

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

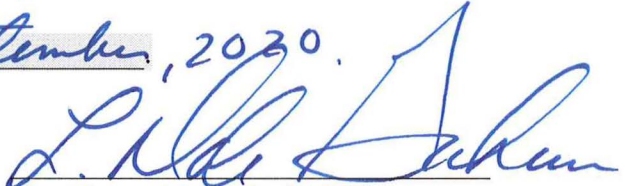
IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
JUDICIAL DISTRICT 22A

ORDER

Pursuant to North Carolina General Statute § 7A-146(2) and Rule 2 of the General Rules for District and Superior Courts, **IT IS HEREBY ORDERED** that the foregoing rules for the District Court of Judicial District 22A shall be effective on September 28, 2020.

These rules shall supersede all previously adopted civil local rules.

Adopted, this the 21 day of September, 2020.


The Honorable L. Dale Graham
Chief District Court Judge

JUDICIAL DISTRICT 22A LOCAL RULES OF DISTRICT CIVIL COURT
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JUDICIAL DISTRICT 22A LOCAL RULES OF DISTRICT CIVIL COURT

Effective 9-28-2020

Rule 1. General Rules

- 1.1 **Purpose.** In accord with North Carolina General Statute § 7A-34 and Rule 2 of the General Rules of Practice, the Judges of Judicial District 22A adopt these rules to institute a case management plan to provide for the just, orderly and prompt disposition of civil, non-jury, and domestic relations cases.
- 1.2 **Discretion.** In the event these rules fail to address a specific matter, the Clerks of Superior Court or their designee are authorized to act with discretion, subject to consulting with the Chief District Court Judge or the Presiding Judge at a particular term.
- 1.3 **Citation.** These rules may be cited as District 22A Local Rule ___.
- 1.4 **Amendments and Modifications.** These rules are subject to amendment and modification as experience indicates and requires.

Rule 2. Pleadings

- 2.1 **Supplemental Pleadings.** In cases involving divorce from bed and board, child custody, or support, or alimony, parties may supplement their original pleading or alimony complaint to allege one-year separation and pray for Absolute Divorce. Pleadings may **not** be supplemented after a final judgment has been entered and the file closed.
- 2.2 **Financial Affidavits in Child Support, Postseparation Support and Alimony Cases.**
 - (a) **Filing Required.** Simultaneous with the filing of **all** child support, postseparation support, alimony cases, and in all cases involving an alleged change in circumstances necessitating a change in support, or any combination thereof, the attorney for the party or the party seeking support or a change of support shall file an affidavit setting forth the financial condition and financial needs of the person(s) for whom support is sought.
 - (b) **Form.** The affidavit shall be on **Form 22B** and shall be typewritten or printed legibly in ink.
 - (i) **Both Parties to File.** Each party shall file a **Form 22B**. Respondent shall serve its **Form 22B** on the opposing counsel five (5) days before the scheduled hearing, whether answer is filed or not.

- (ii) **Admissibility.** Financial affidavit executed pursuant to this Rule shall be admissible in evidence without further authentication if the party that executed the affidavit is present in Court.
- (iii) **Limited Exception.** In cases involving Chapter 50B (Domestic Violence) and Emergency Temporary Custody Orders, which also require child support, the **Form 22B** shall be filed and exchanged by both parties no later than thirty (30) days from the date of the filing of the complaint or service whichever comes first.
- (c) **Copies.** Counsel or party shall make at least two additional copies of the affidavit for the hearing of the case to be furnished to the Judge presiding and opposing counsel or party when the case is tried.
- (d) **Physical Custody in Initial Child Support Cases.** In cases of initial child support, the initial pleadings must state which party has physical custody.

Rule 3. Calendaring and Scheduling

- 3.1 **Clerk’s Duties Generally.** The Court calendars for the disposition of civil cases in Judicial District 22A shall be set by the Clerks of Superior Court in Alexander and Iredell counties with the supervision of the Chief District Court Judge and the Presiding Judge of a particular session.
- 3.2 **Calendar Request Form.** A party requesting to calendar a motion, claim or other matter for hearing shall prepare, file and serve a Request for Court Calendar Form (**Form 22D**) specifying the matter to be calendared, estimated time of hearing, whether the matter is a jury or non-jury hearing, any special circumstances necessary for the hearing, and identification and contact information pertaining to the opposing party or their counsel. The Calendar Request Form shall designate one of the following categories:
 - (a) Uncontested Divorces;
 - (b) Ten-Day Hearings (Emergency Custody matters and Temporary Restraining Orders);
 - (c) Trials;
 - (d) Temporary Child Support and Temporary Child Custody;
 - (e) Postseparation Support;
 - (f) Pretrial Equitable Distribution;
 - (g) Motions (Requiring less than one (1) hour to be heard);
 - (h) Delinquent Judgments;
 - (i) Motions (Requiring more than one (1) hour to be heard);

