

Second Judicial District
Local Rules of District Court
(Revised July 17, 2009)

Rule 1 General Rules

1.1 Authority, Purpose and Effective Date

These rules are published pursuant to the authority vested in the Chief District Court Judge pursuant to NCGS §7A-34 and Rule 2 of the General Rules of Practice for the Superior and District Courts adopted by the Supreme Court of North Carolina. These Rules supersede all previous civil rules of the District Court unless specifically referenced and incorporated herein

The purpose of these rules is to institute a case management plan to provide for the just, orderly and prompt disposition of civil jury, non-jury and domestic relations cases. They are also intended to orderly integrate mandatory Child Custody and Visitation Procedures and Alternate Dispute Resolution Procedures in Equitable Distribution and other Family Financial Cases.

Local Rule 5, the ADR procedures, became effective March 1, 2007 as previously published and are renumbered here. Local Rule 2, the Child Custody and Visitation Mediation Procedures, shall become effective as to all cases filed on and after September 1, 2008. All of the remaining local rules shall become effective as to all cases pending and filed on and after May 1, 2008.

1.2 Discretion

In the event these rules fail to address a specific matter, the Clerks of Superior Court or their designees are authorized to act with discretion, subject to consulting with the Chief District Court Judge or the Judge presiding at a particular term.

1.3 Copies of Rules

The Clerks of Superior Court in Beaufort, Hyde, Martin, Tyrrell and Washington Counties shall file these local rules and upon request provide a copy of all or such parts of them for the usual charges required for copies. The Clerks shall also maintain a printed copy of these rules to be made available in notebook form for review by the public in the civil section or other appropriate location in their office.

1.4 Amendments

Nothing contained in these local rules is intended to nor shall anything contained in these rules limit the inherent or statutory authority of a Presiding Judge, Judge of the District Court or the Chief District Court Judge of this district.

1.5 Limitations

Nothing contained in these local rules is intended to nor shall anything contained in these rules limit the inherent or statutory authority of a Presiding Judge, Judge of the District Court or the Chief District Court Judge of this district.

Rule 2 Mandatory Mediation Procedures in Child Custody and Visitation Cases

2.1 Purpose and Goals of the Program

The Custody and Visitation Mediation Program provides the service of a skilled mediator to the parties involved in a custody and/or visitation dispute. The goal of the program is the reduction of stress and anxiety experienced by children and parents during separation and divorce by furnishing an alternative way for the parties to resolve their disputes. The mediator assists with communication as the parties reorganize the family and plan to continue parenting their children despite the separation. Hopefully, the parties will begin an educational process through mediation which will help them focus on meeting the ongoing and changing needs of their children. Through mediation, the parties will have the opportunity to reduce any acrimony that exists between them regarding custody or visitation, develop a written parenting agreement that is in their children's best interest, and develop skills that will enable them to resolve future problems without involving the courts.

2.2 Referral to Mediation

All actions involving unresolved or temporary issues of custody and visitation of a minor child, including motions for modification, shall be referred to mediation on such issues either prior to trial or after a temporary order has been issued by the court, unless the Chief Judge waives mediation. Any attorney or unrepresented party filing a custody or visitation action, motion or claim shall complete a cover sheet and give it to the clerk at the time of filing for the purpose of identifying the case as including a claim for custody or visitation or modification thereof. Motions for contempt related to custody actions may be ordered to mediation by the judge issuing the show cause order or by the presiding judge on the return date.

Notice to attend mediation/orientation shall be given as set out in these rules and procedures.

2.3 Procedures for Referral to Mediation - Group Orientation

A. Calendar for Group Orientation

Unless custody mediation has been waived by the Chief Judge, any party filing a custody action, motion or claim must simultaneously schedule the matter for mediation group orientation. Scheduling a case for group orientation requires the case file number, the names of both parties, and the names of all attorneys representing any parties in the case. This information shall be listed in the Custody Mediation notebook maintained in the clerk's office where the custody action is filed. This notebook shall be used by the mediator to establish case files and determine attendance at the mediation group orientation. The initiating party may choose one of the next two available mediation group orientation sessions, provided there is time for notice to responding parties as required in Local Rule 2.1 B below.

B. Noticing All Parties to Attend Group Orientation

Both parties shall attend the scheduled mediation group orientation session unless:

- (1) A party is granted permission to attend another session separately by the Custody Mediator, or
- (2) The parties, with the concurrence of the Custody Mediator, agree to attend together on another date.

If a party fails to attend the scheduled mediation group orientation, the Chief Judge will be notified by the mediator and an Order to Mediation will be entered. Parties failing to comply with this order will be subject to appropriate legal sanctions, including the contempt powers of the court.

2.4 Procedures for Referral to Mediation – Waiver

Either party may file a request for waiver of mediation at any time subsequent to the filing of the custody or visitation action, motion or claim. For good cause shown, the Chief Judge may waive the mediation requirement. Good cause may include, but is not limited to, a showing of undue hardship to a party (including travel distance of 50 miles or more), an agreement between the parties for voluntary mediation, allegations of abuse or neglect of a minor child, allegations of alcoholism, drug abuse or spousal abuse, or allegations of severe psychological, psychiatric or emotional problems. However, it is the policy of the court to not allow waivers from attendance at a mediation group orientation session except in extraordinary circumstances. The mediator will attempt to arrange orientation to accommodate special circumstances.

Requests for waiver of mediation shall be submitted to the Chief Judge in writing for consideration. The request shall be served on opposing counsel of record or unrepresented parties. Opposing counsel or the unrepresented party shall respond in writing within five (5) days. The Chief Judge will rule on the request for waiver based on the written request for waiver and any responses thereto, or may conduct a hearing on the request.

A party will only be required to attend mediation group orientation one time. Therefore, parties for mediation of modification motions who have previously attended custody mediation group orientation will be exempt.

2.5 Status Changes and Discovery

The party who filed the original action, claim or motion for custody or visitation shall immediately advise the mediator of any changes in the status of the pending case including a signed consent order, voluntary dismissal or waiver. Notice shall be given 24 hours in advance of the pending orientation or scheduled mediation session where possible, and a copy of any such order shall be delivered to the mediation office at the same time that it is filed. However, because of the educational value of the group orientation, it is the courts policy that such attendance will continue to be required unless there is a dismissal or waiver; and it is encouraged in all cases.

B. Holds on Discovery

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

2.6 The Mediation Process

A. Orientation

Orientation will ordinarily be scheduled once or twice a month in the local county courthouse. Orientation is an educational group session during which the goals and procedures of the mediation process are explained to the parties as a group. Attendance by non-parties is only allowed with the permission of the mediator and it must be for good cause and obtained at least three (3) days before the scheduled day. Once parties have attended a group orientation they do not need to return for group orientation again - even if their case requires a return to mediation years later.

If one or more of the parties is not present as scheduled, they will be subject to the contempt powers of the court. All such contempt matters shall be heard by the Chief Judge or his designee. It is important from a case management perspective that parties begin the mediation process in a timely manner

B. Scheduling of the First Private Mediation Session

The parties involved will schedule private mediation sessions at the time of orientation. At the conclusion of the group orientation the parties will be seen separately from the larger group to schedule their first mediation session. At the discretion of the Chief Judge, a case may be ordered to mediation from the bench.

C. Private Mediation Sessions

Each session lasts approximately 2 hours. It is not uncommon for parenting parties to spend more than one mediation session to fully resolve the issues around parenting the children. Each case is unique and the average number of sessions needed is 1-3. The mediator will facilitate communication and problem-solving which assists the parties in focusing on the needs of their children, the need to reorganize the family and use its strengths to maintain a continuity of relationship and stability in the child's life, and in understanding the options available to the parties that will accomplish these goals.

The mediator does not decide issues but encourages parents to assume responsibility for parenting decisions. Parents are not required to reach an agreement in mediation.

Any time after completion of the one required mediation session, either party or the mediator may unilaterally terminate the mediation process. In the event of termination, the mediator shall file a notice of termination in the court file which shall **not** disclose the reason for termination or the individual who initiated the termination.

D. Outcomes

As a result of mediation, the parties may enter into a full agreement, a partial agreement, or a temporary agreement, or their case may remain unresolved. A full agreement will record all issues surrounding custody and visitation that have been addressed and agreed to. A partial agreement will state those issues that have been resolved and set forth with specificity those issues that still remain open to litigation. A temporary parenting agreement will specify when the parties will return to mediation to review their agreement. The Chief Judge and representing attorneys will be notified of the disposition of each mediated case.

The mediator has a responsibility to solicit from the parents what issues are significant to them and then to facilitate the mediation of those issues, provided they do not go outside the specific limits of child custody mediation.

E. Pending Cases and Administrative Accounting

Any custody case in mediation that has the mediation open beyond sixty days of orientation will not retain its open status, but shall be referred to the bench as "unresolved" unless there is a conscious, valid reason to keep it open. This reason must be expressed to the Mediator. Any case in which mediation remains open after ninety days will require a letter to the Chief Judge stating the special circumstances that require consideration.

