

STATE OF NORTH CAROLINA
THIRTY-FIFTH JUDICIAL DISTRICT


IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

**ORDER AMENDING AND ADOPTING LOCAL RULES FOR
DISTRICT CIVIL COURT**

The attached Local Rules for District Court and forms are hereby adopted as amended herein effective January 1, 2014. The rules shall apply to all cases filed on or after that date. The rules shall further apply to all pending cases relevant to the case status as of the effective date.

These Rules supersede all previous Rules for Juvenile and Domestic cases in the District Court Division of the Twenty-Fourth Judicial District.

It is so ORDERED this the 1st day of November, 2013.



Hon. Alexander Lyerly
Chief District Court Judge

RULE 1: GENERAL

1.1 Purpose. The purpose of these Rules is to provide for the fair, just, and timely resolution of legal problems affecting families and children in this district. These Rules are intended to work in conjunction and compliance with the North Carolina Rules of Civil Procedure, North Carolina Rules of Evidence, and General Rules of Practice for Superior and District Courts.

1.2 Party without an attorney must comply. Parties and attorneys shall comply with these Rules. Although a party is not required to have an attorney, any party who is not represented by an attorney must comply with these Rules. A party representing himself or herself may be referred to in these rules as a *pro se* party.

1.3 Application. It is recognized that these Rules are not complete in every detail and will not cover every situation that may arise. In the event that these Rules fail to address a specific matter, they should be construed in such a manner as to avoid unnecessary delay and to promote the ends of justice. To that end when faced with a scenario not specifically addressed herein, the presiding judge shall exercise his or her discretion in implementing the spirit and intent of these Rules.

1.4 Forms. Local forms are required by these Rules and counsel or pro se parties shall use the forms provided.

1.5 Citation. These Rules and all amendments hereafter shall be filed with the Clerks of Superior Court of the Judicial District and the Administrative Office of the Courts. These Rules may be cited accordingly as **Rules for District Court 24 (RDC24)**.

1.6 Availability of Rules. The Trial Court Coordinator will maintain a supply of copies of these Rules and associated forms to be made available to attorneys and the public upon request. These Rules will be published on the internet at: <http://www.nccourts.org> at the "Local Rules/Forms" link.

RULE 2: GENERAL CALENDARING RULES (Applicable to ALL Civil Filings)

2.1 Case Tracking. The Trial Court Coordinator shall establish and maintain a case tracking system pursuant to Rule 2(c), General Rules of Practice for Superior and District Courts and in accordance with these Rules.

2.2 Status or Pretrial Conferences Required. Except for show cause hearings, motions for temporary or emergency relief, attorney fees, and uncontested divorces, all other domestic matters shall be set for a status and/or pretrial conference as required in the Rules or as set by the presiding judge or Trial Court Coordinator.

2.3 Notice is Responsibility of Moving Party. It is the responsibility of the moving party to give notice to the opposing party or counsel immediately of the date, time, and place of the event as set by the Court. The notification must be in accordance with Rule 4 and 5 of

the Rules of Civil Procedure on *Notice of Hearing Form (FORM #2)*. The moving party shall file all notices with the Clerk's office for inclusion in the case file.

2.4 Upcoming Court Events. In all actions with pending issues, there shall be scheduled a next court date for the upcoming court event that is appropriate in the case: initial scheduling conference, status or interim pretrial conference, pretrial hearing, final pretrial conference, or trial. The TCC will review and monitor pending actions. In any case without a properly scheduled court event, the TCC shall schedule the case for a status conference and/or other appropriate event to ensure that the Court addresses matters in a timely manner. Scheduling Orders are encouraged; however, trial dates are confirmed only when set by the assigned Judge at the final pretrial conference. To add a case for trial to an upcoming trial docket that has already been finalized, the requesting attorney or party must get the consent of all parties **and the presiding judge**.

2.5 Required Court Appearances. Parties and/or attorneys shall be present and ready to proceed as scheduled when a case is noticed for a conference, pretrial hearing, or trial (See Rule 2.11 regarding continuances and conflicts). If the attorneys and/or parties are not present and ready to proceed and have failed to notify the court of an emergency or conflict which would preclude the attorney or party from being present, the Court may impose sanctions for failure to comply with these Rules. See Rule 8. Any case listed on a published calendar is subject to dismissal at the end of the civil term for failure to prosecute if, at the time it is called for hearing, the parties are not present or ready to proceed. All cases calendared shall be ready to be heard and may be called at any time during the session.

