19-R-113

STATE OF NORTH CAROLINA

JUDICIAL DISTRICT 19D

HOKE COUNTY

FILED
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HOKE COUNTY, C.S.C.
BY

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

CIVIL COURT

ORDER ADOPTING LOCAL CIVIL/DOMESTIC RULES

The attached Civil/Domestic Rules for are hereby adopted effective June 3, 2019 and shall apply to all cases filed on or after that date and, insofar as practical, to all pending cases.

These Rules supersede all previous rules for civil and domestic cases in the District Court Division of Judicial District 19D.

It is so ordered this the 31st day of May, 2019.

DON W. CREED, JR.
CHIEF DISTRICT COURT JUDGE
JUDICIAL DISTRICT 19D

Civil / Domestic Court Rules

Judicial District 19D
(Hoke County)

FILED
2019 MAY 31 A 10:10
HOKE COUNTY, C.S.C.
BY

Effective June 3, 2019

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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 issues affecting families and children in this district, whether court intervention is initiated by an individual or a government 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.** 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 Court Administrative Staff is authorized to act with discretion subject to consultation with the presiding judge or the Chief District Court Judge in applying these Rules.

1.3 **Attorneys and Unrepresented Parties Must Comply.** 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 (Pro Se) must comply with these Rules. All unrepresented litigants must keep the Court informed of any changes in their mailing address.

1.4 **Citation.** These Rules and all amendments shall be filed with the Hoke County Clerk of Superior Court of in Judicial District 19D and the Administrative Office of the Courts. These Rules may be cited accordingly as Judicial District 19D Hoke County Court Domestic Rules (19DHCDR).

1.5 **Availability of Rules.** The Court Staff shall make available a copy of these Rules and any amendments to each member of the Bar of Judicial District 19D. The Court Administrative Staff will maintain a supply of Rules and associated forms to be furnished to attorneys and the public upon request.

1.6 **Forms.** Except where specifically required herein, where local forms are required by these Rules, counsel or unrepresented parties may use either the forms provided or a form of their own which substantially corresponds to the specified court form.

1.7 **Communication with Judges.** Attorneys and parties 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.

This Rule is designed to promote impartiality and decorum of the Court with the same intent of the North Carolina Rules of Professional Conduct.

1.8 **Notice of Appearance.** An attorney must file a Notice of Appearance with the Clerk of Superior Court immediately after agreeing to represent a party in a domestic matter and shall serve a copy upon each counsel of record, unrepresented party, and the Court Administrative Staff. An attorney who files a suit for a plaintiff or who files a timely Answer or other responsive pleading for a defendant need not file a Notice of Appearance, but if the case is on a published calendar, the attorney shall immediately notify the Court Administrative Staff so that the calendar can be updated. If a plaintiff or defendant adds or changes attorneys, new counsel shall file and serve a copy of the Notice upon each counsel of record, unrepresented party, and the Court Administrative Staff.

1.9 **Notice of Other Actions.** Attorneys and unrepresented parties must notify the Court of any other pending actions that may affect a pending case including bankruptcy and other civil or criminal matters in this district or other districts.

Rule 2 Domestic Case Filings

2.1 **Requirements.** The following steps are required for a party to file:

Step 1 Complete the AOC Cover Sheet and provide a copy to the Court Administrative Staff along with a copy of the Complaint.

Step 2 File the case with the Clerk of Superior Court accompanied by the original 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

3.1 Uncontested divorces, Motions for Summary Judgment, Small Claim Appeals, Motions to Withdraw, and all non-domestic civil matters shall be noticed for hearing ***for 9:30 a.m.*** on the ***Hoke Civil Non-Domestic session day.***

Deadlines for calendaring on the *Hoke Civil Non-Domestic* session are as follows:

- The calendar shall be posted by the Clerk ten (10) business days prior the session date. Notices/calendar requests must be filed with the Clerk of Court by 5 p.m. on the Friday before the calendar is to be posted for the *Hoke Civil Non-Domestic*

session date. Notices for this session do not have to be provided to Judicial Support Staff, as this calendar is posted by the Clerk.

- It is the responsibility of the moving party to give notice to the opposing party or counsel immediately of scheduling on the *Hoke Civil Non-Domestic* session date.
- Once the calendar has been posted, the only issues that may be added onto the Civil calendar are absolute divorces and ex parte returns, unless otherwise authorized by the presiding judge.
- All notices for add-on matters must be filed with the Clerk no later than noon on the Wednesday prior to the *Hoke Civil Non-Domestic* session date.

