties seeking authorization to utilize a settlement procedure in lieu of a mediated settlement conference, the Court may order the use of the procedure requested unless the Court finds that the parties did not agree upon the procedure to be utilized, the neutral to conduct it and the neutral's compensation; or that the procedure selected is not appropriate for the case or the parties. Judicial settlement conferences may be ordered only if permitted by local rule.
- B. **Other Settlement Procedures Authorized by these Rules.** In addition to mediated settlement conferences, the following settlement procedures are authorized by these Rules:
 - (1) Neutral Evaluation (Rule 8.24), in which a neutral offers an advisory evaluation of the case following summary presentations by each party.
 - (2) Judicial Settlement Conference (Rule 8.25), in which a District Court Judge assists the parties in reaching their own settlement.
- C. **General Rules Applicable to Other Settlement Procedures.**
 - (1) **When Proceeding is Conducted.** The neutral shall schedule the conference and conduct it no later than 150 days from the issuance of the Court's order or no later than the deadline for completion set out in the Court's order, unless extended by the Court. The neutral shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the neutral shall select a date and time for the

conference. Deadlines for completion of the conference shall be strictly observed by the neutral unless changed by written order of the Court.

- (2) **Extensions of Time.** A party or a neutral may request the Court to extend the deadlines for completion of the settlement procedure. A request for an extension shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the neutral. The Court may grant the extension and enter an order setting a new deadline for completion of the settlement procedure. Said order shall be delivered to all parties and the neutral by the person who sought the extension.
- (3) **Where Procedure is Conducted.** Settlement proceedings shall be held in any location agreeable to the parties. If the parties cannot agree to a location, the neutral shall be responsible for reserving a neutral place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and *pro se* parties.
- (4) **No Delay of Other Proceedings.** Settlement proceedings shall not be cause for delay of other proceedings in the case, including but not limited to the conduct or completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.
- (5) **Inadmissibility of Settlement Proceedings.** Evidence of statements made and conduct occurring in a settlement proceeding shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No neutral shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a settlement proceeding in any civil proceeding for any purpose, except proceedings for sanctions under this section, disciplinary proceedings of the State Bar, disciplinary proceedings of any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse.

- (6) **No Record Made.** There shall be no stenographic or other record made of any proceedings under these Rules.
- (7) **Ex Parte Communication Prohibited.** Unless all parties agree otherwise, there shall be no *ex parte* communication prior to the conclusion of the proceeding between the neutral and any counsel or party on any matter related to the proceeding except with regard to administrative matters.

- (8) Duties of the Parties.
- (a) Attendance. All parties and attorneys shall attend other settlement procedures authorized by Rule 8.23 and ordered by the Court.
 - (b) Finalizing Agreement. If agreement is reached during the proceeding, the essential terms of the agreement shall be reduced to writing as a summary memorandum. The parties and their counsel shall use the summary memorandum as a guide to drafting such agreements and orders as may be required to give legal effect to the terms. Within 30 days of the proceeding, all final agreements and other dispositive documents shall be executed by the parties and notarized, and judgments or voluntary dismissals shall be filed with the Court by such persons as the parties or the Court shall designate.
 - (c) Payment of Neutral's Fee. The parties shall pay the neutral's fee as provided by Rule 8.23C(12) except that no payment shall be required or paid for a judicial settlement conference.
- (9) Sanctions for Failure to Attend Other Settlement Procedures. If any person required to attend a settlement proceeding fails to attend without good cause, the Court may impose upon that person any appropriate monetary sanction including, but not limited to, the payment of fines, attorney's fees, neutral fees, expenses and loss of earnings incurred by persons attending the conference.

A party to the action, or the Court on its own motion, seeking sanctions against a party or attorney, shall do so in a written motion stating the grounds for the motion and the relief sought. Said motion shall be served upon all parties and on any person against whom sanctions are being sought. If the Court imposes sanctions, it shall do so, after notice and a hearing in a written order, making findings of fact supported by substantial evidence and conclusions of law.

- (10) Selection of Neutrals in Other Settlement Procedures by Agreement. The parties may select any person whom they believe can assist them with the settlement of their case to serve as a neutral in any settlement procedure authorized by these rules, except for judicial settlement conferences.

Notice of such selection shall be given to the Court and to the neutral through the filing of a motion to authorize the use of other settlement procedures at the scheduling conference or the court appearance when settlement procedures are considered by the Court. The notice shall be on an AOC form as set out in Rule 8.14 herein. Such notice shall state the name, address and telephone number of the neutral selected; state the rate of compensation of the neutral; and state that the neutral and opposing counsel have agreed upon the selection and compensation.

If the parties are unable to select a neutral by agreement, then the Court shall deny the motion for authorization to use another settlement procedure and the Court shall order the parties to attend a mediated settlement conference.

- (11) **Disqualification of Neutrals.** Any party may move a Court of the district in which an action is pending for an order disqualifying the neutral; and, for good cause, such order shall be entered. Cause shall exist, but is not limited to circumstances where, if the selected neutral has violated any standard of conduct of the State Bar or any standard of conduct for neutrals that may be adopted by the Supreme Court.
- (12) **Compensation of Neutrals.** A neutral's compensation shall be paid in an amount agreed to among the 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. The parties shall not compensate a settlement judge.
- (13) **Authority and Duties of Neutrals.**
 - (a) **Authority of Neutrals.**
 - (1) **Control of Proceeding.** The neutral shall at all times be in control of the proceeding and the procedures to be followed.
 - (2) **Scheduling the Proceeding.** The neutral shall make a good faith effort to schedule the proceeding at a time that is convenient with the participants, attorneys and neutral. In the absence of agreement, the neutral shall select the date and time for the proceeding. Deadlines for completion of the conference shall be strictly observed by the neutral unless changed by written order of the Court.
 - (b) **Duties of Neutrals.**
 - (1) The neutral shall define and describe the following at the beginning of the proceeding:
 - (a) The process of the proceeding;
 - (b) The differences between the proceeding and other forms of conflict resolution;
 - (c) The costs of the proceeding;
 - (d) The inadmissibility of conduct and statements as provided by G.S. 7A-38.1(1) and Rule 8.19B(1)(g) herein; and
 - (e) the duties and responsibilities of the neutral and the participants.

- (2) Disclosure. The neutral has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- (3) Reporting Results of the Proceeding. The neutral shall report the result of the proceeding to the Court in writing within 10 days in accordance with the provisions of Rule 8.19B(4) herein on an AOC form. The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the neutral to provide statistical data for evaluation of other settlement procedures.
- (4) Scheduling and Holding the Proceedings. It is the duty of the neutral to schedule the proceeding and conduct it prior to the completion deadline set out in the Court's order. Deadlines for completion of the proceeding shall be strictly observed by the neutral unless said time limit is changed by a written order of the Court.

8.24 Rules for Neutral Evaluation.

- A. Nature of Neutral Evaluation.** Neutral evaluation is an informal, abbreviated presentation of facts and issues by the parties to an evaluator at an early stage of the case. The neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, providing a candid assessment of the merits of the case, settlement value, and a dollar value or range of potential awards if the case proceeds to trial. The evaluator is also responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.
- B. When Conference is to be Held.** As a guiding principle, the neutral evaluation conference should be held at an early stage of the case, after the time for the filing of answers has expired but in advance of the expiration of the discovery period.
- C. Pre-Conference Submissions.** No later than 20 days prior to the date established for the neutral evaluation conference to begin, each party shall furnish the evaluator with written information about the case, and shall at the same time certify to the evaluator that they served a copy of such summary on all other parties to the case. The information provided to the evaluator and the other parties hereunder shall be a summary of the significant facts and issues in the party's case, and shall have attached to it copies of any documents supporting the parties' summary. Information provided to the evaluator and to the other parties pursuant to this paragraph shall not be filed with the Court.
- D. Replies to Pre-Conference Submissions.** No later than 10 days prior to the date established for the neutral evaluation conference to begin, any party may, but is not required to, send additional written information to the evaluator responding to the submission of an opposing party. The response furnished to the evaluator shall be

served on all other parties and the party sending such response shall certify such service to the evaluator, but such response shall not be filed with the Court.