- (j) 50B Domestic Violence Protective Orders and Related Motions.
- 3.3 **Continuances.** Continuances shall be considered pursuant to the Continuance Policy set forth in Rule 10.4 below.
- 3.4 **Time Requirements.** Cases may be added to the published trial calendar by written **Form 22D** request no later than ten (10) days before the convening of the session of court, except:
- (a) Uncontested Divorces may be added on at any time convenient with the Presiding Judge;
 - (b) Temporary Restraining Orders, Domestic Violence Protective Orders, or Any Other Order Requiring Hearing with Ten Days.
 - (i). **Setting.** All hearings on a Temporary restraining order, domestic violence orders, or any other Order requiring hearing within ten (10) days must be scheduled for 9:30am on the day of court and the Presiding Judge will hear the matter at his convenience that day based upon his/her obligations to the court he/she is holding. If the term is a court term of more than one day duration, the hearing must be set forth the first day of the term at 9:30am.
 - (ii) **Notification of Clerk.** The attorney granted a restraining order shall be responsible for notifying the appropriate clerk of court of the name of the case, type of hearing, date and time the hearing is scheduled, and if known, the attorney who represents the parties. The clerk of court will place the above information on the Presiding Judge's calendar and verbally notify the Presiding Judge before court begins on that day.
 - (iii) **Calendaring Motions for Selection of Alternate Dispute Resolution ("ADR") or Expedited Trial.** At any time following thirty (30) days from service of the initial pleadings or a motion for modification, in any case involving child custody, child support, postseparation support or alimony, either party may calendar a motion requesting the selection of ADR or expedited trial upon proper notice, as required by Rule 6(d) of the Rules of Civil Procedure. Said party shall be entitled to have the motion added on to the next court calendar without the permission of the Chief District Court Judge.
 - (iv) **Calendaring Motions for Withdrawal of Counsel, Temporary Custody, Temporary Child Support, Postseparation Support and Temporary Restraining Orders.** Counsel for a particular party may calendar a Motion to Withdraw, Temporary Custody, Temporary Child Support, Postseparation Support and Temporary

Restraining Orders upon proper notice, as required by Rule 6(d) of the Rules of Civil Procedure. Said counsel shall be entitled to have the motion added on the next court calendar without the permission of the Chief District Court Judge.

(v) In any case in which a motion or hearing is previously scheduled, counsel for either party may add-on, subject to the notice provisions of the Rules of Civil Procedure, any related motions or matters without the consent of the Chief District Court Judge. Upon verification to the clerk that proper notice to opposing counsel has been given, the clerk shall add on said motion or matter to the calendar in which the preexisting motion or hearing is already scheduled.

(vi) **Judge's Approval.** Other than as set out in these rules, a case shall be added to the calendar later than ten (10) days prior to the beginning of a session only if specifically approved by written order of the Presiding Judge, the Chief District Court Judge, or pursuant to a Temporary Restraining Order, Domestic Violence Protective Order, or other order by a District Court Judge requiring a hearing within ten (10) days.

3.5 **Limit on Number of Contested Cases on Calendar.** The Civil Clerk shall have the discretion to limit the number of cases for a term of civil district court.

3.6 **Uncontested Divorces Hearings.** Uncontested divorces shall be heard at any term of court at the opening of court or at any other time convenient to the Presiding Judge. The judgments for these cases must be ready for signature when the judgment is entered.

3.7 **Single Settings.** No case may be calendared for more than one session of civil court, except by Preemptory Setting by the Chief District Court Judge. Calendar requests for more than one session will not be accepted.

3.8 **Priority Settings.** A priority setting may be granted at the discretion of any District Court Judge to be calendared and heard on a session or term of civil district court in which the consenting District Court Judge is presiding. No priority settings shall be calendared on a session or term of civil court without the express permission of the District Court Judge presiding over the same.

3.9 **Peremptory Settings.** A peremptory setting shall be granted only for good cause and compelling reason. Requests for a peremptory setting for cases involving persons who must travel long distances, have numerous expert witnesses or for other extraordinary reasons, must be made to the Chief District Court Judge.

3.10 **Time Limits on Issues of Temporary Relief.** The Presiding Judge shall have the authority to limit the parties' presentation of evidence in hearings of temporary

child custody, temporary child support and postseparation support. The actual time allotted to the parties for testimony shall be set by the Presiding Judge prior to the beginning of the hearing in consultation with the parties.

- 3.11 **Carry Over Cases Not Heard During a Scheduled Term.** All cases or motions not reached during a term or in which a continuance was granted shall be continued to a date certain and shall require no further notice except that the clerk shall include them on the calendar or the add-on calendar and mail a copy of the same to all parties as provided in the local calendaring rules.
- 3.12 **Cleanup Calendars.** Cleanup calendars shall be prepared by the civil clerk for a date designated by the Chief District Court Judge. The purpose of civil cleanup calendaring is to determine the status of pending cases, to dismiss actions for failure to prosecute, to set definite trial dates for older cases, and to rule on delinquent judgments or orders. Cleanup calendars may include:
- (a) **Six Month Aging.** All matters in which the complaint or action was filed six (6) months or more prior to the date of the cleanup calendar.
 - (b) **Pending or Delinquent Orders/Judgments.** All matters in which the case has been heard or settled and which an order is pending. In the event that the attorney responsible for the preparation of the judgment or order fails to submit the same within thirty (30) business days as required or fails to request an extension or otherwise comply, the designated clerk shall calendar the case at the next appropriate calendar with the designation “Delinquent Judgment”;
 - (c) **Dismissal.** The Presiding Judge may, in his discretion, dismiss any action which a moving party fails to appear for call of a cleanup calendar.
- 3.13 **Inactive Cases.** A case may be declared inactive if all parties and attorneys in a case agree that the ends of justice require the declaration of a case as inactive and removal of the case from the trial docket. In such a case, the parties shall prepare a consent order stating the reasons for approval and signature of the Chief District Court Judge or Presiding Judge on a Cleanup Calendar, declaring the case inactive and closing the case file without prejudice to any party’s right to have the matter reopened upon motion. Such inactive cases shall be reviewed periodically by the Chief District Court Judge or his or her designee.