F. Confidentiality

Mediation proceedings shall be held in private and shall be confidential.

Except as provided in G.S. 50-13.1, all verbal or written communications from either or both parties to the mediator or between the parties in the presence of the mediator made in a proceeding pursuant to that section are absolutely privileged and inadmissible in court. The mediator shall not at any time disclose to any judge or court personnel the reason that the

mediation was not successful. The Court shall not inquire of the parties or the mediator as to the reasons for the success or failure of the mediation.

G. Preparation, Review and Signing of Parenting Agreements

After the final mediation session, any full, partial or temporary agreement which has been reached by the parties shall be drafted into a Parenting Agreement by the mediator. A copy of the Parenting Agreement shall be given to each party and a copy shall be sent to each attorney of record by the mediator. The parties will be given at least 10 business days to consider the Parenting Agreement and review it with legal counsel before signing. (It is strongly recommended that each party review the agreement with legal counsel before signing.)

After completion of the Parenting Agreement, the mediator shall set an appointment for each party to sign the agreement in the mediator's office. The parties will not be required to sign at the same time; however, they may be required to sign on the same day. In appropriate situations an out-of-town party may be given the option of mailing in their signed Parenting Agreement. In such cases they will need to have their signature properly notarized and the agreement returned to the mediator prior to the time and date set for the other party to sign.

Minor changes to the proposed agreement may be initiated by the parties with the mediator over the telephone or at the time of signing. Major changes that are desired that require mediation will require the parties to return to the mediation process.

If the parties and their attorneys prepare and sign a Consent Judgment in lieu of the Parenting Agreement, they shall present it to the mediator prior to or at the time scheduled for the signing of the Parenting Agreement. Otherwise, the parties will appear at the time and place set by the mediator and sign the Parenting Agreement.

H. Agreements Become Orders of the Court

The signed agreement will be presented to any District court judge for review and signature, along with the Parenting Agreement Order (AOC-CV-631) making this agreement a custody order within the meaning of Chapter 50 and 50A of the General Statutes, NCG.S. §14-320.1, G.S. 110-139.1 or other places where those terms appear.

I. Enforcement

Custody orders agreed to in mediation are enforced as any other court order through the legal system in place. They are not enforced by the mediation office. If problems arise, parents may return to mediation and they may agree to this step in their parenting agreement.

J. Attendance at Mediation

The persons present at the mediation sessions are the parties named in the action. Participation of non-parties is permitted in the discretion of the mediator with the consent of all parties and upon giving five days written notice to the mediator and opposing counsel of record and any unrepresented parties.

K. Mediator May Terminate Process

In the event that the mediator ascertains that mediation is inappropriate, or there are safety issues which mediation will not address appropriately, he or she may terminate the mediation process and return the case to court. In the event that mediation is deemed inappropriate, the mediator will still utilize the standard release form for the file, indicating, "The parties met the requirements of the mediation program but did not reach a mediated parenting agreement."

2.7 Unresolved Cases

When a case is not fully resolved in mediation or when mediation is waived, the Chief Judge's office will set the case on the next Administrative Calendar for a Status Conference. At the Status Conference the court shall:

- A. Review the issues in the case and try to resolve any issues before trial;
- B. Identify other pending family law cases involving the family;
- C. Schedule a hearing on any unresolved motions;
- D. Establish guidelines for completing discovery;
- E. Address issues regarding a child's involvement in court proceedings;
- F. Set a trial date for custody/visitation and child support (if pending)

The Status Conference may be avoided or cancelled by filing with the Chief Judge a written "Notice of Readiness" for trial signed by all parties and attorneys before the Status Conference. The notice may include requested trial dates when both parties will be available. Whenever possible, the case will be set on a requested date. If no dates are requested, the case will be set on the next Administrative Calendar for scheduling of a trial date with the attorneys and unrepresented parties. Attendance at the administrative Scheduling Conference will be mandatory. In appropriate cases the Chief Judge may schedule the hearing after informal contacts or an *in camera* hearing.

2.8 Modifications

These rules apply to motions for the modification of existing custody orders, visitation orders and parenting agreement orders. If the parties previously attended a group orientation session, the mediator will schedule the parties for a mediation session as soon as possible. The moving party or counsel is responsible for contacting the mediator and notifying the opposing party or counsel of the mediation session date. That date may be rescheduled in the discretion of the mediator. If the parties have not previously attended a group orientation session, the case will be handled as an original pleading as set out herein beginning with Local Rule 2.2.

2.9 Return to Mediation

Parties who have previously completed custody mediation with a Parenting Agreement, who want to modify their Parenting Agreement without filing additional court pleadings, and who want to use the services of the Custody Mediator, may request a mediation session through the Chief Judge's office. A "Motion to Return to Custody Mediation" (AOC-CV-634) is an appropriate method of filing such a request.

2.10 Attorney Orientation

It is the expectation of the Chief Judge that attorneys who are involved in domestic practice attend at least one group orientation. The mediator has been asked to keep a record of attorney attendance at orientation. Please contact the Mediation Office to schedule your visit or give your card to the Custody Mediator Coordinator before you leave the orientation.

Rule 3 Pleadings

3.1 Financial Needs Affidavits – (Not Applicable to IVD Child Support)

A. Filings Required by Plaintiff or Moving Party

Simultaneously with the filing of ALL non-IVD child support, alimony and post separation support cases, and in all cases involving an alleged change of circumstances necessitating a change in support, or any combination thereof, there shall be filed by the party seeking support or a change of support an affidavit setting forth the financial condition and financial needs of the party and any child(ren) for whom support is sought. Affidavits may be amended at any time and are not binding at trial. If not included, the pleading will not be accepted for filing.

B. Filings Required by Defendant or Responding Party

The Defendant or Responding Party in ALL non-IVD child support and post separation support cases and in all cases alleging a change of circumstances necessitating a change in support, or any combination thereof, shall, whether an answer is filed or not, file and deliver to the opposing counsel or pro se party no later than three (3) business days before the scheduled hearing, an affidavit setting forth the financial condition and financial needs of the party and any child(ren) for whom support is an issue. In all alimony cases the affidavit must be filed simultaneously with the first responsive pleadings. Affidavits may be amended at any time and are not binding at trial.

C. Reserved (Form and Content)

D. Copies

Counsel or *pro se* parties shall make at least two additional copies of the Affidavit for the hearing of the case, a copy to be furnished to the presiding judge and to the opposing counsel or *pro se* party.

3.2 Physical Custody

In the initial pleading in all child support cases, that pleading shall state which party has physical custody.

3.3 Jury Cases

When a Complaint or other pleading is filed in which a trial by jury is requested, the phrase “**Jury Trial Demanded**” (or equivalent language) shall be typed or legibly written under the name of the pleading.

Examples:

Complaint Answer

Jury Trial Demanded Jury Trial Demanded

2 General Assumptions

Rule 4 Equitable Distribution and Other Family Financial Cases

4.1 Definitions

- A.** “Assigned Judge” means the District court judge who has been exclusively assigned by the Chief District Court Judge of the Second Judicial District to preside over the various claims between the parties in a particular family financial case

- B. “Clerk” means the Clerk of Superior Court or his or her designee.
- C. “Family Financial Case” (FFC) means a case in which the claims raised by the parties include either child support, alimony, post separation support, equitable distribution or claims arising out of contracts between the parties under NCGS §50-20(d), §52-10, §52-10.1, or §52-B, or any combination thereof.
- D. “Initiating Party” means the spouse who first files a claim for equitable distribution, alimony or a claim arising out of a contract in a family financial case.
- E. “Second Initiating Party” means the spouse who first files a claim for alimony or a claim arising out of a contract in a family financial case when the other spouse has already filed a claim for equitable distribution.
- F. “Responding Party” means the spouse against whom the first claim for equitable distribution, alimony or claim arising out of a contract in a family financial case is filed.
- G. “Second Responding Party” means the spouse against whom a second initiating party has filed a claim.

4.2 General Assumptions

A. Preliminary Inquiry

In all family financial cases, these rules are predicated on the assumption that counsel has made preliminary efforts to settle as many issues as possible before filing the case. This effort includes appropriate discovery of their client’s evidence and claims, together with an attempt to also discover the opposing party’s evidence and claims.

B. Plaintiff or Defendant

In all family financial cases, the parties and their counsel are to understand that there is absolutely no advantage at trial to the party being the first to file and therefore designated as the “Plaintiff” rather than the “Defendant.” The court will consider the issues solely on the merits without regard to such designations.

C. Hiding of Assets

Should the court find that a party has intentionally hidden or attempted to hide financial assets with the intent to prevent them from being considered in an equitable distribution case, the court may consider as an appropriate sanction the distribution of those assets or their equivalent to the opposing party as an unequal distribution, notwithstanding that the agreement of the parties or the status of the leadings otherwise established that an equal distribution is equitable

At the time each party serves his or her inventory affidavit on the opposing party, he or she shall also serve a copy of each of the following documents, unless the opposing party has previously furnished him or her with a copy of such document. Ordinarily these documents are not to be filed. Account numbers, social security numbers and similarly specific identifying information may be redacted from all documents except those supplied to the opposing party.