2.6 Settlement of Contested Issues. Parties are encouraged to engage in settlement discussions at every opportunity. The Court recognizes the importance to the family of bringing closure to these disputes, of minimizing misunderstandings that frequently occur when resolutions are not yet committed to writing, and of the Court's responsibility to assist the parties in resolving these disputes. **Unless agreements have been reduced to writing, signed by the parties, their attorneys, and the assigned Judge prior to the time of the court date, parties and counsel are required to appear as scheduled. If a resolution has been reached but not drawn up by the time of the court date, the parties and their counsel are required to appear as scheduled and either execute a Memorandum of Judgment Order or read the terms of the agreement into record.** The Court will then set another court date with the expectation that the order will be prepared, signed and filed with the Court prior to or at the proceeding.

2.7 Motions for Ex Parte Orders. Motions for *Ex Parte* Orders shall be submitted only for such emergency circumstances as are allowed by the Rules of Civil Procedure, statute or other law.

- A. Motions for *Ex Parte* Orders shall be verified and must be delivered in person to a judge by the attorney or pro se litigant requesting the Ex Parte Order.
- B. If an opposing party is represented, reasonable steps shall be taken to contact counsel for the opposing party before an *Ex Parte* motion is submitted. When seeking an *Ex Parte* ruling, parties shall inform the court of the identity of any opposing counsel and the motion itself shall contain opposing counsel's name and contact information for use by the court. *Ex Parte* Orders shall be in writing and shall include the date, time and place such order is scheduled for review. All return hearings shall be scheduled within time limits established by statute.
- C. The moving party shall affirmatively advise the judge whether the motion has previously been submitted to, or denied by, another judge.

2.8 Calendar Request. An attorney of record may request that a case be placed on a non-jury trial calendar by filing a *Request For Setting (FORM #3 -#4)* with the Clerk of Superior Court and delivering a copy to the Trial Court Coordinator and to opposing counsel or parties of record not later than five (5) weeks before the session begins. No hearing date shall be assigned until the pleading containing the requested relief is filed with the Clerk of Superior Court.

2.9 Peremptory Hearings. Requests for a peremptory setting for matters involving persons who must travel long distances or have numerous expert witnesses or other extraordinary reasons must be made to the Trial Court Coordinator. The request shall be made in writing using the *Peremptory Request Form (Form #7)* which shall be delivered to the Trial Court Coordinator with a simultaneous copy sent or delivered to the opposing party or counsel. The opposing party or counsel shall file a response within five (5) days if they oppose the request for peremptory setting. The Trial Court Coordinator shall hold the request for peremptory setting for the aforementioned five (5) days or until receiving a response from the opposing party or counsel in writing. The Trial Court Coordinator shall then place the request before the Judge assigned to the trial session who shall render his or her decision. The Judge's decision shall be transmitted to the moving party who shall then notify the opposing party or counsel. A peremptory setting shall be granted only for good and compelling reason. If a peremptory setting is granted, the matter cannot be continued absent a showing of extraordinary cause.

2.10 Calendars. All District Civil Calendars will be published through the internet web site www.nccourts.org. The availability of calendars published through these outlets shall constitute official notice to local and out of district attorneys, as well as to *pro se* parties who fail to provide a current and valid mailing address to the Clerk of Superior Court. **If you are shown as the attorney of record for a client, but no longer represent said**

client, you have five (5) business days from the time the calendar is posted to notify the TCC. Otherwise you will be responsible for sending notice to that party.

2.11 Calendar Call/Trial Priority List. Due to the higher case volume in Watauga County, a calendar call will be scheduled approximately two weeks prior to the civil trial session. The calendar call date shall appear on the front page heading on the published trial calendar. At the calendar call, all cases appearing on the published trial calendar together with any “add-on” cases placed on the calendar in compliance with these Rules will be reviewed for scheduling purposes only. The Court will consider any scheduling requests and will then set a trial priority list for the upcoming trial term. A written trial priority list will then be prepared and filed with the Clerk of Superior Court. All cases appearing on the published trial calendar are subject to being called and heard during the trial term. The priority list sets forth the order in which cases will be called by the Court for hearing and an estimate as to approximate dates and times during the multi-day term. As cases resolve either by hearing, continuance or settlement, the Court will adjust the trial priority list accordingly to ensure maximum utilization of available court time. Therefore, all parties, including pro se parties, are required to remain in close contact with the Clerk of Superior Court throughout the ongoing civil term to monitor the calendar’s progress to ensure their presence in court when their case is reached and called.