3.2 Administrative sessions shall be held approximately two weeks prior to the weeklong sessions of Hoke County Civil District Court to determine trial order for the Hoke Civil District Court session week (calendar call for the weeklong Hoke Civil Session is noted on the local court/judge's schedule as ***Hoke Civil Admin at 2:00 p.m.***)

Deadlines for calendaring are as follows:

- All notices must be filed, and a copy sent to Judicial Assistant no later than noon on the Wednesday prior to each *Hoke Civil Admin* session date.
- It is the responsibility of the moving party to give notice to the opposing party or counsel immediately of scheduling of both the Administrative and Session week dates.
- The calendar shall be posted to the web after noon on the Thursday prior the *Hoke Civil Admin* session.
- All notices for add-on matters must be approved by the presiding judge, and submitted to the Judicial Assistant no later than noon on the Wednesday prior to the Hoke Civil weeklong session of court.
- A final calendar shall be posted on the Thursday prior to the weeklong Civil Session by Judge's office, noting date and time specific scheduling (as scheduled on the *Civil Admin* day).

All Pro Se parties and attorneys shall appear and provide their available dates at the *Civil Admin Session* unless they have sent notice to the presiding judge related to their cases and availability by the close of business on the Friday prior to the *Civil Admin* date, or unless another attorney will report on their behalf (failure to appear or report by the moving party may result in the case being removed from the weeklong civil session). It is the attorney's or litigant's responsibility to check on when their matter is scheduled during the Hoke Civil weeklong session if the administrative date is missed.

Once cases are set for hearing at the *Civil Admin* date, they will not be continued except for good cause shown, and then only with permission of the presiding District Court Judge.

In the event of a conflict between a case scheduled for hearing pursuant to a *Civil Admin* date, the Court shall follow Rule 6 of the General Rules of Practice in determining priority for the cases. It is the obligation of the conflicted attorney to provide all documentation related to priority to the presiding judge. If the conflict was one an

attorney or party should have known existed prior to this case being set at the *Civil Admin* date, then the presiding Judge may order that attorney or party reimburse the opposing party the cost for trial preparation, including subpoena fees and the cost for expert or professional witness fees.

3.3 **Case Tracking.** The Court Administrative 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 Court Administrative Staff shall publish a calendar and distribute the calendar to the Clerk's Office on the Thursday prior to the *Civil Admin* session, and the final civil calendar for the weeklong session shall be distributed to the Clerk and posted to nccourts.gov no later than the Thursday prior to the session week.

3.4 **Attorneys Must Subscribe.** Attorneys must subscribe to receive all Civil/Domestic calendars directly via email. Subscriptions are available through www.nccourts.org. Once the Clerk or Court Administrative Staff posts any calendar on the web, subscribed attorneys will be notified via email that the calendar is available. Therefore, all attorneys are deemed to have notice of every calendar published on the website.

3.5 **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 in Court. The moving party shall file all notices with the Clerk's Office for inclusion in the case file with a copy forwarded to the Court Administrative Staff via e-mail if scheduling on the weeklong civil session. If a court time is changed, a revised Notice of Hearing must be served and filed by the party requesting the revision with a copy forwarded to the Court Administrative Staff via e-mail.

3.6 **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.

3.7 **Required Court Appearances**. All parties and attorneys shall be present and ready to proceed as scheduled when a case is noticed for hearing or trial. Parties who are represented by an attorney are only required to attend Status Conferences if ordered by the Court. Attorneys shall promptly notify the Court Administrative Staff and opposing party of any known conflicts with a scheduled Civil Admin date or court event.

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 3.2).

3.8 **Dismissal for Missed Court Appearances.** Any case noticed for a court event, including pre-trial conferences, 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 or conflict, which would preclude the attorney or party from being present.

3.9 **Settlement of Contested Issues.** Parties are encouraged to engage in settlement discussions at every opportunity. The 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. If needed, 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

(2) Be released from appearance if a Memorandum of Judgment/Order has been executed and signed by the parties, their attorneys, and the Judge. If needed, 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 Judge, and filed prior to the time of court.

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 a Judge. Any District Court Judge may review the matter. Upon issuance of the Order to Appear and Show Cause, the case shall be set for a first appearance at the next available *Civil Admin* session of court. Notice shall be contained in the Order to Appear and Show Cause, and a copy sent to Court Administrative Staff.

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.

