



LOCAL RULES

&

PROCEDURES

for the

SEVENTH JUDICIAL DISTRICT

DISTRICT COURT DIVISION

WILSON \* NASH \* EDGEcombe

Updated July 1, 2021



*State of North Carolina*  
*General Court of Justice*  
*7th Judicial District*  
*Edgecombe, Nash and Wilson Counties*

DISTRICT COURT JUDGES

JOHN M. BRITT  
PELL C. COOPER  
JOHN J. COVOLO  
ROBERT A. EVANS  
WILLIAM C. FARRIS, CHIEF  
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TO: Seventh Judicial District Bar

FROM: William C. Farris, Chief District Court Judge

DATE: August 24, 2007

Re: Custody Mediation and Local Rules Updates

Dear Fellow Attorneys:

I believe we are in our 40<sup>th</sup> year of the North Carolina unified court system and the creation of the Seventh Judicial District. Our district has been blessed with the best lawyers and judges in the state. Judges Carlton, Britt, Thomas, and Whitley established rules and policies to provide fair and efficient access to justice. It is my privilege to follow them and serve as your Chief District Court Judge. I have enclosed updates to your local rules notebook. Please distribute copies to every attorney in your firm.

The most significant update is the establishment of mandatory custody mediation. This program is mandated by the legislature. The enclosed rules were formulated with the assistance of Katherine Fisher, Charles Craft, Millicent Graves, Michael Spivey, Charlene King, and Wayne Boyette. I hope you find these rules clear and helpful in explaining this program.

Essentially, any party who files a complaint for custody and/or visitation or a motion to modify custody/visitation after September 1, 2007, must simultaneously sign up in the clerk's office to participate in the mediation program. The filing party will choose an orientation session from a schedule posted in the clerk's office and notify the opposing party using a form attached to the enclosed rules.

Phillip Wall has been employed as custody mediator for the Seventh Judicial District. He holds a master's degree in counseling and has undergone extensive training to be certified as a mediator. His office will be located in the Wilson courthouse and he can be contacted by phone, fax, and mail just as you contact me.

Mr. Wall will conduct group orientation sessions in courtrooms in Wilson, Tarboro, and Nashville. At the close of each group orientation session, he will schedule individual mediation sessions with the parties involved in each case.

Attorneys practicing domestic law are required by these rules to attend one of our first orientation sessions to familiarize themselves with the mediation program. If a custody agreement is achieved through mediation, AOC forms will be utilized to convert this agreement to a court order. However, the parties are given ten days to consult their attorneys before finalizing the proposed agreement.

I am told that some people have the impression that this program will assist parents in resolving custody disputes without retaining attorneys. This is not true. The parties will still need to retain counsel to properly begin their lawsuit or to move to modify an existing order. The purpose of this program is to achieve better custody arrangements with input from parents in a non-adversarial setting. Attorneys should play a vital role in achieving these agreements. If an agreement is reached through the mediation program, the parties may save future legal fees since Rule 16 allows them to return to mediation to modify their agreement without filing a new motion or other court process.

In addition to the custody mediation rules, I have enclosed a new table of contents and updates to be inserted as indicated at the bottom of each page.

Finally, I call your attention to the remarks of Judge Albert S. Thomas which were included in the original edition of our local rules at page 1, a copy of which is attached. Unable to match his eloquence, I merely echo and commend his sentiments to you with the admonition that you continue the high standards set by the bar and bench of Edgecombe, Nash, and Wilson counties these past 40 years.

With highest personal regards, I am

Yours truly,

William C. Farris

WCF/dwb

Enclosure



*State of North Carolina*  
*General Court of Justice*  
*7th District Court District*

ALBERT S. THOMAS, JR.  
CHIEF DISTRICT COURT JUDGE  
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DISTRICT COURT JUDGES

SARAH F. PATTERSON  
JOSEPH JOHN HARPER, JR.  
JOHN L. WHITLEY  
JOHN M.B. RITT  
PELL C. COOPER  
ROBERT A. EVANS

June 30, 2000

TO: Members of the Seventh Judicial District Court System

The Seventh Judicial District is, and has been since its inception, a special community in the best sense of the word.

Our history and our present are filled with examples of talented people in the judicial system intensely striving for an individual best yet maintaining a keen commitment to the common good and enhancement of the system itself.

Rare is the person who ventures outside our district for work forays who doesn't rush to return.

Many of the rules and procedures included in this notebook constitute a product of that cooperative and dedicated spirit. While some result from state mandates, most either codify long-standing practice or come from district-wide collaboration.

No rule included here is, or could possibly be, static. All will change with time and experience and, by necessity, ambiguities will need to be settled by a good dose of Seventh District reason and practicality.

The rules are intended to improve our system of justice, our working relationships and our fairness and efficiency both in reality and public perception. We owe that to ourselves and our community as well as to those who follow many years from now. We must not forget to guard against maintaining any unfair, inappropriate or less than optimum rule simply because it had earlier been adopted as a written rule. Continued input and discussion are imperative.

The notebook format is being utilized for that very reason. Notice of additions, deletions and modifications will be sent as the need occurs in order to maintain viability.

Thank you for your assistance and I wish you the absolute best.

Sincerely,

Albert S. Thomas, Jr.  
Chief District Court Judge

## TABLE OF CONTENTS

<u>SECTION</u>		<u>PAGE</u>
<b>I.</b>	<b>INTRODUCTION</b>	
	Introductory Letter	1
	Historical Judicial List	2
	Communication Information	3
	Order Adopting Rules and Procedures	4
<b>II.</b>	<b>JUVENILE</b>	
	Rules for Juvenile Court	6
	Restraining Juveniles in the Courtroom	22
	Access to Juvenile Records	23
	Sharing of Information Adoption Order	24
	NC Code re Sharing of Information	25
	Local Transfer Hearing Form	27
<b>III.</b>	<b>CIVIL</b>	
	Calendaring Rules	32
	Motions for Continuance	34
	Ex Parte Procedures	38
	Peremptory/Special Settings	39
	Filing of Orders	40
	Calendar Request	41(a-c)
	Mandatory custody Visitation Mediation	42
<b>IV.</b>	<b>EQUITABLE DISTRIBUTION</b>	
	Local Rules	47
	Order Implementing State Rules	51
	State Rules	52
	Affidavit Certification	72
	Affidavit Instructions & Schedules	72(a)
	Application/Order for Judge Designation	73
	Report of Settlement Prior to Mediator Designation	74
	Order for Settlement Conference	75
	Designation of Mediator	76
	Report of Mediator	77

<b><u>SECTION</u></b>		<b><u>PAGE</u></b>
<b>V.</b>	<b>CRIMINAL</b>	
	Motions for Continuance	81
	Local Continuance Form	85
	Withdrawal of Counsel	86
<b>VI.</b>	<b>MISCELLANEOUS</b>	
	Vacation Policy	90
	Bond Procedures Upon Recall of Order for Arrest:	
	Wilson	91
	Edgecombe	92
	Nash	93
	Procedures Where Possible Incompetent Detained After Being Charged With a Misdemeanor (Wilson County Only)	94
	Domestic Violence Pre-Trial Release Hearings	95
	Sanctions	96
	Order Assigning District Court Judges	97

## DISTRICT COURT JUDGES

Honorable Pell C. Cooper	1999-
Honorable William C. Farris (Chief)	2001-
Honorable Anthony W. Brown	2009-
Honorable Wayne S. Boyette	2014-
Honorable Elizabeth D. Freshwater-Smith	2016-
Honorable Joseph E. Brown, III	2019-
Honorable William R. Solomon	2021-

## JUDGES PREVIOUSLY SERVING

Honorable J. Phil Carlton (Chief)	1968- 1977
Honorable Allen W. Harrell	1968- 1992
Honorable Tom H. Matthews	1968- 1980
Honorable Ben H. Neville	1968- 1980
Honorable George M. Britt (Chief)	1977- 1996
Honorable Albert S. Thomas (Chief)	1980- 2001
Honorable James E. Ezzell, Jr.	1980- 1983
Honorable Quentin T. Sumner	1983- 1990
Honorable Sarah P. Bailey	1988- 2000
Honorable Joseph John Harper, Jr.	1990- 2014
Honorable M. Alexander Biggs	1991- 1999
Honorable John L. Whitley (Chief)	1992- 2005
Honorable Robert A. Evans	1999- 2009
Honorable William G. Stewart	2000- 2016
Honorable John J. Covolo	2006-2019
Honorable John M. Britt	1996-2020

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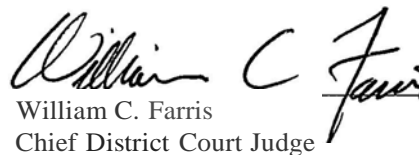
STATE OF NORTH CAROLINA  
7<sup>TH</sup> JUDICIAL DISTRICT  
COUNTIES OF EDGECOMBE, NASH & WILSON

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

## ORDER

The FOLLOWING LOCAL RULES for District Court in the 7<sup>th</sup> Judicial District are hereby adopted and are in effect July 1, 2015.

This the 10<sup>th</sup> day of March, 2015.

A handwritten signature in black ink, reading "William C. Farris". The signature is written in a cursive style with a large, stylized "W" and "F".

William C. Farris  
Chief District Court Judge  
7<sup>th</sup> Judicial District

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## RULES FOR JUVENILE COURT

Purpose. These rules establish procedures for Juvenile Court in the 7th Judicial District and apply to all cases in which a juvenile is alleged to be delinquent, undisciplined, abused, neglected, or dependent. Additionally, they apply to termination of parental rights cases. It is the purpose of the rules to:

1. ensure a coordinated and efficient decision-making process;
2. eliminate unnecessary delays in Court proceedings;
3. help the parties present issues and evidence to the Court in an efficient and appropriate manner;
4. provide for judicial oversight of case planning;
5. justify the trust of the participants and the community.

**Structure of Rules:** The rules for juvenile court are divided into two sections, "A" for abuse, neglect and dependency and termination of parental rights cases and "B" for delinquency and undisciplined cases.

### **Rules 1A -15A: Abuse, Neglect, Dependency and Termination of Parental Rights**

### **Rules 1B - 11B: Delinquency and Undisciplined**

#### **1A. Appointment of Counsel.**

(a) **Lists.** The clerk shall maintain a separate, viable list of attorneys willing and eligible to be appointed to represent parents of juveniles alleged to be abused, neglected or dependent as well as parents in termination of parental rights cases.

(b) **Attorney.** An attorney shall not accept appointment in a case if there is a known reason why the attorney may not be available for the hearing of the case within 45 days. The attorney shall also determine as soon as possible whether there is any potential conflict of interest and then so notify the court.

(c) **Abuse/Neglect/Dependency.** At the earliest reasonable opportunity, the court, including the clerk, shall determine whether the parents request court appointed counsel or waive. If the parents request court appointed counsel and both are eligible, separate counsel to represent each parent shall be appointed unless for good cause the court determines otherwise. If there is an earlier waiver in front of the clerk, the presiding judge at the first court setting shall re-examine the parents as to waiver or appointment of counsel.

**(d) Termination of Parental Rights.** In any case in which a petition for termination of parental rights is filed, at the earliest reasonable opportunity the court, including the clerk, shall determine whether the parents request court appointed counsel or waive. If the parents request court appointed counsel and both are eligible, separate counsel to represent each parent shall be appointed unless for good cause the court determines otherwise. If there is an earlier waiver in front of the clerk, the presiding judge at the first court setting shall re-examine the parents as to waiver or appointment of counsel. If the parent whose rights are sought to be terminated has been represented by an appointed attorney in a prior abuse, neglect; or dependency proceeding the same attorney should be appointed.

## **2A. Responsibilities of Attorneys.**

(a) An attorney who represents a party in a case scheduled for hearing shall appear at calendar call unless excused by the court. An attorney who has a conflict with another court shall comply with the relevant rules relating to priority, and it shall be the responsibility of the attorney to keep the courtroom clerk informed of his or her location at all times. Juvenile court shall have priority over the other district courts.

(b) After an attorney enters an appearance or accepts an appointment in a case, that attorney shall represent the client through disposition. Leave of court to withdraw from a case shall only be granted for compelling reasons.

(c) Where the court determines it is appropriate to appoint counsel for the review hearings, the same attorney should be appointed.

## **3A. Continuances.**

(a) **Policy:** The policy of the 7th Judicial District is that all juvenile cases are to receive the utmost of care, attention and priority. A juvenile's concept of time is often far different from that of an adult and the effects of delay on a juvenile must be thoroughly analyzed before any continuance is allowed. It is our commitment that juvenile court will be efficient, fair and ever mindful of the special needs of juveniles.

(b) **Appropriate Court Official:** Once a case is on the calendar and it is the day of the first setting or thereafter, only a district court judge may continue the case. Any request for a continuance shall be made to the judge presiding over the session of court for which the case is calendared. If the trial judge is not known at the time the request is made or is unavailable, the application may be addressed to any district court judge.

(c) **Time:** All juvenile cases should be resolved or tried at the earliest reasonable opportunity, including the first setting. Any request for a continuance at the first setting shall be granted only for good cause. Thereafter, the continuance may only be allowed for either a statutorily required reason or extraordinary cause. This does not apply to the dispositional phase which may be otherwise continued for good cause.

Except for extraordinary cause, an adjudication in an abuse, neglect and dependency case should occur within 45 days of service of the petition and in no event beyond 60 days of the filing of the petition unless an earlier time is required by statute. A termination of parental rights (TPR) case should be disposed within 90 days of service of the petition.

(d) **Notification:** The party requesting a continuance shall give notice of the motion to the other party as soon as possible and if agreement is reached or continuance granted then appropriate notification shall be made to all concerned, including witnesses.

(e) **Right to Hearing:** All parties shall have the right to be heard by the presiding judge on any objection to a motion to continue.