4.3 Equitable Distribution Inventory Affidavits

A. Initiating Party Affidavits

Within ninety (90) days after filing a claim for equitable distribution, the initiating party shall complete an inventory affidavit, file it with the clerk and serve a copy on the responding party. Upon request by the responding party, the initiating party shall furnish a modifiable electronic copy if available.

B. Responding Party Affidavit

Within thirty (30) days after being served with a copy of the initiating party's inventory affidavit, the responding party shall complete an inventory affidavit, file it with the clerk and serve a copy on the initiating party. If the initiating party's inventory affidavit is served with the complaint or answer, then the responding party's affidavit will be due within sixty (60) days thereafter.

C. Reserved (Form and Content)

D. Order of Listing Assets and Liabilities

The responding party's inventory affidavit shall list assets, liabilities and debts in the same order as the initiating party's inventory affidavit, adding any additional listings at the end of each respective category.

E. Content, Amendment and Sanctions

The affidavit shall be the result of a good faith effort by each party to list each and every item of marital and separate property and debt, and the party's best opinion as to the date of separation fair market value of each item. The affidavits are subject to amendment and are not binding at trial as to completeness or value until incorporated into a final pretrial order to be used at trial. They are subject to the provisions of Rule 11 of the Rules of Civil Procedure, and are deemed to be in the nature of answers to interrogatories propounded to the parties. If a party fails to submit the information required by these rules and NCGS §50-21(a), he or she shall be subject to the provisions of Rules 26, 33 and 37 of the Rules of Civil Procedure.

4.4 Equitable Distribution Production of Documents

- A. Deeds for all real property listed in the party's affidavit.
- B. Certificates of title for all motor vehicles listed in the party's affidavit.
- C. Brokerage and/or mutual fund statements for each account or fund listed in the party's affidavit for the date closest to the date of separation and the most recent date.
- D. Checking account, savings account, money market account and certificate of deposit statements for each account listed in the party's affidavit for the date closest to the date of separation and the most recent date.
- E. Retirement account statements for each account listed in the party's affidavit for the date closest to the date of separation and the most recent date.
- F. Life Insurance policies listed in the party's affidavit.
- G. Deeds of Trust or mortgages listed in the party's affidavit.
- H. Account statements for all debts listed in the party's affidavit for the date closest to the date of separation and the most recent date.
- I. The party's federal income tax returns for the year the parties separated and all subsequent years.

It is incumbent upon the parties to use diligence to obtain the required documents. If any of the documents required by this rule are not furnished with the equitable distribution affidavit, the party shall submit an affidavit setting forth the efforts made to obtain the unfurnished documents. Any written inquiry made to obtain unfurnished documents shall be attached to the affidavit. **In lieu thereof the party may submit a written stipulation with the other party as to the identity and relevant values of the underlying item.** The production of documents pursuant to these rules is subject to Rule 11 or the Rules of Civil Procedure and is deemed to be in the nature of the

production of documents pursuant to Rule 34 of the Rules of Civil Procedure and subject to Rule 37.

4.5 Scheduling and Discovery Conference

A. Time

Approximately 120 days after filing of the initial claim for Equitable Distribution in a family financial case, the matter will be set on an Administrative Calendar for a Scheduling and Discovery Conference, unless a Consent Scheduling and Discovery Order has been entered by the parties and approved by the Chief District Court Judge. (See Local Form 4.5 or equivalent)

B. Attendance

Attendance at this conference is required by all pro se parties and at least one attorney for each represented party unless a Consent Order has been entered as set out in A. above. If an attorney has an excusable conflict, he or she must submit all of the information necessary for the court to enter an appropriate Scheduling and Discovery Order in the form attached to these rules as Local Form 4.5. This information must be submitted to the Chief District Court Judge's Office and the opposing attorney or pro se party in written or electronic form by 2:00 PM at least one (1) full business day before the conference is scheduled.

C. Matters Included

At the conference, the court will determine the date of separation, determine if these rules regarding equitable distribution affidavits and any other required family financial affidavits have been complied with, establish a schedule for completion of discovery, and rule on pending discovery and related motions. Also the court will enter an order for a Mediated Settlement Conference (AOC-CV-842) and if necessary appoint a certified financial mediator (AOC-CV-825) pursuant to Local Rule 5, unless the court has previously entered, or at the conference enters, an order allowing a motion to dispense with ADR Procedures or to utilize an approved ADR Procedure in lieu of the Mediated Settlement Conference. Also the court will, where appropriate, set a date for a Pretrial and Assignment Conference and establish deadlines for the completion of a proposed Equitable Distribution Pretrial Order. Finally, where appropriate, the Court will designate an Assigned Judge for the case.

D. Non Equitable Distribution trial dates

In pending Alimony and Non IVD Child Support matters, if appropriate, a trial date will be set so that those matters can be completed expeditiously if not settled by mediation or otherwise.

E. Order

At the conclusion of the Settlement and Discovery Conference, the court shall complete and enter an order in the form attached hereto as Local Form 4.5.

F. Local Form 4.5

A "Family Financial Scheduling and Discovery Order" is attached as an appendix.

4.6 Pretrial and Assignment Conference

A. Time

When the alternate dispute resolution procedures have been completed, and all discovery deadlines have passed, or approximately 330 days after filing of the initial equitable distribution claim, whichever is earlier, the matter will be set by the Chief District Court Judge's Office on an Administrative Calendar for a Pretrial and Assignment Conference, unless a Consent Pretrial Conference Order has been entered by the parties and approved by

the Chief District Court Judge. (Local Form 4.6 or equivalent). Whenever appropriate, the scheduling of this conference will have been included in the previous Scheduling and Discovery Order.

B. Attendance

Attendance at this conference is required by all parties and attorneys, unless a Consent Pretrial Order has been entered as set out in paragraph “A” above.

C. Continuances.

Continuances will ordinarily not be allowed. If an attorney has an excusable conflict, a proper motion to continue must be made in writing, filed, served on opposing counsel or *pro se* party, and a copy delivered to the Chief District Judge at least five (5) business days before the date set for the Conference. The Chief Judge will rule on the request based on the written motion and any responses thereto. Although no hearing will be conducted, the Chief Judge may seek ex parte clarifying information from either side.

D. Proposed Pretrial Order

The initiating party shall serve on the responding party a proposed equitable distribution pretrial order at least twenty (20) days prior to the date set for the Pretrial Conference. This proposed order shall accurately incorporate the contentions of the parties as set forth in their Equitable Distribution Affidavits. The responding party shall serve on the initiating party any additions, corrections or objections at least ten (10) days prior to the date set for the Pretrial Conference.

E. Pretrial Order

All parties and counsel shall come to the conference prepared to submit their final contentions for inclusion in the Initial Pretrial Order, to be binding upon the parties at trial, unless amendment is allowed by the court at any final pretrial conference conducted immediately prior to trial.

F. Pretrial Order with Preemptory setting

At the conclusion of the Pretrial Conference, the court will enter a “Pretrial Conference Order” in the form attached hereto as Local Form 4.6. The Court may include in this order a preemptory trial setting and/or a designation of an Assigned Judge. Parties and counsel shall bring their personal and business calendars to the conference so that any preemptory trial date set will be as convenient as possible to all involved.

G. Continuances in Preemptorily set cases

Any preemptory trial setting shall be a firm date from which continuances will not be granted, even if all parties agree, unless for an emergency or some extraordinary cause which could not have been foreseen. Motions for such continuances must be addressed to the Chief District Court Judge with notice to the opposing party until seven (7) days (including weekends) before the trial date. During the seven (7) days before the trial date such motions will be made to the scheduled trial judge. If the scheduled trial judge is also an Assigned Judge, any continuance will be set before the Assigned Judge.

H. Local Form 4.6

A “Family Financial Pretrial Conference Order” is attached as an appendix.

4.7 Final Trial Deadline.

Except in exceptional cases, all family financial cases will be ready for trial and have a trial setting within four hundred (400) days of the filing of the complaint or motion seeking relief.

4.8 Time Line

DAY	ACTIONS
0	Initiating Party's Complaint / Motion filed. Non IVD child support, post separation support, alimony and change of circumstance Financial Needs Affidavit required to be filed.
30	Clerk schedules Non IVD child support for Temporary Hearing if not previously scheduled. Pending Orders scheduled for Administrative Court. *
60	Non IVD Child support cases with no order scheduled for Administrative Status Conference. * Responding party's EDIA due when moving party's was filed with complaint / motion

* Exact number of the days may vary depending on the scheduling of Administrative Court dates.