E. Conference Procedure. Prior to a neutral evaluation conference, the evaluator, if he or she deems it necessary, may request additional written information from any party. At the conference, the evaluator may address questions to the parties and give them an opportunity to complete their summaries with a brief oral statement.

F. Modification of Procedure. Subject to approval of the evaluator, the parties may agree to modify the procedures required by these rules for neutral evaluation.

G. Evaluator's Duties.

(1) **Evaluator's Opening Statement.** At the beginning of the conference, the evaluator shall define and describe the following points to the parties in addition to those matters set out in Rule 8.23C(13)(b):

- (a) The facts that the neutral evaluation conference is not a trial, the evaluator is not a judge, the evaluator's opinions are not binding on any party, and the parties retain their right to trial if they do not reach a settlement.
- (b) The fact that any settlement reached will be only by mutual consent of the parties.

(2) **Oral Report to Parties by Evaluator.** In addition to the written report to the Court required under these rules, at the conclusion of the neutral evaluation conference, the evaluator shall issue an oral report to the parties advising them of his or her opinions of the case. Such opinion shall include a candid assessment of the merits of the case, estimated settlement value, and the strengths and weaknesses of each party's claims if the case proceeds to trial. The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefore. The evaluator shall not reduce his or her oral report to writing and shall not inform the Court thereof.

(3) **Report of Evaluator to Court.** Within 10 days after the completion of the neutral evaluation conference, the evaluator shall file a written report with the Court using an AOC form, stating when and where the conference was held, the names of those persons who attended the conference, whether or not an agreement was reached by the parties, and the name of the person designated to file judgments or dismissals concluding the action.

H. Evaluator's Authority to Assist Negotiations. If all parties at the neutral evaluation conference request and agree, the evaluator may assist the parties in settlement discussions. If the parties do not reach a settlement during such discussions, however, the evaluator shall complete the neutral evaluation conference and make his or her written report to the Court as if

such settlement discussions had not occurred. If the parties reach agreement at the conference, they shall reduce their agreement to writing as required by Rule 8.23C(b)(3).

8.25 Judicial Settlement Conference

- A. Settlement Judge.** A judicial settlement conference shall be conducted by a District Court Judge who shall be selected by the Chief District Court Judge.
- B. Conducting the Conference.** The form and manner of conducting the conference shall be in the discretion of the settlement judge. The settlement judge may not impose a settlement on the parties but will assist the parties in reaching a resolution of all claims.
- C. Confidential Nature of the Conference.** Judicial settlement conferences shall be conducted in private. No stenographic or other record may be made of the conference. Persons other than the parties and their counsel may attend only with the consent of all parties. The settlement judge will not communicate with anyone the communications made during the conference, except that the judge may report that a settlement was reached and, with the parties' consent, the terms of that settlement.
- D. Report of Judge.** Within 10 days after the completion of the judicial settlement conference, the settlement judge shall file a written report with the Court using an AOC form, stating when and where the conference was held, the names of those persons who attended the conference, whether or not an agreement was reached by the parties, and the name of the person designated to file judgments or dismissals concluding the action.

8.26.1 Local Rules. The Chief District Court Judge of any district conducting settlement procedures under these Rules is authorized to publish local rules, not inconsistent with these Rules and G.S. 7A-38.4, implementing settlement procedures in that district.

8.26.2 Time Limits. Any time limit provided for by these rules may be waived or extended for good cause shown. Time shall be counted pursuant to the Rules of Civil Procedure.

Rule 9: Domestic Violence

9.1 Domestic Violence Schedule. The Chief District Court Judge shall prepare a Domestic Violence Schedule for each of the three counties in the Eighth Judicial District establishing the dates, times and the courts in which Domestic Violence Cases will be scheduled and heard.

9.2 Filing of Domestic Violence Schedule. The Domestic Violence Schedule will be filed in the offices of the Clerks of Court and the Clerks of Court shall distribute copies to all the assistant/deputy clerks.

- 9.3 Duties of Domestic Violence Clerks.** All Assistant and Deputy Clerks who handle or assist in the processing of Domestic Violence Cases shall follow the schedule in setting the cases on the proper date, time, and before the proper court.
- 9.4 Return Hearings.** A deputy sheriff will be needed at all return hearings, and the clerk assigned to Domestic Violence Court shall coordinate this with the Sheriff's Departments to ensure a deputy is present in the proper courtroom at the scheduled time.

Rule 10: Continuance Requests

- 10.1 General Rule.** Domestic cases should be addressed at the earliest opportunity, including the first pre-trial conference setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that will delay the resolution of the contested issues beyond the established time standards shall only be granted for extraordinary cause.
- 10.2 Conflicts.** Attorneys shall notify the Court and other counsel or party of any other court conflict(s) as they become known and shall communicate with other judges to resolve such conflicts. In resolving conflicts within District Court, **juvenile cases shall take precedence** over all other matters. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts.
- 10.3 Motions.** All applications for continuance shall be by *written Request for Continuance* (Form 4) and shall be delivered to the Case Manager. Oral motions may be allowed only when the reason for the continuance did not become known until immediately preceding the start of the court.
- 10.4 Notification of the Request.** 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 at the same time the motion is delivered to the Case Manager. In addition to the service requirements set out in the statute, distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail or hand delivery.
- 10.5 Input from All Parties.** All parties should have an opportunity to be heard on a motion to continue. If the request is received within 5 business days of the hearing date, and there is no input regarding the other party's or counsel's position, the Court may be unable to address the request prior to the scheduled hearing and will address the request at the time of the scheduled hearing.
- 10.6 Responsibility of the Party Requesting the Continuance.** The burden is on the party requesting the continuance to contact the other attorney or party prior to submitting the request to continue to the Case Manager and include on the request:

- (1) The other party's position on the request as (a) joining in the request or (b) consenting to the request or not objecting to the request or (c) opposing the request.
- (2) If the other party joins in, consents to, or does not object to the request **and the parties can agree on a new court date**, subject to the Case Manager's approval, the moving party shall include this new court date on his or her request for continuance.
- (3) If the other party joins in, consents to, or does not object to the request, **but the parties cannot agree on a new court date**, the moving party is to ascertain several prospective court dates from the other party and include these dates along with several prospective court dates of his or hers on the request for continuance.
- (4) If the other party opposes the request for continuance, the moving party shall submit several prospective court dates that he or she can be available on the request for continuance.
- (5) If the other party cannot be reached or fails to respond, this fact should be noted on the request for continuance as well as a statement on the efforts made by the moving party and why contact was not possible. The moving party shall also submit several prospective court dates that he or she can be available on the request for continuance.

10.7 Responsibility of the Party Opposing the Request for Continuance. A party or attorney opposing the request for continuance must:

- (1) Submit a written response, stating the reasons for opposing the request for continuance, to the Case Manager and the moving party immediately upon receipt of the request for continuance.
- (2) Submit to the Case Manager several prospective court dates that he or she can be available in case the request for continuance is allowed.

10.8 Factors to be Considered. Factors to be considered by the Court 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 a temporary order dealing with the issue that is the subject of a 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 by the moving party, and grounds for previous continuances;

- The extent to which counsel had input into the scheduling of the trial date;
- The due diligence of counsel in promptly making a motion for continuance as soon as practicable;
- Whether the reason for continuance is a short-lived event which may resolve prior to the scheduled court 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 request;
- The position of delay caused by the continuance request;
- The position of opposing counsel or unrepresented parties;
- Whether the parties themselves consent to the continuance;
- Present or future inconvenience or unavailability of the parties, attorneys or witnesses if the case is continued;
- Any other factor that promotes the fair administration of justice.

10.9 New Date. In granting a motion for continuance, the Court should reschedule the conference, hearing or trial to a specific date after receiving scheduling input from all parties.

Rule 11: Timely Orders and Judgments

11.1 Orders and Judgments. All orders or judgments except those provided for in Rule 15.30 (Juvenile DSS orders) must be submitted within **15 days** following notification of the ruling by the Judge. **All orders shall include a statement that all issues have been resolved, or a statement identifying the issues that have been resolved and the issues, which are still pending.** The party preparing the proposed judgment or order shall provide a copy of the proposed document to the opposing party **3 days prior** to submitting the document to the judge. If a copy is provided by actual delivery or by fax, 3 days is sufficient; however, if sent by mail, **6 days prior** shall be required. The Family Court Judge may allow additional time for submission of the order or judgment for good cause.