(f) **Procedure:** The following procedure applies only to adjudicatory hearings, review hearings and Termination of Parental Rights cases:

At the first setting, a motion and order to continue for good cause may be oral. Thereafter, the motion to continue for extraordinary cause shall be oral and heard in open court as well as written unless clearly unreasonable based on the circumstances. Any motion based on a statutory excuse shall be written:

Prior to granting the continuance, the judge should confer with counsel to fully explore how to properly resolve the case.

The 7th Judicial District continuance form shall be used for the written motion and order.

(g) **Evaluation of Motion:** The following are factors to be considered by the judge in deciding whether a case should be continued:

- \* effect on juvenile;
- \* opportunity for effective assistance of counsel;
- \* age and seriousness of the case;
- \* custody status of the juvenile;
- \* impact of a continuance on the safety of the parties or any other persons;
- \* status of the trial calendar;
- \* number, moving party, and grounds for previous continuances;
- \* due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- \* period of delay caused by the continuance requested;
- \* presence of witnesses;
- \* availability of witnesses for the present session or for a future session;
- \* legitimate conflict with another court;
- \* consideration of the financial consequences to the public, the parties, the attorneys or witnesses if the case is continued; and
- \* any other factor that promotes the fair administration of justice.

(h) **Court Conflicts:** Any court conflict shall be resolved according to applicable statutes unless otherwise agreed. The various courts should communicate and if possible, resolve any such conflict as best serves the proper and efficient administration of justice.

If there is a conflict among the district courts, juvenile cases shall take precedence.

(i) **Case Rescheduling:** Any case which is continued should be rescheduled with the new date chosen to be one which will most likely lead to a resolution. All necessary participants should review their schedules to make sure they will be available and that the date is not one likely to lead to a further continuance.

#### **4A; Appointment of Guardian ad Litem (GAL) and Attorney Advocate.**

(a) When a petition is filed alleging abuse and/or neglect, the judge shall order that a GAL and, if the GAL is not an attorney, an attorney advocate be appointed to represent the juvenile named in the petition.

(b) Before assigning a specific guardian ad litem or attorney advocate; the district administrator or program supervisor of the GAL Program shall ensure that the GAL or attorney advocate will be available for all stages of the proceeding.

(c) If the judge determines that a GAL or attorney advocate is not necessary for a juvenile who is found only to be dependent, the judge may dismiss the GAL or attorney advocate or both.

#### **5A. Calendaring.**

(a) The clerk assigned to juvenile court shall maintain the juvenile calendar. Unresolved cases shall not be continued off the calendar. At or before the conclusion of each hearing, the next hearing date shall be set.

(b) Court calendars shall be provided to the GAL office and the Department of Social Services (DSS) no later than two working days prior to court. Appropriate notification shall be sent by the clerk to attorneys for parents.

#### **6A. Priority of Hearings.**

In all cases where a juvenile is placed in nonsecure custody, the scheduling and hearing of adjudications should have priority.

#### **7A. Service of Summons and Petition.**

From the date the petition is filed until the adjudicatory hearing, the petitioner shall have a continuing duty to identify, locate and serve any parent who has not been served with a copy of the summons and petition.

**8A. Continued Custody Hearings for Abuse, Neglect and Dependency Cases.**

(a) Whenever a juvenile is taken into nonsecure custody, hearings shall take place in accordance with the general statutes.

(b) At the hearings the judge shall:

- (1) Explain the nature of the proceeding and the purpose of the hearing.
- (2) Review the adequacy of notice and service of process.
- (3) Attempt to ascertain the identity and whereabouts of any parent, guardian, or custodian of the juvenile who is not present, whether that person has been served, and what steps need to be taken to identify, locate, or serve any such person.
- (4) Review information and allow questions and testimony to help determine:
  - (a) What condition is alleged in the petition,
  - (b) What condition or risk precipitated the nonsecure custody order, including consideration of the results of the petitioner's risk assessment,
  - (c) Whether a condition or risk justifying nonsecure custody under G.S. 7B-503 exists, and
  - (d) What efforts the petitioner has made to prevent or eliminate the need for nonsecure custody; and
- (c) Whether consent exists among the parties.
- (5) Set the date for subsequent hearings unless waived.

(c) If the juvenile is to remain in nonsecure custody, the judge shall explore the following with the parties:

- (1) Placement options for the juvenile, including possible relative placements,
- (2) Efforts to keep siblings together,
- (3) Efforts needed to ensure that a school-aged juvenile's school placement and attendance are not disrupted,



- (4) Parental visitation,
- (5) Sibling visitation,
- (6) Service needs and referrals
- (7) Financial support for the juvenile,
- (8) Whether a court order is needed to address the juvenile's . immediate needs such as immediate treatment or evaluation, and
- (9) Specific steps the parties agree to take before the adjudicatory hearing.

(d) In any case in which a parent's identity or whereabouts is unknown or the paternity of the child has not been legally established, the judge should specify in writing any steps that are to be taken to identify the parent, locate the parent, or establish paternity.

#### **9A. Pre-Adjudication Conferences and Calendar Call.**

(a) Attorneys, social workers, guardians ad litem, attorneys advocate and principal parties shall be in court no later than 9:00 a.m. The summons for the parents, guardians or custodians shall be for 9:00 a.m. Pre-Adjudication conferences will be held at that time if they have not been held earlier. The purpose includes the determination of stipulations, discussion of settlement and other pre-trial matters.

(b) The judge and clerk shall be available no later than 9:15 a.m. to consider motions and, to the extent practical, establish a schedule in order to allow attorneys, parties and witnesses to handle other matters while waiting for their cases to be reached. Attorneys who are excused until a certain time shall keep the courtroom clerk informed of their locations and then return as scheduled.

(c) The t e for the formal opening of court is in the discretion of the presiding judge but should not occur earlier than 9:15 a.m. without appropriate notice.

#### **10A. Stipulations.**

If the parties agree to stipulate to certain findings and/or conclusions and /or provisions of the court's decree, the court shall determine, before accepting the stipulations in open court, that the parties understand the content and consequences of the stipulations, and that they voluntarily consent to the stipulation. The court shall make inquiry of the parties to determine whether the stipulation is voluntary and knowing. The court's findings shall be set forth on the record.

#### **11A. Time for Dispositional Hearing.**

Whenever possible, the disposition should take place immediately after adjudication. The disposition should otherwise be set before the same judge as soon as practicable.

**12A. Predisposition Reports in Abuse, Neglect and Dependency Cases.**

(a) Prior to disposition, DSS shall prepare a pre-disposition report that should include at least the following:

1. A description of the placement plan for the child and how that plan is appropriate to the needs of the child;
2. A description of the plan of services for the child and his or her family, and how that plan is appropriate to meet the needs of the child; and
3. A statement of changes in parental behavior which are needed to correct the conditions that led to the neglect, dependency or abuse and the actions the parents must take;
4. If there is a recommendation that the child be removed from the home, the report shall also include:
  - (a) A statement of the efforts by DSS to prevent the need for placing the child outside the home;
  - (b) A description of the efforts by DSS to reunify the family, including services which have been offered, provided or rejected;
  - (c) A statement of why the child cannot be reasonably protected from the identified problems while remaining in the child's home;
  - (d) The identity of all relatives and friends who have been contacted about providing a placement for the child;
  - (e) A suggested visitation plan for the child;
  - (f) A statement of the child's special needs and how they may be met; and
  - (g) The identity and location of the child's siblings, and a statement of steps required to maintain contact between the siblings and reunify the family.

(b) The GAL for the juvenile shall also prepare a pre-disposition report to assist the Court in reaching a disposition that will best serve the needs of the child.

(c) Copies of the pre-disposition reports shall be made available to all parties and their counsel two working days prior to the hearing unless there is a motion for the court to first view the report at disposition and consider withholding disclosure of parts of the report in accordance with N.C.G.S. 7B-808. Otherwise, failure to properly provide the reports shall be considered presumptively prejudicial in any request for a continuance. As with any purposeful failure to abide by the local rules, the offending party may be subject to sanctions by the court.

(d) The report shall not be presented to the court prior to completion of the adjudicatory hearing unless all parties agree it is necessary in obtaining a consent order.

### **13A. Stipulated Dispositions.**

Before accepting a stipulated disposition, the court shall inquire of the parties in open court to determine whether they understand the contents of the stipulation and its consequences and whether they voluntarily consent to its terms. The court's findings shall be set forth in the record.

### **14A. Notices to Other Agencies.**

Whenever it appears that the best interest of a juvenile or the community may require that the juvenile receive specialized services from a public agency, the court may schedule a hearing to determine the appropriate level of services that the specified agency should provide.

If requested by the court, the clerk or a party shall serve the director or other appropriate representative of the agency with a notice of the hearing and of the issues to be addressed. If the notice is served on a county agency, it shall also be served on the county attorney. Upon proper notice being given, the court shall acquire jurisdiction to order the agency to provide specific services to the juvenile consistent with state law.

### **15\_!\. Review of Cases.**

(a) The court shall conduct an intensive review of each case, as provided by statute. The court may set a review hearing for any case at any time, on its own motion, or upon motion of any party. Notice of the review hearing may be given in open Court at the end of the prior hearing.

(b) The court may waive review hearings under N.C.G.S. 7B-906. Unless so waived, the following apply:

1. When a juvenile remains out of the home following a dispositional order, an initial review shall be conducted within ninety days of the dispositional hearing.
2. When a juvenile remains out of the home following the first review hearing, the judge shall determine and specify in the review hearing order an appropriate date for the next review hearing. The second review hearing shall be held within six months of the date of the first review hearing.

3. A permanency planning hearing shall be held within 12 months of the juvenile's placement in accordance with N.C.G.S. 7B-907. This hearing may occur earlier and may be combined with a review hearing.

If these timelines differ from state law, the general statutes shall be controlling.

(c) Once a permanent plan has been approved by the court, reasonable efforts shall be made to place a juvenile in an appropriate permanent home in a timely manner.

(d) Reasonable efforts to preserve and reunify the family shall not be required to be made with respect to parents of a juvenile if the court has determined that the parents have subjected the child to aggravated circumstances as defined in state and federal law.

(e) As long as the juvenile remains out of the home, subsequent review hearings shall be held at times the court finds appropriate, but in no event more than six months from the date of the previous review hearing, unless the judge orders otherwise. A goal of each review hearing shall be to develop a permanent plan for the juvenile.

(f) At least fifteen (15) days prior to the date set for the review hearing, the Clerk of Court shall mail a notice of the hearing to such of the following persons as may be involved in the case: the parents or their attorneys, the juvenile if he or she will be twelve(12) years of age or more at the time of the review, the juvenile's GAL, the juvenile's attorney, the foster parents or other caretakers, and any other person or agency specified by court order.

## **Rules 1B - 11B: Delinquency and Undisciplined**

### **1B. Appointment of Counsel.**

(a) **Lists.** The clerk shall maintain a separate, viable list of attorneys willing and eligible to be appointed to represent juveniles before the court on delinquency and undisciplined petitions.

(b) **Attorney.** An attorney shall not accept appointment in a case if there is a known reason why the attorney may not be available for the hearing of the case within 30 days. The attorney shall also determine as soon as possible whether there is any potential conflict of interest and then so notify the court.

(c) **Delinquency.** The court shall assign an attorney to represent the juvenile as soon as possible after a petition is filed unless a private attorney has been retained. The clerk shall include the information with the summons and this separate notice shall encourage the juvenile and parents to contact the attorney.

(d) **Undisciplined.** The court shall assign an attorney to represent the juvenile as soon as possible after issuance of a show cause order for contempt unless a private attorney has been retained. The clerk shall include the information with the order and this separate notice shall encourage the juvenile and parents to contact the attorney.

### **2B. Responsibilities of Attorneys.**

(a) An attorney who represents a party in a case scheduled for hearing shall appear at calendar call unless excused by the court. An attorney who has a conflict with another court shall comply with the relevant rules relating to priority, and it shall be the responsibility of the attorney to keep the courtroom clerk informed of his or her location at all times. Juvenile court shall have priority over the other district courts.

(b) After an attorney enters an appearance or accepts an appointment in a case, that attorney shall represent the client through disposition. Leave of court to withdraw from a case shall only be granted for compelling reasons.

(c) The clerk should assign the same attorney to represent the juvenile at all review hearings unless that is impractical.

### **3B. Continuances.**

(a) **Policy:** The policy of the 7th Judicial District is that all juvenile cases are to receive the utmost of care, attention and priority. A juvenile's concept of time is often far different from that of an adult and the effects of delay on a juvenile must be thoroughly analyzed before any continuance is allowed. It is our commitment that juvenile court will be efficient, fair and ever mindful of the special needs of juveniles.

**(b) Appropriate Court Official:** Once a case is on the calendar and it is the day of the first setting or thereafter, only the presiding district court judge may continue the case. After the first setting, any request for a continuance made earlier than the court date shall be made to the judge presiding over the session of court for which the case is calendared. Otherwise, if the trial judge is not known at the time the request is made or is unavailable, the request may be addressed to any district court judge.

**(c) Time:**

- I. Adjudicatory Hearing: All juvenile cases should be resolved or tried at the earliest reasonable opportunity, including the first setting. If a juvenile is placed in secure custody pending adjudication, the adjudicatory hearing shall be scheduled at the earliest possible date. Any request for a continuance at the first setting shall be granted only for good cause. Thereafter, the continuance may only be allowed for either a statutorily required reason or extraordinary cause. This does not apply to the dispositional phase which may be otherwise continued for good cause.
2. First Appearance: In accordance with N.C.G.S. 7B-1808, a first appearance shall be held in all felony cases. It must occur within 10 days of the filing of the petition-or at the first continued custody hearing whichever occurs first. If the juvenile is not in secure custody the first appearance may be continued by the court for good cause.
3. Probable Cause Hearing: In accordance with N.C.G.S. 7B-2202, a probable cause hearing shall be held in all felony cases in which a juvenile was 13 years of age or older when the offense allegedly occurred. It must occur within 15 days of the date of first appearance unless continued by the court for good cause.
4. Transfer Hearing: In accordance with N.C.G.S. 7B-2202(c), a transfer hearing may occur immediately after probable cause is found upon proper notice or absent objection as to notice or at a later date set by the court.