Rule 5. Mandatory Alternative Dispute Resolution Procedures in Equitable Distribution and Other Family Financial Cases

5.1 Purpose of Mandatory Alternative Dispute Resolution Procedures

Pursuant to N.C.G.S. §7A-38.4A, these Rules are promulgated to implement a system of alternative dispute resolution (hereafter "ADR") designed to focus the parties' attention on settlement rather than on trial preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in ADR procedures voluntarily at any time before or after those ordered by the court pursuant to these Local Rules. In the event of a conflict between Local Rules and the North Carolina Supreme Court Rules, the Supreme Court Rules shall govern.

5.2 Duty of Counsel to Consult with Clients and Opposing Counsel about ADR Procedures

Counsel, upon being retained to represent any party to a district court case involving family financial issues, including equitable distribution, child support, alimony, post-separation support, or claims arising out of contracts between the parties under N.C.G.S. §50-20(d), §52-10, §52-10.1 or §52-B shall advise his or her client regarding the ADR procedures approved by these Local Rules and, at or prior to the scheduling and discovery conference mandated by N.C.G.S. §50-21(d), shall attempt to reach agreement with the opposing party on the appropriate ADR procedure for the action.

5.3 Ordering ADR Procedures

A. Equitable Distribution Scheduling Conference

At the scheduling and discovery conference mandated by N.C.G.S. §50-21(d), or within 120 days of the filing of the first pleading containing family financial issues, the court shall include in its scheduling order a requirement that the parties and their counsel, if any, attend a mediated settlement conference or, if the parties agree, other ADR procedures conducted pursuant to these Local Rules, unless excused by the court pursuant to these Local Rules. The court shall dispense with the requirement to attend a mediated settlement conference or other

settlement procedure only for good cause shown. The court shall also execute an “Order for Mediated Settlement Conference in Family Financial Case” (AOC-CV-824).

B. Scope of ADR Proceedings

All other financial issues existing between the parties when the equitable distribution ADR proceeding is ordered, or at any time thereafter, may be discussed, negotiated or decided at the proceeding. Child custody and visitation issues may be the subject of ADR proceedings ordered pursuant to these Rules in cases in which the parties and the mediator have agreed to include them.

C. Authorizing ADR Procedures Other Than Mediated Settlement Conference

The parties and their attorneys are in the best position to know which ADR procedure is appropriate for their case. Therefore, the court shall order the use of an ADR procedure authorized by Local Rule 5.19 if the parties have agreed upon the procedure to be used, the neutral person to be employed and the compensation of the neutral person. If the parties have not agreed on all three items, then the court shall order the parties and their counsel to attend a mediated settlement conference conducted pursuant to these Local Rules.

The motion for an order to use an ADR procedure other than a mediated settlement conference shall be filed on AOC-CV-826, Motion for an Order to Use Settlement Procedure other than Mediated Settlement Conference or Judicial Settlement Conference in Family Financial Case” at or before the scheduling 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

D. Content of Order

The court’s order shall (1) require that a mediated settlement conference or other ADR proceeding be held in the case; (2) establish a deadline for the completion of the conference or proceeding; and (3) state that the parties shall be required to pay the neutral person’s fee at the conclusion of the mediated settlement conference or proceeding unless otherwise ordered by the court.

The order shall be included in the court’s scheduling order. Any order entered at the completion of a scheduling conference may be signed by the parties or their attorneys in lieu of submitting the forms referred to hereinafter relating to the selection of a mediator

E. Court-Ordered ADR Procedures in Other Family Financial Cases

Any party to an action involving family financial issues not previously ordered to a mediated settlement conference may move the court to order the parties to participate in an ADR procedure. Such motion shall be made in writing, state the reasons why the order should be allowed and be served on the opposing party. Any objection to the motion, or any request for hearing, shall be filed in writing with the court within 10 days after the date of the service of the motion. Thereafter, the Chief District Court Judge shall rule upon the motion and notify the parties or their attorneys of the ruling. If the court orders an ADR proceeding, then the proceeding shall be a mediated settlement conference conducted pursuant to these Rules. Other ADR procedures may be ordered if the circumstances outlined in subsection “C” above have been met.

F. Motion to Dispense With ADR Procedures

A party may move the court to dispense with the mediated settlement conference or other ADR procedure. Such motion shall be in writing and shall state the reasons the relief is

sought. For good cause shown, the court may grant the motion. Such good cause may include the fact that the parties have participated in an ADR procedure prior to the scheduling conference or have elected to resolve their case through arbitration or referee or that one of the parties has alleged domestic violence. The court may also dispense with the mediated settlement conference for good cause upon its own motion.

5.4 Selection of Mediator by Agreement of the Parties

The parties may select a family financial mediator certified pursuant to these Rules by agreement by filing with the court a “Designation of Mediator in Family Financial Case” (AOC-CV-825) at the scheduling conference or within 120 days of the filing of the first pleading containing family financial issues. Such designation shall state the name, address and telephone number of the mediator selected, state the rate of compensation of the mediator, state that the mediator and opposing counsel have agreed upon the selection and rate of compensation, and state that the mediator is certified pursuant to these Local Rules.

In the event the parties wish to select a mediator who is not certified pursuant to these Local Rules, the parties may nominate said person by filing a “Nomination of Non-Certified Family Financial Mediator” (AOC-CV-825) with court. Such nomination shall state the name, address and telephone number of the mediator; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation. The court shall approve the nomination if, in the court’s opinion, the nominee is qualified to serve as a mediator.

A copy of the completed “Designation of Mediator in Family Financial Case” (AOC-CV-825) submitted to the court and a copy of the court’s order requiring a mediated settlement conference shall be delivered to the mediator by the parties.

5.5 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 conference and the court shall appoint a certified family financial mediator. The parties shall complete a “Designation of Mediator in Family Financial Case, Motion for Court Appointment of Mediator” (AOC-CV-825) and bring it to the scheduling conference. The order shall include the name, address, and telephone number of the mediator appointed by the court. In selecting the mediator the court shall follow the guidelines established by the relevant Supreme Court Rules.

5.6 Mediator Information Directory

To assist the parties in the selection of a mediator by agreement, the Chief District Court Judge or his designee shall prepare and keep current a central directory of information on all mediators certified pursuant to the Supreme Court Rules. Such information shall be collected on loose-leaf forms and be kept in one or more notebooks made available for inspection by attorneys and parties in the offices of the Clerks of Superior Court for the counties of this District, and in the office of the Chief District Court Judge. The list is also available on the nccourts.com website.

5.7 Disqualification of Mediator

Any party may move the court for an order disqualifying the mediator by submitting the request to the Chief District Court Judge. For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to Local Rule 5.4 or 5.5. Nothing in this provision shall preclude mediators from disqualifying themselves.

5.8 Site and Time of the Mediated Settlement Conference

The mediated settlement conference shall be held in any location agreeable to the parties and the mediator. If the parties cannot agree on a location, the mediator shall be responsible for reserving a neutral place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and *pro se* parties.

The conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date. The court's order issued pursuant to Local Rule 5.3 A shall state a deadline for completion of the conference which shall be no later than 210 days after filing of the action, unless extended by the court. The mediator shall set a date and time for the conference pursuant to Local Rule 5.16 F.

5.9 Requests to Expedite, Extend, or Exempt

A. Expedite or Exempt

Either party may file a motion to expedite or be exempt from mediation for good cause shown. Said motions shall be filed and served upon all parties (and the mediator if one has been appointed) according to the North Carolina Rules of Civil Procedure and shall state the reasons for the motion. A copy shall also be sent to the office of the Chief District Court Judge.

B. Extend

Upon consent of all parties and the mediator, mediation may be extended once for a specified number of days not to exceed 30, or to extend beyond the trial date. In this instance, a Consent Order or Stipulation shall be filed with the court, signed by all parties and the mediator, and approved by the Assigned Judge or the Chief Judge. Any further requests shall be made by filing a motion with the court.

5.10 Recesses

The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set during the conference, no further notification is required for persons present at the conference.

5.11 Delay of Other Proceedings

The mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the court

5.12 Duties of Parties, Attorneys and Other Participants in Mediated Settlement Conferences

A. Attendance.

The following persons **shall** attend a mediated settlement conference:

- (1) parties, and
- (2) at least one attorney of record for each party whose counsel has appeared in the action.

Any person required to attend a mediated settlement conference shall physically attend until such time as an agreement has been reached or the mediator, after conferring with the parties

and their counsel, if any, declares an impasse. No mediator shall unduly prolong a conference.

Any person may have the attendance requirement excused or modified, including allowing a person to participate by phone, by agreement of both parties and the mediator or by order of the court.

