

STATE OF NORTH CAROLINA

COUNTIES OF CHEROKEE, CLAY,
GRAHAM, HAYWOOD, JACKSON,
MACON, AND SWAIN

IN THE GENERAL COURT OF

JUSTICE 43RD JUDICIAL DISTRICT
DISTRICT COURT DIVISION

Administrative order

RE: AMENDED ADDENDUM TO LOCAL RULES REGARDING MANDATORY CHILD CUSTODY/VISITATION MEDIATION FOR THE 43RD JUDICIAL DISTRICT

The 43rd Judicial District Custody and Visitation program was established pursuant to the North Carolina General Statutes 7A-494, 7A-495, and 50-13.1 in June, 2007, and the Rules regarding Custody and Visitation are amended as follows:

I. PURPOSE AND GOALS OF THE PROGRAM:

The goals of custody and visitation mediation are to reduce the stress and anxiety experienced by children in separation and divorce. The program furnishes an alternative for parties to settle custody and visitation disputes. A trained mediator assists the parties to reorganize the family, continue parenting their children despite separation, and

begins an educational process which allows parties to recognize and meet the needs of their children.

Mediation provides a structured, confidential, non-adversarial setting which will assist the parties in making informed choices regarding their minor children with the hope that such a cooperative resolution will alleviate the acrimony between the parties, reducing stress on both the parties and the child. A successful mediation will assist the parties in creating a written parenting plan and provide tools to resolve future conflict without recourse to the courts, thereby reducing the stress of continued litigation of custody and visitation issues.

II. REFERRAL TO MEDIATION

All actions filed after July 1, 2025 involving unresolved issues as to the custody or visitation of a minor child shall be referred to mediation on such issues prior to the trial of the matter, unless the Court waives said mediation for cause. These actions include an action for custody or visitation in which no order has been previously entered, motions to modify orders previously entered by the Court. This mandatory referral

procedure does not limit the right of the Court to enter temporary and ex parte orders under the applicable statutory provisions. Parties failing to comply with the mediation process may be subject to appropriate legal sanctions and the contempt powers of the Court.

III. PROCEDURES FOR REFERRAL TO MEDIATION

- A. Attorney or Filing Party Phase: Unless Custody Mediation has been waived by the court, any party filing a custody or visitation action, motions to modify, or any other claim must, contemporaneously with the filing of that action, file the Notice/Order for Child Custody Orientation and Mediation and send notice to all opposing parties.
- B. Third Party Actions. If any custody action includes a named party or parties that are not a biological or adoptive parent of the children or child at issue, the Court shall hold an initial pre-trial hearing to determine whether such party and/or parties have legal standing to pursue a claim of custody of the children or child at issue before the parties can participate in mediation. Upon referral of any such action to Custody Mediation, The Custody Mediator shall refer the case for

Pre-trial conference before the assigned District Court Judge for determination of legal standing before scheduling custody mediation in the case. If the relevant party or parties are determined to have standing, the Court shall refer the case to custody mediation in accordance with these rules.

- C. The Custody Mediator shall schedule appropriate mediation sessions when mediation orientation is complete. If one or more of the parties fails to attend the custody mediation orientation, the Mediator shall request that the assigned Judge sign an Order to Mediation. Parties failing to comply with this order may be subject to appropriate legal sanctions and the contempt powers of the Court.
- D. The parties may, in writing, jointly request an expedited mediation.
- E. Should counsel for the initiating party or the party acting pro se fail to provide the Order for Mediation, as required above, an Order for Mediation shall be issued. It shall be the responsibility of the Custody Mediator to track all custody/visitation cases subject to these rules and present to the District Court Judge assigned the Order to Mediate within 30 days of the responding parties

time to answer. Parties failing to comply with this order will be subject to appropriate legal sanctions and to the contempt powers of the Court.

- F. When responding to information requests for the domestic court calendar, counsel for parties or pro se litigants shall provide information to the assigned Judge regarding whether the mediation process has been completed. In the event the process has not been followed or completed, the Court will order the matter to mediation, continue the matter to allow mediation to be completed, or, when appropriate, waive mediation and set the matter for trial.

IV. WAIVER OF MEDIATION

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

B. Requests for waiver of mediation shall be made by written motion, (See AOC form AOC-CV-632). The motion shall be served on the opposing counsel or party. Opposing counsel or the party shall respond in writing within five (5) days. The Court will rule on the motion for waiver and any responses thereto or may conduct a hearing on the motion.

V. CHANGES IN STATUS

Counsel for the party or party who filed the original action, claim, or motion for custody or visitation shall immediately advise the Mediator of any changes in status of the pending case, including a signed consent order, voluntary dismissal, or waiver. Notice shall be given twenty-four (24) hours in advance of the pending orientation or scheduled mediation session when possible.

VI. THE MEDIATION PROCESS:

The Mediator should assist the parties in focusing on the needs of their child, recognizing and utilizing the family's strengths, and maintaining important relationships. The Mediator will aid the family in identifying options which are sound and workable, and promote the health, growth, and stability in the child's life, with the

stated goal of reducing conflict within the family to benefit both the parties and the child.