Attendance. Pro se parties are noticed to be present for Calendar Call. Attorneys are required to appear in person or to send a paralegal or may opt to timely forward their availability by proper *Availability Form (Form 11 or as required by the individual Judge)*. The information submitted shall include the case caption, file number, estimated length of hearing/trial, the dates the attorney is available and the reason why the attorney is not available on the other dates of the term. Absent emergency, the Availability Form shall be received by delivery, FAX or email to the Watauga County Clerk of Superior Court no later than 3:00 p.m. the day prior to Calendar Call or will not be considered at Calendar Call.

Avery, Mitchell, Yancey and Madison Priority List. Due to scheduling limitations, it is not presently possible to hold a separate calendar call prior to each civil term. However, the Chief District Court Judge may schedule a calendar call for any civil term when caseloads warrant. In the absence of a separate calendar call, the judge presiding over a civil term shall, after reviewing the present trial calendar and consulting with both the Clerk of Superior Court and the Trial Court Coordinator regarding the age of pending cases, announce a trial priority list for the next scheduled civil term.

In all cases, the Court has sole authority for setting and modifying trial priority lists. Counsel or pro se parties may not modify the schedule, even with the consent of the opposing party, without prior notice and approval by the presiding judge.

2.12 Dismissal for Lack of Prosecution. Cases that have not had any pleadings filed or any action otherwise taken for one year may be dismissed without prejudice by the presiding or Chief District Judge.

RULE 3: DOMESTIC CASE FILINGS

3.1 Filing. *An AOC Cover Sheet (Form #1)* shall accompany the filing with the Clerk of Superior Court of any complaint, motion, answer, response, etc., pursuant to Rule 5 of the General Rules of Practice, except for the following cases: involuntary commitments, domestic violence, IV-D, U.R.E.S.A, U.I.F.S.A., and Clerk's child support cases. The Clerk of Superior Court shall provide a case number at the time of an initial filing and place the number upon the summons. All subsequent pleadings and papers filed with the Clerk and all subsequent communications to opposing counsel or parties or court personnel shall contain the proper case number.

Immediately upon filing of any pleading, the filing attorney shall fax or mail a copy of the *AOC Cover Sheet (Form #1)* to the Trial Court Coordinator (Fax # 828-737-6713_ or mailing address: PO Box 1130, Newland, NC 28657). In the case of a pro se party, the Clerk of Superior Court shall fax or mail the *AOC Cover Sheet (Form #1)*.

The *AOC Cover Sheet (Form #1)* requires each party and counsel of record to list accurate contact information including a valid mailing address. If, during the pendency of the action, the contact information changes, the party is required to immediately contact the Clerk of Superior Court by way of paper writing signed and filed of record setting forth the new contact information including valid mailing address. **Pro se parties are advised that all notices, motions, and trial calendars will be mailed by the Clerk of Superior Court to the mailing address provided and on record.** A parties failure to promptly notify the Clerk of Superior Court of any address change shall not constitute excusable neglect or act to invalidate otherwise proper service.

3.2 Scheduling by Trial Court Coordinator. Upon receipt of *AOC Cover Sheet (Form #1)* setting forth domestic case issues, the Trial Court Coordinator shall schedule the case for the next appropriate court event based upon the issues raised in the pleadings and required under the Rules.

RULE 4: SPECIFIC RULES GOVERNING DOMESTIC CASES

4.1 Temporary Hearings. Temporary hearings shall include hearings on temporary child custody, temporary child support, post-separation support, ex parte returns on non-domestic violence cases, and interim partial distributions under N.C.G.S. 50-20(i1). Temporary hearings shall be limited to one-hour and thirty minutes and each party shall

be allocated one-half of that time to be used for direct examination of the party's witnesses, cross-examination of the opposing party's witnesses, examination of affidavits, and opening and closing statements. The time limitation is NOT extended by the presence of multiple temporary issues heard in one hearing. **It is anticipated that as to child support and PSS, the majority of the evidence will be presented by affidavits.** All affidavits shall be filed by the propounding party and served upon the opposing party at least three (3) business days prior to the scheduled hearing. Rebuttal affidavits, that is affidavits which are filed in response to previous affidavits, shall be served upon the opposing party no later than twenty-four (24) hours before the scheduled temporary matter hearing.

