

LOCAL RULES IMPLEMENTING MANDATORY CHILD CUSTODY/VISITATION MEDIATION

THIRTY-FIFTH JUDICIAL DISTRICT

The Judicial District 35 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 Custody and Visitation Mediation Program provides the services of a skilled mediator to the parties involved in a custody and/or visitation dispute. The goal of the program centers on the reduction of stress and anxiety experiences by children during separation and divorce by furnishing an alternative way for the parties to resolve contested custody and/or visitation issues.

The mediator assists with communication as the parties reorganize the family and plan to continue parenting their children despite 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:

- 1] reduce any acrimony that exists between the parties regarding the dispute of custody or visitation,
- 2] develop custody and visitation agreements that are in the child's best interest;
- 3] minimize the stress and anxiety experiences by the parties, especially the child;
- 4] reduce the litigation of custody and visitation disputes.

II. Referral to Mediation

All actions involving unresolved or temporary issues for custody and visitation of a minor child shall be ordered to mediation on such issues either prior to hearing or after a temporary order has been issued by the court, unless the Chief Judge waives mediation.

1. Issues that arise in motions for modifications as well as in other pleadings shall be set for mediation unless mediation is waived **only by the Chief Judge**.
2. In motions for contempt, the Chief Judge may 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 within 7 business days of the

referral. Parties are not required to attend group orientation before expedited mediation.)

III. Procedures for Referral to Mediation

A. Step one – Calendar for Group Orientation

Unless custody mediation has been waived by the Chief Judge (see item IV) 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 the parties, and the names of all attorneys representing any parties in the case.

B. Step Two – Noticing All Parties to Attend Group Orientation

The party scheduling the Custody Mediation Orientation date is responsible for noticing all opposing parties. All parties should be given 10 days notice prior to the scheduled group orientation, and that the filing party provides the Clerk's Office with a copy of the notice. A master copy of a suitable mediation orientation notice is available through the Mediation Office or the Office of the District Court Judges. Each law office should generate their own stock of notices from the master copy provided.

IV. Waiver of Mediation

On its own motion, or that of either party, the Chief Judge only may waive the setting of a contested custody or visitation matter (including modification or contempt motions) for mediation 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 domestic violence, abuse, or neglect of a minor child, allegations of alcoholism, drug abuse, spousal abuse, or allegations or severe psychological, psychiatric, or emotional problems.

Waivers of mediation will be made to and approved only by the Chief Judge.

The moving attorney may approach the Chief Judge only after giving notice to opposing counsel.

Only the Chief Judge shall rule on the motions for exemption. The motion for exemption may be made at any time prior to the scheduled mediation orientation.

Where the parties reside more than 75 miles from the court, such distance can be considered good cause at the discretion of the Chief Judge. If the party residing outside the area is amenable, mediation may still take place. **NOTE:** The mediator may be able to arrange an orientation session closer to home for parents who reside more than 75 miles from our courthouses, or expedited mediation may be arranged, if needed.

A. Notice to Mediation Office of Exemption, Settlement or Dismissal

The custody mediation office will be notified, by way of a copy of the signed agreement, of any change in the status of a pending case including: a signed consent order, voluntary dismissal, or exception. The Custody Mediation Office will receive a copy at the same time that the order is entered with the Clerk of Court.

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 exempted by judicial order. Except for oral depositions of parties, discovery may proceed regarding child support.

V. The Mediation Process

All parties are mandated to attend the group orientation and at least one private session before withdrawing from the process. The required private mediation session must occur within one month of group orientation, if the mediation program has mediation appointments available.

A. Orientation

Orientations will be scheduled by the mediator in the local or surrounding 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. Once parties have attended the group orientation they do not need to return for orientation again—even if their case requires a return to mediation years later.

(All resident district court judges strongly recommend that attorneys who perform domestic work in our judicial district attend one of the group orientation sessions within 90 days of their start in domestic law practice in the 24th Judicial District.)

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

B. Scheduling of First Private Mediation Session

The parties involved generally schedule their private mediation session at the group orientation.

1. If consented to by both parties (or their counsel) a request may be made for expedited mediation which will waive the normal waiting period.
2. 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 facilitates 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, the need to maintain a continuity of relationship and stability in the child's life, and the options available to the parties that would 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.

D. Outcomes

As a result of mediation, the parties may enter into a full agreement, a partial agreement, or remain unresolved. The full agreement records all issues surrounding custody and visitation that have been addressed and agreed to. The partial agreement will state those issues that have been resolved and those that still remain open to litigation. 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 mediation case that is 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 Mediation Office. Any Case that 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 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 the mediation was not successful. The Court will not inquire of the parties or the mediator as to the reasons for the success or failure of the mediation.

G. Review of Agreement with Counsel & The Signing of Agreements

Parents or custodians have approximately 10 business days after the receipt of the agreement to consider the agreement before signing. A copy of any parenting agreement will be sent to each parent and attorney for review. *The mediator 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. A copy of any signed agreements will be file stamped and sent to each parent and attorney. Parents may, if they wish, conduct the signings through their attorneys. **[The moving attorney is required to send a copy of any final custody order, exemption or dismissal to the mediation office.]**

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

[Signing Agreements: Parenting Agreements are to be signed at the mediation office. If an out-of-town party would like the option of mailing in their signed parenting agreement, they will need to have their signature properly notarized.]

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 50A of the General Statutes G.S. 14-320.1, G.S. 110-391.1 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; often they agree to this step in their parenting agreement.

J. Who Attends Mediation

Parties present in mediation are generally only those named in the suit. Attorneys and other interested parties may be present at the private mediation sessions. The mediator will be discussing mediation with both parties and both attorneys to determine the preference of the parties. It is recommended that anyone attending mediation first attend a group orientation.

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."

L. Attorney Orientation

It is the expectation of the Chief Judge that attorneys who are involved in domestic practice attend at least one 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.

This the _____ day of _____, 2008.

ALEXANDER LYERLY
CHIEF DISTRICT COURT JUDGE

These rules are effective in the 35th District as of _____, 2008.