Rule 4. Calendar Call

- 4.1 **Calendar Call.** At calendar call, the Presiding Judge shall attempt to set cases for trial at a date and time certain during that term of Court. The Court, in setting matters, for hearing during the term, shall try to accommodate attorneys, parties, and witnesses. If a case is on the calendar and has not been continued, all parties shall be available during the whole term for the hearing of their case. Attorneys,

parties and witnesses shall provide the clerk with a telephone number where they can be reached during the term.

- 4.2 **Order of Trial and Hearings.** On the first day of court after the calendar call, the Court will first hear any uncontested matters, short motions, place on record any settlement of cases, confer with attorneys about settling cases on the calendar, or hear any matter of short duration before the Court begins trial of more lengthy matters.
- 4.3 **Attorney Duties at Calendar Call as to Represented Parties.** Consistent with ethical requirements, when an attorney is notified to appear for setting of a calendar, pretrial conference, hearing of a motion, cleanup calendar or for trial, he or she **must appear** as follows:
- (a) An attorney may appear by a partner, associate, or other attorney fully familiar with the particular case involved.
 - (b) A message or phone call to the clerk or other court official is **not sufficient excuse** for not being in court unless the excuse is a last-minute emergency and with reasonable diligence the attorney could not contact the Presiding Judge before court convenes.
- 4.4 **Unrepresented Parties at Calendar Call.** Parties not represented by counsel, with cases on the trial calendar, **must be present** for the calendar call and remain until their case is scheduled for hearing, continued, or otherwise instructed by the Court.
- 4.5 **Cleanup Calendar Call.** Any attorney with a matter on a cleanup calendar **must** be present at calendar call unless a Consent Order or Voluntary Dismissal has been signed and filed with the clerk or unless he or she has previously received express permission from the Presiding Judge to be absent. All unrepresented parties must be present at calendar call.
- 4.6 **Dismissal by Court for Nonappearance.** The failure of an attorney or unrepresented party to appear at calendar call, for either regular calendars or cleanup calendars, may result in dismissal of the applicable party's claims or action.
- 4.7 **Calendar Call for Iredell County District Civil Court.** Beginning at 9:00am on the Thursday immediately preceding the term of District Civil Court there will be a calendar call for the purpose of setting cases for the following week. If the Court is unable to hold calendar call on the Thursday immediately preceding the term of District Civil Court because of holiday, inclement weather, or other circumstances which would disallow the Court from holding a calendar call as set forth above, then the Presiding Judge or Chief District Court Judge shall schedule another date at his/her discretion prior to the commencement of the term of court and shall notify all parties and counsel as soon as practically possible to do so. Represented parties/clients shall not need to be present at the calendar call, nor will they need to be present until their case is actually called for hearing.

- 4.8 **Calendar Call for Alexander County District Civil Court.** Beginning at 9:30am on the first day of the term of District Civil Court there will be a calendar call for the purpose of setting cases.

Rule 5. Child Custody Cases

- 5.1 **Custody Mediation.** Every case involving custody or visitation shall be subject to mediation pursuant to N.C. Gen. Stat. 50-13.1. Unless otherwise ordered by the Court, parties shall attend and complete custody mediation orientation and custody mediation through the custody mediation program designated by Administrative Office of Courts or attend private custody mediation prior to a setting for permanent custody, visitation or a modification of permanent custody. Upon the filing of a custody case, custody mediation orientation shall be scheduled unless an Order to Waive Custody Mediation (AOC-CV-632) is entered. A Motion and Order to Waive Custody Mediation shall not be required if prior to the scheduled custody mediation orientation or mediation sessions the parties submit a consent order resolving all pending custody issues.
- 5.2 **Scheduling Mediation Orientation.** Mediation orientation shall be scheduled for each custody and visitation case. A copy of the Order to Attend Mediation and Mediation Orientation (Form 22 M) containing the orientation date shall be served by the initiating party on the opposing parties or their counsel of record.
- 5.3 **Scheduling Mediation.** Parties may choose to attend and complete private mediation. If the parties attend private mediation, they shall not be required to attend mediation orientation. If the parties do not choose to attend private mediation, then they shall attend mediation orientation and a date will be scheduled for mediation at orientation by the custody mediation program.
- 5.4 **Parenting Education Program.**
- (a) In all custody, visitation or custody modifications cases, the parties shall register for and complete a Partners in Parenting class or other approved parent education class within 60 days of the filing of the action or pleading. If a party has previously successfully completed Partners in Parenting then the Court, upon proper motion, may excuse that party from this requirement. The Court is not prevented from conducting any temporary or emergency hearing that may be necessary. The class completion is not a pre-requisite to the Court conducting any hearing that may be necessary or required.
 - (b) Upon filing of any of the above referenced actions or motions, the parties shall obtain from the Office of the Clerk of Superior Court a copy of the Partners in Parenting brochure prepared by Piedmont Mediation Center and follow the directives outlined therein. The moving party shall attach a copy of this rule and brochure and Order & Notice to Attend Partners in Parenting

Education Class (Form 22-P) to the pleading to be served upon the opposing party.