(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 or any opposing counsel who they believe may be involved in the case. 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. The scope,

structure and time limit of the Ex Parte Review Hearing is within the discretion of the presiding judge.

(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 during the next available jury session.

3.13 **Peremptory Hearings.** Requests for a peremptory setting shall be submitted in open court or sent to the Court Administrative Staff in writing with a copy sent to the other party or counsel.

3.14 **Managing and Closing Cases.** In Domestic 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 PostSeparation 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.

3.15 **Administrative Orders.** If a case is made inactive by an Administrative Order, either party may submit a Motion to Reinstate to the Court Administrative Staff for the Judge to review. Any Judge can decide to reopen the case without a hearing or schedule a hearing to determine whether the case should be reopened. If the case is reopened, the party or attorney seeking the reopening will set the matter for a hearing.

Rule 4 Temporary or Interim Hearings

4.1 **Temporary Hearings.** Temporary hearings include hearings requesting custody, visitation, child support, post-separation support, reviews of Ex Parte Orders (except domestic violence cases) and interim partial distributions. Temporary hearings may be heard on affidavits.

4.2 **Service of Affidavits.** Unless otherwise stated in these Rules, affidavits for temporary hearings must be served in accordance with the North Carolina Rules of Civil Procedure - when a motion is supported by affidavit, the affidavits shall be served with the motion; opposing affidavits shall be served at least two days before the hearing. If the opposing affidavit is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served affidavit or take such other action as the ends of justice require. For the purpose of the two day requirement, service shall mean personal delivery, facsimile, or other means such that the party actually receives the affidavit within the required time. The affidavits shall be filed with the Court on the date of hearing.

4.3 **Parties and Their Attorneys.** Parties and their attorneys, if any, shall be present at the hearing.

4.4 **Time Limits.** Temporary hearings for custody shall be limited to two hours. Temporary hearings for all other matters shall be limited to one hour. Each party shall be allocated one-half of the time 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 conclude within these time limits because of the exchange of information between the parties before the hearing; however, this time limit may be reduced or extended in the discretion of the presiding Judge for good cause.

Rule 5 Custody and Visitation Procedures

5.1 **Scheduling.** The moving party shall schedule the Orientation to Mediation for the parties within 45 days of filing the action and allowing for ten days' notice. The moving party shall send a copy of the *Custody Mediation Orientation Notice* and local *Coversheet for Custody Mediation* form to the Custody Mediator when filed.

5.2 **Temporary Hearings.** Either party or attorney may schedule a temporary hearing on the issue of custody or visitation. The parties will still participate in Custody Mediation.

5.3 **Responsibility of the Moving Party at the time of filing.** The moving party shall serve on the opposing party:

(1) The pleading;

(2) The Notice of Custody Mediation Orientation;

(3) The Notice of Hearing setting the temporary hearing date, if temporary relief was requested.

The following Rules reflect NCGS 7A-494, 7A-495 and 50-13.1:

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 trial of these issues, unless exempted by the Court.

5.5 **Purpose of Mediation.** 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 or 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 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 and (2) at least one mediation session. If a party fails to participate in accordance with these Rules, the case will be closed in mediation and scheduled for a Status Conference on the next available Civil Admin session. The Mediator will use a Mediation Outcome form to update the Court Administrative Staff and attorneys.

5.8 **Failure to Appear.** After notice, the failure of any party to appear for a scheduled orientation or a mediation session may result in the following sanctions:

First failure to attend Orientation:
The Mediation Staff is authorized to notify the person of possible sanctions and reschedule the Orientation.

First failure to attend a Mediation Session OR Second failure to attend Orientation:
The Mediation Staff shall report the failure to attend to the Court. The person failing to appear is subject to a $100 fine plus the cost of any expenses incurred by the other party as determined at the next scheduled Status Conference.

Any subsequent failure to attend - A Show Cause Order shall issue for a contempt hearing before the assigned Judge and such sanctions as may be appropriate may be imposed.

5.9 **Orientation.** Prior to the mediation sessions, the parties shall attend an Orientation to mediation where the goals and procedures of the mediation process are explained by the mediator. Orientation lasts approximately 2 hours (including the completion of a questionnaire and the scheduling of appointments for the first mediation session). Children are not included in the Orientation session. If the parties have attended an Orientation within the previous three years, they do not need to attend an Orientation if they return to mediation.

5.10 **Mediation Session.** Only parties named in the suit are permitted to be present in the mediation session; however, other parties may be present 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 or two. 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.