11.2 Delinquent Orders and Judgments. Parties delinquent in submission of orders and judgments as required by Rule 11.1 shall be identified to the Chief District Court Judge or the assigned Family Court Judge, and sanctions or penalties may be imposed as deemed appropriate and as allowed by law.

Rule 12: Sanctions

12.1 Failure to Comply. Failure to comply with these Rules shall subject the parties and/or their attorneys to such sanctions as allowed by law and deemed appropriate by the assigned Family Court Judge. The sanctions will include, but are not limited to:

- (1) Dismissal by the Court of all or any part of any claim for relief or pleading.
- (2) Disallowance of evidence and/or testimony.
- (3) Payment of a fine.

- (4) Payment of the reasonable cost incurred by a party due to the other party's non-compliance with these Rules.
- (5) Payment of the opposing party's reasonable attorney's fees.

Rule 13: Remanded Cases

13.1.1 Remands. When cases are remanded by the Appellate Division, appellant's counsel shall promptly notify the Case Manager's office so that the case can be scheduled for a pre-trial conference within **30 days** of being notified by appellant's counsel.

Rule 14: Telephone Conferences

14.1.1 Telephone Conferences. The Court may, in its discretion, order or allow oral argument on any motion by telephone conference call or speaker phone conference call, provided that all participants to the conference can be heard by all other parties at all times during the conference call. The attorney shall schedule such conference calls at a time convenient to all parties and the judge. The judge may direct which party or parties shall bear the cost of the conference call.

Rule 15: Juvenile Abuse, Neglect and Dependency

15.1 Scope. These Rules apply to all cases in which a petition is filed alleging that a minor child has been abused, neglected, or dependent, pursuant to NCGS Chapter 7B.

15.2 Purpose. These Rules are intended to help assure protection and permanence for children who come under the court's juvenile jurisdiction and are designed to fulfill the purposes of Family Court and the North Carolina Juvenile Code. To that end, these Rules shall serve the following purposes:

- (1) To help the Court oversee case planning;
- (2) To make Family Court and its proceedings accessible and understandable to families and children;
- (3) To encourage the involvement of families and children in the decision making process;
- (4) To promote the integration of services for the parents and children involved in hearings, and to increase their access to community resources;
- (5) To eliminate unnecessary delays in court proceedings; and
- (6) To help the parties present issues and evidence to the Court in an efficient and simple manner.

15.3 Construction and Enforcement. These Rules shall be construed to accomplish the purposes set forth in Rule 15.2. The Court may impose sanctions against a party or attorney who fails to comply with these Rules; however, no rule shall be construed, applied, or enforced in a manner that will endanger or harm a child or prejudice the rights of a party.

15.4 Appointment of Counsel.

- (1) The Clerk shall maintain a list of attorneys eligible to be appointed to represent parents of children alleged to be abused, neglected, or dependent, and a list of attorneys to represent minors requesting judicial waiver of parental consent to abortion. To be included on any list, an attorney must maintain an office in the Eighth Judicial District, have a local working telephone number at which he or she can be contacted, complete any initial or follow-up training specified by any administrative order of the Chief District Court Judge, and maintain a mailbox in the clerk's office in Wayne, Lenoir, or Greene County.
- (2) When a petition is filed alleging abuse, neglect, or dependency, the clerk shall appoint separate counsel to represent each parent named in the petition against which allegations are made. The clerk shall prepare a Notice of Appointment of Counsel to be served on the respondent with the petition and summons. The notice shall include the attorney's name, business address, and telephone number and shall direct the respondent to contact the attorney. The notice shall also inform the respondent:
 - That the respondent may retain counsel;
 - That the Court, at the first hearing, will determine whether the respondent qualifies for appointed counsel and, if the respondent does, whether the respondent waives the right to such counsel; and
 - That the Court will dismiss court-appointed counsel if the respondent does not qualify for appointed counsel or the respondent waives the right to counsel.

After the first hearing in a case, an attorney appointed to represent a respondent who has not been served and does not appear at the hearing, shall not be responsible for further appearances until the clerk notifies the attorney that the respondent has been served.

- (3) In any case in which a petition for termination of parent rights is filed, the clerk shall appoint the same attorney to represent the parent in the termination proceeding if the parent whose rights are sought to be terminated has been represented by an appointed attorney in a prior abuse, neglect, or dependency proceeding. The petitioner shall mail the attorney a copy of the summons and petition. If the parent fails to apply or qualify for court-appointed counsel by the date of the hearing on the petition, or waives court-appointed counsel, the

appointment of counsel shall not be approved by the Court. In the event the termination of parental rights proceeding is filed as a motion in the cause, pursuant to North Carolina General Statute 7B-1102, the current appointed counsel, including the Guardian ad Litem, shall continue representation, unless that attorney has properly moved the Court to withdraw.

- (4) When a juvenile is alleged to be abused or neglected in a petition, the Court shall appoint a Guardian ad Litem to represent the juvenile. When the juvenile is alleged to be dependent, the Court may appoint a Guardian ad Litem to represent the juvenile. The Guardian ad Litem and attorney advocate have standing to represent the juvenile in all actions where they have been appointed.

Before assigning a Guardian ad Litem, the Guardian ad Litem District Administrator shall ensure that a Guardian ad Litem representative will be available for the seven-day hearing in the case and for all stages of the proceedings. If the District Administrator determines that it is impossible to secure the presence of a GAL representative for the Child Planning Conference, he or she will notify the Juvenile Case Manager stating the reasons therefore.

- 15.5 Responsibilities of Attorneys.** An attorney who represents a party in a case scheduled for hearing shall appear at the hearing unless excused by the Court or by agreement of all other parties. An attorney who has a conflict in another court shall comply with the relevant rules relating to priority, and it shall be the responsibility of the attorney to keep the courtroom clerk or Juvenile Case Manager informed of his or her location at all times. Juvenile Court shall have priority among the other district courts for purposes of hearing.

After an attorney enters an appearance or accepts an appointment in a case, he or she shall represent his or her client through all stages of the proceedings as long as the child continues within the jurisdiction of the court. Leave of court to withdraw from a case shall be granted only for compelling reasons.

- 15.6 Child Planning Conference.** The social worker assigned to the case shall provide the assigned juvenile case manager a copy of the filed petition. A Child Planning Conference shall be held according to a schedule promulgated by the Chief District Court Judge. Notice of the Child Planning Conference shall be distributed by the assigned juvenile case manager to all parties prior to the conference.

The social worker, the DSS supervisor, Guardian ad Litem program representative, the respondent and the respondent's attorney shall attend said conference. Additional attendees may include mental health representatives, school representatives and other relatives. The assigned Juvenile Case Manager shall monitor service on each such respondent and facilitate the Child Planning Conference. The Juvenile Case Manager will ensure that all available information in the matter is shared among the parties, ensure that all parties have the opportunity to participate in the discussion of the case, facilitate the discussion as much as possible, and assist in the preparation of the appropriate document for the district court judge's signature. A signed copy of any Memorandum of Agreement and Consent Order prepared as a result of the Child Planning Conference shall immediately be filed with the juvenile court clerk of court's office and copies provided to each party.

15.7 Calendar. The juvenile calendar shall be maintained by the clerk assigned to the juvenile court in conjunction with the juvenile court case manager. No case shall be scheduled on such calendar except as set by said juvenile case manager or with the consent of the presiding judge. Any cases involving a juvenile previously adjudicated abused, neglected or dependent, shall be heard by the same judge presiding at the adjudication, unless circumstances otherwise require.

At or before the conclusion of each hearing, the next hearing date shall be set, if applicable. Court calendars shall be prepared and published by the juvenile case manager two weeks prior to the scheduled court session. Court calendars shall be provided to the GAL office, Department of Social Services, the attorney advocate, the DSS attorney and the respondents' attorneys.

15.8 Placement Changes. DSS shall discuss any child placement changes with the GAL prior to a move, whenever possible, however, if the situation warrants immediate removal of the child to protect his or her safety, the GAL shall be notified of the change in placement within twenty-four (24) hours of such change.

Furthermore, DSS shall notify the GAL of any significant life altering events, including but not limited to; when the juvenile is alleged to be the victim of a crime, especially a crime against the juvenile's person; when the placement poses danger to the juvenile; and when the juvenile's present or past caregiver has died.