B. Scheduling

Participants required to attend shall promptly notify the mediator after selection or appointment of any significant problems they may have with dates for conference sessions before the completion deadline, and shall keep the mediator informed as to such problems as may arise before an anticipated conference session is scheduled by the mediator. After a conference session has been scheduled by the mediator, and a scheduling conflict with another court proceeding thereafter arises, participants shall promptly attempt to resolve it pursuant to Rule 3.1 of the General Rules of Practice for the Superior and District Courts, or, if applicable, the Guidelines for Resolving Scheduling Conflicts adopted by the State-Federal Judicial Council of North Carolina June 20, 1985

5.13 Finalizing by Notarized Agreement, Consent Order and/or Dismissal

The essential terms of the parties' agreement upon any or all issues shall be reduced to writing as a summary memorandum at the conclusion of the conference unless the parties have reduced their agreement to writing, have signed it and in all other respects have complied with the requirements of Chapter 50 of the North Carolina General Statutes. The parties and their counsel shall use the summary memorandum as a guide to drafting such agreements and orders as may be required to give legal effect to its terms. In the event the parties fail to agree on the wording or terms of a final agreement or court order, the mediator may schedule such other sessions as the mediator determines would assist the parties.

Within thirty (30) days of reaching agreement upon all issues at the conference, or otherwise, all final agreements and other dispositive documents shall be executed by the parties and notarized and a copy given to the mediator; and judgments or voluntary dismissals shall be filed with the Clerk of Court by such persons as the parties, the mediator or the court shall designate. If the agreement is reached at the conference, the person designated to file closing documents shall also sign the mediator's report.

When a case is settled upon all issues all attorneys of record must notify the office of the Chief District Court Judge within four business days of the settlement and advise who will file the appropriate documents and when they will be filed.

5.14 Payment of the Mediator's Fee

The parties shall pay the mediator's fee as provided by Local Rule 5.17.

5.15 Sanction for Failure to Attend Mediated Settlement Conferences

If any person required to attend a mediated settlement conference fails to attend without good cause, the court may impose upon that person any appropriate monetary sanction including, but not limited to, the payment of attorneys fees, mediator fees, expenses and loss of earnings incurred by persons attending the conference.

A party to the action seeking sanctions shall file a written motion stating the grounds for the motion and the relief sought. Said motion shall be served upon all parties and on any person against whom sanctions are being sought. If the court imposes sanctions, it shall do so, after notice and a hearing, in a written

order, making findings of fact supported by substantial evidence and conclusions of law.

5.16 Authority and Duties of the Mediator

A. Control of Conference

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

B. Private Consultation

The mediator may communicate privately with any participant during the conference. However, there shall be no *ex parte* communication before or outside the conference between the mediator and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this Rule prevents the mediator from engaging in *ex parte* communications, with the consent of the parties, for the purpose of assisting settlement negotiations. Nothing in this Rule prevents the mediator from requesting or requiring the parties to submit copies of pleadings, written contentions, worksheets or other documentation prior to the mediation, provided the opposing party and /or attorney is provided with copies of any documentation sent to the mediator.

C. Scheduling and Holding the Conference

The mediator shall schedule the conference and conduct it prior to the conference completion deadline set out in the court's order. The mediator shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the mediator shall select a date and time for the conference.

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

D. Disclosure

The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.

The mediator shall define and describe the following at the beginning of the conference:

- (1) The process of mediation;
- (2) The differences between mediation and other forms of conflict resolution;
- (3) The costs of the mediated settlement conference;
- (4) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement;
- (5) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
- (6) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
- (7) The admissibility of conduct and statements as provided by G.S. 7A-38.4A (j);
- (8) The duties and responsibilities of the mediator and the participants; and
- (9) The fact that any agreement reached will be by mutual consent.

E. Declaring Impasse

It is the duty of the mediator to determine in a timely manner that an impasse exists and that the conference should end. The mediator shall inquire of and consider the desires of the

parties to cease or continue the conference.

F. Reporting Results of Conference

The mediator shall provide a “Report of Mediator or other Neutral in Family Financial Case” (**AOC-CV-827**) to the court and the Chief District Court Judge, within 10 days of the completion of the conference, stating whether an agreement was reached by the parties. If the case is settled or otherwise disposed of prior to the conference, the mediator shall file the report indicating the disposition of the case, the person who informed the mediator that settlement had been reached, and the person who will present final documents to the court.

If an agreement upon all issues was reached at the conference, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the persons designated to file such consent judgment or dismissals. The mediator shall have the person(s) designated sign the mediator’s report acknowledging acceptance of the duty to timely file the closing documents with the court. If partial agreements are reached at the conference, the report shall state what issues remain for trial. The mediator’s report shall inform the court of the absence without permission of any party or attorney from the mediated settlement conference.

Mediators who fail to report as required pursuant to this Rule shall be subject to the contempt powers of the court and sanctions.

5.17 Compensation of the Mediator and Sanctions

A. By Agreement

When the mediator is selected by agreement of the parties, compensation shall be as agreed upon between the parties and the mediator.

B. By Court Order

When the mediator is appointed by the court, the parties shall compensate the mediator for mediation services at the rate of \$125 per hour. The parties shall also pay to the mediator a one-time, per case administrative fee of \$125, which accrues upon appointment and shall be paid if the case settles prior to the mediated settlement conference or if the court approves the substitution of a mediator selected by the parties for a court-appointed mediator.

C. Payment of Compensation by the Parties

Unless otherwise agreed to by the parties or ordered by the court, the mediator’s fee shall be paid in equal shares by the parties. Payment shall be due and payable upon completion of the conference.

D. Inability to Pay

No party found by the court to be unable to pay a full share of a mediator’s fee shall be required to pay a full share. Any party required to pay a share of a mediator fee pursuant to Local Rule 5.17 B and C 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**.

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

Any mediator conducting a settlement conference shall accept as payment in full of a party’s share of the mediator’s fee that portion paid by or on behalf of the party pursuant to an order of the court.

E. Postponement and Fees

As used herein, the term “postponement” shall mean rescheduling or not proceeding with a settlement conference once a date for the settlement conference has been scheduled by the mediator. After a settlement conference has been scheduled for a specific date, a party may not unilaterally postpone the conference. A conference session may be postponed by the mediator for good cause beyond the control of the moving participant(s) only after notice by the movant to all parties of the reason for the postponement and a finding of good cause by the mediator.

With the consent of all parties, a mediator may also postpone a scheduled conference session without a finding of good cause. In cases in which the court appoints the mediator, or in which the parties’ compensation agreement with the mediator does not otherwise provide, if a settlement conference postponement is allowed without good cause, a fee of \$125 shall be paid to the mediator. However, if the request is made within five (5) business days of the scheduled date, the fee shall be \$250. Postponement fees shall be paid by the party requesting the postponement unless otherwise agreed to by the parties. Postponement fees are in addition to the one-time, per case administrative fee provided for in Local Rule 1.17 B.

Upon receipt of a motion by the parties seeking authorization to utilize an ADR procedure in lieu of a mediated settlement conference, the court or the Chief District Court Judge may order the use of one of those procedures listed in subsections A, B or C below, unless the court or Chief District Court Judge finds that the parties did not agree upon the procedure to be utilized, the neutral person to conduct it, or the neutral person’s compensation, or that the procedure selected is not appropriate for the case or the parties. In addition to mediated settlement conferences, the following ADR procedures are authorized by these Rules:

F. Sanctions for Failure to Pay Mediator’s Fee

Willful failure of a party to make timely payment of that party’s share of the mediator’s fee (whether the one-time per case administrative fee, the hourly fee for mediation services, or any postponement fee) shall constitute contempt of court and subject that party to the contempt powers of the court. This shall include the willful failure of a party contending inability to pay a full share to promptly move the court for a determination of such. In addition, any party not paying his or her share of the mediator’s fee shall be assessed a \$50.00 late payment fee unless waived by the mediator.

[Note DRC Comment to Rule 7.E (Local Rule 5.17 herein). Non-essential requests for postponements work a hardship on parties and mediators and serve only to inject delay into a process and program designed to expedite litigation. As such, it is expected that mediators will assess a postponement fee in all instances where a request does not appear to be absolutely warranted. Moreover, mediators are encouraged not to agree to post-ponements in instances where, in their judgment, the mediation could be held as scheduled.]

5.18 Mediator Certification and Decertification

In order to be a certified mediator pursuant to these Rules, an individual shall:

- A.** Be designated as a certified family financial mediator by the Dispute Resolution Commission pursuant to the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and other Family Financial Cases, or be designated as a certified Superior Court Mediator by the Dispute Resolution Commission pursuant to the North Carolina Supreme Court Rules for Mediated Settlement Conferences and be certified as a

- B. Certification may be revoked or not renewed at any time if it is shown to the satisfaction of the Dispute Resolution Commission that a mediator no longer meets the qualifications established or has not faithfully observed the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases or those of this district. Any person who is or has been disqualified by a professional licensing authority of any state for misconduct shall be ineligible to be certified under this Rule.

5.19 Other ADR Procedures

- A. Neutral Evaluation wherein a neutral person (hereinafter “neutral”) offers an advisory evaluation of the case following summary presentations by each party.
- B. Arbitration wherein the parties agree to arbitrate under the Family Law Arbitration Act (N.C.G.S. §50-41, et seq.), which shall constitute good cause for the court to dispense with other ADR procedures authorized by these Rules.
- C. Judicial Settlement Conference in exceptional cases as determined only by the Chief District Court Judge and generally only after the parties have been unsuccessful in reaching a settlement through the other ADR procedures authorized herein.