5.11 **Subsequent Mediation Sessions.** A party must attend the Orientation and first mediation session. The Mediator will schedule any subsequent mediation sessions with consent of the parties and at the discretion of the mediator.

5.12 **Expedited Mediation.** In some cases, the parties may be best served by attending orientation/mediation immediately. The parties must contact the Mediation Office to discuss this option.

5.13 **Waiving the Custody Mediation Process.** In some instances, such as an ongoing investigation by the Department of Social Services, the mediator may determine a case is inappropriate for mediation and release the case for the parties to schedule in Court. In other 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 may be considered good cause. Before a mediation waiver based on distance is considered, any North Carolina resident must provide verification of attendance at a Mediation Orientation in a North Carolina county or provide an explanation why such attendance is not possible. Parties desiring an exemption shall complete and submit a Motion to Waive Mediation for a Judge to review. If mediation is exempted, the attorneys will set the matter for trial.

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 a Judge. The 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 the 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.

5.16 **Partial Parenting Agreements.** If a partial agreement is reached, the Mediator will prepare a final draft of the partial agreement and follow the same process for a full parenting agreement.

5.17 **Temporary Parenting Agreements.** If the parties sign an agreement containing temporary provisions, the custody case will remain open until a final Order is filed either through mediation or a court proceeding. The judge will review the status of the case and determine whether the case will be scheduled for trial or referred back to mediation.

5.18 **Enforcement.** Custody Orders developed through mediation shall have the same force and effect and shall be enforced as any other Court Order.

5.19 **No Agreement Reached in Mediation.** If the parties fail to agree, the Mediator will notify the attorneys with the Mediation Outcome form.

5.20 **Modifications of Existing Agreements.** The parties must have a custody or visitation issue formally pending before the Court to return to mediation.

5.21 **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 that no agreement was reached with the Mediation Outcome form.

5.22 **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.

5.23 **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.

5.24 **Correspondence with Attorneys.** The Mediator will deliver any written communication to attorneys by fax, e-mail, or the boxes located in the courthouse.

5.25 **Interpreter.** The parties shall notify the Mediation Office if an interpreter is needed for mediation. The Mediation Office may schedule the Orientation and Session as a combined event.

Rule 6 Child Support Procedures

6.1 **IV-D Issues in Domestic Cases.** If a IV-D issue is scheduled in Civil Court in conjunction with other domestic issues, the IV-D attorney shall receive notice of the hearing by the moving party.

6.2 **Collateral matters in IVD Cases.** Pursuant to NC Gen. Stat. § 110-130.1(c), any nonchild support or collateral matter filed in a Title IV-D action in this District shall be dismissed upon being calendared in court. The Clerk of Superior Court should provide anyone attempting to file such matter a copy of this rule prior to filing.

6.3 **Responsibility of Moving Party at the Time of Filing.** The moving party shall serve on the opposing party:

(1) The pleading; and

(2) The Notice of Hearing including any temporary hearing dates.

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

6.5 **Proof Required.** Parties shall exchange documentation of income (W-2, federal tax return, pay stubs, etc.) and insurance costs before the hearing.

6.6 **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.

6.7 **Pre-Trial Conferences.** Pre-Trial Conferences are not required unless requested by a party or ordered by the Judge.

Rule 7 Post-Separation Support, Alimony and Modification of Alimony Procedures

7.1 **Mandatory Use of Financial Affidavits.** It shall be mandatory that the financial affidavit form adopted in this district be used in cases seeking post-separation support and/or alimony.

7.2 **Responsibility of the Moving Party at the Time of Filing.** The moving party must serve the other party with the pleading seeking post-separation support and/or alimony.

7.3 **Responsibilities of Moving Party before the Post-Separation Support Hearing.** The moving party must serve the completed financial affidavit and proof of income for the previous thirty days on the opposing party seven days prior to the hearing.

7.4 **Responsibility of the Opposing Party Before the Post-Separation Support Hearing.** The opposing party must serve the completed financial affidavit and proof of income for the previous thirty days on the moving party the Thursday prior to session of Court.

7.5 **The Post-Separation Support Hearing.** Both parties must file the completed financial affidavits with the court at or before the hearing. Any filed financial affidavit is deemed to be before the Court as evidence offered in the PSS hearing and is subject to cross-examination and objection. Both parties and their attorneys, if any, shall be present at the hearing.