**(d) Notification:** The party requesting a continuance shall give notice thereof to the other party and court counselor's office as soon as possible and if the continuance is granted by the judge then appropriate notification shall be made to all concerned, including witnesses.

**(e) Right to Hearing:** All parties shall have the right to be heard by the presiding judge on any objection to a motion to continue.

**(f) Procedure:** The following procedure applies to adjudicatory and motion for review hearings: At the first setting, a motion and order to continue for good cause may be oral. Thereafter, the motion to continue for extraordinary cause shall be oral and heard in open court unless clearly unreasonable based on the circumstances. Any motion based on a statutory excuse shall be written.

,..... Prior to granting the continuance, the judge should confer with counsel to fully explore how to properly resolve the case.

It is in the discretion of the presiding judge whether to require a written continuance order.

**(g) Evaluation of Motion:** The following are factors to be considered by the judge in deciding whether a case should be continued:

- \* effect on juvenile;
- \* opportunity for effective assistance of counsel;
- \* age and seriousness of the case;
- \* custody status of the juvenile;
- \* impact of a continuance on the safety of the parties or any other persons;
- \* status of the trial calendar;
- \* number, moving party, and grounds for previous continuances;
- \* due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- \* period of delay caused by the continuance requested;
- \* presence of witnesses;
- \* availability of witnesses for the present session or for a future session;
- \* legitimate conflict with another court;
- \* consideration of the financial consequences to the public, the parties, the attorneys or witnesses if the case is continued; and
- \* any other factor that promotes the fair administration of justice.

**(h) Court Conflicts:** Any court conflict shall be resolved according to applicable statutes unless otherwise agreed. The various courts should communicate and if possible resolve any such conflict as best serves the proper and efficient administration of justice.

If there is a conflict among the district courts, juveniles' cases shall take precedence.

**(i) Case Rescheduling:** Any case which is continued should be rescheduled with the new date chosen to be one which will most likely lead to resolution. All necessary participants should review their schedules to make sure they will be available and that the date is not one likely to lead to a further continuance.

#### **4B. Calendaring:**

(a) The clerk assigned to juvenile court shall maintain the juvenile calendar. Unresolved cases where service has been completed shall not be continued off the calendar. At or before the conclusion of each hearing, the next hearing date shall be set. This does not apply where the juvenile is considered on run.

(b) Court calendars shall be provided to the district attorney and the juvenile court counselor's office. Appropriate notification shall be sent by the clerk to attorneys for juveniles.

(c) No delinquency case shall have a file number shown on the calendar.

**SB. Placement of the Delinquent or Undisciplined Juvenile in the Custody of DSS.**

(a) If a juvenile court counselor has reason to suspect that a juvenile for whom a delinquency or undisciplined petition has been filed may also be abused, neglected or dependent, that counselor shall immediately call the Child Protective Services (CPS) intake worker at the appropriate Department of Social Services to make an official report. The report to CPS should include the date of the next scheduled hearing. If not known at the time of the initial call to CPS, DSS shall be notified as soon as the hearing date is determined.

(b) Where the legal mandates for a CPS investigation exist, DSS shall investigate the allegations and report its findings to the court at the next scheduled hearing in addition to complying with other statutory requirements. If DSS substantiates the allegations, it shall inform the court whether or not it intends to file a petition.

(c) If a party or the court determines that the best interests of the juvenile or the community may require that the juvenile be placed in the custody of the DSS, that party or a person designated by the court shall notify DSS Child Protective Services of the date of the hearing and of the issue to be considered. DSS shall receive notice of and be allowed to participate in all future hearings until it is determined that placement of the juvenile with DSS is not an appropriate option. If a juvenile is placed in its custody, DSS shall receive notice of and be allowed to participate in all future dispositional or review hearings.

(d) If emergency circumstances require that a juvenile, who has been adjudicated delinquent or undisciplined, be placed in the custody of DSS without prior notice, the court shall designate a person to immediately notify appropriate DSS staff. DSS, after consulting with the juvenile court counselor, shall conduct an investigation and report its findings to the court.

**6B. Continued Secure Custody Hearings for Delinquency.**

(a) Whenever a juvenile is taken into secure custody, all hearings shall take place in accordance with the general statutes.

(b) At the hearings, the judge shall:

1. Explain the nature of the proceeding and the purpose of the hearing.
2. Review the adequacy of notice and service of process.
3. Receive testimony and allow the juvenile, juvenile's attorney parents or guardian to present information, be heard and to ask questions of other parties. The judge is not bound by the usual rules of evidence. In determining the need for continued secure custody, the judge is bound by statutory criteria.



(c) If the judge orders the juvenile released from secure custody, the judge shall:

- I. Release into the care of a responsible person or organization.
2. Release on the written promise of the parent or guardian to produce the juvenile for subsequent proceedings.
3. Consider restrictions on activities, associations, or travel if related to securing the juvenile's presence in court.

(d) If the judge determines the need for continued secure custody, the order must be in writing, contain appropriate findings of fact, state the purpose continued custody is to achieve and set the date for subsequent hearings unless waived. In no event may that waiver be for more than 28 days without further review by the court and either hearing or waiver.

**7B. Pre-Adjudication Conferences and Calendar Call.**

(a) Attorneys for juveniles, the district attorney, court counselors and principal parties shall be in court no later than 9:00 a.m. The summons for the juvenile and parents shall be for 9:00 a.m. Pre-Adjudication conferences will be held at that time if they have not been held earlier. The purpose includes the determination of stipulations, discussion of settlement and other pre-trial matters.

(b) The judge and clerk shall be available no later than 9:15 a.m.. to consider motions and, to the extent practical, establish a schedule in order to allow attorneys, parties and witnesses to address business elsewhere while waiting for their cases to be reached. Attorneys who are excused until a certain time shall keep the courtroom clerk informed of their location and then return as scheduled.

(c) The formal opening of court is in the discretion of the presiding judge but should not occur earlier than 9:15 a.m. without appropriate notice.

**SB. Time for Dispositional Hearing.**

Whenever possible, the disposition should take place immediately after adjudication. If it must be continued, the disposition should otherwise be set before the same judge.

**9B. Predisposition Reports.**

The juvenile court counselor shall conduct an intake assessment of the juvenile and his or her family prior to the disposition hearing unless excused by the court. If the juvenile's parents, guardians, or custodians consent, the assessment shall be conducted prior to the adjudicatory hearing. The juvenile court counselor shall prepare a written predisposition report to be presented

to the court. A copy of the report shall be made available to the juvenile's attorney and the district attorney two working days prior to the hearing unless there is a motion for the court to first view the report at disposition and consider withholding disclosure of parts of the report in accordance with N.C.G.S. §B-2413. The report should include at least the following:

- I. Information concerning both parents, including their location, their contact with the juvenile, any mental health or substance abuse history, and any other relevant information;
2. A summary of the juvenile's court history;
3. A summary of services previously provided the juvenile;
4. The juvenile's educational history and present school placement;
5. A summary of evaluations completed;
6. A statement of evaluations needed;
7. An opinion whether there is reason to suspect the juvenile is abused, neglected, or dependent;
8. A risk and needs assessment unless waived by the court.

**10B. Notice to Other Agencies.**

Whenever it appears that the best interest of a juvenile or the community may require that the juvenile receive specialized services from a public agency the court may schedule a hearing to determine the appropriate level of service that the specified agency should provide.

If requested by the court, the clerk or a party shall serve the director or other appropriate representative of the agency with a notice of the hearing and of the issues to be addressed. If the notice is served on a county agency, it shall also be served on the county attorney. Upon proper notice being given, the court shall acquire jurisdiction to order the agency to provide specific services to the juvenile consistent with state law.

**11B. Review of Cases.**

(a) If a delinquent or undisciplined juvenile has been placed in the custody of DSS and DSS has not filed a petition alleging abuse, neglect, or dependency, DSS shall schedule reviews of the placement every six months until the juvenile is removed from DSS's custody. Any party may request an earlier review. The juvenile's parents shall receive notice. The juvenile court counselor shall notify DSS and the parents of termination of probation.

**(b)** In all other cases, the juvenile court counselor or the juvenile may request the court to review its disposition at any time by filing a Motion for Review with notice to the appropriate parties.

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## **ACCESS TO JUVENILE RECORDS**

In accordance with N.C.G.S. 7B-290l(a) and in consideration of the need for a proper, just and efficient judicial process,

It is hereby ordered that the parents of a juvenile who is the subject of an abuse, neglect or dependency case, the parents' attorneys, the attorney for the Department of Social Services, the assigned social worker from that Department of Social Services, the Attorney Advocate and the Guardian ad Litem shall be allowed to examine the records of that case maintained in the Clerk of Superior Court's office.

## **ORDER**

Subchapter 5G of Chapter 5, Title 9, of the North Carolina Administrative Code entitled "Sharing of Information Regarding Abused, Neglected, Dependent, Undisciplined, or Delinquent Juveniles" as follows is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE  
TITLE 9. OFFICES OF THE GOVERNOR AND LIEUTENANT GOVERNOR  
CHAPTER 5. JUVENILE JUSTICE  
SUBCHAPTER 5G. SHARING OF INFORMATION REGARDING ABUSED,  
NEGLECTED, DEPENDENT, UNDISCIPLINED, OR DELINQUENT JUVENILES  
Current through April 3, 2000

**SECTION .0100. GENERAL INFORMATION**

**.0101 PURPOSE AND SCOPE**

(a) These Rules:

- (1) designate agencies that are authorized to share with each other, upon request, information in their possession that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent; and
- (2) establish procedures for the sharing of information among designated agencies.

(b) Nothing in these Rules precludes any other necessary sharing of information among agencies.

(c) Nothing in these Rules requires the disclosure or release of any information in the possession of a district attorney.

(d) Nothing in these Rules authorizes or requires a designated agency to share information with another designated agency if that sharing would violate federal law or regulations.

**.0102 DEFINITIONS**

Unless the context clearly requires a different meaning,

- (1) "Designated agency" means an agency designated by these Rules as an agency authorized to share information pursuant to these rules and G.S. 7B- 3100, and includes any person or entity that is employed by a designated agency, works under contract with a designated agency, or functions in a volunteer, student, intern, or similar capacity in or for a designated agency.
- (2) "Information" means any confidential or nonconfidential information, whether or not recorded, including information stored in computer data banks or computer files, that is relevant to
  - (a) a case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent, and
  - (b) the protection, treatment of or educational opportunities of the juvenile in regard to whom the petition is filed or the protection of others.
- (3) "Juvenile" means a person who has been alleged or adjudicated to be an abused, neglected, dependent, undisciplined, or delinquent juvenile, as defined in G.S. 7B- 101 or 7B-1500, and who is subject to the continuing jurisdiction of the juvenile court.

**.0103 AGENCIES AUTHORIZED TO SHARE INFORMATION**

The following agencies are authorized and required to share information concerning juveniles pursuant to these rules and G.S. 7B-3100:

- (1) local mental health facilities,
- (2) area mental health authorities,

- (3) local health departments,
- (4) county departments of social services,
- (5) local law enforcement agencies,
- (6) local school administrative units,
- (7) district attorneys' offices,
- (8) the Office of Juvenile Justice,
- (9) the Office of Guardian ad Litem Services of the Administrative Office of the Courts,
- (10) a local agency that has been designated by a standing order issued by the chief district court judge of the district court district in which the agency is located as an agency authorized to share information pursuant to these rules and G.S. 7B-3100.

**.0104 SHARING OF INFORMATION AMONG DESIGNATED AGENCIES**

- (a) Except as provided in Paragraph (c) of these Rules, a designated agency shall provide information to the designated agency making a request.
- (b) Except as provided in Paragraph (c) of these Rules, a district attorney may provide information to the designated agency making a request.
- (c) When the disclosure of requested information is prohibited or restricted by federal law or regulations, a designated agency shall share the information only in conformity with the applicable federal law and regulations. At the request of the initiating designated agency, the designated agency refusing the request shall inform that agency of the specific law or regulation that is the basis for the refusal.
- (d) At the request of a designated agency from which information is requested, the initiating agency shall provide documentation or other support for its claim that the sharing of the requested information is authorized or required by this Subchapter.
- (e) When a designated agency shares confidential information with another designated agency pursuant to this Subchapter, the designated agency sharing the confidential information shall document the date on which the information was shared and the agency to which the information was provided.
- (f) Information received by a designated agency pursuant to this Subchapter may be used only to protect the juvenile or others or to improve the educational opportunities of the juvenile.
- (g) Information received by a designated agency pursuant to this Subchapter, if otherwise confidential; may not be redisclosed except as authorized or required by law.
- (h) A designated agency that receives otherwise confidential information pursuant to this Subchapter shall
  - (1) develop written policies and procedures regarding controlled access to the information, including policies regarding the discipline or dismissal of persons who fail to comply with the requirements of this Subchapter;
  - (2) update these procedures as necessary;
  - (3) ensure that only authorized persons have access to the information;
  - (4) ensure that the information is stored in a secure manner; and
  - (5) use best management practices for computer security with respect to information included in a computer database, including but not limited to, computer security measures to block entry into the system by individuals who are not authorized to have access to the information.

**HISTORY NOTE:** Authority G.S. 7B-3100; Temporary Adoption Eff. July 7, 1999.



STATE OF NORTH CAROLINA

FILE NO. \_\_\_\_\_

COUNTY OF \_\_\_\_\_

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

In the Matter of

Name of Juvenile:

Date of Birth:

Age:

**ORDER**

Address:

City, State, Zip:

The court, upon its own motion under N.C.G.S. 7B 2202(e), hereby orders that upon a finding of probable cause a transfer hearing be held for the above captioned case(s) on the probable cause hearing date which is \_\_\_\_\_.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Judge Presiding

**NOTICE**

The court hereby gives notice

1) to the prosecutor:

\_\_\_\_ orally in open court  
\_\_\_\_ hand delivery by the clerk  
\_\_\_\_ first class mail

on \_\_\_\_\_, 20\_\_\_\_.

