

Mediation of Custody and Visitation Disputes

Judicial District 23

The Judicial District 23 Custody and Visitation Mediation Program is established under the following North Carolina General Statutes: 7A-494, 7 A-495 and 50-13.1

1. Purpose and Goals of the Program

The purpose of the Custody and Visitation 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 alternative way for the parties to resolve their disputes.

The mediator helps the parties reorganize the family in order to continue parenting their children despite the separation. The mediator also assists the family in recognizing and meeting the needs of their children.

A successful mediation will help the parties put a parenting agreement in writing, teach them to attempt to resolve future problems without seeking recourse from the courts and reduce the litigation of custody and visitation disputes.

2. Referral to Mediation

Any Chapter 50 action involving the 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 formally waives mediation.

3. Procedures for Referral to Mediation

A. Attorney Referral Phase

Unless Custody and Visitation Mediation has been formally waived by the court (see paragraph 4), any party filing any Chapter 50 action involving custody or visitation must schedule the matter for Custody Mediation Orientation prior to docketing the case for permanent hearing.

Custody Mediation Orientation can be scheduled with the Custody Mediation Office either in writing via a notebook maintained by the office of the Clerk of Court or through electronic media.

Once a request to schedule the matter has been received via electronic media, specific arrangements must be confirmed in writing by the Custody Mediation Office.

The party requesting the Mediation Orientation date is responsible for noticing all parties in writing, with copies of such notice to be forwarded to the Custody Mediation Office and to the appropriate Clerk of Court.

Unless waived in writing by all parties to the action, Notice for Custody Mediation Orientation shall be served at least ten (10) days prior to the Custody Mediation Orientation.

If one or more of the parties is not present for the Custody Mediation Orientation as scheduled, or if one or more of the parties appears more than fifteen (15) minutes late for the Custody Mediation Orientation, then the case will be rescheduled to the next available date by the Custody Mediation Office and written notice of the rescheduled date will be given to the appropriate party and/or their legal counsel.

If one or more of the parties is not present for the rescheduled Custody Mediation Orientation or if one or more of the parties appears more than fifteen (15) minutes late for the Custody Mediation Orientation, then the Court will be notified in writing of the same. At the Court's discretion, a Judge may sign an Order for Mediation. Any party failing to appear for Custody Mediation Orientation may be subject to the contempt powers of the court.

If any party seeking to schedule an Expedited Custody Mediation must submit a request to the Custody Mediation Office either in writing or via electronic media (as noted above).

B. Expedited Mediation

Expedited Custody Mediation will be scheduled only at the discretion of the Custody Mediator or as ordered in writing by a District Court Judge. Once a

request to schedule the Expedited Custody Mediation has been received, specific arrangements will be confirmed in kind by the Custody Mediation Office.

The party requesting the Expedited Custody Mediation is responsible for noticing all parties in writing with as much advanced notice as possible. The party requesting the Expedited Custody Mediation is also responsible for ensuring that copies of such notice are forwarded to the Custody Mediation Office and to the appropriate Clerk of Court.

If one or more of the parties is not present for the Expedited Custody Mediation as scheduled or if one or more parties is more than fifteen (15) minutes late for the Expedited Custody Mediation, then the case will be rescheduled to the next available date by the Custody Mediation Office and written notice of the rescheduled date will be given to the appropriate party and/or their legal counsel. If one or more of the parties is not present for the rescheduled Expedited Custody Mediation or if one or more parties is more than fifteen (15) minutes late for the Expedited Custody Mediation, then the Court will be notified in writing of the

same. At the Court's discretion, a Judge may sign an Order for Mediation. Any party failing to appear for Expedited Custody Mediation may be subject to the contempt powers of the court.