- A. Upon filing, both parties shall complete the necessary intake form and orientation as set forth by the mediator. The parties shall be advised that if they fail to either complete the intake form or complete orientation, an order to show cause may be issued and the non-appearing party could be found in contempt of court.
- B. The mediation process shall consist of no more than three sessions, each of which shall not exceed two hours in length. A party must complete, either virtually or in person, orientation and the first mediation session before deciding to withdraw from the process. The number of sessions may be extended by agreement of the parties with the permission of the Custody Mediator and/or the Chief District Court Judge or Assigned District Court Judge.
- C. **Neutral Stance of Mediator-** While a mediator is to be neutral in promoting an agreement between the parties, the mediator is to be aware of the best interests of the child or children involved in the case. During the mediation

process, the mediator is to help the parties avoid agreements which do not promote the best interests of the child or are so ambiguous as to be unenforceable by the Court.

D. **Authority of the Mediator-** The Mediator shall be in control at all times of the mediation process and the procedures to be followed in the mediation. Parties present in mediation sessions are to be those named in the action. As a general rule, attorneys will not be present during the mediation but may be present in adjoining areas to give clients advice in reaching an agreement. With the consent of all parties, the mediator may speak to the child in an effort to assist the parties to assess the needs and interests of the child. No mediation will be cancelled or continued because a party's attorney is not available.

E. **Location-** The mediation proceeding may occur either in person or by virtual means. If in person, the sessions shall be held in a private and safe location, preferably at the County Courthouse if possible.

F. **Confidentiality-** The mediation proceeding shall be confidential. Neither the mediator nor any party or other person involved in mediation sessions shall be

competent to testify as to communications made during or in the furtherance of such mediation sessions; provided, there is no privilege as to communications made in furtherance of a crime or fraud. An individual shall not, however, obtain thereby immunity from prosecution for criminal conduct or be excused from the reporting requirement of North Carolina General Statutes §7A-543 or §108A-102.

VII. PARENTING PLAN:

- A. A detailed and clearly written parenting agreement or parenting plan is the desired result of the mediation process. The parenting plan may include a designation of the party or parties having legal or physical custody, and what duties and responsibilities such designation includes. The plan should also include a complete schedule of the child's time with each party, including holidays, vacation time and special events. Arrangements may be made for special day observances such as birthdays. The needs of the child to maintain relationships with persons with whom the child has a substantial relationship may be addressed.

- B. At the conclusion of the mediation, the parties may enter into a full agreement, a partial agreement, a temporary agreement, or the issue may remain unresolved. If some but not all issues are resolved, the parties may enter into a partial agreement detailing the resolved issues and setting forth with specificity those that remain open to litigation.
- C. The mediator should help the parties reduce their agreement, whether full or partial, to writing and ensure that each party understands the written document. Before the parties sign the proposed agreement, the mediator shall either mail or email a copy of the proposed agreement to the parties and counsel and encourage the parties to have their attorneys review the agreement with them prior to the signing of the plan.
- D. When the Parenting Agreement is mailed to each party, it will include a signing deadline of no less than fourteen (14) days from the date of the mailing. Each party shall have at the opportunity to review the parenting agreement and consult with counsel. The parties shall sign the agreement in the presence of their attorneys, and the attorneys shall sign the agreement, indicating their

approval, prior to submitting to the mediator. If any party does not approve of the agreement as written, the matter will be noticed in for hearing. If the parties are not represented by counsel the parties shall follow instructions from the Mediator regarding signing the agreement.

- E. Once a Parenting Agreement is signed by a party, it shall be returned to the Child Custody Mediation Office and not filed with the Clerk's Office, even in cases where both parties have signed the same copy of the Parenting Agreement. Parenting Agreements must be entered into Odyssey with a Custody Mediation Parenting Agreement Code and not as a Proposed Order. Parenting Agreements will only be signed by the Chief District Court Judge when tasked to the Chief District Court Judge from the Custody Mediation Queue.
- F. If the parties or attorneys prepare and sign a consent judgment in lieu of the parenting agreement, they shall inform the Mediator immediately.

VIII. PLAN INCORPORATED INTO COURT ORDER:

Where an initial signed agreement is submitted to the Court, it shall be incorporated in a court order unless the Court finds good reason not to do so: (See AOC Form, AOC-CV-631, Order Approving Parenting Agreement). After both parties have signed the parenting agreement, the mediator shall tender it, and the Order Approving Parenting Agreement to either the Chief District Court Judge or the assigned District Court Judge for signature. When each order is signed or incorporated, the agreement is enforceable as any other court order. Even though designated "parenting agreement", or some similar name, the incorporated agreement shall be considered a custody order of child custody determination within the meaning of Chapter 50A of the North Carolina General Statutes. N.C.G.S. §14-320.1, N.C.G.S. §110-139, or other places where those terms appear.

IX. TERMINATION OF MEDIATION:

After the parties have attended at least the orientation and first mediation session, either or both the parties may decide not to participate further in the mediation process, and the mediator shall report to the Court that no agreement was reached.

Either party may move to have the mediation proceedings dismissed and the action heard in court due to the mediator's bias, undue familiarity with a party, or other prejudicial ground. Further, if the mediator determines that the case is not suitable for mediation due to power imbalance between the parties, the presence of child abuse or neglect, or other appropriate reason, the mediator may report to the court that the case is not resolved. (See AOC Form AOC-CV-914M, Order to Calendar Custody or Visitation Dispute).

X. RETURN TO MEDIATION:

The mediator shall explain to the parties that the needs of the child or children change over time and encourage the parties to return to mediation if they are unable to resolve any problems caused by those changing needs or other changes in circumstances. (See AOC Form, AOC-CV-634 Motion to Modify Custody).

4/24/2026 2:26:37 PM

This is the 24th day of April, 2026



Donna F. Forga
Chief District Court Judge 43rd Judicial District