

**SEVENTH JUDICIAL DISTRICT
LOCAL RULES FOR MANDATORY CHILD CUSTODY/VISITATION
MEDIATION**

The Seventh Judicial District custody and visitation mediation program is established under N.C.G.S. §7A-494 and 495, and 50-13.1. These rules shall apply to all claims and motions filed on or after the first day of September, 2007, in new or pre-existing cases.

1. PURPOSE

The program provides a trained, neutral mediator employed by the court to help parents agree on a custody and visitation plan that is in the child's best interest. All parties (and sometimes the child) participate in the process. The mediator focuses discussion on the rights and responsibilities of both parents and, especially, on the needs of the child. The mediator does not dictate the terms of the agreement, but assists the parties in reaching their own agreement after full discussion of issues affecting the child's health, education, and welfare. When mediation is successful, parents and their child avoid the cost and trauma of a custody trial.

The goals of mediation include:

- a. Reduce acrimony between the parties;
- b. Reach agreements in the child's best interest;
- c. Give the parties responsibility for making decisions about their child;
- d. Provide a confidential, non-adversarial setting to minimize the stress and anxiety of the parties and their child; and
- e. Reduce re-litigation of custody disputes.

2. MANDATORY PARTICIPATION

All parties to any action seeking child custody or visitation, or a modification of same, must participate in mediation prior to any pre-trial conference or hearing of these issues other than temporary or emergency issues.

3. SCHEDULING

Any party filing a custody/visitation action or motion must simultaneously schedule the matter for a group orientation session to occur within 45 days of the original filing. The custody mediator shall provide the Clerk in each county with tentative scheduling dates and the schedule shall be publicly available. The custody mediator is authorized to use discretion to schedule and reschedule orientation sessions and mediation sessions at times convenient to the parties and to the courts.

4. NOTICE

The party scheduling the orientation date shall give notice to all opposing parties at least 10 days prior to the scheduled group orientation session. The notice may be served with any complaint or motion as provided by the rules of civil procedure, or the notice may be served separately by first class mail. The filing party shall provide the Clerk with a copy of the notice with a certificate of service. The notice form is attached to these rules.

5. THE MEDIATION PROCESS

The ultimate goal of mediation is to have the parties enter into a Parenting Agreement. The process consists of two phases: The group orientation session and private sessions.

A. Orientation is a public group session to explain the goals and procedures of mediation. Once parties have attended orientation, they do not need to return for orientation again - - - even if their case requires a return to mediation years later. The group orientation session will last approximately one hour. Sessions will be held one or two times each month in Nashville, Tarboro, and Wilson in the courthouses. The parties contesting custody/visitation of their child should attend the same orientation session. Attorneys do not attend orientation with their clients. (However, all attorneys who appear in domestic cases shall attend one group orientation session to become familiar with custody mediation procedures.) At the conclusion of the orientation, the parties in a particular case will be seen separately from the larger group to schedule their first private mediation session.

B. The parties and the mediator meet one to three times in private sessions lasting no more than approximately two hours each. Generally, attorneys do not attend the private sessions. Only custody and visitation may be discussed, not issues of child support, alimony, or distribution of property. At the conclusion of mediation, the parties may enter into a full agreement, a partial agreement, a temporary agreement, or none. A partial agreement shall state in detail the resolved issues and those that remain open for trial.

6. AGREEMENT

After the final mediation session, the mediator shall prepare in writing the full or partial agreement reached by the parties. The mediator will send a copy to each parent and attorney for review. Each party should review the agreement with his or her attorney before signing. Each party shall have 10 days after receipt of his or her copy to consider the agreement before signing. Each party shall sign the original parenting agreement in the presence of the mediator at a time and place scheduled by the mediator, generally at the mediation office. The parties need not sign at the same time, but may be required to sign on the same day. If an out of town party requests the option of mailing in the signed agreement, his or her signature must be notarized.

7. AGREEMENTS BECOME ORDERS OF THE COURT

The mediator will present the signed agreement to any district court judge for review and signature along with an Order Approving Parenting Agreement (AOC-CV-631; AOC- CV-636 for partial agreement), making this agreement a Custody Order within the meaning of the N.C.G.S. Custody Orders agreed to in mediation are enforced by the courts, not the mediation office.

8. CONFIDENTIALITY

Mediation proceedings shall be held in private and shall be confidential. The mediator is neutral and will not testify on behalf of either party. The mediator shall not at any time disclose to any judge or court personnel the reason that the mediation was not successful. The court will not inquire of the parties or the mediator as to the reasons for the success or failure of the mediation.

9. DISCOVERY SUSPENDED

No discovery regarding a custody or visitation claim shall be served, noticed, or conducted until the mediation process is complete or has been exempted by judicial order. Except for oral depositions of parties, discovery may proceed regarding child support.

10. CHANGE IN STATUS

The parties who filed the original action, claim, or motion for custody/visitation shall immediately advise the mediator of any changes in the status of the pending case including a signed consent order or voluntary dismissal. Notice shall be given at least 24 hours in advance of the pending orientation or private mediation session when possible.

11. TERMINATION WITHOUT AGREEMENT

If the parties are unable to reach any agreement in mediation or if the mediator ascertains that there are safety issues or other reasons why mediation is not appropriate, the mediator shall terminate the mediation process and file a report in the case file, indicating that the parties met the requirements of the mediation program but did not reach a mediated parenting agreement.

12. FAILURE TO APPEAR

If any party fails to appear for a scheduled orientation session, the mediator shall notify the person of the possible sanctions and reschedule the session.

For the second failure to attend the orientation session or for the first failure to attend a scheduled private mediation session, the party shall be ordered to appear in court and show just cause for his or her failure to appear. The court may impose the following sanctions:

- a. The party may be held in contempt; and/or
- b. The court may order a return to mediation; or
- c. The court may set the case for trial.

13. WAIVER OF MANDATORY MEDIATION

Either party may move to waive mediation for good cause including, but not limited to, grounds listed in N.C.G.S. § 50-13.1(c). The motion should be made on form AOC-CV-632 which includes notice of hearing and certificate of service. Any district court judge may rule on a motion to waive mandatory mediation. The party who filed the original action, claim or motion for custody/visitation must file any motion to waive mandatory mediation within 10 days of the date of filing said original action, claim or motion. Other parties must file any motion to waive mandatory mediation within 10 days of receipt of service of the original action, claim or motion. The court may enlarge the 10 day time limit for extraordinary cause.

14. EXPEDITED MEDIATION

Any party (or the court) may apply to the mediator for expedited mediation which consists of an abbreviated orientation, if any, and private mediation sessions on shorter notice than previously provided herein. Expedited mediation is only available for good cause shown including, but not limited to, out of state litigants or military personnel anticipating deployment or transfer.

15. CALENDARING OF CUSTODY AND VISITATION FOR TRIAL

Unless mediation has been waived by court order, no custody case can be calendared for trial until the mediation process has been complete.

16. RETURN TO MEDIATION

Parties, by consent, may return to mediation at any time after the parenting agreement, consent order, or other order has been signed and adopted, for the purpose of reviewing or modifying the original parenting agreement. No new motion or other court process is required if the original parenting agreement is signed through the mediator.