5.20 General Rules Applicable to Other ADR Procedures

The same general Rules governing when a proceeding is conducted, extensions of time, where the procedure is to be conducted, delay, inadmissibility of proceedings, records, ex parte communications, duties of the parties, sanctions, selection of the neutral, disqualification of the neutral, compensation, and authority and duties of the neutral shall apply to other ADR procedures as set forth herein for mediation, and in the Rules of the North Carolina Supreme Court.

5.21 Rules for Neutral Evaluation

Neutral evaluation is an informal, abbreviated presentation of facts and issues by the parties to an evaluator at an early stage of the case. The neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, providing a candid assessment of the merits of the case, settlement value, and a dollar value or range of potential awards if the case proceeds to trial. The evaluator is also responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.

A. Pre-Conference Submissions

No later than twenty (20) days prior to the date established for the neutral evaluation conference, each party shall furnish the evaluator with written information about the case, and shall, at the same time, certify to the evaluator that the party has served a copy of such summary on all other parties to the case. The information provided to the evaluator and the other parties shall be a summary of the significant facts and issues in the party’s case and shall have attached to it copies of any documents supporting the party’s summary. Information provided to the evaluator and to the other parties pursuant to this paragraph shall not be filed with the court.

B. Replies to Pre-Conference Submissions

No later than ten (10) days prior to the date established for the neutral evaluation conference, any party may, but is not required to, send additional written information to the evaluator responding to the submission of an opposing party. The response furnished to the evaluator shall be served on all other parties, and the party sending the response shall certify service to

the evaluator, but this response shall not be filed with the court.

C. Conference Procedures

Prior to a neutral evaluation conference, the evaluator may request additional written information from any party. At the conference, the evaluator may address questions to the parties and give them an opportunity to complete their summaries with a brief oral statement.

D. Modification of Procedure

Subject to approval of the evaluator, the parties may agree to modify the procedures required by these Rules for neutral evaluation

E. Evaluator's Duties

- (1) **Evaluator's Opening Statement.** At the beginning of the conference the evaluator shall define and describe the follow points to the parties:
 - a) The process of the proceeding;
 - b) The differences between the proceeding and other forms of resolution (i.e., that the neutral evaluation conference is not a trial, the evaluator is not a judge, the evaluator's opinions are not binding on any party, and the parties retain their right to trial if they do not reach a settlement);
 - c) The costs of the proceeding;
 - d) The fact that any settlement reached will be only by mutual consent of the parties;
 - e) The inadmissibility of conduct and statements made during the conference in any subsequent court proceedings; and
 - f) The duties and responsibilities of the neutral and the participants.
- (2) **Oral Report to Parties by Evaluator.** In addition to the written report to the court required by these Rules, at the conclusion of the neutral evaluation conference, the evaluator orally shall advise the parties of the evaluator's opinion of the case. Such opinion shall include a candid assessment of the merits of the case, estimated settlement value, and the strengths and weaknesses of each party's claims if the case proceeds to trial. The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefore. The evaluator shall not reduce his or her oral report to writing and shall not inform the court thereof.
- (3) **Report of Evaluator to Court.** Within ten (10) days after the completion of the neutral evaluation conference, the evaluator shall complete and file with the court a "Report of Mediator or Other Neutral in Family Financial Case" (AOC-CV-827), providing a copy to the Chief District Court Judge, stating when and where the conference was held, the names of those persons who attended the conference, whether or not an agreement was reached by the parties, and if an agreement was reached, the name of the person designated to file judgments or dismissals concluding the action.

F. Evaluator's Authority to Assist Negotiations

If all parties at the neutral evaluation conference request and agree, the evaluator may assist the parties in settlement discussions. If the parties do not reach a settlement during such discussions, the evaluator shall complete the neutral evaluation conference and make a written report to the court and to the Chief District Court Judge as if such settlement discussions had not occurred. If the parties reach agreement at the conference, they shall reduce their agreement to writing as required by these rules.

5.22 Judicial Settlement Conference

When the Chief District Court Judge has, in his or her discretion, pursuant to a request of a party or otherwise, required the parties to participate in a judicial settlement conference at any point prior to trial, the following shall apply.

A. Settlement Judge

The settlement judge shall not have previously ruled on any substantive issues in the assigned case. The settlement judge shall be selected by the Chief District Court Judge and assigned to participate in the judicial settlement conference.

B. Conducting the Conference

The form and manner of conducting the conference shall be in the discretion of the settlement judge. The settlement judge may not impose a settlement on the parties but will assist them in reaching a resolution of all claims.

C. Confidential Nature of the Conference

The judicial settlement conference shall be conducted in private. No stenographic or other record may be made of the conference. Only the parties and their counsel may attend. Any communications made during the conference may not be used in any court proceeding or communicated to the Assigned Judge. The settlement judge may report that a settlement was reached and the settlement shall be reduced to writing before leaving the conference.

D. Report of the Judge

Within ten (10) days after the completion of the judicial settlement conference, the settlement judge shall file a written report with the court using the "Report Of Neutral Conducting Settlement Procedure Other Than Mediated Settlement Conference In Family Financial Case" (AOC-CV-834) form, stating when and where the conference was held, the names of the persons in attendance, whether or not an agreement was reached between the parties and the name of the person designated to file judgments or dismissals concluding the action.

Rule 6 Calendaring and Scheduling

6.1 Generally

Court calendars for the disposition of civil cases in the Second Judicial District shall be as scheduled by the Chief District Court Judge as shown on the periodically published District Court Schedule for all court days in the various counties. However, any of the District court judges may schedule a matter before himself or herself on an office day should exigent circumstances so require, as determined in his or her discretion.

6.1 Clerks' Responsibilities

The various Clerks shall be responsible for setting and maintaining civil calendars, excluding IVD child support calendars, under the supervision of the Chief District Court Judge and the Presiding Judge. All cases shall be set on the first day of multiple day sessions.

A. Automatic settings without request

The clerks shall automatically calendar, without request, the following types of cases:

- (1) Magistrate's Appeals, whether jury or non-jury.

- (2) Returns of *ex parte* domestic violence restraining orders issued under the provisions of Chapter 50 B of the General Statutes.
- (3) Returns of *ex parte* temporary custody orders as directed in such orders.
- (4) Returns of temporary restraining orders as directed in such orders.
- (5) Non IVD Child Support cases for entry of a temporary order in all cases where at least a temporary support order has not been entered within 30 days of filing of the first pleading or motion seeking child support.

Unless directed otherwise, all such cases shall be set on the next available civil calendar, except magistrates appeals and temporary child support hearings shall not be set on a Friday Calendar in Beaufort County, and when a matter requires return before a civil day is scheduled it should be set on any available criminal day in the county of filing or an adjoining county when time requirements cannot otherwise be met.

B. Calendar Requests

With certain exceptions, *pro se* parties or attorneys of record may request that a case or motion be placed on a calendar by the clerk by filing a Calendar Request with the clerk and delivering a copy to opposing *pro se* parties or counsel of record in accordance with the appropriate statutory notice provisions. Such requests are subject however to the following limitations:

- (1) In Beaufort County, requests to calendar uncontested divorces and other uncontested matters and motions certified on the request to not require more that fifteen (15) minutes for hearing must be delivered to the clerk not less that three (3) days before Friday sessions and not less that ten (10) days before multiple day sessions
- (2) In Hyde, Martin, Tyrrell, and Washington Counties, requests to calendar uncontested divorces and uncontested matters and motions certified on the request to not require more that fifteen (15) minutes for hearing must be delivered to the clerk not less that five (5) business days before the scheduled session.
- (3) Matters included on an Administrative Calendar shall only be scheduled for trial as set out in the Local Rules governing such calendars.
- (4) A custody case shall not be set for trial until the custody mediator has, by written notice, notified all parties that the mediation attempt was unsuccessful.
- (5) Cases anticipated requiring more than one (1) full day for trial, or in which witnesses must travel an extended distance, shall not be made to the Clerk, but should be made to the Chief District Court Judge.

6.3 Jury Calendars

Combined jury and non-jury calendars will be scheduled in all counties of the district from time to time as case dockets require. On all such calendars jury matters shall have priority. However, except when being shared with the Superior Court, the jurors shall ordinarily be summoned to appear at 2:00 PM on the first day of the term to allow time for the Presiding Judge to conduct a calendar call and organize the term of court. If time permits, in the discretion of the Presiding Judge, short matters may be heard before the jurors arrive.

A. Calendar Call

At calendar call, the Presiding Judge will attempt to set the cases for trial on a certain day or time during the term of court in an effort to accommodate attorneys, parties and witnesses. Calendar call may be scheduled prior to the term, and will be conducted or reviewed on the

first day of the term.

B. Attendance

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. All parties and their attorney, if represented, must be present for the calendar call on the first day of the term and remain until their case is scheduled for hearing, continued or as otherwise instructed by the court. Attorneys, parties and witnesses who are excused for any time shall provide the clerk with a telephone number where they can be reached at all times during the term.