- (c) The Partners in Parenting class is offered by the Piedmont Mediation Center. Each party shall contact the Piedmont Mediation Center within forty-eight (48) hours of receiving the Court's Order to register for the class and shall pay his or her respective fees and expenses as charged by the Piedmont Mediation Center. Each party shall bring their copy of the Order & Notice to Attend Partners in Parenting Class with them to the Piedmont Mediation Center on the date they attend the class.
- (d) The Piedmont Mediation Center shall be responsible for maintaining data regarding the appointments and completion of Parent Education. The Center shall give each party a Certificate of Completion at the conclusion of the class and a copy of the signed certificate shall be filed in the Clerk's Office by Partners in Parenting. The Center shall report to the Clerk of the Superior Court of each respective county and to the District Court Judge's Office for District 22A the failure of a party to attend a scheduled or rescheduled class. If a party fails to attend the class by the required scheduled or rescheduled date, without good cause, the Chief District Court Judge or assigned Judge in Civil District Court may issue a Motion to Show Cause as to why this requirement was not met and may impose such sanctions as the Court deems appropriate.
- (e) For good cause, on the written motion of either party or on the Court's own motion, the Court may waive a parties' attendance of the class. The moving party requesting a waiver of attendance of the class shall serve a copy of the motion upon the opposing party at the time the motion is filed with the Court. Any response to the motion by the opposing party shall be filed and served upon the moving party within seven (7) days after receipt of the motion. Both the motion and response may be accompanied by supporting affidavits or other documentation. Either party may request an evidentiary hearing on the motion. If the motion to waive attendance of the class is denied, the parties shall proceed with their scheduled appointments, or if the appointment date has passed shall, within forty-eight (48) hours after receiving the Court's ruling, contact the Piedmont Mediation Center for new appointment dates. Partners in Parenting is an approved parent education class for parties involved in custody disputes. The same rules will apply for any other approved classes.

Rule 6. Equitable Distribution Rules

6.1 Equitable Distribution Affidavit.

- (a) Equitable Distribution Inventory Affidavit shall be filed in **all** cases for equitable distribution in accordance with these Rules.

(b) **Form and Content.**

- (i) **Equitable Distribution Inventory Affidavit.** The Equitable Distribution Inventory Affidavit (**Form 221**), shall list all property claimed by the party to be marital, separate, divisible property, and debt existing on the date of separation and as of the date of submission of the Equitable Distribution Inventory Affidavit, with each party's best estimate as to the date of separation and present value of all assets and debts. The affidavit shall be subject to timely amendment.
- (ii) Equitable Distribution Affidavits shall be filed in accordance with these Rules both as to form and content and shall be **typed**. These affidavits should be studied carefully and must be executed fully and accurately. Continuances may only be granted to cure affidavit errors or omissions at the discretion of the Presiding Judge.
- (iii) **Order of Listing of Assets and Liabilities.** The party upon whom service of the initial Equitable Distribution Inventory Affidavit is made shall list assets and liabilities in the same order as in the initial Equitable Distribution Inventory Affidavit.

6.2 **Scheduling and Discovery Conference.** Within 120 days after the filing of the initial pleading or motion in the cause for equitable distribution, the party first serving the pleading or application shall apply to the Court to conduct a scheduling and discovery conference. If that party fails to make application, then the other party may do so. At the Scheduling and Discovery Conference, the Court shall:

- (a) determine a schedule of discovery;
- (b) consider and rule upon any discovery motions and/or protective orders;
- (c) consider and rule upon any motions for appointment of expert witnesses/appraisers, or other applications, including applications to determine the date of separation, and shall set a date for the disclosure of expert witnesses and a date on or before which an initial pretrial conference shall be held; and
- (d) order the parties and their counsel to attend a mediated settlement conference or, if the parties agree, other settlement procedure, appoint a mediator or other appropriate neutral if there has been no prior designation.

6.3 **Initial Pretrial Conference.** Within 180 days after the filing of the initial pleading or motion in the cause for equitable distribution, the parties shall attend the Initial Pretrial Conference. At the Initial Pretrial Conference, the Court shall:

- (a) make inquiry as to the status of the case;
- (b) enter a date for the completion of discovery, the completion of mediated settlement conference, if applicable, and the filing and service of motions;
- (c) determine a date on or after which a final pretrial conference shall be held and a date on or after which the case shall proceed to trial.

6.4 **Final Pretrial Conference.** Within 240 days after the filing of the initial pleading or motion in the cause for equitable distribution, the parties shall attend the Final Pretrial Conference. The Final Pretrial Conference shall be conducted pursuant to Rules of Civil Procedure and the General Rules of Practice for district and superior court, adopted pursuant to N.C. Gen. Stat. § 7A-34. The Court shall rule upon any matters reasonably necessary to affect a fair and prompt disposition of the case in the interests of justice.

6.5 **Referees, Appraisals, Alternative Dispute Resolution.**

- (a) **Referees.** The Court may order a reference before entering final judgment to assist the Court in resolving factual disputes concerning ownership of or identification of, marital property or valuation of specific assets. The costs of such a referee, unless otherwise agreed to by the parties and approved by the Court, will be taxed as part of the costs, and apportioned as deemed appropriate by the judge, and may be required to be paid in advance.
- (b) **Settlement Procedures in Equitable Distribution and Family Financial Cases.** Pursuant to N.C. Gen. Stat. §7A-38.4A and the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Family Financial Cases, in all cases involving equitable distribution 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 prescribed by law.

6.6 **Pretrial Conferences and Orders in Jury Cases.**

- (a) There shall be a pretrial conference and order in every jury case, unless counsel and/or unrepresented parties stipulate in writing to the contrary and the Court approves the stipulations. Upon its own motion or upon request of any party, the Court may dispense with or limit the scope of the pre-trial conference or order.
- (b) The pretrial order shall be prepared by the Plaintiff or Plaintiff's counsel and signed by the attorneys or unrepresented parties prior to the trial date. The form shall be in substance as shown in Rule 7 of the General Rules of Practice for District and Superior Courts.

