

**LOCAL RULES FOR THE MEDIATION
OF CUSTODY AND VISITATION DISPUTES**
NORTH CAROLINA CUSTODY AND VISITATION MEDIATION PROGRAM JUDICIAL
DISTRICT 9

The Judicial District 9 Custody and Visitation Mediation Program is established under the following North Carolina General Statutes, 7A-494, 7A-495, and 50-13.1.

I. PURPOSE AND GOALS OF THE PROGRAM:

The purpose of the Custody and Mediation program is to provide the services of a skilled mediator to the parties involved in a custody and visitation dispute. The goal of the program is to reduce stress and anxiety experienced by children in separation and divorce by furnishing an alternate way for the parties to resolve these disputes. The mediator assists with communication as the parties work to reorganize the family by creating a plan to continue parenting their children through and beyond the separation. Ideally, an educational process begins in mediation which helps parties refocus in order to meet the ongoing needs of their children.

Through mediation, parties have the opportunity to:

- reduce any acrimony that exists between parties regarding the dispute of custody or visitation.
- develop custody and visitation agreements that are in the child's best interest.
- participate in a process that invites informed choices and, where possible, gives the parties the responsibility for making decisions about child custody and visitation.
- minimize the stress and anxiety experienced by the parties, especially the child.
- reduce the litigation of custody and visitation disputes.

II. REFERRAL TO MEDIATION:

Any action involving custody of or visitation with a minor child or children shall be ordered to mediation prior to trial or after a temporary order has been issued by the court, unless the court waives mediation.

(A) Issues that arise in motions for modifications as well as in other pleadings shall be set for mediation unless mediation is waived by the court.

(B) In motions for contempt, the presiding Judge will determine whether to hear the motion or to refer the matter for expedited mediation. (In expedited mediation, the parties meet with a mediator immediately, if available, or as soon possible after the referral. Parties are not required to attend group orientation before expedited mediation).

III. PROCEDURES FOR REFERRAL TO MEDIATION:

STEP 1: CALENDAR FOR GROUP ORIENTATION: Unless Custody Mediation has been waived by the court (see Paragraph IV), any party filing a custody action, motion or claim must schedule the matter for group orientation to mediate. *This request for mediation occurs at the time of original filing.* The sign-up sheet for orientation will be located in a notebook in the Clerk's office in each county. An original and one copy of the appropriate cover sheet (Custody Mediation Cover Sheet, **DOM-9-10**) must be filed with each custody or visitation action. A copy of **DOM-9-10** will be placed in the mediator's box in the Clerk's office or in sign-up notebook, as well as a copy of the Notice for Custody Mediation Orientation (**DOM 9-1**).

STEP 2: NOTICING ALL PARTIES TO ATTEND GROUP ORIENTATION:

After scheduling the group orientation, the party requesting the Custody Mediation Orientation date is responsible for noticing all opposing parties using the form titled Notice for Custody Mediation Orientation (**DOM-9-1**). (Each law office may photocopy or include this notice in their automated records from the master copy provided in this packet). The original of form DOM-9-1 must be filed with the Clerk. Unless waived by both sides, notice for mediation shall be served **10** days prior to the Mediation Orientation. A letter written by the Chief Judicial District Judge shall accompany this notice (see sample **DOM-9-3**). If one or more of the parties is not present as scheduled, the Judge will sign an Order for Mediation (see form **DOM-9-2**). In the event the filing party does not schedule Mediation Orientation, the Judge may sign an Order for Mediation (**DOM-9-2**). Parties failing to comply with this Order will be subject to contempt powers of the court.

(A) Request for Expedited Mediation:

A written request for expedited mediation (see form Stipulation for Expedited Mediation, **DOM-9-4**), signed by both parties or their attorneys, will waive the notice period. The attorney is to telephone the custody mediator's office and clearly leave a message requesting an expedited mediation session. The attorney will also file **DOM-9-4** with the Clerk's office and leave a copy of **DOM-9-4** in the mediator's box. In expedited mediation, the parties meet with a mediator immediately, if available, or as soon as possible after the referral. Parties are not required to attend group orientation before expedited mediation.

(B) At the Discretion of the Presiding Judge

A case may be ordered to mediation from the bench.

IV. WAIVER OF MEDIATION:

On its own motion, or that of either party, the court may waive mediation of a contested custody or visitation matter for good cause. Good cause includes, but is not limited to, a showing of undue hardship to a party, an agreement between the parties for voluntary mediation, allegations of abuse or neglect of the minor child, of alcoholism, of drug abuse, of spousal abuse, or of severe psychological, psychiatric, or emotional problems.

Where the parties reside more than 75 miles from the court, such distance may be considered good cause in the discretion of the court. If the party residing outside the area agrees, mediation may still proceed. Note: The mediator may be able to arrange an orientation session closer to home for parents who reside more than 75 miles from the court, or expedited mediation may be arranged.