2) to the juvenile's attorney:

\_\_\_\_ orally in open court  
\_\_\_\_ hand delivery by the clerk  
\_\_\_\_ first class mail

on \_\_\_\_\_, 20\_\_\_\_.

Material opposite unmarked squares to be considered surplus and is to be disregarded.

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## CIVIL COURT CALENDARING RULES

1. Requests to calendar a matter in civil court must be filed seven business days prior to the requested court date except for SOB or other statutorily required hearings. Matters will be added to the calendar only by the presiding judge or Chief District Court Judge.
2. Calendars should be published no less than five business days prior to the session of court.
3. Calendar requests must contain the certification of the filing attorney or party that:
  - (a) The issues to be calendared are ready for trial (or hearing) and both parties have agreed to the calendar date requested OR no answer or other appearance was made by the opposing party OR this is a matter under the "First or Fourth" sections below.
  - (b) The party filing the calendar request is ready for trial (or hearing) upon the issues to be calendared, but the parties have not agreed upon the court date.
4. Only one court date per case is to be requested unless essential for separate issues.
5. The Clerk of Court in each county shall maintain calendar requests in a book, in order filed, for use by the presiding judge at the calendar call.
6. The Clerk of Court in each county shall place matters on the court calendar in the following order:

**First:** Uncontested matters calendared in the order in which the calendar requests were filed with the clerk.

**Second:** Cases in which the parties have not agreed upon a court date. This hearing is for the setting of a trial date only.

**Third:** Motions certified on the calendar request not to require more than ten minutes for hearing.

**Fourth:** Cases in which a hearing is required within a specified time pursuant to statute or court order including but not limited to Chapters SOB and SOC, ex parte custody and temporary restraining orders.

**Fifth:** Pre-Trial Conferences.

**Sixth:** Small claims appeals and other matters.

**Seventh:** Peremptory settings.

**Eighth:** Cases (including motions which require more than 10 minutes) in which the parties have agreed upon the court date; or cases in which there was no answer or other appearance made by the opposing party; or cases in which the court has set a trial date. These cases shall appear on the calendar in the order in which the calendar requests were filed with the clerk.

7. The presumption shall be that matters will be heard in the order calendared. However, the presiding judge shall determine the order of trial at the calendar call.
8. Continuances of matters calendared by agreement, or set by the court, should be granted only by consent of both parties or for compelling reasons.
9. Except for uncontested or domestic violence matters, any continuance should be to a date exceeding one week.
10. A Calendar Request form as shown on pages III-41(a)- (c) is to be utilized.
11. Nothing herein shall be construed to prevent the court from entering orders for temporary custody and support of minor children pursuant to N.C.G.S. 50-13.S(d).

## **Motions for Continuance of Civil Cases**

The policy of the Seventh Judicial District is that all civil cases, including domestic, child support, general civil and magistrate appeals, shall be expeditiously addressed and concluded. The intent is to provide a proper forum and reach a resolution within a reasonable time so as to satisfy the requirements of giving the parties a just and timely hearing and of giving the community an expectation of appropriate fairness and efficiency.

### **1. Appropriate Court Official**

The following procedures apply where there is no stipulation by all parties in writing as to a continuance. All continuances, however, including those by stipulation or agreement, shall comply with Rule 7 and ultimately be within the discretion of the presiding judge.

Any application for a continuance shall be made to the judge presiding over the session of court for which the case is calendared after notification as required in 3.

### **2. Right to Hearing**

All parties shall have the right to be heard by the presiding judge on any objection to a motion to continue.

### **3. Notification**

All parties must be notified by the movant with the motion including a clear statement of reasons for the request. A copy of the motion must be sent to all counsel of record and/or unrepresented parties prior to the court's ruling on the motion. Distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail or hand delivery. However, an oral motion may be allowed when the reason for the continuance did not become known until immediately preceding the start of court and constitutes extraordinary cause.

### **4. Procedure**

The motion shall be written and may be formal or informal (including a letter) except for oral motions under Rule 3.

When a written motion to continue is made and service completed seven (7) or more working days prior to trial, opposing counsel and/or unrepresented parties shall have a period of four (4) working days, following completion of distribution, to communicate objections to the motion for continuance to the moving party. Objections not raised in writing within this time period are deemed waived.

When a written motion to continue is made less than even (7) working days of the trial term, the moving party shall include in the motion a statement that the opposing counsel



or party has been notified of the motion. If the moving party is unable to contact opposing counsel or unrepresented parties, the motion shall state what efforts were made and why contact was not achieved.

## **5. Evaluation of Motion**

Factors to be considered when deciding whether to grant or deny a motion for continuance should include:

- \* effect on children;
- \* whether there already is a temporary order as to the issue that is the subject of the continuance request;
- \* impact of a continuance on the safety of the parties or any other persons;
- \* whether the issue has been statutorily identified as an issue which should be addressed expeditiously, i.e., child support, post-separation support;
- \* age of the case or motion;
- \* status of the trial calendar for the session;
- \* number, moving party and grounds for previous continuances;
- \* due diligence of counsel in promptly making a motion for continuance;
- \* legitimate conflict with another court;
- \* amount of delay caused by the continuance requested;
- \* position of opposing counsel or unrepresented parties;
- \* present or future inconvenience or unavailability of witnesses and parties;
- \* consideration of the financial consequences to the public, the parties, the attorneys or witnesses if the case is continued: and
- \* any other factor that promotes the fair administration of justice.

## **6. Court Conflicts**

Any court conflict shall be resolved according to applicable statutes unless otherwise agreed. The various courts should communicate and if possible, resolve any such conflict as best serves the proper and efficient administration of justice.

Juvenile cases should take precedence if there is a conflict among the District Courts.

Rule 2(e) of the General Rules of Practice states "when an attorney is notified to appear for the setting of a calendar, pretrial conference, hearing of a motion or for trial, he must, consistent with ethical requirements, appear or have a partner, associate or another attorney familiar with the case present. Unless an attorney has been excused in advance by the judge before whom the matter is scheduled and has given prior notice to his opponent, a case will not be continued".

## **7. Case Rescheduling**

Any case being continued should be rescheduled to a specific date. Prior to granting a motion for continuance the judge is to hear input concerning rescheduling and the new date chosen should be one which will most likely lead to a resolution. Except in cases of

domestic violence or uncontested matters, any continuance should exceed one week in order to preserve the integrity of the next week's calendar.

## **8. Time Standards**

In accordance with standards adopted by the Supreme Court of North Carolina in the case flow management plan provided 1 May 1996 to the General Assembly, pursuant to Chapter 333 of the 1995 Sessions Laws "all domestic cases should be disposed within 18 months of filing, with 90% disposed within six months. Issues of child support should be resolved, and a temporary or permanent order entered within 60 days of service. Post-disposition issues, such as contempt and motions to modify existing orders, should be resolved within 60 days of the filing of such actions. All general civil and magistrate appeal cases should be disposed within 24 months of filing, with 90% of all cases disposed within 12 months of filing." Equitable Distribution and other family financial cases not including child support should be disposed within one year.

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## EX PARTE PROCEDURES

Any request or motion for an ex parte order shall be made only in cases of a true emergency with the movant to comply with the following procedure:

- 1) Motions shall be written.
- 2) If a particular judge is in the process of hearing the case, or has retained jurisdiction, then any emergency request is to be heard by that judge. If that judge is not reasonably available, then any district court judge may hold the hearing.
- 3) If the opposing party is represented by counsel, reasonable notice should be given prior to the hearing of the motion.
- 4) Any movant shall inform the court prior to or at the start of the hearing
  - 1) whether there is opposing counsel
  - 2) whether that counsel has been notified
  - 3) whether another judge has heard/refused to hear a similar motion/this motion
  - 4) whether another judge has heard other matters in the case.
- 5) If any ex parte communication with a judge takes place without the opposing counsel or party present, then notification of that communication occurring must be given by the movant to the counsel or party.
- 6) Ex parte orders must be written and state the date, time and location for review within the allowable 10-day period.

## **PEREMPTORY / SPECIAL SETTINGS**

Any request for a peremptory or special day setting shall be based on compelling reasons and be heard by the judge who will preside. If at all possible, the request should be regularly calendared for an earlier civil session with the judge first exploring the possibility of settlement. If the judge determines a peremptory setting or a setting for a special day is warranted, a written request with the judge's acknowledgement shall be mailed or faxed to the Chief District Court Judge's office. Consultation shall be made with the appropriate clerk's and sheriff's offices to determine staff and courtroom availability prior to a final order from the Chief District Court Judge.

Except for extraordinary cause, no calendar should include more than one peremptory setting.

## **FILING OF ORDERS**

All civil orders must be prepared, signed, and filed no later than 30 days from the date of the presiding judge's ruling.

If the order is not timely filed, the clerk will immediately notify the presiding judge through the Civil Case Management Administrator in the chief district court judge's office.

The administrator shall contact the judge and unless that judge knows of good cause otherwise the matter will be re-calendared by the clerk for the next session of court the judge has in that location. Notice will be sent to the attorneys and parties with the judge to determine fault, penalty, or other action.

This provision does not apply to IV-D or juvenile orders.

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NORTH CAROLINA  
WILSON COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO. \_\_\_\_\_  
CALENDAR REQUEST

\_\_\_\_\_  
PLAINTIFF

\_\_\_\_\_  
ATTORNEY

VS

\_\_\_\_\_  
DEFENDANT

\_\_\_\_\_  
ATTORNEY

TO: CLERK OF SUPERIOR COURT OF WILSON COUNTY

SESSION: \_ \_ \_ \_ \_

Please check one:

The session date above is the agreed court date per Rule 3(a) under Civil Court Calendaring Rules. The issues to be calendared are ready for trial (or hearing) and both parties have agreed to the calendar date requested OR no answer or other appearance was made by the opposing party OR this is a matter under the "First or Fourth" sections below.

The parties have not agreed on a hearing date and this request is to determine such date per Rule 3(b) under Civil Court Calendaring Rules.

Please check one:

- FIRST: Uncontested Matters, with divorces listed first
- SECOND: Hearing only to determine court date
- THIRD: Motion of 10 minutes or less
- FOURTH: Required hearing pursuant to 50B, other statute or court order
- FIFTH: Pre-trial conference
- SIXTH: Small Claims appeal
- SEVENTH: Peremptory setting by Court Order
- EIGHTH: Other matter

\_\_\_\_\_  
ATTORNEY OR PARTY



NORTH CAROLINA  
EDGECOMBE COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO. \_\_\_\_\_  
CALENDAR REQUEST

\_\_\_\_\_  
PLAINTIFF

\_\_\_\_\_  
ATTORNEY

VS

\_\_\_\_\_  
DEFENDANT

\_\_\_\_\_  
ATTORNEY

TO: CLERK OF SUPERIOR COURT OF EDGECOMBE COUNTY

SESSION: \_ \_ \_ \_ \_

Please check one:

The session date above is the agreed court date per Rule 3(a) under Civil Court Calendaring Rules. The issues to be calendared are ready for trial (or hearing) and both parties have agreed to the calendar date requested OR no answer or other appearance was made by the opposing party OR this is a matter under the "First or Fourth" sections below.

The parties have not agreed on a hearing date and this request is to determine such date per Rule 3(b) under Civil Court Calendaring Rules.

Please check one:

- FIRST: Uncontested Matters, with divorces listed first
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- SIXTH: Small Claims appeal
- SEVENTH: Peremptory setting by Court Order
- EIGHTH: Other matter

\_\_\_\_\_  
ATTORNEY OR PARTY

NORTH CAROLINA  
NASH COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO. \_\_\_\_\_  
CALENDAR REQUEST

\_\_\_\_\_  
PLAINTIFF

\_\_\_\_\_  
ATTORNEY

VS

\_\_\_\_\_  
DEFENDANT

\_\_\_\_\_  
ATTORNEY

TO: CLERK OF SUPERIOR COURT OF NASH COUNTY

SESSION: \_ \_ \_ \_ \_

---

Please check one:

The session date above is the agreed court date per Rule 3(a) under Civil Court Calendaring Rules. The issues to be calendared are ready for trial (or hearing) and both parties have agreed to the calendar date requested OR no answer or other appearance was made by the opposing party OR this is a matter under the "First or Fourth" sections below.

The parties have not agreed on a hearing date and this request is to determine such date per Rule 3(b) under Civil Court Calendaring Rules.

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Please check one:

- FIRST: Uncontested Matters, with divorces listed first
- SECOND: Hearing only to determine court date
- THIRD: Motion of 10 minutes or less
- FOURTH: Required hearing pursuant to 50B, other statute or court order
- FIFTH: Pre-trial conference
- SIXTH: Small Claim appeal
- SEVENTH: Peremptory setting by Court Order
- EIGHTH: Other matter

\_\_\_\_\_  
ATTORNEY OR PARTY

**SEVENTH JUDICIAL DISTRICT  
LOCAL RULES FOR MANDATORY CIDLD  
CUSTODY/VISITATION MEDIATION**

The Seventh Judicial District custody and visitation mediation program is established under N.C.G.S. §7A-494 and 495, and 50-13.1. These rules shall apply to all claims and motions filed on or after the first day of September, 2007, in new or pre-existing cases.

**1. PURPOSE**

The program provides a trained, neutral mediator employed by the court to help parents agree on a custody and visitation plan that is in the child's best interest. All parties (and sometimes the child) participate in the process. The mediator focuses discussion on the rights and responsibilities of both parents and, especially, on the needs of the child. The mediator does not dictate the terms of the agreement but assists the parties in reaching their own agreement after full discussion of issues affecting the child's health, education, and welfare. When mediation is successful, parents and their child avoid the constant trauma of a custody trial.