15.9 Referral of Placement Issues in Juvenile Cases. Cases in which juvenile(s) have been adjudicated to be abused, neglected, dependent, delinquent or undisciplined, may be referred to the program for mediation of any dispute over placement of the juvenile(s), provided the Chief District Court Judge in the district has determined that such referrals are appropriate and that available resources allow mediation of such cases. The Chief District Court Judge shall regularly monitor the number of cases referred to the program to ensure that resources allow continued referral of such cases.

If the Chief District Court Judge has authorized referrals of such cases to mediation, a referral may be made upon the motion of the Court or upon the motion of any party. In the discretion of the presiding judge, an order of referral to mediation may be made. The order of referral should identify the persons who are to participate in the mediation and shall designate the persons who are entitled to receive a copy of any agreement that is reached.

If an agreement is reached in mediation regarding the placement of the juvenile(s) in question, the mediator shall assist the participants in reducing the agreement to writing and shall ensure that each participant understands the written document. The mediator shall encourage each participant to review the agreement with his or her attorney prior to signing the same and shall afford them a reasonable opportunity to do so. After the agreement is signed by all participants, the mediator shall promptly furnish a copy to each party, attorney and persons designated in the referral order for review prior to the dispositional hearing. After a hearing at which all parties have a right to be heard, the Court may incorporate the terms of said agreement in its dispositional order, provided it finds the same to be in the best interests of the juvenile(s).

15.10 Continuances. From the time specified by statute, or court order, continuances shall be granted only for good cause, for the purpose of receiving additional evidence, reports or assessments that the Court deems necessary or in the best interest of the child, or as a result of extraordinary circumstances upon motion of a party to the action. Court orders for continuances shall appear in the record and shall state specific supporting reasons for said continuances.

15.11 Translators. Any court hearing shall not proceed unless a language translator or translators are present when it is determined that such is needed. The need for translators will be determined by the agency or attorney having initial contact with the client. Preference in securing a translator's services for the court process will be given to those translators who have been working with the family prior to the court process.

15.12 Timing of Hearings: Non-Secure Custody, Adjudication, Disposition and Review. The time frames for scheduling hearings will be as follows except as determined to be necessary by the Court for the proper administration of the Adoption and Safe Families Act:

- Non-secure custody hearing: To be held within seven (7) calendar days of entering initial custody orders;
- Adjudication hearing: To be set for a date as close as practicable to forty-five (45) days after the filing of the petition, but within sixty (60) days;
- Dispositional hearings: Upon completion of the adjudication hearing, unless the petition is dismissed, or within two (2) weeks if continued after adjudication, or upon receipt by the Court of sufficient information.
- Review hearing: Initial review within ninety (90) days of disposition (wherein the child is removed from the custody of parent, guardian or caretaker) and within each six (6) months thereafter;
- Permanency planning hearing: Within twelve (12) months of initial custody order or within thirty (30) days of court finding that reunification efforts are not appropriate. This hearing may be combined with any review hearing;
- Adoption review hearing: Within six (6) months of termination of parental rights or relinquishment and within every six (6) months thereafter until the child is placed for adoption and the adoption petition is filed;

In cases where a juvenile has matters arising in both delinquency/undisciplined and abuse/neglect/dependency jurisdiction, the specific matter to be heard shall dictate the court date on which the case shall be set. All parties shall be given proper notice of the said hearing.

15.13 Non-Secure Custody Hearings.

- (1) If a child is placed in non-secure custody of DSS, the first hearing to determine the need for continued non-secure custody shall be held within seven (7) calendar days after the juvenile was taken into non-secure custody.
- (2) Non-secure custody hearings shall be held before a district court judge.
- (3) At the non-secure custody hearing, the Court:
 - Shall review the nature of the proceeding and the purpose of the hearing;
 - Shall address any issues relating to adequacy of notice, service of process, and need for a translator for the respondents;
 - Shall follow-up on any pending issue regarding the identity or whereabouts of any missing parent of the juvenile and on efforts to serve said parent;
 - Shall receive testimony and evidence from the parties for the purpose of the Court determining:
 - (a) Whether a condition or risk justifying non-secure custody exists,
 - (b) What efforts the petitioner has made to eliminate the need for non-secure custody, and
 - (c) What other steps the parties have taken since the filing of the petition to resolve the issues.
 - Shall encourage the parties to engage in discovery of records which may be necessary in the representation of any party to the petition proceeding;
 - Shall rule on any written motions filed to deny, restrict or defer discovery; and
 - Shall determine the respondent's need for court-appointed counsel.
- (4) After giving all parties an opportunity to present evidence and to ask questions of other parties, the Court shall make the appropriate findings of fact and conclusions of law indicating:
 - Whether there is a reasonable factual basis to believe:
 - (a) That the matters alleged in the petition are true,
 - (b) That continued non-secure custody is supported by one or more the criteria set forth in NCGS 7B-503, and

- (c) That there is not other reasonable means available to protect the juvenile.
 - Whether the petitioner has presented clear and convincing evidence that no less intrusive alternative will suffice to protect the juvenile; and
 - Whether the petitioner has made reasonable efforts to eliminate the need for the juvenile placement.
- (5) If the Court finds that continued non-secure custody is necessary, the Court shall review or explore with the parties the following:
 - The appropriateness of the juvenile's placement and other placement options, including possible relative placements and efforts to place or keep siblings together,
 - Any efforts needed to ensure that a school-age juvenile's school placement and attendance are not disrupted,
 - Parental visitation,
 - Sibling visitation,
 - Service needs and referral,
 - Financial support for the juvenile,
 - Whether additional orders are needed to address the juvenile's immediate need such as an immediate need for medical treatment or evaluation, and
 - Specific steps to be taken by the parties for the next hearing.
- (6) If the Court finds that continued non-secure custody is not warranted, the Court shall explore with the parties the following:
 - Service needs and referrals, and
 - Specific steps to be taken by the parties before the next hearing.
- (7) At the conclusion of the non-secure custody hearing, the judge shall:
 - Inform the parties of the time and date of the adjudication hearing and, if needed, a further secure custody hearing,
 - Prepare and ensure that all parties have a copy of any order entered as a result of the non-secure custody hearing, and

- Identify efforts made by the Department of Social Services to prevent out-of-home placement and determine whether those efforts were reasonable or if no such efforts were possible given the circumstances.
- (8) At a non-secure custody hearing, the judge may accept stipulations and approve consent orders relating to continued non-secure custody. Before accepting a stipulation to findings, conclusions or provisions of an order, the judge, in open court, shall determine that the stipulating parties understand the content and consequences of the stipulation and that they voluntarily consent to the stipulation. The judge shall inquire of the parties in order to determine that the stipulation is voluntary and knowing. The judge's findings shall be set forth on the record.
 - (9) If an additional non-secure custody hearing is not scheduled, any party may request an additional non-secure custody hearing by filing a written request with the clerk, who shall calendar the hearing within ten (10) days of said request. The requesting party shall provide at least five (5) days notice of the hearing to all other parties.
 - (10) All parties are expected to share information relative to this hearing, including recommendations to be made, as soon as these become available.

15.14 Service of Petition and Summons.

- (1) From the date the petition is filed until the adjudication hearing, the petitioner shall have a continuing duty to identify and locate any parent or other respondent who has not been served with a copy of the summons and a copy of the petition, and to have the summons and petition served on any such parent or other respondent.
- (2) Any time a parent or other respondent is served with a copy of a non-secure custody order, the parents also shall be served with a notice informing the parent or other respondent of the nature, date, place, and time of the non-secure custody hearing.
- (3) The summons or other appropriate notice shall inform the respondent of potential outcomes of this action, including:
 - Return of the child to parent or parents,
 - Assigning custody or guardianship to relatives or other court-appointed persons, or
 - Termination of parental rights and adoption.

- (4) Notice shall also include the fact that parents or other respondents can be ordered to participate in treatment.
- (5) The petitioner, the Guardian ad Litem, and the respondents' attorneys are encouraged to cooperate with law enforcement to expedite the service of petition and summons on the respondent.