Rule 7. Alternative Dispute Resolution (ADR)

- 7.1 **Alternative Dispute Resolution (ADR) Policy.** The District Court Judges and the Family Law Rules Committee of Judicial District 22A recognize the alternatives to litigation often provide better means of resolving disputes, and support a program of appropriate dispute resolution in all cases involving custody, child support, alimony, postseparation support and equitable distribution cases filed in Judicial District 22A. Accordingly, these rules implement a menu of ADR techniques available for use in custody, child support, alimony, post-separation support and equitable distribution proceedings, with the goal of expediting resolution and reducing costs to litigants. These rules do not apply to any domestic violence actions.
- 7.2 **ADR Methods Adopted by these Rules.** The following techniques for resolving disputes short of trial are available in Judicial District 22A:
- (a) Mediated Settlement Conference: an independent mediator assists the parties in reaching their own settlement.
 - (b) Arbitration: an arbitrator makes a decision following a presentation by each party.
 - (c) Some other court-approved ADR procedure upon which the parties may agree. The Motion for an Order to use Settlement Procedure other than Mediated Settlement Conference in Family Financial Case (AOC-CV-826) shall be filed at or before the Scheduling and Discovery Conference and shall state: (1) the ADR procedure chosen by the parties; (2) the name, address and telephone number of the neutral person selected by the parties; (3) the rate of compensation of the neutral person; and (4) that all parties consent to the motion.
- 7.3 **Duty of Counsel to Consult with Clients and Opposing Counsel Concerning Use of an ADR Procedure.**
- (a) Upon being retained to represent any party in a custody, child support, alimony, postseparation support or equitable distribution action, counsel shall advise his or her client regarding the ADR procedures approved by these Rules.
 - (b) At or prior to the Initial Pre-Trial Conference, counsel shall consult with his or her client and other counsel about the use of ADR or, alternatively, an expedited trial, and shall attempt to reach an agreement on the use of an ADR procedure or an expedited trial.
- 7.4 **General Rules Applicable to All Proceedings.**
- (a) **Time for Proceeding.** The Order for Alternative Dispute Resolution shall state that the ADR procedure shall be completed within 60 days prior to the

Final Pre-Trial Conference, but for good cause shown, the Presiding Judge may allow an extension of time. The Mediator/Arbitrator shall file with the Clerk of Court and provide to the Presiding Judge a notice of the outcome of the proceeding within ten (10) business days of the conclusion of the ADR procedure. (AOC-CV-827)

- (b) **Place of Proceeding.** Unless all parties and the Mediator/Arbitrator agree, the ADR proceeding will be held in the courthouse or other public or community building in the District or any other place designated by the mediator/arbitrator. The Mediator/Arbitrator shall be responsible for reserving a place, setting a time and making other arrangements for the proceeding, and for giving timely notice to all attorneys and unrepresented parties, in writing, of the time and location of the proceeding.
- (c) **Pre-Proceeding Submission.** Pre-proceeding submission shall be governed by the specific rule for the particular ADR proceeding or as requested by the Mediator/Arbitrator. The Mediator/Arbitrator shall be responsible for mailing or delivering a copy of the rules regarding pre-proceeding submissions to be applied at the proceeding to the attorneys and/or unrepresented parties.
- (d) **No Delay of Other Proceedings.** The ADR proceeding called for in this Rule, shall not be cause for the 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. Nothing in these rules shall prevent the Court from hearing cases for any emergency relief, including but not limited to, temporary custody and temporary support.
- (e) **Inadmissibility of Negotiations.** All conduct or communications made during an ADR proceeding are presumed to be made in compromise negotiations and shall be governed by Rule 408 of the North Carolina Rules of Evidence and N.C. Gen. Stat. 7A-38.1(l).
- (f) **No Record Made.** There shall be no record made of any ADR proceedings under these Rules, unless the parties have agreed to binding arbitration, in which case any party may request that a record be made.
- (g) **Ex Parte Communication Prohibited.** There shall be no *ex parte* communication outside the ADR proceeding between the Mediator/Arbitrator and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this Rule prevents the Mediator/Arbitrator from engaging in *ex parte* communications, with consent of the parties, for the purposes of assisting settlement negotiations.
- (h) **Attendance.** The following persons shall attend the ADR proceeding:

- (i) **Non-Binding Procedures.** At all non-binding ADR procedures, counsel may attend. If counsel chooses not to attend, counsel shall advise opposing counsel and the Mediator/Arbitrator in writing that his client will appear pro se. In the event counsel will not attend ADR procedure, counsel will get client's permission and a written waiver.
- (ii) **Binding Arbitration.** At a binding arbitration, counsel and his or her client are free to determine who shall appear at the hearing.
- (i) **Right to Trial.** ADR proceedings under these Rules shall not impair the right of the litigants to demand trial.
- (j) **Immunity of the Neutral.** A Mediator/Arbitrator acting pursuant to these Rules shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, and as proved by N.C. Gen. Stat. 7A-38.1(l).
- (k) **Scope of ADR.** In addition to child custody and visitation issues, the ADR proceeding shall include issues of equitable distribution of the property of the parties, and other financial issues between the parties, such as post-separation support, alimony, and child support.
- (l) **Conclusion of ADR Proceeding.** At the end of the last ADR session, if agreement has been reached, the Mediator/Arbitrator shall prepare a written document (the "Summary Document"), which the parties shall sign, summarizing the terms agreed to in the proceeding (AOC-DRC-17). Absent an agreement to the contrary, any Summary Document shall be reported only to the parties and their counsel. The parties, and their counsel, shall use the Summary Document as a guide to drafting such agreement or order as may be required to give legal effect to the terms of the Summary Document. If both parties are unrepresented, they are to take their Summary Document to an attorney who will finalize that document into a court order appropriate for a judge's signature. Within thirty (30) days of their receipt of the Summary Document (or prior to the Final Pre-Trial Conference, whichever occurs first), the parties shall submit to the Court dispositive documents to conclude the case. If the parties fail to agree on the terms of a contract or appropriate court order, the Mediator/Arbitrator may schedule another session to determine whether or not further ADR is appropriate and would assist in effecting resolution or may notify the Court, in writing, that the ADR proceeding has failed. (AOC-CV-827)