Requests for Waivers of Mediation will be written (see forms **DOM-9-5** and **DOM-9-6**) and presented to a Judge who hears and hold Custody cases in said county. Requests for waivers may be presented without a court date. **DOM-9-5** and **DOM-9-6** will be filed with the Clerk's office and a copy of **DOM-9-6** will be placed in the custody mediator's box by the attorney.

(A) The custody mediation office will be notified by counsel of record of any change in the status of a pending case including, a signed consent order, voluntary dismissal, or exemption. The attorney will put a copy in the Custody Mediator's box.

(B) No discovery regarding a custody or visitation claim shall be served, notice or conducted until the mediation process is complete or has been exempted by judicial order. Except for oral depositions of parties, discovery may proceed regarding financial information.

V. THE MEDIATION PROCESS:

All parties are mandated to attend the group orientation and one private session before withdrawing from the process. Forms **DOM-9-8** (Motion to Show Cause for Failure to Comply with

Custody Mediation) and **DOM-9-9** (Order to Show Cause for Failure to Comply with Custody Mediation) will be used should either or both parties fail to comply with the mediation process. The required private mediation session will generally occur within two to six weeks of group orientation or as soon as possible, as the mediation program has appointments available.

(A) **Orientation:** Prior to mediation, a group orientation session is held at which the goals and procedures of the mediation process are explained to the parties. Orientation will be held monthly on a regular schedule that is maintained in the Mediator's office. Orientation will last approximately one hour. Children are not permitted to be present for the group orientation. Once parties have attended the group orientation, if they file a new action within 18 months of first Orientation, they are not required to attend another group Orientation.

(B) **Scheduling of First Mediation Session:** The parties involved will schedule their private mediation session at the time of orientation (see form **DOM-9-7**, Notice of Custody Mediation Conference) unless they are ordered to expedited mediation from the bench. In cases involving expedited mediation the mediator will likely conduct an abbreviated orientation and the mediation in one session.

(C) **Mediation Session:** Parties permitted to be present to mediation are only those named in the suit. Children are NOT permitted to attend the group orientation or the private mediation session(s). Attorneys and other interested individuals may be present at the mediation sessions only with the agreement of all parties, counsel, and the mediator. All participants in mediation are bound by the statutory requirement of confidentiality. 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 but the average number of sessions is 1 to 3. 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.

(D) **Outcomes:** As a result of mediation, the parties may enter into a full agreement, a partial agreement, a temporary agreement, or fail to reach agreement. The full agreement resolves all issues surrounding custody and visitation that have been addressed. The partial agreement will state those issues that have been resolved and those that still remain open to litigation. Both the court and the attorneys will be notified of the disposition of each mediated case, although information discussed during the mediation sessions remains confidential in accord with the guidelines of the statutory requirements. The mediator maintains a neutral stance and at no time will testify on behalf of either party.

A copy of any parenting agreement will be sent to each parent and attorney for review *before* signing. Parties have approximately 5-10 business days after the receipt of the agreement to consider the agreement and seek legal counsel. Minor changes to proposed agreements may be initiated by parents with the mediator over the telephone. Major changes that are desired will require both parties to return to mediation. ***The Court recommends that each party review the agreement with legal counsel before signing.*** The mediator will schedule signings through the Mediation office. Parents will not be required to sign at the same time, however they may be required to sign on the same day. The signed agreement is presented to a District Court Judge who holds custody cases in said county for review and signature, along with the Parenting Agreement Order (AOC-CV-631) making this agreement a custody order. A copy of any signed agreements will be file stamped and sent to each parent and attorney.

The parties will have the opportunity to return to mediation to modify their existing agreement without refile with the court. When parties return, the mediator will notify the Clerk's office and attorney's by using form AOC-CV-634.

When mediation does not result in a parenting agreement, the Custody Mediator will send a copy of an Order to Calendar Custody or Visitation Dispute (AOC-CV-941M) to the court, attorneys of record.

(E) **Enforcement:** Custody orders signed in mediation are enforced as any other court order through the legal system. They are not enforced by the mediation office. If problems arise, parents may return to mediation. Often they agree to this step in their parenting agreement.

(F) **Confidentiality and Other Issues:** Mediation proceedings shall be held in private and shall be confidential. Except as provided in G.S. 50-13.1, all verbal and 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 this 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 an agreement was not reached. The court will not inquire of the parties or the mediator as to the reasons for no agreement in mediation. The Mediator in her/his discretion may terminate the mediation process if information is revealed that would support terminating mediation for reasons of safety, welfare, or psychological dynamics.

(G) **Pending Cases**

The Court's goal is to address these parenting issues through mediation promptly. The mediator will request that the filing party/or their Attorney send a letter to the person calendaring cases, should mediation extend longer than usual.

(H) **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 and return the case to court. In the event that mediation is deemed inappropriate, the mediator will utilize the standard release form (AOC-CV-941M).