15.15 Pre-Hearing Conferences.

- (1) Pre-Adjudication Conference. The purposes of the pre-adjudication conference shall be to explore the possibility of settlement, to narrow the issues as much as possible, to stipulate those facts for adjudication and disposition not in dispute, to ensure full sharing of information, and to allow the fullest opportunity for negotiation in the interest of the children by all parties. The Juvenile Case Manager shall assist the parties in 1) sharing witness lists, exhibit lists and exhibits; 2) defining the issues; 3) identifying matters that can be stipulated and making stipulations; 4) considering any proposed consent order; and 5) setting the date of the adjudication hearing.

Pre-adjudication conferences will be scheduled for the court session immediately prior to the scheduled court hearing date for adjudication. The pre-adjudication conference will involve the respondent's attorney(s), the DSS attorney, and the GAL attorney as direct participants. The parties, and the GAL volunteer, to the extent that they are available, should be present to consult on proposed agreements as needed.

The parties may, through counsel, reach a consent agreement on adjudication at any time prior to the scheduled court hearing, thereby rendering a pre-adjudication conference unnecessary.

The judge presiding over juvenile court for the period in which the pre-adjudication conference is held will be available to "voir dire" the parties and approved settlements, stipulations, statements of issues in dispute, and discovery agreements resulting from these conferences.

Unless a consent is entered, the specific provisions of proposed settlements, stipulations, and statements of issues remaining in dispute will be set out in a written Pre-Adjudication Conference Order for the judge's approval and signature for distribution to the parties at the conclusion of the conference. Each party shall furnish a written list of prospective witnesses and exhibits. Copies of all available listed exhibits intended for use at trial shall be provided. Any listed exhibit not available for distribution at the pre-adjudication conference shall be distributed as soon as available. Parties are encouraged to share any exhibits intended to be used for hearing on adjudication at the earliest practicable time.

- (2) Pre-Dispositional Conference. The parties may, through counsel, agree to hold a pre-dispositional conference to explore the possibility of settlement, to narrow

the issues as much as possible, to stipulate those facts for disposition not in dispute, to ensure full sharing of information, and to allow the fullest opportunity for negotiation in the interest of children by all parties. The pre-dispositional conference will involve the parties' counsel, the respondents, when available, the DSS team representatives and one or more representatives of the GAL program as direct participants. The pre-dispositional conference will be held, if requested, at the court session immediately prior to the scheduled court hearing for disposition. The parties may, through counsel, reach a consent agreement on disposition at any time prior to the scheduled court hearing, thereby rendering a pre-dispositional conference unnecessary.

The judge presiding over juvenile court for the period in which the pre-dispositional conference is held will be available to "voir dire" the parties and approved settlements, stipulations, statements of issues in dispute, and discovery agreements resulting from these conferences.

The specific provisions of proposed settlements, stipulations, and statements of issues remaining in dispute will be set out in a written Order for the judge's approval and signature for distribution to the parties at the conclusion of the conference.

15.16 Adjudication. The adjudication hearing shall be held within forty-five (45) days from the filing of the petition unless the judge for good cause orders that it be held at a different time.

15.17 Dispositional Hearings. At each dispositional hearing, the following issues shall be brought to the attention of the Court for its consideration:

- (1) Who shall have legal custody of and placement responsibility for (or guardianship of) the child;
- (2) Any specific placement, which would require a court order or approval;
- (3) The service goals for the child and family, and the service plan to achieve these goals, or further evaluations needed for responsive service planning;
- (4) If a child is to be placed or remain in DSS custody, authorization for the DSS to procure, and give consent for, any necessary medical, psychological or psychiatric treatment for the child, or that this authority be granted to any court guardian;
- (5) Reasonable efforts, requirements and issues toward reunification or another permanent plan;
- (6) The visitation plan for the child with parents and any siblings, specific conditions or requirements of the visitation plan, which need to be ordered;
- (7) Any special conditions or provisions which need to be ordered in regard to the child, parents, caretakers or service providers;

- (8) Child support provisions to be ordered;
- (9) Date and time of the next court review hearing;
- (10) Requirements of NCGS 7B-907 in regard to a permanency planning hearing and required criteria, findings and subsequent actions; and
- (11) Any other issues proposed as necessary for the proper disposition of the juvenile matter.

15.18 Discovery. Except as protected by privilege, all parties shall disclose all relevant material and information to all other parties to the juvenile court action on a timely basis. The obligation to provide discovery shall be ongoing, pursuant to the Rules of Civil Procedure.

Any party may file a motion to compel discovery of specific information or material. Such motions shall be heard not less than ten (10) days prior to the hearing to which the motion pertains. All means of discovery permitted by the Rules of Civil Procedure shall be available, including orders to compel and imposition of sanctions.

15.19 Pre-Dispositional Reports. The petitioner (DSS) shall prepare a pre-dispositional report that includes, at a minimum, the following:

- (1) A description of the recommended placement plan for the child and how that plan is appropriate to the child's needs;
- (2) A description of the plan of services for the child and the child's family and how that plan is appropriate to meet the child's needs, including the child's need for a safe permanent home;
- (3) A statement of the specific changes in parental behavior that are needed to correct the conditions that lead to the abuse, neglect or dependency, and a recommendation as to specific actions the respondents must take to achieve these goals;
- (4) If the recommendation is that the child be removed from the home or that such removal continues, then the report shall include:
 - A statement of the efforts by DSS to prevent or eliminate the need for placing the child outside the home;
 - A description of the efforts by DSS to reunify the family including services that have been offered, utilized, or rejected, and a statement as to the appropriateness of continued efforts to reunify the family;
 - A statement of why the child cannot be protected from the identified problems while remaining in the home;

- The identity of all relatives and kin who have been contacted about providing a place for the child, and a description of the nature and results of those contacts;
 - A proposed visitation plan for the child;
 - A statement of the child's special needs and how they may be met;
 - The identity and location of the child's siblings and a statement of the steps to be taken to maintain contact between the child and siblings;
 - If applicable, a description of the child's school or day care situation, and what is to be done to maintain continuity and stability of these situations and the status of any treatment previously undertaken subsequent to a case plan or a court order.
- (5) The Guardian ad Litem for the child shall prepare pre-dispositional reports to assist the Court in reaching a disposition that will best serve the child's needs;
- (6) Dispositional reports by the DSS and the GAL will be provided, in written form, to each other and to parties' counsel no later than five (5) days prior to the scheduled adjudication/disposition court hearing date. These reports should be furnished by the most efficient available means. Any updates to these reports should be distributed as soon as they become available.
- (7) Pre-disposition reports shall not be submitted to or considered by the Court until the adjudication is completed or the parties have settled all adjudication issues.

15.20 Adjudicatory Stipulations. Before accepting a stipulation to findings, conclusions or provisions of the Court's adjudication order, the judge, in open court, shall determine that the stipulating parties understand the content and consequences of the stipulation, including, if applicable, the possibility that the child may be removed permanently from the home, and that they voluntarily consent to the stipulation. The judge shall inquire of the parties in order to determine that the stipulation is voluntary and knowing. The Court's findings shall be set forth on the record.

If there are any known impediments to communication or comprehension, *eg* language, hearing impediment or intellectual impediment, on the part of the respondents, then the Court shall make appropriate findings as to how those issues were addressed.

The Court shall not be bound by any stipulation to which fewer than all the parties who have appeared have agreed.

15.21 Services by Other Public Agencies.

- (1) At any time after adjudication, if it appears that the best interest of the juvenile may require, or that a party is recommending, that the juvenile receive services from a public agency or a community agency which are outside the scope of the usual services of that agency, or from a private provider, the Court may direct any party seeking such services to serve the appropriate representative of the agency or provider with a notice of the hearing(s) or any subsequent hearing(s). Prior to actual service of said notice, that agency or provider should be contacted by the person making the recommendation, or other person designated by the Court, to discuss the matter in detail and to determine who will be the agency or provider representative appearing in court.
- (2) At the hearing(s) for which the agency or provider have been served with notice, the Court may hear evidence and enter orders relating to the level and type of services that the agency or provider can and should provide to meet the child's needs.
- (3) After proper notice, the Court shall have jurisdiction to order the agency or provider to provide specific services to the child.