7.6 **Initial Status Conference.** The Initial Status Conference shall take place at the *Hoke Civil Admin* session. At the Initial Status Conference, the Judge shall enter a Scheduling Order including a requirement that the parties and their counsel attend a mediated settlement conference or, if the parties agree, other settlement procedure, unless excused by the Court for good cause shown.

7.7 **Affidavits for the Alimony or Modification of Alimony Hearing.** Unless otherwise set in the Scheduling Order, the parties shall exchange financial affidavits and proof of income thirty days prior to mediation/judicial settlement conference or thirty days before the hearing if ADR is waived. Trial will be scheduled after the parties have filed Certificates of Service indicating the affidavits have been exchanged. Parties are under a continuing obligation to file updated financial affidavits reflecting any substantive changes.

Rule 8 Equitable Distribution Procedures

8.1 **Court Events.** These are the court events anticipated for the typical equitable distribution case:

- Initial Status Conference - set within 120 days of filing
- Initial Pretrial Conference – Pretrial Order due
- Final Pre-trial Conference
- Trial

8.2 **Inventory Affidavit.** The form adopted in this district must be used unless all parties, and the Judge, consent to a different form. If a different form is approved, all parties must submit their data on that single form. Once finalized, the Inventory Affidavit will be submitted to the Court as a single document.

8.3 **Responsibility of Initiating Party.** Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution *Inventory Affidavit* listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property in accordance with N.C. Gen. Stat. § 50-21(a).

8.4 **Responsibility of Responding Party.** Within 30 days after service of the Inventory Affidavit, the party upon whom service is made, shall list all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property to the original affidavit.

8.5 **Exchange of Affidavits/Worksheet.** The parties shall continue to exchange the affidavit until such time as each party has listed their contentions as to the classification, value, possession, and proposed distribution of all property to be divided. Every block for each item listed on the affidavit shall be completed. All incomplete fields, including "TBD", must be updated within thirty days unless extended by the Judge. The failure of any one party to provide a complete listing without good cause constitutes substantial evidence of a lack of good faith. Prior to mediation, it is expected that the parties will have in their possession a full and final listing of all property that the trial judge may be asked to distribute.

It is the intent of the Court that the parties list the items that are identified and the values as close as possible so that a Pre-Trial Order may be completed. If there are items where value cannot be determined, the parties should be prepared to have a plan for the Court, previously discussed with the opposing counsel, as to how values can be determined: i.e., appraisals, sale, etc. If there are items that need discovery, a plan for discovery should be presented at the Initial Status Conference. It is expected that each party will share with the other party, records that they have in their possession as to items that are clearly marital, and that the parties will cooperate with opposing counsel prior to the Initial Status Conference to allow for access to the records and items for inspection. The Court intends for the parties to exchange data and information so that the proposed Pre-Trial Order may be as thorough as possible at the Pretrial Conference.

8.6 **Filing the Affidavit.** Each time the affidavit is exchanged with the other party, a Certificate of Service shall be filed in the court file. The Inventory Affidavit is only filed after it is a full and final listing of all property on a single form.

8.7 **Initial Status Conference.** At the time the initial claim for equitable distribution is filed the Party filing the action shall file a Notice of Hearing setting the date for an initial status conference. The Initial Status Conference shall take place at the Hoke Civil Admin Session. At the Initial Status Conference, the Judge shall enter a Scheduling Order including a requirement that the parties and their counsel to designate a mediator and attend a mediated settlement conference or, if the parties agree, other settlement procedure, by a specified date unless excused by the Court for good cause shown. At the time of the initial status conference the Presiding Judge shall set a Court date for the entry of the Pre-Trial Order. The parties may avoid an Initial Status Conference if they submit a Consent Scheduling Order which designates a mediator and establish a deadline to complete Alternative Dispute Resolution (ADR) Court in advance. Deadlines listed in any Scheduling Order may be extended for good cause by the Judge.

Failure to schedule an Initial Status Conference or submit a Consent Scheduling Order may result in the case being ordered to Mediated Settlement Conference and an appointment of a mediator by the Court.

8.8 **Pre-Trial Orders.** The Pre-Trial Order shall be filed in accordance with the Scheduling Order or subsequent extensions granted by the Court. The Court retains its authority, based on the evidence, to make findings of fact, conclusions of law and orders regarding value, classification, or distribution to affect an equitable division of the property notwithstanding the stipulations of the parties.

8.9 **Pre-Trial Conference.** After the Pre-Trial Order is filed, the movant will notice a fifteen minute Pretrial Conference to narrow the issues and set a trial date.