C. Pretrial Hearings and other short matters

After the calendar call, the Presiding Judge shall first conduct any necessary pretrial hearings and enter a final pretrial order for all jury cases to be heard. Thereafter, as time allows, the Presiding Judge may hear uncontested matters, hear short motions and any other matters of short duration, place on the record any settlement of cases, and confer with attorneys about settling cases. All such matters should be concluded before the jurors arrive.

6.4 Notice

A. Civil Calendars (revised 07/14/2009)

All regular civil calendars and Administrative calendars in the Second Judicial District, except Friday Calendars in Beaufort County, ordinarily will be posted to the internet. Attorneys should sign up for electronic e-mail via www.nccourts.org. to receive an electronic copy of the calendar. Calendars will not be mailed to attorneys. The Clerks Office will maintain a copy of the civil district calendar for viewing. Clerks shall mail a copy of the calendar to each pro se party having a case on the calendar.

B. Addresses

Calendars to be mailed will be mailed to the address of record in the file and it is the responsibility of every attorney and pro se party to keep that address current. Mailing of the calendar to the address of record shall constitute due notice whether or not the mail is returned as undeliverable because of a non current address or inaccurate address in the file.

C. Withdrawal by Counsel – Client’s Address

All motions by counsel to withdraw from a case must include the last known address of their client. This address must be updated at the time of hearing if there is a change.

6.5 Administrative Sessions

Civil administrative sessions will be the primary case management tool for tracking the mandates of the NC General Statutes and the NC Supreme Court, and to meet the case clearance, on-time processing and aging guidelines contained in the Case Performance Management System. These one day sessions shall generally be scheduled every eight weeks, one in Beaufort County (for Beaufort and Hyde Counties) and one in Martin County (for Martin, Tyrrell, and Washington Counties). A separate calendar will be prepared for each county. Each case will list a designated **EVENT** that is a Status Conference, Scheduling and Discovery Conference, or Pretrial and Assignment Conference. In addition, within that **EVENT** each case will list a **TYPE** of event scheduled.

A. EVENT: Status Conference

(1) **TYPE: Pending Orders.** All orders and Judgments outstanding beyond the thirty (30) day limit established by these rules (see Local Rule 7) shall be calendared and tracked with appropriate action taken until the missing order is signed and filed, the case is

rescheduled for a new trial, or the case is dismissed for failure to present a judgment or comply with these rules or an order of the court.

- (2) **TYPE: Pending Non-IVD Child Support.** As directed in Local Rule 6.2 A (5), all non-IVD child support cases are automatically calendared after thirty (30) days for a least entry of a temporary order. This is necessary to meet the mandate of having an order entered within sixty (60) days. Therefore, all child support cases more that sixty (60) days old with no support order entered will be included here.
- (3) **TYPE: Jury Cases.** All Magistrates Appeals requesting a jury trial and all other cases in which a jury is requested that have been pending approximately 180 days will be calendared here. The primary purpose is to track these cases in order to facilitate the scheduling of Jury Sessions, Scheduling and Discovery Conferences and Initial Pretrial Conferences as appropriate.
- (4) **TYPE: Child Custody and Non Domestic Cases.** All such cases pending more than six (6) months will be listed here and appropriate action taken.
- 5) **TYPE: Monitor.** If they do not appear elsewhere on the Administrative Calendar, all cases that have been continued at a previous administrative session in order to monitor the happening of some action and a semiannual list of all cases containing issues pending beyond twelve (12) months, will be included here for review and appropriate action.

B. EVENT: Scheduling and Discovery Conference

- (1) **TYPE: Family Financial Cases.** All family financial cases pending approximately one hundred and twenty (120 days) will be set. This conference will be for the purposes set out in Local Rule 4.5. In addition an “Order for a Mediated Settlement Conference” (**AOC-CV-824**) will be entered. If no “Designation of Mediator” is filed by the parties prior to or during the conference, then the Court will assign a mediator (**AOC-CV-825**)
- (2) **TYPE: Jury Cases.** Discovery Conferences will be conducted as previously determined to be necessary at the Status Conference (Local Rule 6.5 A (3)).
- (3) **TYPE: Child Custody and Non Domestic Cases.** When there are preliminary matters such as discovery issues that need to be determined before a case can be set for trial, it will generally be set here for hearing and determination. Included will be requests made to the office of the Chief Judge and matters scheduled from a Status Conference (see Local Rule 6.5 A (4)).

C. EVENT: Pretrial and Assignment Conferences

- (1) **TYPE: Initial Pretrial Conferences- Post ADR cases.** These are the conferences set out in Local Rule 4.6 A. They are subject to the requirements of Local Rule 4.6 generally.
- (2) **TYPE: Non Jury Assignment Conferences.** When calendar requests have been made to the Chief District Court Judge’s office as set out in Local Rule 6.2 B (5) and a trial date has not or could not be set otherwise, the request will be scheduled here for determination of a trial date. Parties and Counsel must appear and bring with them their personal and business calendars so that a date as convenient as possible to all involved may be set. If appropriate, a preemptory or special setting may be made.
- (3) **TYPE: Jury Cases.** This group of cases will include jury cases in which the attorneys have filed a calendar request stating that the case is ready for trial, jury cases that have been scheduled for an Initial Pretrial Conference from an earlier Administrative Calendar, and jury cases generally that have been pending for 270 days or more. As appropriate, an Initial Pretrial Conference will be conducted or scheduled for a later

date to the end that an Initial Pretrial Order will be in place when the matter is scheduled for trial.

D. EVENT: Judicial Settlement Conferences

In those limited cases where a Judicial Settlement Conference has been approved by the Court pursuant to the Alternate Dispute Resolution Rules (See Local Rule 5.19 C), such conferences will be listed here and conducted when all other administrative matters have been completed. All parties and counsel must be present for the hearing.

E. Notice

The notice provisions of Local Rule 6.4 apply. Ten (10) days notice shall be deemed sufficient, whether a calendar is mailed directly to the attorney or *pro se* party at the address of record, or posted on the North Carolina Court Systems web cite and notice thereof provided by direct mail or electronic mail.

Rule 7 Judgments and Settlements

7.1 Court Ordered - Submission in Thirty (30) Days

All judgments and orders in all civil, juvenile and IVD child support cases are to be submitted to the Presiding Judge for signature by the attorney designated to prepare the judgment or order not more than thirty (30) working days after announcement of the judgment or order unless otherwise ordered.

All judgments and orders submitted to a judge for signature must show the following on the signature page:

- A. the date the judgment or order was announced by the Court; and
- B. the date of signature by the judge.

7.2 Settlements

If any matter on a trial calendar is settled prior to the beginning of the scheduled term, the attorney for the plaintiff or moving party or the *pro se* plaintiff or movant, must take one of the following actions:

A. Notice of Settlement

If the matter is settled in time to do so, notify the clerk designated for that term of court at least one (1) full business day before the beginning of the scheduled term and advise the clerk who will prepare the judgment or order. This will enable the clerk sufficient time to note this information on the Presiding Judge's calendar and will excuse the attorneys and parties from appearance. In such cases a Consent Judgment or Order signed by the attorneys and parties must be presented to a district court judge for signature within thirty (30) working days of the notice to the clerk.

B. Other Settlements

If the matter is settled and Local Rule 7.2 A immediately above does not apply, then all parties and attorneys will appear on the first day of the calendar to announce their settlement in open court and to enter a Memorandum of Judgment as set out in Local Rule 7.3 below. The attorney designated to prepare the judgment or order shall submit it to the Presiding Judge for signature within thirty (30) working days after signing of the Memorandum of Judgment by the Presiding Judge, unless otherwise ordered.

7.3 Memorandum of Judgment

A Memorandum of Judgment is required for all matters settled in whole or in part during the term in which it is calendared. It must designate which attorney will prepare the final judgment or order.

A. Handwritten

The Memorandum of Judgment may be handwritten.

B. Parties Agreement

After completion, the parties and counsel must appear before the Presiding Judge for inquiry in open court regarding the parties understanding of and agreement with the settlement and for explanation of its force and effect. This requirement may be waived on a case by case basis by the Presiding Judge, in his or her discretion. Any waivers should be noted by the clerk on the minutes.

C. Release of Parties, Witnesses and Attorneys

Unless otherwise directed by the Presiding Judge, no attorney is released or authorized to release his or her client and witnesses until the procedure in Local Rule 7.3 B is completed.

D. Final Judgment

The attorney designated to prepare the judgment or order shall comply with the time requirements contained in Local Rule 7.2 B above.

7.4 Extensions

The attorney designated to prepare any judgment or order may, prior to expiration of the initial thirty (30) working days, file a motion with the Presiding Judge or any district court judge, as is appropriate, for an extension of time in which to submit the judgment or order for signature. Such motion shall be in writing with notice to the opposing counsel or *pro se* party. Whether allowed for good cause shown or not, a written order with appropriate findings must be filed.