15.22 Orders Requiring or Recommending Mental Health or Substance Abuse Assessments or Counseling.

- (1) Any Order entered by a juvenile judge which requires or recommends that services be provided by any mental health or facility center including but not limited to psychological, psychiatric or substance abuse assessments, counseling or other appropriate services, shall be reduced to written outline format and signed by the judge on the day of court. (The judge's order must require the said facility to furnish to the court by a specific deadline a written report bearing upon the services provided or offered, and indicating whether the person(s) for whom said services were offered or provided, cooperated or not with the offering of said services. The report should also inform the court of the current status of the person referred, whether the person is to continue to receive services or not, any progress or lack thereof the person has made in his/her treatment or services.)
- (2) The outline of the Court's order signed on the day of court by the judge shall be filed by the juvenile clerk and served by mail by the clerk upon the area mental health center director or other named mental health professional. The juvenile clerk shall provide a certificate of service for each such order.

15.23 Review Hearings.

- (1) When a child remains out of the home following an original dispositional hearing, a review hearing shall be held at a time the judge designates in the disposition order, but in no event more than ninety (90) days from the date of the dispositional hearing.

- (2) When a child remains out of the home following the first review hearing, the judge shall determine and specify in the review hearing and order an appropriate date for the next review hearing. In no event shall the second review hearing be more than six (6) months from the date of the first review hearing. The goal of the second review hearing shall be to develop a permanent plan for the child.
- (3) As long as the child remains out of the home, subsequent review hearings will be held at times the judge finds appropriate, but in no event more than six (6) months from the previous review hearing, unless the judge orders otherwise.
- (4) In any case where a child is removed from a parent, guardian, or custodial caretaker, the Court shall conduct a review hearing designated as a permanency planning hearing, within twelve (12) months after the date of the original order removing custody, unless a permanent plan for the child has previously been finalized by the Court. A permanency planning hearing shall be combined with any review hearing, at the request of any party, with notice given at the previous hearing or with written notification given at least thirty (30) days prior to the permanency planning and review hearing, and with the approval of the Court. The provisions of NCGS 7B-907 will govern procedure and content of the permanency planning hearing.
- (5) The DSS and GAL office shall deliver a written report to all counsel, and to any unrepresented parties, at least five (5) days before any scheduled review hearing. The reports shall, at a minimum, describe the progress in the case since the last hearing, agency concerns, efforts made by the reporting agency/person, and the agency/person's recommendations.
- (6) If a parent's identity or whereabouts remain unknown or the paternity of the child has not been legally established, the judge shall specify in the review hearing order any steps to be taken to identify the parent, locate the parent, or establish paternity.

15.24 Permanency Planning Hearings.

- (1) The Court shall conduct an extensive permanency planning hearing of each case, as provided by statute. The Court may set a permanency planning hearing for any case at any time, on its own motion or upon motion by any party. Notice of the permanency planning hearing may be given in open court at the end of the prior hearing.
- (2) Unless previously set in open court, the Clerk of Court shall mail a notice of the hearing at least thirty (30) days prior to the date set for the review hearing, to the following persons as may be involved in the case: parents or their attorney, the child, if he or she will be twelve (12) years of age or more at the time of the review, the child's GAL, the child's attorney, the foster parents or other caretakers, and any other person or agency specified by court order.

- (3) In a permanency planning hearing held pursuant to NCGS 7B-907, the hearing shall be timely held at the judge's next session after the reunification order has been entered in open court. Nothing in this section shall prohibit the holding of joint review and permanency planning hearing. However, a permanency planning hearing shall be designated either in the court's previous order or by notice to all counsel and/or pro se parties, unless notice is waived by the parties.
- (4) In a permanency planning hearing held pursuant to NCGS 7B-907, DSS shall deliver a written court summary to all counsel, unrepresented parties, and the GAL office at least five (5) days prior to their review hearing which summarizes the progress in the case since the last hearing and the recommendations of DSS
- (5) If a permanent plan has not been implemented, the case shall be re-calendared for further permanency planning hearings pursuant to statute.
- (6) The prevailing party must prepare a proposed order conforming to NCGS 7B-907.

15.25 Placement Review by Court after Termination of Parental Rights.

- (1) A placement review shall be held no later than six (6) months from the date of termination of parental rights. Review hearings shall be held every six (6) months thereafter until the child is placed for adoption and the adoption petition is filed by the adoptive parent.
- (2) Notification for post termination of parental rights placement hearing shall be given no more than thirty (30) days and no less than fifteen (15) days prior to the hearing. Notification shall be provided to the child if twelve (12) years of age or more, to the agency with custody, to the person giving care for the child, to the Guardian ad Litem, and to any other person or agency the Court may specify.
- (3) At the post termination of parental rights placement hearing, the Court shall allow sufficient time to hear information from the parties and from any other agency, which will aid the Court in its review. Information consistent with the requirements of NCGS 7B-908 shall be submitted in writing to the Court by DSS and GAL.
- (4) An order shall be drawn as a result of this hearing and shall include findings and provisions as required by NCGS 7B-908 and shall affirm the agency plan or require specific additional steps which are necessary to accomplish a permanent plan which is in the best interest of the child.

15.26 Court Orders.

- (1) Court orders issued as a outcome of a required hearing review shall contain, at a minimum, those findings required by NCGS 7B-906 and, if applicable, those findings required by NCGS 7B-907.

- (2) All court orders in juvenile proceedings involving child abuse/neglect/dependency (either entered by consent or as the result of judicial determination), shall state with specificity all pertinent findings of fact and all appropriate conclusions of law.
- (3) All court orders in juvenile proceedings involving child abuse/neglect/dependency (either entered by consent or as the result of judicial determination) shall state with specificity all applicable dispositional provisions.
- (4) If requested by counsel, drafts of such orders shall be circulated among counsel for all parties to the proceeding reasonably in advance of the submission of the original order to the Court for entry. Drafts are to be circulated within twenty-one (21) days after the hearing and any additions or changes must be submitted within five (5) additional days. All orders are to be submitted to the judge presiding for signature within thirty (30) days after the hearing.
- (5) The district court judge presiding in any hearing may dictate his or her own order.

15.27 Family Court Time Standards (Abuse/Neglect/Dependency Cases):

General. Not all of the stages listed below will occur in every case; e.g., the child may not be taken into non-secure custody or the petition may be dismissed. In every case, the child's best interest is the paramount goal.

Event:	Time from Filing Complaint:
a. Non-Secure custody order entered	Same day petition is filed
b. First non-secure custody hearing (second non-secure custody hearing no more than subsequent non-secure custody hearings at intervals of no more than	7 days 7 days after first; 30 days)
c. Adjudication (1) in 75% of cases (2) in 100% of cases	45 days 60 days
d. Disposition (1) in 75% of cases (2) in 100% of cases	60 days 90 days
e. First Placement Review Hearing	150 days
f. First Permanency Planning Hearing	330 days
g. Reunification or Implementation of Other Permanent Plan	

(other than TPR):	
(1) in 90% of cases	330 days
(2) in 100% of cases	365 days
h. Termination of Parental Rights (TPR):	
(1) in 90% of cases	TPR petition filed within 360 days
(2) in 100% of cases	TPR petition filed within 390 days
i. TPR Hearing:	
(1) in 90% of cases	120 days from filing of TPR petition
(2) in 100% of cases	180 days from filing of TPR petition

Rule 16: Juvenile – Delinquent and Undisciplined

16.1 Scope. These Rules apply to all cases in which a petition is filed alleging that a juvenile has committed a delinquent or undisciplined offense.

16.2 Purpose. These Rules are intended to help assure a more efficient court process and are designed to fulfill the purposes of Family Court and the North Carolina Juvenile Code. To that end, these Rules shall serve the following purposes:

- (a) To help the Court oversee case planning;
- (b) To make Family Court and its proceedings accessible and understandable to families and children;
- (c) To encourage the involvement of families and children in the decision making process;
- (d) To promote the integration of services for the parents and children involved in hearings, and to increase their access to community resources;
- (e) To eliminate unnecessary delays in court proceedings; and
- (f) To help the parties present issues and evidence to the Court in an efficient and simple manner.

16.3 Appointed Attorney List. The Clerk of Court shall maintain a current list of attorneys eligible to be appointed to represent (1) juveniles alleged to be delinquent (2) undisciplined juveniles alleged to be in contempt of a court order and (3) parents alleged to be in contempt. To be included on the list an attorney must maintain an office in the Eighth Judicial District, have a working local telephone number at which he or she can be contacted, and complete any initial or follow-up training specified by the Chief District Court Judge.