The goals of mediation include:

- a. Reduce acrimony between the parties;
- b. Reach agreements in the child's best interest;
- c. Give the parties responsibility for making decisions about their child;
- d. Provide a confidential, non-adversarial setting to minimize the stress and anxiety of the parties and their child; and
- e. Reduce re-litigation of custody disputes.

**2. MANDATORY PARTICIPATION**

All parties to any action seeking child custody or visitation, or a modification of same, must participate in mediation prior to any pre-trial conference or hearing of these issues other than temporary or emergency issues.

### **3. SCHEDULING**

Any party filing a custody/visitation action or motion must simultaneously schedule the matter for a group orientation session to occur within 45 days of the original filing. The custody mediator shall provide the Clerk in each county with tentative scheduling dates and the schedule shall be publicly available. The custody mediator is authorized to use discretion to schedule and reschedule orientation sessions and mediation sessions at times convenient to the parties and to the courts.

### **4. NOTICE**

The party scheduling the orientation date shall give notice to all opposing parties at least 10 days prior to the scheduled group orientation session. The notice may be served with any complaint or motion as provided by the rules of civil procedure, or the notice may be served separately by first class mail. The filing party shall provide the Clerk with a copy of the notice with a certificate of service. The notice form is attached to these rules.

### **5. THE MEDIATION PROCESS**

The ultimate goal of mediation is to have the parties enter into a Parenting Agreement. The process consists of two phases: The group orientation session and private sessions.

A. Orientation is a public group session to explain the goals and procedures of mediation. Once parties have attended orientation, they do not need to return for orientation again - - even if their case requires a return to mediation years later. The group orientation session will last approximately one hour. Sessions will be held one or two times each month in Nashville, Tarboro, and Wilson in the courthouses. The parties contesting custody/visitation of their child should attend the same orientation session. Attorneys do not attend orientation with their clients. (However, all attorneys who appear in domestic cases shall attend one group orientation session to become familiar with custody mediation procedures.) At the conclusion of the orientation, the parties in a particular case will be seen separately from the larger group to schedule their first private mediation session.

B. The parties and the mediator meet one to three times in private sessions lasting no more than approximately two hours each. Generally, attorneys do not attend the private sessions. Only custody and visitation may be discussed, not issues of child support, alimony, or distribution of property. At the conclusion of mediation, the parties may enter into a full agreement, a partial agreement, a temporary agreement, or none. A partial agreement shall state in detail the resolved issues and those that remain open for trial.

## **6. AGREEMENT**

After the final mediation session, the mediator shall prepare in writing the full or partial agreement reached by the parties. The mediator will send a copy to each parent and attorney for review. Each party should review the agreement with his or her attorney before signing. Each party shall have 10 days after receipt of his or her copy to consider the agreement before signing. Each party shall sign the original parenting agreement in the presence of the mediator at a time and place scheduled by the mediator, generally at the mediation office. The parties need not sign at the same time but may be required to sign on the same day. If an out of town party requests the option of mailing in the signed agreement, his or her signature must be notarized.

## **7. AGREEMENTS BECOME ORDERS OF THE COURT**

The mediator will present the signed agreement to any district court judge for review and signature along with an Order Approving Parenting Agreement (AOC"CV" 631; AOC" CV-636 for partial agreement), making this agreement a Custody Order within the meaning of the N.C.G.S. Custody Orders agreed to in mediation are enforced by the courts, not the mediation office.

## **8. CONFIDENTIALITY**

Mediation proceedings shall be held in private and shall be confidential. The mediator is neutral and will not testify on behalf of either party. 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.

## **9. DISCOVERY SUSPENDED**

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.

## **10. CHANGE IN STATUS**

The parties who filed the original action, claim, or motion for custody/visitation shall immediately advise the mediator of any changes in the status of the pending case including a signed consent order or voluntary dismissal. Notice shall be given at least 24 hours in advance of the pending orientation or private mediation session when possible.

## **II. TERMINATION WITHOUT AGREEMENT**

If the parties are unable to reach any agreement in mediation or if the mediator ascertains that there are safety issues or other reasons why mediation is not appropriate, the mediator shall terminate the mediation process and file a report in the case file, indicating that the parties met the requirements of the mediation program but did not reach a mediated parenting agreement.

### **12. FAILURE TO APPEAR**

If any party fails to appear for a scheduled orientation session, the mediator shall notify the person of the possible sanctions and reschedule the session.

For the second failure to attend the orientation session or for the first failure to attend a scheduled private mediation session, the party shall be ordered to appear in court and show just cause for his or her failure to appear. The court may impose the following sanctions:

- a. The party may be held in contempt; and/or
- b. The court may order a return to mediation; or
- c. The court may set the case for trial.

### **13. WAIVER OF MANDATORY MEDIATION**

Either party may move to waive mediation for good cause including, but not limited to, grounds listed in N.C.G.S. § 50-13.I(c). The motion should be made on form AOC-CV-632 which includes notice of hearing and certificate of service. Any district court judge may rule on a motion to waive mandatory mediation. The party who filed the original action, claim or motion for custody/visitation must file any motion to waive mandatory mediation within 10 days of the date of filing said original action, claim or motion. Other parties must file any motion to waive mandatory mediation within 10 days of receipt of service of the original action, claim or motion. The court may enlarge the 10-day time limit for extraordinary cause.

### **14. EXPEDITED MEDIATION**

Any party (or the court) may apply to the mediator for expedited mediation which consists of an abbreviated orientation, if any, and private mediation sessions on shorter notice than previously provided herein. Expedited mediation is only available for good cause shown including, but not limited to, out of state litigants or military personnel anticipating deployment or transfer.

## **15. CALENDARING OF CUSTODY AND VISITATION FOR TRIAL**

Unless mediation has been waived by court order, no custody case can be calendared for trial until the mediation process has been complete.

North Carolina  
7th Judicial District  
Edgecombe County

In The General Court of Justice  
District Court Division  
File No. \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs.

Custody Mediation Orientation Notice

\_\_\_\_\_  
Defendant

**TO THE PARTIES OR THE ATTORNEYS OF RECORD:**

Pursuant to N.C.G.S. 50-13, the above captioned case has been set for mandatory mediation of all custody and visitation issues.

Notice is hereby given to all parties that they are required to be present at the Edgecombe County Courthouse, District Courtroom, second floor:

Date: \_\_\_\_\_,

Time: \_\_\_\_\_, to participate in the orientation program required by the court. The orientation program will last approximately one hour.

**PARTIES WHO FAIL TO COMPLY WITH THIS NOTICE MAY BE SUBJECT TO THE CONTEMPT POWERS OF THE COURT.**

The orientation program will focus on the goals of mediation, which are as follows:

1. Reduce acrimony between the parties;
2. Reach agreements in the child's best interest;
3. Give the parties responsibility for making decisions about their child;
4. Provide a confidential, non-adversarial setting to minimize the stress and anxiety of the parties and their child; and
5. Reduce re-litigation of custody disputes.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

-----\_or-----  
Attorney for (Plaintiff or Defendant)      Plaintiff or Defendant

**Certificate of Service**

I certify that a copy of this notice was served by:

\_\_ depositing a copy enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care of the U.S. Postal Service directed to:

\_\_\_ plaintiff, \_\_\_ defendant, \_\_\_ plaintiff's attorney, \_\_\_ defendant's attorney  
OR

\_\_ attaching a copy to the plaintiff's complaint or the moving party's motion and served with same pursuant to the N. C. Rules of Civil Procedure.

Signature \_\_\_\_\_, Title \_\_\_\_\_

Date \_\_\_\_\_



North Carolina  
7th Judicial District  
Nash County

In The General Court of Justice  
District Court Division  
File No. \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs.

Custody Mediation Orientation Notice

\_\_\_\_\_  
Defendant

TO THE PARTIES OR THEIR ATTORNEYS OF RECORD:

Pursuant to N.C.G.S. 50-13, the above captioned case has been set for mandatory mediation of all custody and visitation issues.

Notice is hereby given to all parties that they are required to be present at the Nash County Courthouse, Courtroom 3, second floor: Date \_\_\_\_\_, Time: \_\_\_\_\_, to participate in the orientation program required by the court. The orientation program will last approximately one hour.

**PARTIES WHO FAIL TO COMPLY WITH THIS NOTICE MAY BE SUBJECT TO THE CONTEMPT POWERS OF THE COURT.**

The orientation program will focus on the goals of mediation, which are as follows:

1. Reduce acrimony between the parties;
2. Reach agreements in the child's best interest;
3. Give the parties responsibility for making decisions about their child;
4. Provide a confidential, non-adversarial setting to minimize the stress and anxiety of the parties and their child; and
5. Reduce re-litigation of custody disputes.

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Attorney for (Plaintiff or Defendant)      Plaintiff or Defendant

### Certificate of Service

I certify that a copy of this notice was served by:

\_\_\_ depositing a copy enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care of the U.S. Postal Service directed to:  
\_\_\_ plaintiff, \_\_\_ defendant, \_\_\_ plaintiff's attorney, \_\_\_ defendant's attorney  
OR

\_\_\_ attaching a copy to the plaintiff's complaint or the moving party's motion and served with same pursuant to the N. C. Rules of Civil Procedure.

Signature \_\_\_\_\_, Title \_\_\_\_\_

Date \_\_\_\_\_

North Carolina  
7<sup>th</sup> Judicial District  
Wilson County

In The General Court of  
Justice  
District Court Division  
File No. \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs.

Custody Mediation Orientation Notice

\_\_\_\_\_  
Defendant

**TO THE PARTIES OR THE ATTORNEYS OF RECORD:**

Pursuant to N.C.G.S. 50-13, the above captioned case has been set for mandatory mediation of all custody and visitation issues.

Notice is hereby given to all parties that they are required to be present at the Wilson County Courthouse, Courtroom B, basement floor: Date \_\_\_\_\_, Time \_\_\_\_\_, to participate in the orientation program required by the court. The orientation program will last approximately one hour.

**PARTIES WHO FAIL TO COMPLY WITH THIS NOTICE MAY BE SUBJECT TO THE CONTEMPT POWERS OF THE COURT.**

The orientation program will focus on the goals of mediation, which are as follows:

1. Reduce acrimony between the parties;
2. Reach agreements in the child's best interest;
3. Give the parties responsibility for making decisions about their child;
4. Provide a confidential, non-adversarial setting to minimize the stress and anxiety of the parties and their child; and
5. Reduce re-litigation of custody disputes.

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Attorney for (Plaintiff or Defendant) or \_\_\_\_\_  
Plaintiff or Defendant

**Certificate of Service**

I certify that a copy of this notice was served by:

\_\_\_ depositing a copy enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care of the U.S. Postal Service directed to: \_\_\_ plaintiff, \_\_\_ defendant, \_\_\_ plaintiff's attorney, \_\_\_ defendant's attorney  
**OR**

\_\_\_ attaching a copy to the plaintiff's complaint or the moving party's motion and served with same pursuant to the N. C. Rules of Civil Procedure.

Signature \_\_\_\_\_, Title \_\_\_\_\_

Date \_\_\_\_\_

## **RULES FOR TRIAL AND SETTLEMENT PROCEDURES IN EQUITABLE DISTRIBUTION AND OTHER FAMILY FINANCIAL CASES**

Rule 1            These rules apply to all claims asserted for equitable distribution filed in the Seventh Judicial District on or after April 1, 1999 except that Rule 5 of these Rules shall apply to all said claims filed in this District on or after January 1, 1999 and Rule 6 of these Rules shall apply to all said claims filed in the District on or after July 1, 2000. Pending cases not automatically included may be ordered to mediation in the discretion of the Presiding Judge.

Rule 2            The equitable distribution procedures established by G.S. 50-21 are supplemented by these rules.

Rule 3            The Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases are adopted as attached except as modified by these Local Rules.

Rule 4            The equitable distribution affidavits required by G.S. 50-21(a) shall be prepared using the form of affidavit attached to the Rules. Unless extended for good cause by the court, statutory time limits on the exchange of properly prepared affidavits are to be strictly observed. There shall be a presumption that sanctions are to be imposed upon willful non-compliance.

Rule 5            Each equitable distribution case filed in the Seventh Judicial District will be assigned to one Judge who will hear and determine all matters concerning equitable distribution in that case. The Judge to be assigned may be designated by agreement of the parties provided the Judge so designated consents. The parties may so designate a Judge at any time within 90 days of the filing of the complaint. The Chief District Court Judge shall make the designation absent agreement.

Rule 6            Upon filing of a complaint initiating an equitable distribution claim, and in no event later than three business days thereafter, the Plaintiff shall forward notification to the Case Management Administrator in the Chief District Court Judge's office. The notification shall include the names and addresses of the parties and attorneys, file name and number, county of filing and date of filing.

Thereafter, the parties shall notify the Case Management Administrator of the following:

- (a) Designation of a judge by agreement within the 90-day period allowed.
- (b) Settlement.
- (c) Date of all mandatory court appearances as shown in the timelines within three business days of calendaring unless scheduled by the Case Management Administrator.

Rule 7            No equitable distribution case may be calendared for trial until the parties have either completed, or been exempted from, the settlement procedures required by The Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases.

Rule 8 The Plaintiff shall report to the Chief District Court Judge, and to any designated equitable distribution Judge, equitable distribution cases settled by the parties before a mediator is either designated or appointed pursuant to Rule 10 of these Local Rules or Rule 2 of the Rules of The North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases. The report shall be made on the form attached to the Supreme Court Rules.

Rule 9 The following Rule/Rules of the Supreme Court as to Settlement Procedures is/are deleted: Rule 12 titled "Judicial Settlement Conference."