8.10 **Fast Track to Mediation.** At any time, the parties may enter a Consent Order referring a case to mediation and selecting a mediator as otherwise described in these Rules.

8.11 **Expedited Equitable Distribution Trial.** At the Initial Status Conference, the parties may request to bypass settlement procedures and expedite an equitable distribution trial. Upon the consent of the presiding Judge, the attorneys shall schedule the case for trial without further discovery.

8.12 **Supreme Court Rules.** These Rules are supplemental to the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases. Any conflict between the Rules should be resolved in favor of the Supreme Court Rules. These Rules shall allow for settlement procedures including binding or non-binding arbitration as permitted by law in N.C. Gen. Stat. § 7A-37.1 and Arbitration Rule 1(b).

8.13 **Appointment of Mediators.** The Court is only permitted to appoint certified mediators. However, the Judge will approve a qualified mediator nominated by consent of the parties.

8.14 **Notification to Mediator.** Once a mediator is selected, the Court Administrative Staff shall send the mediator a copy of the Scheduling Order and a Report of Mediator form. If the mediator is unable to mediate the case by the deadline listed on the Scheduling Order, the mediator shall contact the Court Administrative Staff.

8.15 **Report of Mediator.** The mediator shall file a report, with a copy to the Court Administrative Staff, within ten days of the conference.

8.16 **Settlement.** If the parties reach a settlement on a case scheduled for trial, they shall immediately notify the Court Administrative Staff of the settlement.

Rule 9 Domestic Violence Actions

9.1 **Collateral Issues in 50B actions.** Entry of Orders regarding collateral issues in an action pursuant to Chapter 50B are discouraged and should be addressed in a separate action. Any Order entered pursuant to a Chapter 50B action shall be for a fixed period of time not to exceed one year.

Rule 10 Continuance Requests

10.1 **Conflicts.** Attorneys shall promptly notify the Court and other counsel or unrepresented party of any other court conflicts as they become known.

10.2 **Motions.** A request for a continuance shall be submitted on the local *Motion for Continuance* form and a copy delivered to opposing counsel or unrepresented party via the quickest means available. The moving party must also submit an *Order for Continuance* form with the header complete. Any objection to any written request for continuance must be in writing. Oral requests are allowed if they are made on the record in front of the Judge as soon as possible after the need for a continuance is known.

If the parties agree that a continuance may be granted, the parties may complete a *Stipulation of Continuance* form and submit it directly to the Judge. The Judge may grant or deny the continuance. No party is excused from Court until the Judge has signed a Continuance Order. It is the responsibility of the attorney or unrepresented party to follow-up with the Court Administrative Staff.

The judge may review the *Motion for Continuance* or the *Stipulation of Continuance* out of session.

If a rescheduling request is made before the court docket is published and both sides consent, the Court Administrative Staff may reschedule the matter as consented by the parties.

Rule 11 Timely Orders and Judgments

11.1 **Orders and Judgments.** All proposed domestic orders or judgments must be submitted to the court within 30 days following the ruling by the judge. The party preparing the proposed judgment or order shall provide a copy of the proposed document to the opposing party three days (six if by mail) prior to submitting the document to the judge.

11.2 **Delinquent Orders and Judgments.** Parties delinquent in submitting proposed orders and judgments shall be identified to the Chief District Court Judge or the presiding Judge and sanctions or penalties may be imposed as deemed appropriate and as allowed by law.

11.3 **Rulings.** In any case where a ruling is not given immediately at the conclusion of the hearing or trial, the judge should announce in court a date and time within 30 days for the ruling to be issued.

Rule 12 Sanctions

12.1 **Failure to Comply.** Failure to comply with these Rules may subject the parties and/or their attorneys to such sanctions as allowed by law and deemed appropriate by the presiding Judge. The purpose of this section is to encourage an efficient flow of cases and is not designed to create an unfair advantage to one party. The sanctions may include, but are not limited to:

(1) Dismissal by the Court of all or any part of any claim for relief or pleading; or

(2) Disallowance of evidence and/or testimony; or

(3) Payment of a fine; or

(4) Payment of the reasonable cost incurred by a party due to the other party's non-compliance with these Rules; or

(5) Payment of the opposing party's reasonable attorney's fees.

Rule 13 Remanded Cases

13.1 **Remands.** When cases are remanded by the Appellate Division, appellant's counsel shall promptly notify the Court Administrative Staff 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 **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.