7.5 **Qualifications and Selections of Mediators/Arbitrators.**

- (a) **Independent Selection.** By agreement of the parties, any individual may be selected to serve as a Mediator/Arbitrator whether or not such individual

meets the certification requirements set forth in these Rules. The parties shall complete a Designation of Mediator in Family Financial Case (AOC-CV-825) and bring it to the Scheduling and Discovery Conference.

- (b) **Appointment of Certified Family Financial Mediator by the Court.** If the parties cannot agree upon the selection of a mediator, they shall so notify the Court at the Scheduling and Discovery Conference and the Court shall appoint a mediator in the Scheduling and Discovery Order. The parties shall complete a Designation of Mediator in Family Financial Case (AOC-CV-825) and bring it to the Scheduling and Discovery Conference. The Court shall include the name, address, and telephone number of the mediator appointed by the Court.
- (c) **Qualifications of Mediators/Arbitrators on Approved List.** Mediators/Arbitrators appointed by the court without the agreement of the parties shall be certified pursuant to the Rules Implementing Statewide Mediated Settlement Conferences or the Rules for Settlement Procedures in District Court Family Financial Cases. Those certified Mediators/Arbitrators who are willing to mediate or arbitrate actions within this Judicial District shall submit proof of their certification and their contact information to the Chief District Court Judge for placement upon the list of available mediators/arbitrators. Mediators/Arbitrators who have applied for service under these Rules shall hear indigent cases in accordance with Rule 7.6(d).
- (d) **Disqualification.** Any party may move the Presiding District Court Judge for an order disqualifying the Mediator/Arbitrator and for good cause such order shall be entered, and a new Mediator/Arbitrator shall be assigned by the Court.

7.6 **Compensation of the Mediator/Arbitrator.**

- (a) **By Agreement.** When the parties stipulate to the selection of a particular Mediator/Arbitrator, compensation shall be agreed to among the parties and the Mediator/Arbitrator.
- (b) **By the Court.** When the Mediator/Arbitrator is appointed by the Court, the Mediator/Arbitrator shall be compensated by the parties at the same hourly rate as that set for mandatory Mediated Settlement Conferences under the Rules Governing Mediated Settlement Conferences in Superior Court Civil Actions pursuant to N.C. Gen. Stat. 78A-38.1 for all time expended by the Mediator/Arbitrator in connection with the ADR procedure, plus reasonable out-of-pocket expenditures.
- (c) **Payment of Compensation by Parties.** Unless otherwise agreed to by the parties, costs of the ADR proceedings shall be paid in equal shares by the

parties. Payment shall be made directly to the Mediator/Arbitrator upon completion of the ADR proceeding.

- (d) **Inability to Pay.** No party found 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 7.6 may move the Court to pay according to the Court's determination of that party's ability to pay. This motion shall be submitted on AOC-CV-828. Such a motion shall be heard no later than ten (10) days before the hearing or conference. If a party is found to be unable to pay, the Mediator/Arbitrator's fee shall be reduced by the indigent's proportionate share rather than requiring the other parties to make up the difference.
- (e) **Report to the Court.** The mediator shall submit a report to the Court concerning nonpayment of mediator's fees. The Court may order payment of such fees by the delinquent party. Failure to comply with said order may be punishable as for contempt in the Court's discretion.

7.7 **Sanctions for Failure to Attend.** If a person fails to attend a duly ordered ADR procedure without good cause, the Presiding Judge may impose upon the party any lawful sanction.

7.8 **Rules for Mediated Settlement Conferences.** Mediated settlement conferences pursuant to these local rules shall be governed by Rule 6 of the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Actions.

7.9 **Rules for Arbitration.** Arbitrations pursuant to these local rules shall be governed by Rule 12 of the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Actions.

(a) **Agreement for Binding Arbitration.**

- (i) **Agreement for Binding Arbitration.** The parties may agree in writing, at any time prior to the Arbitrator's award, to elect that the Arbitrator's award be binding on the parties. The written agreement shall be executed by the parties and their counsel and shall be filed with Clerk of Court prior to the issuance of the Arbitrator's award.
- (ii) **Issuance of Award.** At the conclusion of a binding Arbitration hearing, the Arbitrator shall issue an award in accordance with the provisions of Rule 12 D of the North Carolina Rules for Statewide Mediated Settlement Conferences.
- (iii) **Termination of Binding Arbitration Action by Agreement before Judgment.** The parties may file a stipulation of dismissal or consent judgment at any time before entry of judgment on the Arbitrator's award.

- (iv) **Entry of Judgment on the Arbitrator's Award.** If the case is not terminated by agreement of the parties, within ten (10) business days of the issuance of the Arbitrator's award, the Arbitrator shall file the award with the Clerk, and it shall be incorporated within a judgment of the court. The judgment shall be entered in accordance with and be subject to all applicable provisions of law and shall have the same force and effect as judgment of the court in any civil action.
- (b) **Modification of Procedure.** Subject to approval of the Arbitrator, the parties may agree to modify the procedures required by these Rules for Arbitration.

