

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

14TH JUDICIAL DISTRICT

DURHAM COUNTY
FILED
 MAY 20 2020
 AT 1:49
 BY [Signature]
 CLERK OF SUPERIOR COURT

DISTRICT COURT DIVISION

FILE # 20R145

ADMINISTRATIVE ORDER ADOPTING TEMPORARY LOCAL DOMESTIC RULE

WHEREAS, the Governor of North Carolina and the Chief Justice of the North Carolina Supreme Court have issued Orders for the courts to take appropriate measures to protect health and safety and minimize exposure to COVID-19; and

Whereas, it is necessary and appropriate that reasonable measures be taken to address certain critical issues pending in Domestic Court, the attached Rule 5 of the Local Family Court Rules is hereby temporarily adopted and shall apply to all temporary hearings where a request for scheduling is submitted between May 20, 2020 and July 31, 2020; and

Any temporary hearing that is already docketed pursuant to a Notice of Hearing that was issued prior to May 20, 2020 shall proceed in the courtroom as previously calendared and subject to previously adopted time limits. A temporary hearing that is already docketed can be converted to an affidavit hearing upon written request of either party. The request must be submitted to the Family Court Office, copied to all parties, at least 30 days prior to the scheduled court date although less notice may be acceptable if all sides and the assigned judge consent to convert the hearing to an Affidavit hearing; and

This temporary Rule 5 supersedes all previous versions of Rule 5 of the local Family Court Rules for the 14th Judicial District Court Division. This temporary Order for Rule 5 is subject to modification or extension by subsequent Administrative Order. All other local Domestic Rules remain in place as previously adopted.

SO ORDERED this the 20 day of May, 2020. [Signature]

Pat Evans

PAT EVANS

CHIEF DISTRICT COURT JUDGE

DURHAM COUNTY

RULE 5 TEMPORARY OR INTERIM HEARINGS

5.1 *Temporary Hearings by Affidavit.* Any party who requests temporary relief regarding custody, visitation, child support or post separation support can contact the Family Court Case Coordinator to schedule a temporary hearing that shall be conducted by affidavit. The Case Coordinator will issue a date for the Affidavit hearing set within 30-45 days, whenever possible, from the issuance of the notice. The moving party shall serve notice of this date on all parties along with a copy of this rule.

5.2 *Affidavits.* For hearings regarding temporary child support, the parties must comply with the exchange of income and insurance information outlined in Rule 10.2. For hearings regarding post separation support, the parties must comply with the mandatory use of the financial affidavit form and exchange of income information as outlined in Rule 10.3. In addition, each party may submit testimony affidavits that are made on the personal knowledge of the witness, that set forth facts that would be admissible in evidence and that show the witness is competent to testify to the matters stated in the affidavit. Any supporting documents or exhibits must be attached to an affidavit that establishes a proper foundation for admissibility pursuant to the rules of Evidence. The court will indicate in its ruling which attachments were considered or excluded from consideration.

5.3 *Affirmation.* Affidavits shall be notarized. If the Chief Justice's Emergency directive is still in place, the following affirmation may be substituted for a notarized signature:

I affirm, under the penalties for perjury, the foregoing representations are true.

Signed _____

5.4 *Filing of Affidavits.* Both parties shall file testimony affidavits and any attachments with the Clerk of Court as least 14 days prior to the scheduled hearing. Both parties shall file any rebuttal affidavits and any attachments with the Clerk of Court at least 7 days prior to the scheduled hearing. Rebuttal affidavits shall be limited to rebutting information included in the opposing party's testimony affidavit(s). Rebuttal affidavits must cite the specific portion of the testimony affidavit that is being rebutted.

5.5 *Service of Affidavits.* Testimony affidavits and any attachments shall be served on all other parties. Service may be by personal delivery, fax, or mail. Testimony affidavits and any attachments shall be served by email to any party that consents to be served by email. A Certificate of Service shall be filed with the Clerk of Court.

5.6 *Arguments.* Written arguments, including any objections to affidavits or attachments, shall be submitted to the Family Court Case Coordinator and served on all other parties at least 3 days prior to the scheduled hearing. Written arguments may be submitted and served by personal delivery, fax, mail or email. Written arguments shall **not** be filed with the Clerk of Court, but a Certificate of Service shall be filed.

5.7 *Failure to Comply.* The court, in its discretion, may decline consideration of any affidavit or argument that fails to comply with these rules or any other governing rules of procedure or evidence.

5.8 *Supplemental Affidavits.* The court, in its discretion, may request supplemental affidavits.

5.9 *Expedited Affidavit Hearing.* If both parties file and serve all affidavits and arguments earlier than the deadlines require, the parties may submit a written request to the Family Court Case Coordinator (via fax, email or personal delivery) requesting that the temporary hearing by affidavit be conducted earlier than the scheduled hearing date.

5.10 *Presence at the Hearing.* Parties and attorneys shall **not** be present at a temporary affidavit hearing. For temporary custody, parties may request a supplemental remote hearing for the limited purpose of presenting testimony and cross-examination of any party or subject child. All parties must consent in writing to the scheduling of a supplemental remote hearing. Remote hearings will be scheduled by the Family Court Case Coordinator after consultation with the presiding judge.

5.11 *Time Limits.* Interim distribution hearings shall be limited to one hour. Temporary custody hearings held remotely shall be limited to one hour. Each party shall be allocated one-half of the time to be used for direct examination of the party's witnesses, cross-examination of affidavits, opening and closing

statements. It is anticipated that most temporary hearings will conclude within these time limits because of the exchange of information between the parties before the hearing; however, this time limit may be extended in the discretion of the presiding Family Court Judge for good cause.