The Court may, in its discretion, postpone or waive these filing requirements. Pretrial conferences are not required prior to temporary matter hearings unless ordered by the Judge. Granted Extensions of Time to File will not automatically delay a temporary hearing.

4.2 Custody/Visitation. All child custody and visitation issues, both for initial establishment and modification, shall proceed through Child Custody/Visitation Mediation. The parties shall fully comply with mediation in accordance with Local Rules Implementing Mandatory Child Custody Visitation Mediation as set forth by May 1, 2008 Order. Upon request of the party filing the complaint, the Trial Court Coordinator will set a temporary hearing date within thirty (30) days of the filing. The moving party shall serve upon the opposing party or counsel the pleading and the *Notice of Hearing (Form #2)* setting the orientation date and the temporary hearing date, if applicable. As used herein, "Custody" includes custody, visitation, and parenting issues. A date for Custody Mediation Orientation will be assigned in all cases unless waived as allowed by applicable rule.

4.3 Temporary and Permanent Child Support. The party filing a complaint or motion seeking the establishment of child support or the modification of an existing order must attach a completed *Financial Affidavit (Form #8)* to the complaint or motion at filing. The Trial Court Coordinator shall set all child support cases for a temporary hearing within thirty (30) days after filing to ensure compliance with North Carolina regulations which dictate that a temporary child support order shall be entered in each new child support case within sixty (60) days of service of the request. The hearing for permanent child support will be set within 240 days of filing.

The moving party shall serve upon the opposing party or counsel the pleading and their completed Financial Affidavit, the Notice of Hearing setting the temporary hearing date (*Form #2*), a blank *Financial Affidavit (Form #4)*, and a blank *Employer Wage Affidavit (Form #9)*. At the temporary hearing, both parties must file with the Court and serve on the opposing party or counsel the completed Employer Wage Affidavit. The responding party or counsel must also file and serve the completed Financial Affidavit. If at the temporary hearing both parties and the presiding Judge agree, the parties may proceed with a hearing for the establishment of a permanent order of child support. It is the Court's policy to establish temporary child support even when the custody mediation is ongoing and custody has yet to be resolved.

4.4 Post-separation Support & Alimony. All pleadings for post-separation support and alimony must have attached a completed *Financial Affidavit (Form #8)*. The Trial Court Coordinator shall set all post-separation support issues for a hearing within 30 days of the filing of the pleading. Alimony will be set for a pretrial conference if and when it remains an open issue after any equitable distribution claim is resolved. If equitable distribution is not an issue in the case, then a pretrial conference will be set greater than 90 days and no less than 120 days from the filing of the pleading for alimony. In both instances, the moving party shall serve upon the opposing party or counsel the pleading and his/her completed Financial Affidavit, the *Notice of Hearing (Form #2)* setting the hearing date, a blank *Financial Affidavit (Form #8)*, and a blank *Employer Wage Affidavit (Form #9)*.

At the hearing, both parties must file with the Court and serve on the opposing party or counsel the completed *Employer Wage Affidavit (Form #9)*. Five (5) days before the hearing, the responding party or counsel must also file and serve the completed Financial Affidavit. If at the post-separation support hearing, both parties and the presiding Judge agree, the parties may proceed with a hearing for the establishment of an order for alimony.

4.5 Equitable Distribution. Any pleading stating an initial claim for equitable distribution shall include a *Notice of Hearing (Form #_2_)* setting a court date for an initial status conference to occur approximately 120 days from the date of filing.

It is the responsibility of the moving party to serve the opposing party or counsel for the opposing party with the following:

- (1) the pleading asserting equitable distribution; and
- (2) the Notice of Hearing setting the initial status conference date (*Form #2*); and
- (3) a blank *Equitable Distribution Inventory Affidavit (Form #10)*.

In the event a pleading is filed seeking an interim distribution pursuant to N.C.G.S. 50.20(i1), the party shall specifically identify the property they wish to have distributed. The Trial Court Coordinator will schedule an interim distribution hearing before the assigned judge within 30 days of the date of filing or date of the request. It is the responsibility of the party seeking the interim distribution to serve the opposing party or counsel with a Notice of Hearing for the interim distribution (*Form #2*) and a copy of the pleading seeking an interim distribution, including the specific property sought to be distributed.