Rule 10 The following timelines shall apply to all cases filed on or after July 1, 2000:

- (a) The designation of a judge by the parties shall be filed within 90 days of the filing of the complaint or the Judge will be designated by the Chief District Court Judge;
- (b) A scheduling conference shall take place within 120 days of the filing of the complaint. If the scheduling conference has not been calendared by a party within 90 days of the filing of the complaint it may then be calendared by the Chief District Court Judge.
- (c) If a mediator has not been selected by the parties and notice has not been given to the Chief District Court Judge of that selection within 120 days of the filing of the complaint, a mediator shall be appointed by the Chief District Court Judge. Mediation shall be completed within 90 days of the scheduling conference or 210 days of the filing of the complaint, whichever occurs first. Extension may be granted for good cause by the designated judge with notice given to the Chief District Court Judge.
- (d) A final pre-trial conference shall be held within 60 days of the completion of mediation.
- (e) Trial of the matter should take place no later than 60 days after the final pre-trial conference;
- (f) The compilation of the timelines is as follows:

Maximum time from complaint filing

90 days	Designation of Judge
120 days	Scheduling conference
120 days	Selection of a Mediator
210 days	Mediation completed
270 days	Final pre-trial conference
330 days	Trial

Rule 11 For good cause the Presiding Judge may modify the preceding timelines.

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ADMINISTRATIVE ORDER IMPLEMENTING RULES FOR TRIAL AND  
SETTLEMENT PROCEDURES IN EQUITABLE DISTRIBUTION AND OTHER  
FAMILY FINANCIAL CASES

WHEREAS, the North Carolina Supreme Court adopted rules pursuant to N.C.G.S. 7A-38.4 for settlement procedures in equitable distribution and other family financial cases, and

WHEREAS, implementation of the Supreme Court rules requires replacement of the existing Seventh Judicial District Rules for Equitable Distribution Cases,

NOW, THEREFORE, pursuant to N.C.G.S. 7A-146, and N.C.G.S. 7A-38.4, the following Rules for Trial and Settlement Procedures in Equitable Distribution and Other Family Financial Cases are hereby adopted. These Rules shall apply to all equitable distribution or family financial cases filed in the Seventh Judicial District on or after April 1, 1999 except that Rule 5 shall apply to all such cases filed in the District on or after January 1, 1999 and Rule 6 shall apply to all cases filed in this District on or after July 1, 2000.

Entered this the 20<sup>th</sup> of August, 2001.

John L. Whitley  
Chief District Court Judge  
Seventh Judicial District

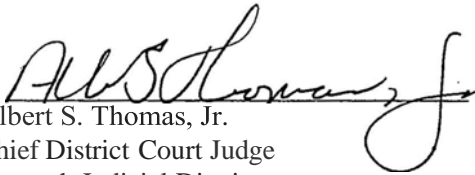
**ADMINISTRATIVE ORDER IMPLEMENTING RULES FOR TRIAL AND  
SETTLEMENT PROCEDURES IN EQUITABLE DISTRIBUTION AND OTHER  
FAMILY FINANCIAL CASES**

WHEREAS, the North Carolina Supreme Court adopted rules pursuant to N.C.G.S. 7A-38.4 for settlement procedures in equitable distribution and other family financial cases, and

WHEREAS, implementation of the Supreme Court rules requires replacement of the existing Seventh Judicial District Rules for Equitable Distribution Cases,

NOW, THEREFORE, pursuant to N.C.G.S. 7A-146, and N.C.G.S. 7A-38.4, the following Rules for Trial and Settlement Procedures in Equitable Distribution and Other Family Financial Cases are hereby adopted. These Rules shall apply to all equitable distribution or family financial cases filed in the Seventh Judicial District on or after April 1, 1999 except that Rule 5 shall apply to all such cases filed in this District on or after January 1, 1999 and Rule 7 shall apply to all cases filed in this District on or after July 1, 2000.

Entered this the 15th day of May, 2000.

  
Albert S. Thomas, Jr.  
Chief District Court Judge  
Seventh Judicial District



**ORDER ADOPTING RULES IMPLEMENTING  
SETTLEMENT PROCEDURES IN  
EQUITABLE DISTRIBUTION AND  
OTHER FAMILY FINANCIAL CASES**

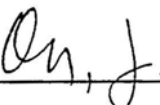
WHEREAS, section 7A-38.4 of the North Carolina General Statutes establishes a pilot program in district court to provide for settlement procedures in equitable distribution and other family financial cases, and

WHEREAS, N.C.G.S. § 7A-38.4(c) provides for this Court to implement section 7A-38.4 by adopting rules,

NOW, THEREFORE, pursuant to N.C.G.S. § 7A-38.4 (c), Rules Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases are hereby adopted. These rules shall be effective on the 1st day of March, 1999.

Adopted by this Court in conference this 30th day of December, 1998. The Appellate Division Reporter shall publish the Rules Implementing Settlement Procedures in Equitable Distribution

Family Financial Cases in their entirety, at the earliest practicable date.

  
Orr, J.  
For the Court

Witness my hand and the seal of the Supreme Court of North Carolina, this the \_\_\_\_\_ day of January, 1999.

\_\_\_\_\_  
Christie Speir Cameron  
Clerk of the Supreme Court

RULES OF THE NORTH CAROLINA SUPREME COURT  
IMPLEMENTING SETTLEMENT PROCEDURES IN  
EQUITABLE DISTRIBUTION AND OTHER FAMILY FINANCIAL CASES

**RULE 1. INITIATING SETTLEMENT PROCEDURES**

**A. PURPOSE OF MANDATORY SETTLEMENT PROCEDURES.**

Pursuant to G.S. 7A-38.4, these Rules are promulgated to implement a system of settlement events which are designed to focus the parties' attention on settlement rather than on trial preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time before or after those ordered by the Court pursuant to these Rules, including binding or non-binding arbitration as permitted by law [see, for example, N.C.G.S. 7A-37.I, Arb. Rule 1(b)].

**B. DUTY OF COUNSEL TO CONSULT WITH CLIENTS AND OPPOSING COUNSEL CONCERNING SETTLEMENT PROCEDURES.**

In furtherance of this purpose, counsel, upon being retained to represent any party in an equitable distribution, child support, alimony, or post-separation support action, shall advise his or her client regarding the settlement procedures approved by these Rules and, at or prior to the scheduling conference mandated by G.S. 50-21(d), shall attempt to reach agreement with opposing counsel on the appropriate settlement procedure for the action.

**C. ORDERING SETTLEMENT PROCEDURES.**

- (1) **Equitable Distribution Scheduling Conference.** At the scheduling conference mandated by G.S. 50-21(d) in an equitable distribution action, or at such earlier time as specified by local rule, the Court shall include in its scheduling order a requirement that the parties and their counsel attend a mediated settlement conference or, if the parties agree, other settlement procedure conducted pursuant to these rules, unless excused by the Court pursuant to Rule 1.C.(6) or by the Court or mediator pursuant to Rule 4.A.(2).
- (2) **Scope of Settlement Proceedings.** All other financial issues existing between the parties when the equitable distribution settlement proceeding is ordered, or at any time thereafter, may be discussed, negotiated or decided at the proceeding. In those districts where a child custody and visitation mediation program has been established pursuant to G.S. 7A-

494, child custody and visitation issues may be the subject of settlement proceedings ordered pursuant to these Rules only in those cases in which the parties and the mediator have agreed to include them and in which the parties have been exempted from the program.

- (3) Authorizing Settlement Procedures Other Than Mediated Settlement Conference. The parties and their attorneys are in the best position to know which settlement procedure is appropriate for their case. Therefore, the Court shall order the use of a settlement procedure authorized by Rules 10-12 herein or by local rules of the District Court in the county or district where the action is pending if the parties have agreed upon the procedure to be used, the neutral to be employed and the compensation of the neutral. If the parties have not agreed on all three items, then the Court shall order the parties and their counsel to attend a mediated settlement conference conducted pursuant to these Rules.

The motion for an order to use a settlement procedure other than a mediated settlement conference shall be submitted on an AOC form at the scheduling conference and shall state:

- (a) the settlement procedure chosen by the parties;
  - (b) the name, address and telephone number of the neutral selected by the parties;
  - (c) the rate of compensation of the neutral; and
  - (d) that all parties consent to the motion.
- (4) Content of Order. The Court's order shall (1) require the mediated settlement conference or other settlement proceeding be held in the case; (2) establish a deadline for the completion of the conference or proceeding; and (3) state that the parties shall be required to pay the neutral's fee at the conclusion of the settlement conference or proceeding unless otherwise ordered by the Court. Where the settlement proceeding ordered is a judicial settlement conference, the parties shall not be required to pay for the neutral.

The order shall be contained in the Court's scheduling order, or, if no scheduling order is entered, shall be on an AOC form. Any scheduling order entered at the completion of a scheduling conference held pursuant to local rule may be signed by the parties or their attorneys in lieu of submitting the forms referred to hereinafter relating to the selection of a mediator.

- (5) Court-Ordered Settlement Procedures in Other Family Financial Cases. Any party to an action involving family financial issues not previously ordered to a mediated settlement conference may move the Court to order the parties to participate in a settlement procedure. Such motion shall be made in writing, state the reasons why the order should be allowed and be served on the non-moving party. Any objection to the motion or any request for hearing shall be filed in writing with the Court

within 10 days after the date of the service of the motion. Thereafter, the Judge shall rule upon the motion and notify the parties or their attorneys of the ruling. If the Court orders a settlement proceeding, then the proceeding shall be a mediated settlement conference conducted pursuant to these Rules. Other settlement procedures may be ordered if the circumstances outlined in subsection (3) above have been met.

- (6) **Motion to Dispense With Settlement Procedures.** A party may move the Court to dispense with the mediated settlement conference or other settlement procedure. Such motion shall be in writing and shall state the reasons the relief is sought. For good cause shown, the Court may grant the motion. Such good cause may include, but not be limited to, the fact that the parties have submitted the action to arbitration or that one of the parties has alleged domestic violence. The Court may also dispense with the mediated settlement conference for good cause upon its own motion or by local rule.

## **RULE 2. SELECTION OF MEDIATOR**

- A. SELECTION OF CERTIFIED MEDIATOR BY AGREEMENT OF THE PARTIES.** The parties may select a mediator certified pursuant to these Rules by agreement by filing with the Court a Designation of Mediator by Agreement at the scheduling conference. Such designation shall: state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.

In the event the parties wish to select a mediator who is not certified pursuant to these Rules, the parties may nominate said person by filing a Nomination of Non-Certified Mediator with the Court at the scheduling conference. Such nomination shall state the name; address and telephone number of the mediator; state the training, experience, or other qualifications of the mediator; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation, if any. The Court shall approve said nomination if, in the Court's opinion, the nominee is qualified to serve as mediator and the parties and the nominee have agreed upon the rate of compensation.

Designations of mediators and nominations of mediators shall be made on an AOC form. A copy of each such form submitted to the Court and a copy of the Court's order requiring a mediated settlement conference shall be delivered to the mediator by the parties.

- B. APPOINTMENT OF CERTIFIED MEDIATOR BY THE COURT.** If the parties cannot agree upon the selection of a mediator, they shall so notify the Court and request that the Court appoint a mediator. The motion shall be filed at the scheduling conference and shall state that the attorneys for the parties have

had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The motion shall be on an AOC form.

Upon receipt of a motion to appoint a mediator, or in the event the parties have not filed a designation or nomination of mediator, the Court shall\_ appoint a mediator certified pursuant to these Rules under a procedure established by said Judge and set out in local order or rule.

The Dispute Resolution Commission shall furnish for the consideration of the District Court Judges of any district where mediated settlement conferences are authorized to be held, the names, addresses and phone numbers of those certified mediators who request appointments in said district.

- C. MEDIATOR INFORMATION DIRECTORY.** To assist the parties in the selection of a mediator by agreement, the Chief District Court Judge having authority over any county participating in the mediated settlement conference program shall prepare and keep current for such county a central directory of information on all mediators certified pursuant to these Rules who wish to mediate in that county. Such information shall be collected on loose leaf forms provided by the Dispute Resolution Commission and be kept in one or more notebooks made available for inspection by attorneys and parties in the office of the Clerk of Court in such county.
- D. DISQUALIFICATION OF MEDIATOR.** Any party may move a Court of the district where the action is pending for an order disqualifying the mediator. For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to Rule 2. Nothing in this provision shall preclude mediators from disqualifying themselves.

### **RULE 3. THE MEDIATED SETTLEMENT CONFERENCE**

- A. WHERE CONFERENCE IS TO BE HELD.** The mediated settlement conference shall be held in any location agreeable to the parties and the mediator. If the parties cannot agree to a location, the mediator shall be responsible for reserving a neutral place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and *pro se* parties.
- B. WHEN CONFERENCE IS TO BE HELD.** As a guiding principle, the conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date. The mediator is authorized to assist the parties in establishing a discovery schedule and completing discovery .

The Court's order issued pursuant to Rule 1.A.(1) shall state a deadline for completion of the conference which shall be not more than 150 days after issuance of the Court's order, unless extended by the Court. The mediator shall set a date and time for the conference pursuant to Rule 6.B.(5).

- C. **REQUEST TO EXTEND DEADLINE FOR COMPLETION.** A party, or the mediator, may move the Court to extend the deadline for completion of the conference. Such motion shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the motion, said party shall promptly communicate its objection to the Court.

The Court may grant the request by entering a written order setting a new deadline for completion of the conference, which date may be set at any time prior to trial. Said order shall be delivered to all parties and the mediator by the person who sought the extension.

- D. **RECESSES.** The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set during the conference, no further notification is required for persons present at the conference.
- E. **THE MEDIATED SETTLEMENT CONFERENCE IS NOT TO DELAY OTHER PROCEEDINGS.** The mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.