16.4 Appointment of Attorneys. Upon the filing of a petition, the clerk shall assign an attorney to represent the juvenile, unless a private attorney has previously been retained. An attorney shall not accept appointment in any case if he or she knows any reason why they may not be available to try the case within 45 days. The attorney shall continue as attorney of record and shall receive notice of all subsequent proceedings until he or she is allowed to withdraw.

16.5 Responsibilities of Attorneys. An attorney who represents a party in a case scheduled for hearing shall appear at the hearing unless excused by the Court or by agreement of all other parties. An attorney who has a conflict in another court shall comply with the relevant rules relating to priority, and it shall be the responsibility of the attorney to keep the courtroom clerk or Juvenile Case Manager informed of his or her location at all times. Juvenile Court shall have priority among the other district courts for purposes of hearing.

After an attorney enters an appearance or accepts an appointment in a case, he or she shall represent his or her client through all stages of the proceedings as long as the child continues within the jurisdiction of the court. Leave of court to withdraw from a case shall be granted only for compelling reasons.

16.6 Continuances. From the time specified by statute, or court order, continuances shall be granted only for good cause, for the purpose of receiving additional evidence, reports or assessments that the Court deems necessary or in the best interest of the child, or as a result of extraordinary circumstances upon motion of a party to the action. Court orders for continuances shall appear in the record and shall state specific supporting reasons for said continuances.

16.7 Calendar. The juvenile calendar shall be maintained by the clerk assigned to the juvenile court in conjunction with the juvenile court case manager. Any cases involving a juvenile previously adjudicated delinquent or undisciplined, shall be heard by the same judge presiding at the adjudication, unless circumstances otherwise require.

At or before the conclusion of each hearing, the next hearing date shall be set, if applicable. Court calendars shall be prepared and published by the juvenile case manager one week prior to the scheduled court session. Cases shall not be added to the calendar after the publication date unless required by statute. Court calendars shall be provided to the Department of Juvenile Justice and Delinquency Prevention, the juvenile's attorney, and the District Attorney.

16.8 Referral of Placement Issues in Juvenile Cases. Cases in which juvenile(s) have been adjudicated to be abused, neglected, dependent, delinquent or undisciplined, may be referred to the program for mediation of any dispute over placement of the juvenile(s), provided the Chief District Court Judge in the district has determined that such referrals are appropriate and that available resources allow mediation of such cases. The Chief District Court Judge shall regularly monitor the number of cases referred to the program to ensure that resources allow continued referral of such cases.

If the Chief District Court Judge has authorized referrals of such cases to mediation, a referral may be made upon the motion of the Court or upon the motion of any party. In the discretion of the presiding judge, an order of referral to mediation may be made. The order

of referral should identify the persons who are to participate in the mediation and shall designate the persons who are entitled to receive a copy of any agreement that is reached.

If an agreement is reached in mediation regarding the placement of the juvenile(s) in question, the mediator shall assist the participants in reducing the agreement to writing and shall ensure that each participant understands the written document. The mediator shall encourage each participant to review the agreement with his or her attorney prior to signing the same and shall afford them a reasonable opportunity to do so. After the agreement is signed by all participants, the mediator shall promptly furnish a copy to each party, attorney and persons designated in the referral order for review prior to the dispositional hearing. After a hearing at which all parties have a right to be heard, the Court may incorporate the terms of said agreement in its dispositional order, provided it finds the same to be in the best interests of the juvenile(s).

16.9 Service of Summons and Petition.

- (a) When the juvenile and his or her parent(s) or guardian attend the Intake meeting, and the decision is made to file a petition, a Sheriff's Deputy will serve a Summons and a copy of the Petition on the parent or guardian and the juvenile before they leave the intake meeting. If the juvenile and parent or guardian did not attend the intake meeting, the Sheriff's Office will assist in serving the Summons and a copy of the petition.
- (b) From the date the petition is filed until the adjudication hearing, the petitioner shall have a continuing duty to identify and locate any parent who has not been served with a copy of the summons and petition and to have the summons and petition served on any such parent. Additionally, any motion for service by certified or registered mail shall be liberally granted.

16.10 Duty of Juvenile Court Counselor and DSS in Case of Juvenile Who May be Abused or Neglected.

- (a) Upon approving for filing a petition alleging a juvenile to be delinquent or undisciplined, the Juvenile Court Counselor shall determine whether there is reason to suspect that the juvenile is abused, neglected, or dependent. If the Juvenile Court Counselor determines that there is such reason, he or she shall immediately notify DSS and document said notification in the record. The notification shall include the date of the next hearing, if such is known. If not known at the first notification, DSS shall be notified as soon as the hearing date is determined. Upon receipt of first notification, DSS shall investigate the allegations and report its findings to the Court at the next scheduled hearing, if any, in addition to complying with the requirement of NCGS 7B-302. If DSS substantiates the allegations, it shall inform the Court whether or not it intends to file a petition.
- (b) If the Juvenile Court Counselor does not approve a petition for filing, he or she shall, nevertheless, determine whether there is reason to suspect that the juvenile is abused, neglected, or dependent. If the Juvenile Court Counselor determines

that there is such evidence, he or she shall proceed as in (a) above. Upon receipt of notification, DSS shall investigate the allegations and report its findings as required by law.

- 16.11 Translators.** Any court hearing shall not proceed unless a language translator or translators are present when it is determined that such is needed. The need for translators will be determined by the agency or attorney having initial contact with the client. Preference in securing a translator's services for the court process will be given to those translators who have been working with the family prior to the court process.
- 16.12 Detention Hearings.** If a juvenile is placed in secure custody pending adjudication, the first detention hearing must be held within 5 days of the juvenile being placed in custody. This hearing may not be waived. Subsequent detention hearings must be held within 10 days of the prior detention hearing unless waived by the juvenile through his or her attorney.
- 16.13 First Appearances.** The first appearance for juveniles alleged to have committed a felony offense must be held within 10 days of the filing of the petition. For juveniles held in secure custody, the first appearance will be incorporated in the juvenile's first detention hearing.

In the summons to the parent, the parent shall be informed of the date of the first appearance and ordered to appear with the juvenile. If the parent fails to appear for the first appearance, an Order to Show Cause may be issued informing the parent of the consequences of being found in contempt for failure to appear. If the juvenile fails to appear at a first appearance, a secure custody order shall be issued.

- 16.14 Probable Cause Hearings.** Probable cause hearings, as allowed by law, shall be scheduled at the first appearance, and shall be held within 15 days after the first appearance unless the Court continues the probable cause hearing for good cause. Whenever possible, the State shall inform the juvenile's attorney at the first appearance of the intention to seek transfer of the case to Superior Court.

If a motion for transfer to Superior Court is granted, the order shall specify the reasons for the transfer. When the case is transferred to Superior Court, the Superior Court has jurisdiction over that felony, any offense based on the same act or transaction, or on a series of acts or transactions connected with or constituting parts of a single scheme or plan of that felony, and any greater or lesser offense included in that felony.

If no request for transfer to Superior Court is made, the Court shall either proceed to an adjudicatory hearing or set a date for that hearing.

16.15 Admissions.

- (a) **Undisciplined Juvenile.** Whether a juvenile alleged to be undisciplined admits or denies the allegations in the petition, the State shall present sufficient evidence for the Court to determine the facts as to whether or not the juvenile is in fact undisciplined as alleged in the petition.

- (b) **Delinquent Juvenile.** When a juvenile alleged to be delinquent admits the allegations of the petition, or with the consent of the State, desires to admit the allegations of a lesser offense, the juvenile attorney's shall prepare a Transcript of Admission on a form supplied by the clerk. The attorney shall review the Transcript of Admission with the juvenile and determine that the juvenile's admission is a product of his or her informed choice and that it is voluntary. The juvenile, the juvenile's attorney, and the District Attorney shall then sign the form and present it to the Court at that time. The Court shall then review the Transcript of Admission to determine that the juvenile's admission is a product of an informed and voluntary choice.

16.16 Dispositional Hearing. Whenever possible, the Court shall enter disposition immediately after adjudication. The disposition will otherwise be set before the same judge as soon as practicable. In cases involving a juvenile held in secure custody pending disposition, the juvenile will have a hearing every 30 days before the same Family Court Judge. If the same judge who presided at the adjudication hearing is not available within the time frame as stated above, any Family Court Judge may enter disposition.