Initial Status Conference. The purpose of the initial status conference is to ensure that the case is proceeding toward resolution in a timely and orderly fashion. At the initial status conference, the presiding Judge will confirm that each party has completed and filed his or her Equitable Distribution Inventory Affidavit (EDIA). **These rules require that both parties will file the EDIA prior to or at the initial status conference.** There is no requirement that the plaintiff's EDIA be filed prior to the defendant's filing of his or her EDIA or vice versa. Nothing in the rules prevents a party from amending the EDIA prior to the final pretrial conference with the assigned judge. Failure to comply with the filing requirement for the EDIAs may subject the non-complying

party to a motion for sanctions to be imposed (Sanctions examples include requiring the non-complying party to pay the other party's attorney fees for preparation and attending the conference.). Failing to comply with the EDIA filing requirements delays the movement of the case through court and wastes the time of the complying party and his/her attorney. At the initial status conference the presiding judge will issue an Order of Reference designating the method of ADR to be employed, the Neutral who will conduct the ADR, and the deadline for the completion of the ADR process. The ADR process (mediation) is to be scheduled for completion within 70 days of the initial status conference.

(a) The Trial Court Coordinator will set the date for a final pretrial conference upon receipt of the Report of Mediator indicating an impasse or partial agreement in Family Financial Mediation. This conference shall be set to occur within 240 days from filing of the complaint. At the final pretrial conference, the Judge will assign the final pretrial order and a due date and set the trial date.

(b) If the Report of Mediator indicates an agreement on all issues, then the equitable distribution issue will be placed on the next civil calendar as an order due.

Attendance at the initial status conference is mandatory for all counsel and pro se parties. It will be up to the discretion of counsel whether or not their clients are required to attend the initial status conference. However, if the parties or counsel wish to avoid the initial status conference they may do so, without penalty, **only** if they have completed and submitted the following to the Trial Court Coordinator in advance of the date of the status conference:

1. Each party or counsel must have completed, filed with the Clerk of Superior Court, and served the opposing party with the Equitable Distribution Inventory Affidavit;
2. The parties or counsel must have designated a mediator to conduct the ADR in writing by filing with the Clerk Form # AOC CV-825 and providing a copy to the Trial Court Coordinator (if agreement is not reached, the Trial Court Coordinator will designate the mediator) ; and
3. A Consent Order setting forth a discovery schedule, if needed.

Upon submission of the consent proposal, a judge will review the proposed dates and execute the Order of Reference if accepted. If the judge declines to accept the proposal, the initial status conference shall be rescheduled for the next available civil term and the parties shall appear and proceed as set out above.

Failure to attend the initial status conference or mediation session or failure to complete, file, and exchange ED Inventory Affidavits may result in a show cause hearing before the Court. At the hearing the Judge, in his or her discretion, may impose sanctions as permitted by law, including dismissal, against the non-complying party or parties. Nothing contained herein prevents a party, either pro se or through counsel, from filing a written motion seeking an extension of any time limit set forth in these Rules. However, the moving party must show good cause and seek the extension **prior to** expiration of any time limit contained within these Rules or as set by statute.

Equitable Distribution Affidavit. The party initially praying for ED shall prepare and serve upon the opposing party an Equitable Distribution Inventory Affidavit (EDIA) not later than 90 days after the filing date to comply with the statutory mandate. The opposing party shall then file an EDIA within 30 days thereafter. The inventory affidavit shall list all of the property known by the party to have existed at the date of separation and owned by the party or parties. The inventory affidavit is intended to be a beginning point in the discovery of and development of the parties' net marital estate and separate estates. The inventory affidavit shall be subject to amendment and shall not be binding at trial as to completeness or value. Nonetheless, it is expected by the Court that the parties will make a concerted effort to file a complete and accurate affidavit.

If the defendant in an equitable distribution action obtains from the Court an extension of time to file the answer, the extension of time does **not** extend the time for the setting of the status conference. The conference still will be set within the time standard of 120 days from the filing of the claim for equitable distribution.

Amended Equitable Distribution Affidavit. No later than ten (10) days prior to the Equitable Distribution Final Pretrial Conference, each party shall file and serve upon opposing counsel or party any amendment to the Equitable Distribution Affidavits. These must be typewritten. The affidavit is binding on the party at trial unless an amendment is allowed by the Judge.