C. Time-Referral Phase

If the counsel for the parties fails to schedule mediation within 45 days of the filing of the action, an Order for Mediation may be issued by the Judge. If such an Order is issued during a judicial proceeding, then the assisting Clerk of Court will be responsible for providing notice to all parties and/or their legal counsel, once specific arrangements for the Custody Mediation Orientation have been confirmed with the Custody Mediation Office. If such an Order is issued outside the course of judicial proceeding, then the Custody Mediator will be responsible for noticing all parties not less than ten (10) days prior to the Custody Mediation Orientation. Parties failing to comply with any Order for Mediation may be subject to the contempt powers of the court.

D. Judicial Referral

At the discretion of the presiding Judge, a Chapter 50 case may be ordered to Custody Mediation from the bench. The assistant Clerk of Court will be responsible for providing notice to all parties and/or their legal counsel, once specific arrangements for the Custody Mediation Orientation have been confirmed with the Custody Mediation Office.

4, Waiver of Mediation

On its own motion, or that of either party and/or their legal counsel, the Court may waive mediation of a contested custody or visitation matter for good cause. Good cause may include, 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, allegations of alcoholism, allegations of drug abuse, allegations of domestic violence or allegations of severe psychological, psychiatric, or emotional problems. Where either party resides more than 50 miles from the Court, such distance may be considered good cause. Requests for waivers of mediation will be made to and approved only by the Court via the use of AOC-CV-632.

5. The Mediation Process

Unless Custody Mediation has been waived by the Court, the parties shall participate in one orientation session and at least one mediation conference. The Custody Mediation program shall operate in accordance with North Carolina General Statute 50-13.1, preserving the confidentiality of the mediation process.

The mediator should assist the parties in focusing on the needs of their children, the need to reorganize the family and use its' strengths, and the need to maintain

continuity of relationships and stability in the child's life. The mediator will help to explore the options available to the parties that will best accomplish these goals.

Custody mediation will not proceed with any party who is incarcerated.

A. Orientation

Prior to mediation, an orientation session is held at which the goals and procedures of the mediation process are explained to the parties. Orientation will be held on a regular schedule to be maintained by the Mediator's office. Third parties will be allowed in orientation only at the discretion of the Mediator and no children will be allowed. Parties are required to attend the orientation session and at least one (1) mediation conference session before withdrawing from the process. The parties involved will schedule their mediation conference session at the conclusion of the orientation.

B. Mediation Conference Session

Only the plaintiff(s) and defendant(s) named in the Chapter 50 action will be allowed to participate directly in the mediation conference session. The participation of others, including children or any other third parties, will be only at the discretion of the Custody Mediator. Generally, attorneys are not present in mediation conference sessions.

If one or more of the parties is not present for the Custody Mediation Conference as scheduled or if one or more parties is more than fifteen (15) minutes late for the Custody Mediation Conference, then the case will be rescheduled to the convenience of the party present by the Custody Mediation Office and written notice of the rescheduled date will be given to the appropriate party and/or their legal counsel. If one or more of the parties is not present for the rescheduled Custody Mediation Conference or if one or more parties is more than fifteen (15) minutes late for the Custody Mediation Conference, then the Court will be notified in writing of the same.

In cases involving three or more parties, mediation may proceed without the presence of one (1) or more parties, if the absence of the party is noted in any resulting Parenting Agreement and the absent party's right to petition the court in the future is duly noted therein.

At the Court's discretion, a Judge may sign an Order for Mediation. Any party failing to appear for Custody Mediation Conference may be subject to the contempt powers of the court.

c. WebEx

On a limited basis Custody Mediation Conferences may be conducted via telephone, via Web/Ex, via teleconferencing or through other available electronic means, at the

discretion of the Custody Mediator, with the consent of the District Court Judge. However, these types of Custody Mediation Conferences may only be conducted after at least one (1) face-to-face session has occurred between the Custody Mediator and the parties.

D.Full Agreement

As a result of the mediation conference session, the parties may enter into a full agreement of the issues discussed, a partial and/or a temporary agreement of the issues discussed, or the parties may fail to reach an agreement. A full agreement represents resolution of all issues surrounding custody and visitation that have been addressed.

A partial parenting agreement will represent all of the issues surrounding custody and visitation that have been resolved, as well as contain a listing of those issues that remain open to litigation.

