

EQUITABLE DISTRIBUTION RULES

17B JUDICIAL DISTRICT (with forms appended)

Rule 1. Application. These rules apply to equitable distribution claims only. They have no application to any other type of claim. These rules do not modify or affect any rules for child support cases.

Rule 2: Effective Date. Subject to the provisions set forth below, these rules apply to all equitable distribution claims upon adoption.

Rule 3: Time. Upon motion of either party, and for good cause shown, the times set forth in these rules may be extended or reduced by the court.

Rule 4: Sanctions. Failure to comply with these rules will result in sanctions, including but not limited to, the dismissal of a claim with or without prejudice, refusal to receive into evidence the offending party's affidavit or oral testimony as to matters which should have been set forth in the affidavit, contempt and any other sanction allowed by law.

Rule 5: Rules for Claims Filed on or after the Adoption Date of these Rules.

Rule 5.1: Affidavit Requirements: Both parties must fully and accurately complete an affidavit in the form approved and adopted herein by the District Court.

Rule 5.2: Filing of Affidavits. The party making the initial claim for equitable distribution shall file a full and accurately completed affidavit in the Office of the Clerk of Superior Court and deliver a copy of same to the opposing party or attorney in the form required by the instructions no later than 90 days following the filing of the initial claim. The responding party shall file a full and accurately completed affidavit in the Office of the Clerk of Superior Court and deliver a copy of same to the filing party or attorney in the form required by the instructions no later than 30 days after service of the affidavit of the filing party (which shall be no later than 120 days from the filing of the initial claim for equitable distribution). **At the time of service of the affidavit by both the filing and responding party, a copy of the coverpage/coverletter shall be forwarded to the Office of the District Court Judge.** Only the coverpage/coverletter shall be forwarded to the Office of the District Court Judge. It is not required that the entire affidavit be attached.

Rule 5.3: Mediation and Selection of a Mediator. All cases with a claim filed for equitable distribution will be required to attend Family Financial Settlement Mediation prior to calendaring for trial the issue of equitable distribution. Selection of a mediator must be made no later than 90

days from the filing of the claim for equitable distribution. The parties may select a certified or non-certified mediator by using form AOC-CV-825. If no mediator has been selected within the time period stated herein, then the Judicial Assistant/Trial Court Coordinator will appoint a certified mediator to conduct the Family Financial Settlement Mediation. Mediation shall be completed no later than 180 days from the date of the filing of the claim for equitable distribution.

Any requests for an extension to complete mediation shall be made to the Judicial Assistant/Trial Court Coordinator using Form AOC-CV-835 for a ruling by a District Court Judge.

The mediator shall report to the Office of the Chief District Court Judge and Clerk of Court using Form AOC-CV-827 within ten (10) days of the completion of the conference, whether or not the parties reached an agreement. 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 conducted by consent judgment or voluntary dismissal and shall identify the persons designated to file such consent judgments 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.

Rule 5.4: Discovery Deadline. All discovery relative to equitable distribution shall be completed no later than 180 days from the initial filing of the claim for equitable distribution.

Rule 5.5: Pre-Trial Order. The party initiating the claim for equitable distribution shall prepare and serve on the responding party a pre-trial order in the form adopted herein no later than 150 days from the initial filing of the claim for equitable distribution. A pre-trial order shall be adopted by the court no later than 180 days from the initial filing of the claim for equitable distribution, or sanctions will be imposed to the offending party(ies).

Rule 5.6: Pre-Trial/Scheduling/Discovery Conference. Pursuant to G.S. 50-21(d) the party first serving the pleading or application for equitable distribution, shall apply to the court within 120 days of the filing for the claim for equitable distribution, to the court to conduct a pre-trial, scheduling/discovery conference. If the initiating party fails to make application for the conference, the responding party may apply for such conference. At the conference, both parties and attorneys of record shall be present at said conference, unless prior approval to be excused has been obtained from the presiding Judge. The Court at the conference may determine but is not limited to the following:

- (A) Determine a schedule for discovery;
- (B) Rule on pending pre-trial motions or schedule a date for same;
- (C) Determine a date for mediation and designate a mediator if the parties have not previously selected and scheduled same;
- (D) Schedule a date for the entry of the final pre-trial order;
- (E) Schedule a date for a final pre-trial conference; and
- (F) Schedule a date for trial.

However, **both** parties may file Stipulation and agree the Conference is not necessary and may ask the Court to excuse the parties from attending such Conference. A filed copy of said Stipulation shall be forwarded to the Office of the Chief District Court Judge no later than 120 days from the date of the filing of the claim for Equitable Distribution.

Rule 5.7: Evidence. As to those matters covered by the affidavit, the testimony of each party must be presented in the form of the affidavit as opposed to oral testimony, unless a particular item listed in the affidavit is challenged by the opposing affidavit, cross-examination or otherwise. The parties may testify orally as to such challenged matters and as to matters not covered by the affidavit. Regardless if challenged or not, the evidence presented in the affidavits shall be received by the court as evidence by the party presenting the affidavit. Other witnesses, including experts, are not required to testify by affidavit. Cross-examination of all witnesses, including the parties is not limited to the rule and is in the discretion of the trial judge.

Rule 6: Rules for Cases Pending Prior to the Adoption Date of These Rules. Pending cases not calendared for trial as of the adoption date of these Rules shall comply with Rules 6.1 through 6.4.

Rule 6.1: Affidavit Requirements. Rules 5.1 shall apply.

Rule 6.2 Pre-Trial/Scheduling/Discovery Conference Notice Requirements. Immediately upon adoption of these Rules, the party with a pending claim for equitable distribution as of the date these Rules are adopted shall obtain from the Judicial Assistant/Trial Court Coordinator a date for a pre-trial conference. This date shall be as close as practicable to 60 days from the adoption date for these Rules for all claims pending at the adoption date. The Court at the Pre-Trial/Scheduling/Discovery Conference **SHALL** determine but is not limited to the following:

- (A) Determine a date for the entry of both the Plaintiff and Defendant's Equitable Distribution Affidavits;
- (B) Determine a schedule for discovery;
- (C) Rule on pending pre-trial motions or schedule a date for same;
- (D) Determine a date for mediation and designate a mediator if the parties have not previously selected and scheduled same;
- (E) Schedule a date for the entry of the final pre-trial order;
- (F) Schedule a date for a final pre-trial conference; and
- (G) Schedule a date for trial.

Rule 6.3: Mediation and Selection of a Mediator. Rule 5.3 shall apply.

Rule 6.4: Evidence. Rule 5.7 shall apply.

Rule 7: Miscellaneous Provisions.

Rule 7.1: Calendar Dates. The issue of equitable distribution shall be calendared for trial no later than 90 days following the completion of mediation.

Rule 7.2: Availability of copies of these Rules and Forms. Upon their adoption, these Rules and appended forms shall be filed in the Office of the Chief District Court Judge and in the Office of each Clerk of Superior Court in the District. Upon request, copies will be furnished to counsel by the Clerk of Court or by his/her designee. The forms attached to these Rules may be duplicated or copies by the parties to proceedings or their attorneys and used as originals for the purpose of meeting the filing requirements of these Rules.

Rule 7.3: Citation of Equitable Distribution Rules. These equitable Distribution Rules shall be cited as ED Rule1, etc.

This the _____ day of June, 2007.

CHARLES M. NEAVES, JR.
Chief District Court Judge

Effective _____