Sanctions. Failure to serve the Equitable Distribution Inventory Affidavit or any amendment thereto in the timeframe outlined above may result in the responsible party's proffered testimony (either written or oral) not being allowed into evidence by the Court. This failure to observe timeframes may also result in the imposition of sanctions as provided by Rule 37 of the North Carolina Rules of Civil Procedure. The Court may extend the time limits in this subsection for good cause shown, but only if the motion to extend is filed **prior to** expiration of any time limit contained within these Rules or as set by statute.

Reference. In any equitable distribution claim, the Court may, in its discretion, and pursuant to Rule 53 and Rule 16(a)(5) of the North Carolina Rules of Civil Procedure, order a reference before proceeding further, or before entering final judgment. The Court may provide for the apportionment of the costs of said references, filing deadlines, and scope as it deems to be in the furtherance of the disposition of the claim.

Final Pretrial Conference. The Court shall set a final pretrial conference prior to trial of any ED claim. All parties and counsel of record are required to be present at the final pretrial conference. The parties' presence is necessary to enable a thorough review of proposed stipulations and settlement options. The purpose of the final pretrial conference is to narrow the contested issues for trial, to determine the need for reference, to seriously explore the prospects of settlement of the case, to finalize proposed witness lists, to determine what facts can be stipulated and agreed upon by the parties, to develop lists of stipulated exhibits, and to agree upon a final pretrial order. At a pretrial conference, the Court will address any requests for additional discovery and set a date for trial of the matter or such additional pretrial conferences as are necessary. The presiding Judge will order a final pretrial order to be

completed and submitted by a certain date or within ten days following the final pretrial conference. Failure of the moving party to complete the order or failure of the opposing party to cooperate with providing the appropriate information/documents to complete the order may result in the imposition of sanctions. **No ED trial will commence without the filing of a completed and filed final pretrial order.**

Rule 5: MANDATORY USE OF FINANCIAL AFFIDAVITS

5.1 Application. This rule shall apply to support cases involving the establishment or modification of child support, post-separation support and/or alimony. As used in this rule, the term “support” means all of the actions referenced in the preceding sentence.

5.2 Financial Affidavits. Each party who seeks support or from whom support is sought shall file and serve upon the other party a completed *Financial Affidavit (Form #8)*. The moving party shall file and serve his or her Financial Affidavit, along with the pleading seeking support. **The moving party also shall serve a blank Financial Affidavit upon the party from whom support is sought.** The responding party shall file and serve the Financial Affidavit and his or her responsive pleading, if any, no later than ten (10) business days prior to the date and time of any hearing or pretrial conference on the other party’s motion. The Court may, in its discretion, postpone or waive these filing requirements.

5.3 Employer Wage Affidavits. Each party shall submit to his/her employer(s) an *Employer Wage Affidavit (Form #9)* for completion. Each party shall file a completed Employer Wage Affidavit and serve a copy on the other party no later than five (5) business days prior to the first hearing or conference on the pending request for support or modification thereof. Any original or certified copy of affidavit by the employer which is delivered under the provisions of this rule, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication.

RULE 6: CONTINUANCE REQUESTS

6.1 General Rule. Domestic cases should be addressed at the earliest opportunity, including the first pretrial conference setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that will delay the resolution of the contested issues beyond the established time standards shall only be granted for extraordinary cause. Because the time standard for hearing temporary issues and entering orders is brief, it is expected that hearings on temporary issues shall proceed as scheduled at the first setting as these orders are temporary and therefore non-prejudicial. Extensions of time will not prevent a temporary issue from being heard and a temporary order entered.

6.2 Conflicts. The various levels of Court should work together to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts. Attorneys shall notify the Court and opposing counsel of any other Court conflict(s) as they become known and shall communicate with other Judges to resolve such conflicts. In resolving Court conflicts, juvenile cases shall take precedence over all other matters.

6.3 Motions. All applications for continuance shall be by written motion (Form #5) and shall be filed with the Clerk of Superior Court. However, oral motions may be allowed when the reason for the continuance did not become known until immediately preceding the start of Court.

6.4 Notification of the Request. All parties must be notified of a motion to continue. A copy of the motion to continue must be distributed to all counsel of record and/or unrepresented parties and the TCC at the same time the motion is filed with the Clerk of Superior Court. In addition to the service requirements set out in the statute, distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail or hand delivery.

6.5 Input from All Parties. All parties should have an opportunity to be heard on a motion to continue. If the request is received within five (5) business days of the hearing date, and there is no input regarding the opposing party's or counsel's position, the Court may be unable to address the request prior to the hearing and will address the request at that time.