A temporary agreement represents resolution of all issues surrounding custody and visitation that have been addressed. However, a temporary agreement will be time limited, with a specified plan for when the parties will return to mediation to discuss a more permanent parenting plan.

Both the court and the attorneys will be notified of the disposition of each mediated case, although information discussed during the course of the mediation conference sessions remain confidential in accordance with the guidelines of the mental health professions. The Custody Mediator maintains a neutral stance with regard to the outcome of the mediation process and at no time will any Custody Mediator testify on behalf of any party, in any manner.

E. No Agreement

In the event that the parties are able to reach agreement on issues surrounding custody and visitation, a copy of any memorandum of understanding (Parenting Agreement) will be sent to all parties and all attorneys, typically within seven (7) to ten (10) days. The parties and attorneys will typically have a period often (10) to fourteen (14) days from the mailing of the proposed memorandum to consult with counsel before returning the notarized, signed Parenting Agreement to the Custody Mediation Office. Any additions, corrections, deletions or re-negotiation of the terms of any drafted memorandum of understanding, will begin a new ten (10) to fourteen (14) day period as noted above.

F. Order

Any Parenting Agreement that has been signed and notarized by the relevant parties will be presented to a District Court Judge for review and signature. Upon approval, the District Court Judge will sign an Order Approving Parenting Agreement (AOC-CV-631) that shall make the

Parenting Agreement a Custody Order within the meaning of NCGS 50, 50A, 14-320.1, 150-139.1, or other places within the General Statutes where the term "Custody Order" appears.

In the event that a Chapter 50 case has been mediated and resulted in a signed, notarized Parenting Agreement and a Chapter 50-B/50-C Restraining Order involving the same parties has also been ordered by the Court, then, the signed, notarized Parenting Agreement will be presented to the same District Court Judge who entered the Chapter 50-B/50-C Restraining Order, with a memorandum from the Custody Mediator indicating the existence of the Chapter 50-B/50-C Restraining Order.

Once any Parenting Agreement has been signed by the District Court Judge, it will be the responsibility of the Custody Mediator to file the Parenting Agreement with the appropriate Clerk of Court. The Custody Mediator will also be responsible for sending the signed, filed copy of the Parenting Agreement/Court Order to each of the parties and will provide a copy to any attorney of record.

G. Enforceable

Custody Orders resulting from Parenting Agreements are enforceable through the civil legal system in a manner like any other civil court order; they are not enforced by the Custody Mediation Office. However, parties with a Custody Order resulting from a Parenting Agreement will have the opportunity to return to mediation to modify an existing agreement without filing any motion to modify with the Clerk of Court, in accordance with the provisions of the Parenting Agreement. Any party wishing to return to Custody Mediation for this purpose more than once during any calendar year, will be scheduled only at the discretion of the Custody Mediator, unless a motion is properly filed with the Clerk of Court.

H. Termination of Orientation

Custody Mediation may terminate any Orientation Session or Custody Mediation Conference at any time at his/her discretion, if continuing the proceedings would be professionally inappropriate for reasons related to safety, welfare or psychological dynamics.

I. Conflict

In the event of any conflict of interest between the Custody Mediator and one or more of the parties to the Chapter 50 action, related to prior personal contact, business contact or community contact, then the Custody Mediator will be responsible for scheduling a Custody Mediator from a neighboring judicial district to handle any Custody Mediation Conferences. The Custody Mediator from a neighboring judicial district will be free from any conflict of interest with each party and will be scheduled as soon as professionally possible.

J. Inappropriate

When Custody Mediation does not result in a Parenting Agreement, or if a

Chapter 50 case is deemed to be professionally inappropriate in the discretion of the Custody Mediator, then the Custody Mediator will present an Order to Calendar Custody or Visitation Dispute (AOC-CV914M) to a District Court Judge for signature and subsequent filing with the appropriate Clerk of Court. A copy of the signed, filed Order to Calendar Custody or Visitation Dispute will be sent to the attorneys of record and/or to unrepresented parties.