#### **RULE 4. DUTIES OF PARTIES, ATTORNEYS AND OTHER PARTICIPANTS IN MEDIATED SETTLEMENT CONFERENCES**

##### **A. ATTENDANCE.**

- (1) The following persons shall attend a mediated settlement conference:
- (a) Parties.
  - (b) Attorneys. At least one counsel of record for each party whose counsel has appeared in the action.
- (2) Any person required to attend a mediated settlement conference shall physically attend until such time as an agreement has been reached or the mediator, after conferring with the parties and their counsel, if any, declares an impasse. No mediator shall prolong a conference unduly. Any such person may have the attendance requirement excused or modified, including allowing a person to participate by phone, by agreement of both parties and the mediator or by order of the Court. Ordinarily, attorneys for the parties may be excused from attending only after they have appeared at the first session.

- B. **FINALIZING BY NOTARIZED AGREEMENT, CONSENT ORDER AND/OR DISMISSAL.** The essential terms of the parties' agreement shall be reduced to writing as a summary memorandum at the conclusion of the conference unless the parties have executed final documents. The parties and

their counsel shall use the summary memorandum as a guide. to drafting such agreements and orders as may be required to give legal effect to the its tem1s. Within thirty (30) days of reaching agreement at the conference, all final agreements and other dispositive documents shall be executed by the parties and notarized, and judgments or voluntary dismissals shall be filed with the Court by such persons as the parties or the Court shall designate. In the event the parties fail to agree on the wording or terms of a final agreement or court order, the mediator may schedule another session if the mediator determines that it would assist the parties.

**C. PAYMENT OF MEDIATOR'S FEE.** The parties shall pay the mediator's fees as provided by Rule 7.

#### **RULE 5. SANCTIONS FOR FAILURE TO ATTEND MEDIATED SETTLEMENT CONFERENCES**

If any person required to attend a mediated settlement conference fails to attend without good cause, the Court may impose upon that person an appropriate monetary sanction including, but not limited to, the payment of attorney's fees, mediator fees, expenses and loss of earnings incurred by persons attending the conference.

A party to the action seeking sanctions, or the Court on its own motion, shall do so in a written motion stating the grounds for the motion and the relief sought. Said motion shall be served upon all parties and on any person against whom sanctions are being sought. If the Court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law.

#### **RULE 6. AUTHORITY AND DUTIES OF MEDIATORS**

##### **A. AUTHORITY OF MEDIATOR.**

- (1) **Control of Conference.** The mediator shall at all times be in control of the conference and the procedures to be followed. However, the mediator's conduct shall be governed by standards of conduct promulgated by the Supreme Court upon the recommendation of the Dispute Resolution Commission, which shall contain a provision prohibiting mediators from prolonging a conference unduly.
- (2) **Private Consultation.** The mediator may communicate privately with any participant during the conference. However, there shall be no *ex parte* communication before or outside the conference between the mediator and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this rule prevents the mediator from engaging in *ex parte* communications, with the consent of the parties, for the purpose of assisting settlement negotiations.

## **B. DUTIES OF MEDIATOR.**

- (1) The mediator shall define and describe the following at the beginning of the conference:
  - (a) The process of mediation;
  - (b) The differences between mediation and other forms of conflict resolution;
  - (c) The costs of the mediated settlement conferences;
  - (d) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement;
  - (e) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
  - (f) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
  - (g) The inadmissibility of conduct and statements as provided by G.S. 7A-38,4(k) which states:

Evidence of statements made and conduct occurring in a settlement proceeding conducted pursuant to this section shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except in proceedings for sanctions or proceedings to enforce a settlement of the action. No such settlement shall be enforceable unless it has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, or other neutral conducting a settlement procedure pursuant to this section shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference or other settlement procedure in a civil proceeding for any purpose, including proceedings to enforce a settlement of the action, except to attest to the signing of any such agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.

- (h) The duties and responsibilities of the mediator and the participants; and
    - (i) The fact that any agreement reached will be reached by mutual consent.
- (2) Disclosure. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- (3) Declaring Impasse. It is the duty of the mediator to determine in a timely manner that an impasse exists and that the conference should end. To that end, the mediator shall inquire of and consider the desires of the parties to cease or continue the conference.



- (4) **Reporting Results of Conference.** The mediator shall report to the Court, or its designee, using an AOC form, within 10 days of the conference, whether or not an agreement was reached by the parties. If the case is settled or otherwise disposed of prior to the conference, the mediator shall file the report indicating the disposition of the case. If an agreement was reached at the conference, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the persons designated to file such consent judgment or dismissals. If partial agreements are reached at the conference, the report shall state what issues remain for trial. The mediator's report shall inform the Court of the absence without permission of any party or attorney from the mediated settlement conference. The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the mediator to provide statistical data in the report for evaluation of the mediated settlement conference program.
- (5) **Scheduling and Holding the Conference.** The mediator shall schedule the conference and conduct it prior to the conference completion deadline set out in the Court's order. The mediator shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the mediator shall select a date and time for the conference. Deadlines for completion of the conference shall be strictly observed by the mediator unless changed by written order of the Court.
- (6) **Informational Brochure.** Before the conference, the mediator shall distribute to the parties or their attorneys a brochure prepared by the Dispute Resolution Commission explaining the mediated settlement conference process and the operations of the Commission.

#### **RULE 7. COMPENSATION OF THE MEDIATOR**

- A. BY AGREEMENT.** When the mediator is selected by agreement of the parties, compensation shall be as agreed upon between the parties and the mediator.
- B. BY COURT ORDER.** When the mediator is appointed by the Court, the parties shall compensate the mediator for mediation services at the rate of \$125.00 per hour. The parties shall also pay to the mediator a one-time, per case administrative fee of \$125.00, which accrues upon appointment.
- C. PAYMENT OF COMPENSATION BY PARTIES.** Unless otherwise agreed to by the parties or ordered by the Court, the mediator's fee shall be paid in equal shares by the parties. Payment shall be due and payable upon completion of the conference.

- D. INABILITY TO PAY.** No party found by the Court to be unable to pay a full share of a mediator's fee shall be required to pay a full share. Any party required to pay a share of a mediator fee pursuant to Rule 7.B.&C. may move the Court to pay according to the Court's determination of that party's ability to pay.

In ruling on such motions, the Judge may consider the income and assets of the movant and the outcome of the action. The Court shall enter an order granting or denying the party's motion. In so ordering, the Court may require that one or more shares be paid out of the marital estate.

Any mediator conducting a settlement conference pursuant to these rules shall accept as payment in full of a party's share of the mediator's fee that portion paid by or on behalf of the party pursuant to an order of the Court issued pursuant to this rule.

## **RULE 8. MEDIATOR CERTIFICATION AND DECERTIFICATION**

The Dispute Resolution Commission may receive and approve applications for certification of persons to be appointed as mediator. For certification, a person must have complied with the requirements in each of the following sections.

### **A. Training and Experience.**

1. Be a practitioner member of the Academy of Family Mediators; or
2. Be certified as a Superior Court mediator prior to December 31, 1998, and have family law or family mediation experience and be recommended by a regular District Court Judge in the applicant's district who has familiarity with the applicant's competence and qualifications in the area of family law or family mediation; or
3. Have completed a 40-hour family and divorce mediation training approved by the Dispute Resolution Commission pursuant to Rule 9 and have additional experience as follows:
  - (a) as a licensed attorney and/or judge of the General Court of Justice for at least four years; or
  - (b) as a licensed psychologist, licensed family counselor, licensed pastoral counselor or other licensed mental health professional for at least four years; or
  - (c) as a mediator having mediated in a community center or other supervised setting at least 5 cases each year for four years after first having completed a 20-hour mediation training program; or
  - (d) as a certified Superior Court mediator having mediated at least 10 cases in the past two years which may include family mediations, cases in state or federal courts or cases before state or federal administrative agencies; or
  - (e) as a certified public accountant for at least four years.

- B. If not licensed to practice law in one of the United States, have completed a 6-hour training on North Carolina legal terminology, court structure and civil procedure provided by a trainer certified by the Dispute Resolution Commission.
- C. Be a member in good standing of the State Bar of one of the United States or have provided to the Dispute Resolution Commission three letters of reference as to the applicant's good character and experience as required by Rule 8.A.
- D. Have observed as a neutral observer with the permission of the parties three mediations involving custody or family financial issues conducted by a mediator who is certified pursuant to these rules, or who is a practitioner member of the Academy of Family Mediators, or who is an A.O.C. mediator.

During the period of the pilot program, a person may satisfy the observation requirements of this section by satisfactorily demonstrating that he/she has served as mediator with divorcing parties having custody of family financial disputes in at least five (5) cases or fifty (50) hours.

- E. Demonstrate familiarity with the statutes, rules, and standards of practice and conduct governing mediated settlement conferences conducted pursuant to these Rules.
- F. Be of good moral character and adhere to any standards of practice for mediators acting pursuant to these Rules adopted by the Supreme Court.
- G. Submit proof of qualifications set out in this section on a form provided by the Dispute Resolution Commission.
- H. Pay all administrative fees established by the Administrative Office of the Court in consultation with the Dispute Resolution Commission.
- I. Agree to accept as payment in full of a party's share of the mediator's fee as ordered by the Court pursuant to Rule 7.
- J. Agree to be placed on at least one district's mediator appointment list and accept appointments, unless the mediator has a conflict of interest which would justify disqualification as mediator.
- K. Comply with the requirements of the Dispute Resolution Commission for continuing mediator education or training. (These requirements may include advanced divorce mediation training, attendance at conferences or seminars relating to mediation skills or process, and consultation with other family and divorce mediators about cases actually mediated. Mediators seeking recertification beyond one year from the date of initial certification may also be required to demonstrate that they have completed 8 hours of family law training, including tax issues relevant to divorce and property distribution, and 8 hours of

training in family dynamics, child development and interpersonal relations at anytime prior to that recertification.)

Certification may be revoked or not renewed at any time if it is shown to the satisfaction of the Dispute Resolution Commission that a mediator no longer meets the above qualifications or has not faithfully observed these rules or those of any district in which he or she has served as a mediator, Any person who is or has been disqualified by a professional licensing authority of any state for misconduct shall be ineligible to be certified under this Rule.

#### **RULE 9. CERTIFICATION OF MEDIATION TRAINING PROGRAMS**

A. Certified training programs for mediators certified pursuant to these rules shall consist of a minimum of forty hours of instruction. The curriculum of such programs shall include the subjects in each of the following sections.

- (1) Conflict resolution and mediation theory.
- (2) Mediation process and techniques, including the process and techniques typical of family and divorce mediation.
- (3) Knowledge of communication and information gathering skills.
- (4) Standards of conduct for mediators.
- (5) Statutes, rules, and practice governing mediated settlement conferences conducted pursuant to these Rules.
- (6) Demonstrations of mediated settlement conferences with and without attorneys involved.
- (7) Simulations of mediated settlement conferences, involving student participation as mediator, attorneys and disputants, which simulations shall be supervised, observed and evaluated by program faculty.
- (8) An overview of North Carolina law as it applies to custody and visitation of children, equitable distribution, alimony, child support, and post separation support.
- (9) An overview of family dynamics, the effect of divorce on children and adults, and child development.
- (10) Protocols for the screening of cases for issues of domestic violence and substance abuse.
- (11) Satisfactory completion of an exam by all students testing their familiarity with the statutes, rules and practice governing mediated settlement conferences in North Carolina.

B. A training program must be certified by the Dispute Resolution Commission before attendance at such program may be used for compliance with Rule 8.A. Certification need not be given in advance of attendance.

Training programs attended prior to the promulgation of these rules or attended in other states or approved by the Academy of Family Mediators may be approved by the Dispute Resolution Commission if they are in substantial compliance with the standards set forth in this rule. The Dispute Resolution Commission may require attendees of an AFM approved program to demonstrate compliance with

the requirements of Rule 9.A.(5) and 9.A.(8) either in the AFM approved training or in some other acceptable course.

- C. To complete certification, a training program shall pay all administrative fees established by the Administrative Office of the Courts in consultation with the Dispute Resolution Commission.

## **RULE 10. OTHER SETTLEMENT PROCEDURES**

### **A. ORDER AUTHORIZING OTHER SETTLEMENT PROCEDURES.**

Upon receipt of a motion by the parties seeking authorization to utilize a settlement procedure in lieu of a mediated settlement conference, the Court may order the use of the procedure requested unless the Court finds that the parties did not agree upon the procedure to be utilized, the neutral to conduct it and the neutral's compensation; or that the procedure selected is not appropriate for the case or the parties. Judicial settlement conferences may be ordered only if permitted by local rule.

### **B. OTHER SETTLEMENT PROCEDURES AUTHORIZED BY THESE RULES.**

In addition to mediated settlement conferences, the following settlement procedures are authorized by these Rules:

- (1) Neutral Evaluation (Rule 11), in which a neutral offers an advisory evaluation of the case following summary presentations by each party.
- (2) Judicial Settlement Conference (Rule 12), in which a District Court Judge assists the parties in reaching their own settlement, if allowed by local rules.

### **C. GENERAL RULES APPLICABLE TO OTHER SETTLEMENT PROCEDURES.**

- (1) When Proceeding is Conducted. The neutral shall schedule the conference and conduct it no later than 150 days from the issuance of the Court's order or no later than the deadline for completion set out in the Court's order, unless extended by the Court. The neutral shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the neutral shall select a date and time for the conference. Deadlines for completion of the conference shall be strictly observed by the neutral unless changed by written order of the Court.
- (2) Extensions of Time. A party or a neutral may request the Court to extend the deadlines for completion of the settlement procedure. A request for an extension shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the neutral. The Court may grant the extension and enter an order setting a new deadline for completion of the

settlement procedure. Said order shall be delivered to all parties and the neutral by the person who sought the extension.