Rule 8. Judgments and Settlements

- 8.1 **Submission in 30 days.** All judgments and orders in all civil cases are to be submitted to the Presiding Judge for signature by the attorney designated by the Presiding Judge to prepare the judgment or order not more than thirty (30) business days after announcement of the judgment or order.
- 8.2 **Dates Shown.** All judgments and orders submitted to the Presiding Judge for signature must show the following on the signature page of the judgment:
 - (a) the date that judgment or order was announced by the Court;
 - (b) the date of signature by the judge, unless it is the same date.
- 8.3 **Settlement.** If any case or motion on the trial calendar is settled prior to the beginning of the scheduled term, the Plaintiff or Plaintiff's attorney of record must notify the designated civil clerk within twenty-four (24) hours of the settlement and advise who will prepare the judgment or order. Said order or judgment must be presented to a District Court Judge within thirty (30) business days of the notice of the designated clerk.
- 8.4 **Memorandum of Judgment/Order.** If a case on a calendar for scheduled civil session is settled in whole or part on the date it is scheduled to be heard or during that term, the attorney so parties shall prepare a memorandum of judgment/order ("MOJ") on an AOC-CV-220 form.
 - (a) the MOJ may be handwritten and may be continued on additional sheets if sufficient space is not provided on the first page;
 - (b) the parties should, after the MOJ is prepared, appear before the Presiding Judge so he/she can inquire of them in open court as to whether or not they agree with the MOJ. Such appearance is in the discretion of the Presiding Judge;
 - (c) No attorney is authorized to release his or her client or witness until the above procedure is followed;

- (d) all remaining issues in the case should be clearly defined; and
 - (e) the Settlement Rules herein above in subparagraph (c) shall apply to the MOJ.
- 8.5 **Extensions.** The attorney designated to prepare a judgment or order may file a motion with any District Court Judge for an extension of time in which to prepare the judgment or order prior to the expiration of the initial thirty (30) business days. Such motion shall be made in writing with notice to opposing counsel or party and may be allowed for good cause shown.
- 8.6 **Tendering of Proposed Orders and Judgments to Opposing Attorney.** Simultaneous with the presentation of the judgment or order to the Presiding Judge for signature, the attorney preparing and submitting the same shall tender a copy thereof to the opposing counsel (or in the absence of counsel, to the opposing party). Any objection to the proposed order or judgment must be made within five (5) business days of the receipt of the judgment or order. Where no objection is made within the time period, the Presiding Judge will sign the order or judgment as tendered. Tender of Judgment or order is not required in IV-D or UIFSA cases.

Rule 9. Sanctions

- 9.1 **Generally.** Failure to comply with any of these rules shall be sufficient grounds to deny any request made by said party and furthermore shall subject an action to dismissal or other sanctions allowed by law and deemed appropriate at the discretion of the Presiding Judge.
- 9.2 **Financial Affidavit.** Failure to file a Form 22B Financial Affidavit may, in the discretion of the Presiding Judge, result in the responsible party's proffered testimony (either written or oral) not being allowed into evidence by the Court and may result in imposition of sanctions as set forth in Rule 37 of the Rules of Civil Procedure.
- 9.3 **Failure to Submit Judgment/Order.**
- (a) When an attorney for a litigant fails to timely submit a judgment/order, he/she is subject, in the discretion of the Court, to the following sanctions:
 - (i) A fine in the amount of Ten Dollars (\$10.00) per day for every day the judgment is delinquent;
 - (ii) A reasonable attorney fee is opposing counsel is directed to prepare the judgment or order to be paid to opposing counsel;
 - (iii) Criminal and/or civil contempt; and

- (iv) Any other action the Presiding Judge may deem appropriate under the circumstances.
- (b) In the event an attorney fee is levied hereunder, the Presiding Judge may remit part or all of the assessment or fine for good cause shown.

Rule 10. Miscellaneous Provisions

10.1 Bankruptcy.

- (a) Any request to continue, hold or in any other way delay disposition of a case due to bankruptcy of one of the parties must be accompanied by certification of the bankruptcy filing of stay of proceeding from the United States Bankruptcy Court having Jurisdiction. The attorney for the bankrupt party shall prepare an injunction pursuant to the above authority, which shall be filed with the Clerk of Court and be presented to the appropriate judge. After sufficient notice, the Presiding Judge may remove the matter from the active calendar and place on inactive status because a petition for bankruptcy has been filed staying the proceeding. Such notice may be in writing by way of letter or in the form of a calendar.
- (b) Civil actions in which one of the parties declares bankruptcy will be disposed of in accordance with the following authority and procedure:
 - (i) The Rules and Forms of Practice and Procedure in Bankruptcy
 - (ii) Title 11 of the Code of the Laws of the United States of America.

10.2 Attorney Fees. At any hearing where an attorney has noticed a claim for attorney fees, the attorney seeking fees shall introduce an affidavit prior to the hearing's conclusion showing the attorney's time expended up to the day prior to the date of the hearing), hourly rate, the skill required, the experience and/or ability of the attorney, and statement of customary and usual rates for similar attorney services in the community. A copy of the affidavit shall be served upon opposing counsel or the opposing party if unrepresented. The opposing party may review and submit objections to a request for attorney fees at the hearing or inform the Court that more time is needed to review the attorney fee affidavit. If the opposing party requests more time to review the attorney fee affidavit, then the Court shall afford the party an opportunity for review and to submit written objections within five (5) business days of the hearing. If the opposing party informs the Court of its intent to submit written objections within

five (5) business days, then the Court shall take the matter under advisement and rule on the matter after receiving and reviewing said objections. Where no objection is made within the time period, the Presiding Judge will accept the affidavit and rule thereon. No award of attorney fees will be made unless the affidavit is properly introduced and served.