6.6 Responsibility of the Party Requesting the Continuance. The burden is on the party requesting the continuance to contact the opposing counsel or party prior to submitting the motion to the Clerk of Superior Court, and include the opposing party's/counsel's position on the request as:

- Joining in the request;
- Consenting to or not objecting to the request; or
- Opposing the request.

If the opposing party cannot be reached or fails to respond, that should be noted on the request as well as a statement on the efforts made and why contact was not possible.

6.7 Responsibility of Party Opposing the Request for Continuance. A party or counsel opposing the request has the burden of submitting a written response to the Clerk of Superior Court immediately upon receipt of the continuance.

6.8 Factors to be Considered. Factors to be considered by the Court when deciding whether to grant or deny a motion for continuance should include:

- The effect on children and spouses if the issue is continued and not resolved;
- Whether there is in effect a temporary order dealing with the issue that is the subject of a continuance request;
- The impact of a continuance on the safety of the parties or any other persons;
- Whether the issue has been identified statutorily as an issue which should be addressed expeditiously, i.e., child support, post-separation support;

- The age of the case or motion;
- The status of the trial calendar for the sessions;
- The number of previous continuances OR the number, moving party, and grounds for previous continuances;
- The extent to which counsel had input into the scheduling of the trial date;
- The due diligence of counsel in promptly making a motion for continuance as soon as practicable;
- Whether the reason for continuance is a short-lived event which would resolve prior to the scheduled court date;
- Whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- The period of delay caused by the continuance request;
- The position of opposing counsel or unrepresented parties;
- Whether the parties themselves consent to the continuance;
- Present or future inconvenience or unavailability of witnesses/parties, the attorneys or the witnesses if the case is continued; and
- Any other factor that promotes the fair administration of justice.

Citing of any of the above or other reasons for requesting a continuance is not a guarantee that the continuance will be granted. The assigned Judge will take into account the individual circumstances, the number of continuances previously granted for the same issue or case, and the age of the case relevant to other pending cases.

RULE 7: DELINQUENT ORDERS OR JUDGMENTS

7.1 Orders and Judgments. Orders and judgments shall be prepared by the prevailing party and submitted to the Judge by the date assigned by the Court. The party preparing the proposed judgment or order shall provide a copy of the proposed document to the opposing party ten (10) days prior to submitting the document to the Judge.

E-mail is an acceptable and preferred format for submitting orders and judgments and may be submitted to either the assigned Judge and/or the Trial Court Coordinator.

7.2 Delinquent Orders and Judgments. Cases identified as being delinquent pursuant to the rule may be dismissed at the discretion of the Chief District Court Judge or assigned Judge, or sanctions or penalties may be imposed as deemed appropriate and as allowed by law.

RULE 8: SANCTIONS

8.1 Sanctions. Failure to comply with any section of these rules shall subject the parties, and/or their counsel to sanctions allowed by law and deemed appropriate at the discretion of the presiding Judge including but not limited to: dismissal of any or part of any claim for relief or pleadings, disallowance of evidence and/or testimony, a fine, payment of costs or the opposing party's reasonable legal fee. Any attorney or pro se party may file a motion for sanctions or a Judge invoke sanctions upon his/her own motion.

RULE 9: MANAGING PENDING ISSUES AND CLOSING CASES

9.1 Attorneys who prepare proposed orders should include as a final provision in the order or judgments a statement that the order or judgment either resolves all issues or identify those issues, which remain to be heard in the case.

9.2 In domestic matters, when a judgment or order is entered which renders moot issues not addressed in the order, the Clerk shall close the moot issues administratively upon being informed of the judgment or order resolving the main issue. Therefore, the Clerk shall administratively enter as closed and remove from the pending docket the following issues, which are moot:

- (1) The entry of a final Equitable Distribution Order shall close any request for an Interim Distribution;
- (2) The entry of an Alimony Order shall close any request for Post-separation Support;
- (3) The entry of a Divorce Judgment shall close a request for Divorce from Bed and Board, whether the Divorce is entered in the main action or in a collateral action between the parties. To complete the record, the Clerk may place a certified copy of the Divorce Judgment in the case in which the Divorce from Bed and Board is pending if the Divorce was granted in separate action;
- (4) A final Custody Order shall close any request for Temporary Custody or Visitation; Orders or Judgments resolving all other issues shall close any request for such other relief as may be appropriate or similar requests for unspecified additional relief.