7.5 Consent Judgments

At any time, a Consent Judgment settling a matter or matters at issue may be submitted to a district court judge for approval and signature. If the matter appears on a trial calendar, the Consent Judgment must be submitted to the Presiding Judge during the term. Consent Judgments must contain the notarized signature of all parties and the signature of the attorney(s) of record, and be specifically titled as a Consent Judgment.

7.6 Open Issues Remaining

All issues intended to remain open after a judgment or order is entered in a case must be clearly designated in the judgment or order as being reserved for later determination. If no remaining issues are so designated, then the judgment or order will be deemed a full and final settlement as to all pending issues, unless the matter was clearly noticed and scheduled only on specific pending issues. This rule shall apply to all judgments or orders entered by the court after hearing, all Memorandums of Judgment and all Consent Judgments.

7.7 Tendering of Proposed Judgments or Orders

If a judgment or order is not timely tendered for approval, signature and filing, any of the following actions may be taken:

7.8 Sanctions

If a judgment or order is not timely tendered for approval, signature and filing, any of the following actions may be taken:

A. Show Cause

With due notice to the attorney(s) or *pro se* parties, the Presiding Judge or the Chief District Court Judge may enter an Order to Show Cause for Contempt to anyone subject to the Court's jurisdiction where there is probable cause to believe that person is in violation of the Local Rules to timely tender a proposed judgment or order. Upon a hearing and finding of contempt, the Presiding Judge may, in his or her discretion, enter an appropriate order including but not limited to imposing a fine, vacating or modifying any findings or order related to the earlier hearing, or requiring the payment of attorney fees for preparation of the order by the other attorney.

B. Presiding Judge

The Presiding Judge may, without further notice to the attorneys or parties, in his or her discretion, order a new trial or order the matter dismissed without prejudice pursuant to Local Rule 4 B of the Rules of Civil Procedure as an involuntary dismissal for failure to comply with the Rules or Order of the Court.

C. Administrative Action

If the matter is calendared on an Administrative Session as a "Pending Order" pursuant to Local Rule 6.5 A (1), the Court may enter an Order dismissing the action without prejudice as an involuntary dismissal or removing the action to inactive status, as appropriate. A matter removed to inactive status will no longer be considered as having any pending issues. Inactive actions may only be returned to active status by a written order of the court entered upon a properly filed and noticed motion. Attorneys or parties may not rely on the record address of parties for notice in such cases; they must give notice as if the matter was a new action.

Rule 8 Ex Parte Procedures

8.1 Basis.

A motion for an *ex parte* order shall be made only in cases of a true emergency with the movant to comply with the minimal requirements set out in this Rule.

8.2 Form.

All *ex parte* motions shall be written and clearly set out the need and authority for emergency relief.

8.3 Appropriate Judge.

- A.** If a particular judge is in the process of hearing the case, or has been assigned the case by the Chief District Court Judge, or has retained jurisdiction, then any emergency request is to be heard by that Judge.
- B.** If that Judge is not reasonably available, then any district court judge may hold the hearing, subject to the requirements of Local Rule 8.5 E.

8.4 Notice.

If the opposing party is represented by counsel, then reasonable notice should be given to that attorney prior to approaching a judge for a hearing on the motion. To the extent feasible, that notice should include a copy of the motion and the anticipated timing, location, and judge to be approached for the hearing.

If an *ex parte* communication with a judge takes place without the opposing counsel present, then notification of that communication occurring must be given by the movant to the opposing counsel as soon as is reasonably possible.

8.5 Hearing

All movants shall inform the court prior to or at the beginning of the hearing, as follows

- A. Whether or not there is opposing counsel, and if so the name of counsel.
- B. Whether any opposing counsel has been notified as required in this rule.
- C. Whether another judge has heard or refused to hear the motion or any similar motion and, if heard, the ruling given.
- D. Whether another judge has heard other matters in the case.
- E. When the motion is presented to a judge other than as required in Local Rule 8.3 A, then details must be provided explaining why that judge was not reasonably available.

8.6 Order.

All Ex Part Orders must be in writing and state the date and time entered and provide the date, time and location for the hearing to review the order. When an Ex Parte Order is denied, unless otherwise ordered by the ruling judge, the denial must be shown in a written order and filed with the clerk.

Rule 9 Continuances

9.1 Continuance Policy

The “District Court Continuance Policy” adopted by the Chief District Court Judge on 8 October 1997 and published on the web site of the North Carolina Court System under “Local Rules and Forms” is incorporated herein by reference and by such incorporation made a part of these Local Rules.

9.2 Conflicts

To the extent any of the provisions of Local Rules 1 - 10 herein are in conflict with the Continuance Policy incorporated above, the specific rule in Local Rules 1-10 shall apply.

9.3 Firm Trial Settings

A. Preemptory Settings

Ordinarily there will only be one preemptorily set case on any trial calendar. Preemptorily set cases shall be noted on the calendar and appear as the first case on the calendar. All preemptory trial settings shall be a firm date from which continuances will not be granted

even if all parties agree, unless for an emergency or some extraordinary cause which could not have been foreseen. Motions for such continuances must be in writing addressed to the Chief District Court Judge with notice to the opposing party/counsel until seven (7) days, including weekends, before the trial date. During those seven (7) days before the trial date such motions will be made to the Presiding Judge. If a continuance is allowed, a new preemptory trial date shall be determined by the judge continuing the case, which date and status shall be included in the continuance order. If the case has been assigned to a particular judge, then all new trial settings must be before that judge. To the extent possible a new preemptory trial date should be determined after consideration of the schedules of the attorneys, parties and witnesses involved.

B. Settings from Administrative Sessions

Cases set on a trial calendar from an administrative session but which did not receive a preemptory setting, shall be appropriately noted on the calendar and shall also be considered a firm date from which continuances should not be granted, even if all parties agree, except for some compelling reason. Any motion prior to calendar call must be made in writing to the Presiding Judge with Notice to the opposing party/counsel. Such cases will be placed in their regular order on the trial calendar; however, they should not be continued for an anticipated inability to be reached unless and until it is entirely clear that the case cannot be reached and completed during the session. Any continuance order shall be in writing and to a date certain after consideration of the participants schedule if known; and shall include the notation that the case was previously set from an administrative session. If the case has an Assigned Judge, all new trial settings must be before that Judge.

C. Inactive cases

If a case is set on a trial calendar that has been inactive for a substantial time as determined by the Chief District Court Judge, it will be so noted on the trial calendar with the additional notation that the case is to be tried or dismissed. Such cases may only be continued by or after consultation with the Chief District Court Judge or his/her designee.

D. Withdrawal of Counsel

No attorney of record shall be allowed to withdraw between calendar call and the date set for trial unless the client has retained new counsel who is ready to proceed with the trial. No attorney will be allowed to withdraw in cases described in Local Rule 9 A and Local Rule 9 B above between the Administrative Session setting the trial date and the trial date except by the Chief District Court Judge, and withdrawal will not ordinarily be allowed if it will delay the trial of the case.

E. Rule 2(e), General Rules of Procedure

This Rule states “*When an attorney is notified to appear for the setting of a calendar, pretrial conference, hearing of a motion or for trial, he must, consistent with ethical requirements, appear or have a partner, associate or another attorney familiar with the case present. Unless an attorney has been excused in advance by the judge before whom the matter is scheduled and has given notice to his opponent, a case will not be continued.*” This Rule is repeated here for emphasis.

Rule 10 Miscellaneous

10.1 Motions to Withdraw

All motions to withdraw must be in writing, filed and set for hearing before any calendar call and shall be subject to the notice requirements and time limitations for calendar requests as set out in Local Rule 6.2

B. All Orders allowing withdrawal must either show the consent of the client as evidenced by the client's signature, or show it is based on a hearing conducted after proper notice. See also Local Rule 9.3 D above.

10.2 Court Conflicts

Any court conflict should be resolved according to applicable statutes and Rule 3.1 "Guidelines for Resolving Scheduling Conflicts" of the General Rules of Practice as adopted by the N.C. Supreme Court. Within those priority categories in the District Courts of the Second Judicial District, first consideration must be given to cases peremptorily set by the Chief District Court Judge.

10.3 Sanctions

A. Dismissals

Failure to comply with any section of these Local Rules may subject the action, party or attorney to sanctions to include dismissal and any other sanctions provided in Rules 37 and 41 of the North Carolina Rules of Civil Procedure.

B. Administrative Session

Rule 2(c) of the General Rules of Practice applies to Administrative Calendars the same as to any other, and failure to appear and proceed for the purpose(s) calendared shall be considered a violation of that Rule subjecting an action to dismissal or other sanctions. However, in the discretion of the court, in appropriate cases, an action may be declared inactive and removed from the active calendar and ordered closed rather than dismissed. Local Rule 7.8 C shall govern any return to active status of any action declared inactive.

Adopted this the _____ day of April, 2008.

Samuel G. Grimes
Chief District Court Judge