- 10.3 **Employers' Affidavits in Child Support, Postseparation Support and Alimony Cases.** In all cases involving child support, postseparation support and/or alimony, each party may submit to his or her employer an affidavit in form substantially equivalent to **Form 22E**. Upon completion by the employer, a copy of the affidavit shall be served on the opposing party's counsel (or on the party, if the party is unrepresented), and the original shall be filed in the case file at the courthouse. These affidavits shall be completed, served and filed at least 10 days prior to a scheduled hearing. Unless a party prior to trial files and serves a written objection to an employer's affidavit, and also issues a subpoena for the maker of the affidavit, an employer's affidavit shall be admissible in evidence without further foundation or authentication, and shall be considered by the court in setting support.

A party or the party's counsel may serve an employer's affidavit, together with a subpoena to produce documents for the date of the scheduled hearing, on the employer for the opposing party, and may advise the opposing party's employer by letter that the employer may avoid the necessity of appearing in court by returning the completed affidavit to the requesting party. A suggested form for such a letter is found in **Form 22EL**.

It shall be a violation of the Local Rules of Practice for a party or a party's attorney to impede in any way the efforts of the other party or the other party's attorney to obtain employers' affidavits as described in this rule. A party who willfully fails to comply with this rule may be assessed, in the discretion of the Court, the costs (including a reasonable attorney's fee) of the other party in obtaining the employer's affidavit.

- 10.4 **Continuance Policy. Motions for Continuance General Civil, Magistrate Appeal, and Domestic Cases.** Civil cases should be disposed at the earliest opportunity, including the first trial setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that will delay the resolution of the case beyond the established time standards shall only be granted for extraordinary cause.

- (a) **Appropriate Court Official.** All applications for continuance shall

be made to the District Court Judge presiding over the session of court for which the case is calendared, or his or her designee. If the trial judge is not known at the time the request is made, the application should be addressed to the Chief District Court Judge, or his or her designee.

- (b) **Court Conflicts.** The various levels of court should work together to try to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts. Attorneys shall notify the court and opposing counsel of any other court conflict(s) as they become known and shall keep the court advised of the resolution of that conflict. All judges shall communicate with other judges to resolve such conflicts. In resolving court conflicts juvenile cases shall take precedence over all matters.
- (c) **Documentation of Continuance.** All requests for continuance should be by written motion unless the parties have agreed to the continuance. However, oral motions may be allowed when the reason for the continuance did not become known until immediately preceding the start of court.
- (d) **Notification of Opposing Counsel, Unrepresented Parties and Witnesses.** All parties must be notified of a motion to continue. A copy of the motion to continue must be distributed to all counsel of record and/or unrepresented parties prior to ruling on the motion. In addition to the service requirements set out in the statute, distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail, or hand delivery.
- (e) **Objections to Motion for Continuance.** All parties should have an opportunity to be heard on a motion to continue.
- (f) **Evaluation of Motions for Continuance.** Factors to be considered by the appropriate court official when deciding whether to grant or deny a motion for continuance should include:
 - the effect on children and spouses if the issue is continued and not resolved;
 - whether there is in effect a temporary order dealing with the issue that is the subject of the continuance request;
 - the impact of a continuance on the safety of the parties or any other persons;
 - whether the issue has been identified statutorily as an issue which should be addressed expeditiously, i.e., child support, postseparation support;

- the age of the case;
- the status of the trial calendar for the session;
- the order in which the case appears on the trial calendar, including whether the case is peremptorily scheduled;
- the number of previous continuances OR the number, 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 filing a motion for continuance as soon as practicable;
- whether the reason for continuance is a short-lived event which would resolve prior to the scheduled trial date;
- whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- the period of delay caused by the continuance requested;
- the position of opposing counsel or unrepresented parties for a future session;
- whether the parties themselves consent to the continuance; present or future inconvenience or unavailability of witnesses/parties;
- consideration of the financial consequences to the public, the parties, the attorneys, or witnesses if the case is continued;
- compliance with any law relating to the scheduling and trial of civil cases (such as, summary ejection appeals); and
- any other factor that promotes the fair administration of justice.

(g) **Case Rescheduling.** Upon granting a motion for continuance, the judge should reschedule the case to a specific trial date after receiving input from all parties.

(h) **Time Standards.** All general civil and magistrate appeal cases should be disposed within 24 months of filing, with 90% of all cases disposed within 12 months of filing. All domestic cases should be disposed of within 18 months of filing, with 90% disposed within six months. Issues of child support should be resolved and a temporary or permanent order entered within 60 days of service. Post-disposition issues, such as contempt and motions to modify existing orders, should be resolved within 60 days of the filing of such actions.

Appendix: Forms

- 22P Order for Partners in Parenting
- 22M Order for Mediation and Mediation Orientation
- 22B Affidavit of Financial Standing
- 22D District Court Calendar Request Form
- 22EL Employer Letter
- 22E Employer Affidavit
- 22I Equitable Distribution Inventory Affidavit
- 22S Pre-Trial Equitable Distribution Status and Scheduling Order
- 22PT Equitable Distribution Pretrial Order