16.17 Pre-Disposition Reports. The Juvenile Court Counselor shall conduct an interview of the juvenile and his or her family prior to the disposition hearing unless excused by the Court. If the juvenile, parent(s), guardian(s), or custodian(s) consent, the interview shall be conducted prior to the adjudication hearing. The interview shall include the location of the juvenile's residence and any anticipated future residence if deemed appropriate by the Juvenile Court Counselor. The Juvenile Court Counselor shall prepare a written pre-dispositional report to be presented to the Court if the juvenile is adjudicated to be delinquent or undisciplined. If feasible, the report shall include the following information when available:

- (a) The results of any home study.
- (b) Information concerning both parents, including their location, their contact with the juvenile, any mental health or substance abuse history, and any other relevant information.
- (c) A summary of the juvenile's court history.
- (d) A summary of services previously provided for the juvenile.
- (e) The juvenile's educational history and present school placement.
- (f) A summary of evaluations completed.
- (g) A statement of evaluations needed.
- (h) A summary of appropriate community resources needed by the juvenile and their availability.

- (i) An opinion as to whether there is reason to expect that the juvenile is abused, neglected, or dependent.
- (j) A risk and needs assessment.
- (k) The level of sanctions according to the dispositional grid as set forth in NCGS7B-2507.

The report shall not be submitted to the Court until the juvenile has been adjudicated. If the juvenile is adjudicated delinquent or undisciplined, the Juvenile Court Counselor shall provide a copy of the pre-dispositional report to the attorney for the juvenile. If the report contains information that, in the Juvenile Court Counselor's opinion, should not be disclosed to the juvenile or the juvenile's parents, the counselor shall so inform the Court and the attorney representing the juvenile. The juvenile's attorney shall not disclose any such information to the juvenile or his or her parents without permission of the Court.

16.18 Placement of Delinquent or Undisciplined Juveniles in Custody of the Department of Social Services. If a party or the Court determines (at any stage in a proceeding) that the best interest of the juvenile or the community may require that the juvenile be placed in the custody of the Department of Social Services; that party or a person designated by the Court shall notify the Department of Social Services Child Protective Services intake worker and the County Attorney in writing of the date of the next scheduled hearing and of the issue to be considered. Upon receipt of the notice, the Department of Social Services shall acquire the right to receive notice of and to participate in all future hearings until it may be determined that placement of the juvenile with the Department of Social Services is not an appropriate option. If a juvenile is placed in its custody, the Department of Social Services shall receive notice of and participate in all future disposition or review hearings.

If circumstances require that a juvenile adjudicated delinquent or undisciplined be placed in the custody of the Department of Social Services before notice has been given, the Court shall designate a person to notify the Department of Social Services Child Protective Services intake worker immediately. The Department of Social Services shall thereafter have the right to receive notice of and participate in all future disposition or review hearings.

16.19 Review of Cases.

- (a) If a delinquent or undisciplined juvenile has been placed in the custody of the Department of Social Services, and the Department of Social Services has not filed a petition alleging abuse, neglect, or dependency, the Department of Social Services shall schedule reviews of the placement pursuant to statute until the juvenile is removed from the custody of the Department of Social Services. Any party may request an earlier review. The juvenile's parents shall receive notice of any hearing. Any such custody order may extend beyond the term of any probation or commitment. The Department of Social Services shall determine whether a petition should be filed. The Juvenile Court Counselor shall notify the Department of Social Services of termination of probation.

- (b) In all other cases, the Juvenile Court Counselor or the juvenile may request the Court to review its disposition at any time by filing a Motion for Review with notice to parents and the Department of Social Services if appropriate. The Motion for Review shall include a statement of what community resources have been used or attempted and an explanation of why any appropriate, available resources have not been used.
- (c) If a juvenile alleged or found to be delinquent is in the custody of the Department of Social Services, the attorney for the juvenile shall be notified of the Department of Social Services hearings and provided with reports and recommendations of the Department of Social Services and the Guardian ad Litem.
- (d) If the Department of Social Services is not relieved of court-ordered responsibility, the case shall be re-docketed for further review within six months.
- (e) In any case where the County may be ordered to pay for a therapeutic placement or other services, the County Attorney will be notified of any hearing before such services are ordered. The County Attorney shall also be notified if the juvenile's probation is terminated.

16.20 Family Court Time Standards-Juvenile Delinquent and Undisciplined. The Family Court time standards are rules as established by the Family Court Advisory Committee under the direction of the North Carolina Supreme Court. The following time frames represent maximum time limits that are “goals” for Juvenile Delinquent and Undisciplined matters. Unless otherwise specified “days” are calendar days.

<u>Event</u>	<u>Time from Filing of Complaint</u>
(1) Adjudicatory Hearing	
(a) In 90% of cases	Within 60 days of service of the petition
(b) in 100% of cases	Within 90 days of service of the petition
(2) Dispositional Hearing	
(a) in 95% of cases	Within 30 days of adjudication
(b) in 100% of cases	Within 60 days of adjudication

Rule 17: The Sharing of Information in Juvenile and Family Court Cases

17.1 Purpose and Scope. The purpose of these Rules is to designate agencies and authorize them to share with each other, upon request, information in their possession that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent. This sharing of information shall continue until the juvenile is no longer subject to the jurisdiction of the Court. These agencies may also be involved in

family court cases involving, but not limited to: child custody, visitation, child support, equitable distribution, and post-separation support.

17.2 Definitions. Unless the context clearly requires a different meaning, the following terms are defined as follows:

- (1) **Designated Agency** means an agency designated by these Rules as an agency authorized to share information pursuant to these Rules and to NCGS 7B-3100, and includes any person or entity that is employed by a designated agency, works under contract with a designated agency, or functions in a volunteer, student, intern, or similar capacity in or for a designated agency.
- (2) **Information** means any confidential or non-confidential information whether or not recorded, including information stored in computer data banks, or computer files that is relevant to (a) a case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent, and (b) the protection, treatment of or educational opportunities of the juvenile in regard to whom the petition is filed for the protection of others.
- (3) **Juvenile** means a person who has been alleged or adjudicated to be an abused, neglected, dependent, undisciplined, or delinquent juvenile as defined in NCGS 7B-101 or 7B-1501, and who is subject to the continuing jurisdiction of the Court.

17.3 Agencies Authorized to Share Information. The following agencies are authorized and required to share information concerning juveniles pursuant to these Rules and NCGS 7B-3100:

- (1) Local mental health facilities in Wayne, Lenoir and Greene Counties.
- (2) Area mental health authorities.
- (3) Local health departments of Wayne, Lenoir and Greene Counties
- (4) Departments of Social Services of Wayne, Lenoir and Greene Counties.
- (5) Local law enforcement agencies in Wayne, Lenoir and Greene Counties.
- (6) Local school administrative units in Wayne, Lenoir and Greene Counties.
- (7) Department of Juvenile Justice.
- (8) Office of Guardian ad Litem Services of the Administrative Office of the Courts and any local personnel within the guardian ad litem program of Wayne, Lenoir and Greene Counties.
- (9) Any local agency that has been designated by an order issued by the Chief District Court Judge of the Eighth Judicial District in which the agency is located as an agency authorized to share information pursuant to these Rules and NCGS 7B-3100.
- (10) Child Support Enforcement agencies of Wayne, Lenoir and Greene Counties.
- (11) District Attorney for the Eighth Judicial District. The District Attorney is authorized to disclose or release information among agencies; however, nothing in these Rules shall be deemed to require the disclosure or release of any information in the possession of the District Attorney.

- 17.4 Confidentiality.** Any information shared among agencies pursuant to these Rules shall remain confidential, shall be withheld from public inspection and shall be used only for the protection of the juvenile.
- 17.5 Other Information Sharing.** Nothing herein shall preclude any other necessary sharing of information among agencies.
- 17.6 Federal and State Law or Regulation.** Nothing in these Rules authorizes or requires a designated agency to share information with another designated agency that sharing would violate any federal or state law or regulation.

Rule 18: Amendments and Modifications to Rules

- 18.1 Amendments and Modifications.** These Rules are subject to amendment or modification as experience indicates and requires.