- (3) **Where Procedure is Conducted.** Settlement proceedings shall be held in any location agreeable to the parties. If the parties cannot agree to a location, the neutral shall be responsible for reserving a neutral place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and *pro se* parties.
- (4) **No Delay of Other Proceedings.** Settlement proceedings shall not be cause for delay of other proceedings in the case, including but not limited to the conduct or completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.
- (5) **Inadmissibility of Settlement Proceedings.** Evidence of statements made and conduct occurring in a settlement proceeding shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No neutral shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a settlement proceeding in any civil proceeding for any purpose, except proceedings for sanctions under this section, disciplinary proceedings of the State Bar, disciplinary proceedings of any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse.

- (6) **No Record Made.** There shall be no stenographic or other record made of any proceedings under these Rules.
- (7) **Ex Parte Communication Prohibited.** Unless all parties agree otherwise, there shall be no *ex parte* communication prior to the conclusion of the proceeding between the neutral and any counsel or party on any matter related to the proceeding except with regard to administrative matters.
- (8) **Duties of the Parties.**

- (a) **Attendance** All parties and attorneys shall attend other settlement procedures authorized by Rule 10 and ordered by the Court.
- (b) **Finalizing Agreement.** If agreement is reached during the proceeding, the essential terms of the agreement shall be reduced to writing as a summary memorandum. The parties and their counsel shall use the summary memorandum as a guide to drafting such agreements and orders as may be required to give legal effect to its terms. Within 30 days of the proceeding, all final agreements and other dispositive documents shall be executed by the parties and notarized, and judgments or voluntary

dismissals shall be filed with the Court by such persons as the parties or the Court shall designate.

- (c) Payment of Neutral's Fee. The parties shall pay the neutral's fee as provided by Rule 10.C.(12), except that no payment shall be required or paid for a judicial settlement conference.
- (9) Sanctions for Failure to Attend Other Settlement Procedures. If any person required to attend a settlement proceeding fails to attend without good cause, the Court may impose upon that person any appropriate monetary sanction including, but not limited to, the payment of fines, attorney's fees, neutral fees, expenses and loss of earnings incurred by persons attending the conference.

A party to the action, or the Court on its own motion, seeking sanctions against a party or attorney, shall do so in a written motion stating the grounds for the motion and the relief sought. Said motion shall be served upon all parties and on any person against whom sanctions are being sought.

If the Court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law.

- (10) Selection of Neutrals in Other Settlement Procedures.

**Selection By Agreement.** The parties may select any person whom they believe can assist them with the settlement of their case to serve as a neutral in any settlement procedure authorized by these rules, except for judicial settlement conferences.

Notice of such selection shall be given to the Court and to the neutral through the filing of a motion to authorize the use of other settlement procedures at the scheduling conference or the court appearance when settlement procedures are considered by the Court. The notice shall be on an AOC form as set out in Rule 2 herein. Such notice shall state the name, address and telephone number of the neutral selected; state the rate of compensation of the neutral; and state that the neutral and opposing counsel have agreed upon the selection and compensation.

If the parties are unable to select a neutral by agreement, then the Court shall deny the motion for authorization to use another settlement procedure and the court shall order the parties to attend a mediated settlement conference.

- (11) Disqualification of Neutral. Any party may move a Court of the district in which an action is pending for an order disqualifying the neutral; and, for good cause, such order shall be entered. Cause shall exist, but is not limited to circumstances where, if the selected neutral has violated any standard of conduct of the State Bar or any standard of conduct for neutrals that may be adopted by the Supreme Court.

(12) Compensation of Neutrals. A neutral's compensation shall be paid in an amount agreed to among the parties and the neutral. Time spent reviewing materials in preparation for the neutral evaluation, conducting the proceeding, and making and reporting the award shall be compensable time. The parties shall not compensate a settlement judge.

(13) Authority and Duties of Neutrals.

(a) Authority of Neutrals.

(i) Control of Proceeding. The neutral shall at all times be in control of the proceeding and the procedures to be followed.

(ii) Scheduling the Proceeding. The neutral shall make a good faith effort to schedule the proceedings at a time that is convenient with the participants, attorneys and neutral. In the absence of agreement, the neutral shall select the date and time for the proceeding. Deadlines for completion of the conference shall be strictly observed by the neutral unless changed by written order of the Court.

(b) Duties of Neutrals.

(i) The neutral shall define and describe the following at the beginning of the proceeding:

- (a) The process of the proceeding;
- (b) The differences between the proceeding and other forms of conflict resolution;
- (c) The costs of the proceeding;
- (d) The inadmissibility of conduct and statements as provided by G.S. 7A-38.1(1) and Rule 10:C.(6) herein; and
- (e) The duties and responsibilities of the neutral and the participants.

(ii) Disclosure. The neutral has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.

(iii) Reporting Results of the Proceeding. The neutral shall report the result of the proceeding to the Court in writing within ten (10) days in accordance with the provisions of Rules 11 and 12 herein on an AOC form. The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the neutral to provide statistical data for evaluation of other settlement procedures.

(iv) Scheduling and Holding the Proceeding. It is the duty of the neutral to schedule the proceeding and conduct it prior to the



completion deadline set out in the Court's order. Deadlines for completion of the proceeding shall be strictly observed by the neutral unless said time limit is changed by written order of the Court.

**RULE 11. RULES FOR NEUTRAL EVALUATION**

- A. NATURE OF NEUTRAL EVALUATION.** Neutral evaluation is an informal, abbreviated presentation of facts and issues by the parties to an evaluator at an early stage of the case. The neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, providing a candid assessment of the merits of the case, settlement value, and a dollar value or range of potential awards if the case proceeds to trial. The evaluator is also responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.
- B. WHEN CONFERENCE IS TO BE HELD.** As a guiding principle, the neutral evaluation conference should be held at an early stage of the case, after the time for the filing of answers has expired but in advance of the expiration of the discovery period.
- C. PRE-CONFERENCE SUBMISSIONS.** No later than twenty (20) days prior to the date established for the neutral evaluation conference to begin, each party shall furnish the evaluator with written information about the case, and shall at the same time certify to the evaluator that they served a copy of such summary on all other parties to the case. The information provided to the evaluator and the other parties hereunder shall be a summary of the significant facts and issues in the party's case and shall have attached to it copies of any documents supporting the parties' summary. Information provided to the evaluator and to the other parties pursuant to this paragraph shall not be filed with the Court.
- D. REPLIES TO PRE-CONFERENCE SUBMISSIONS.** No later than ten (10) days prior to the date established for the neutral evaluation conference to begin, any party may, but is not required to, send additional written information to the evaluator responding to the submission of an opposing party. The response furnished to the evaluator shall be served on all other parties and the party sending such response shall certify such service to the evaluator, but such response shall not be filed with the Court.
- E. CONFERENCE PROCEDURE.** Prior to a neutral evaluation conference, the evaluator, if he or she deems it necessary, may request additional written information from any party. At the conference, the evaluator may address questions to the parties and give them an opportunity to complete their summaries with a brief oral statement.
- F. MODIFICATION OF PROCEDURE.** Subject to approval of the evaluator, the parties may agree to modify the procedures required by these rules for neutral evaluation.

## **G. EVALUATOR'S DUTIES.**

- (1) Evaluator's Opening Statement. At the beginning of the conference the evaluator shall define and describe the following points to the parties in addition to those matters set out in Rule 10.C.(2)(b):
  - (a) The facts that the neutral evaluation conference is not a trial, the evaluator is not a judge, the evaluator's opinions are not binding on any party, and the parties retain their right to trial if they do not reach a settlement.
  - (b) The fact that any settlement reached will be only by mutual consent of the parties.
- (2) Oral Report to Parties by Evaluator. In addition to the written report to the Court required under these rules, at the conclusion of the neutral evaluation conference the evaluator shall issue an oral report to the parties advising them of his or her opinions of the case. Such opinion shall include a candid assessment of the merits of the case, estimated settlement value, and the strengths and weaknesses of each party's claims if the case proceeds to trial. The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefor. The evaluator shall not reduce his or her oral report to writing and shall not inform the Court thereof.
- (3) Report of Evaluator to Court. Within ten (10) days after the completion of the neutral evaluation conference, the evaluator shall file a written report with the Court using an AOC form, stating when and where the conference, was held, the names of those persons who attended the conference, whether or not an agreement was reached by the parties, and the name of the person designated to file judgments or dismissals concluding the action.

**H. EVALUATOR'S AUTHORITY TO ASSIST NEGOTIATIONS.** If all parties at the neutral evaluation conference request and agree, the evaluator may assist the parties in settlement discussions. If the parties do not reach a settlement during such discussions, however, the evaluator shall complete the neutral evaluation conference and make his or her written report to the Court as if such settlement discussions had not occurred. If the parties reach agreement at the conference, they shall reduce their agreement to writing as required by Rule 10.C.(8)(b).

## **RULE 12. JUDICIAL SETTLEMENT CONFERENCE**

- A. Settlement Judge. A judicial settlement conference shall be conducted by a District Court Judge who shall be selected by the Chief District Court Judge.
- B. Conducting the Conference. The form and manner of conducting the conference shall be in the discretion of the settlement judge. The settlement judge

may not impose a settlement on the parties but will assist the parties in reaching a resolution of all claims.

- C. Confidential Nature of the Conference. Judicial settlement conferences shall be conducted in private. No stenographic or other record may be made of the conference. Persons other than the parties and their counsel may attend only with the consent of all parties. The settlement judge will not communicate with anyone the communications made during the conference, except that the judge may report that a settlement was reached and, with the parties' consent, the terms of that settlement.
- D. Report of Judge. Within ten (10) days after the completion of the judicial settlement conference, the settlement judge shall file a written report with the Court using an AOC form, stating when and where the conference was held, the names of those persons who attended the conference, whether or not an agreement was reached by the parties, and the name of the person designated to file judgments or dismissals concluding the action.

### **RULE 13. LOCAL RULE MAKING**

The Chief District Court Judge of any district conducting settlement procedures under these Rules is authorized to publish local rules, not inconsistent with these Rules and G.S. 7A-38.4, implementing settlement procedures in that district.

### **RULE 14. DEFINITIONS**

- (A) The word, Court, shall mean a judge of the District Court in the district in which an action is pending who has administrative responsibility for the action as an assigned or presiding judge, or said judge's designee, such as a clerk, trial court administrator, case management assistant, judicial assistant, and trial court coordinator.
- (B) The phrase, AOC forms, shall refer to forms prepared by, printed, and distributed by the Administrative Office of the Courts to implement these Rules or forms approved by local rule which contain at least the same information as those prepared by AOC. Proposals for the creation or modification of such forms may be initiated by the Dispute Resolution Commission.

### **RULE 15. TIME LIMITS**

Any time limit provided for by these rules may be waived or extended for good cause shown. Time shall be counted pursuant to the Rules of Civil Procedure.

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NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

\_\_\_\_\_ COUNTY

FILE NO. \_\_\_\_\_

\_\_\_\_\_  
**Plaintiff**

vs.

\_\_\_\_\_  
**Defendant**

***SEVENTH DISTRICT EQUITABLE  
DISTRIBUTION AFFIDAVIT***

\_\_\_\_\_ in this action serves upon the opposing party this Equitable Distribution Affidavit. This Affidavit contains my listing of the assets and debts of the parties on the date of separation and my contentions as to whether any asset or debt so listed is a marital asset or debt or a separate asset or debt:

I certify that I have exercised due diligence to provide a complete listing of all assets and debts that existed on the date of my separation from the opposing party. All of the information contained with this Affidavit is true to the best of my knowledge.

\_\_\_\_\_  
AFFIANT

Sworn to and subscribed before me, this the \_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## INSTRUCTIONS FOR COMPLETING EQUITABLE DISTRIBUTION AFFIDAVIT

**GENERAL:** The party required to serve the first affidavit shall fill out each schedule lettered 'A', 'B', 'C', etc. The completed affidavit shall then be served upon the adverse party. The adverse party will indicate their contentions concerning classification, possession, and value in the places provided. The adverse party will add schedules 'A', 'B', 'C', etc. if necessary to add property not listed by the other party. The completed affidavit shall then be served upon the adverse party. Each party will attach to the schedules their sworn affidavit on the form provided.

### SPECIFIC SECTIONS.

**Description:** Provide a description of the item of property sufficient to allow the other party to identify the item.

**Class:** Indicate your contention concerning classification by marking each item in the space provided as M - marital, S - separate.

**Possession:** Indicate your contention concerning the party in present possession of each item by marking H - for husband, or W - for wife in the space provided.

**Value:** List in the space provided your contention as to date of separation value for each item.

**SPECIAL INSTRUCTIONS FOR SCHEDULE F:** Before the mediated settlement conference only sections A, B, and C of this schedule must be completed. Complete these sections as follows:

A. **Household furnishings:** State your estimate of the date of separation value of all contents of the parties home(s) not listed on other schedules.

B. **Lawn, Garden, Tool, etc.:** State your estimate of the date of separation value of all personal property used outside the parties home(s) not listed on any other schedule.

C. **Miscellaneous:** State your estimate of the date of separation value of all personal property not included in A or B and not listed on any other schedule.

**SCHEDULE A - REAL PROPERTY**

Equitable Distribution Affidavit of \_\_\_\_\_

ITEM Description	CLASS		POSSESSION		VALUE	
	Husband's Contention	Wife's Contention	Husband's Contention	Wife's Contention	Husband's Contention	Wife's Contention

**SCHEDULE B- TRANSPORTATION**

Equitable Distribution Affidavit of \_\_\_\_\_

ITEM Description	CLASS		POSSESSION		VALUE	
	Husband's Contention	Wife's Contention	Husband's Contention	Wife's Contention	Husband's Contention	Wife's Contention



**SCHEDULE C - STOCKS, BONDS & SECURITIES**

Equitable Distribution Affidavit of \_\_\_\_\_

ITEM	CLASS		POSSESSION		VALUE	
	Husband's Contention	Wife's Contention	Husband's Contention	Wife's Contention	Husband's Contention	Wife's Contention
Description						

**SCHEDULE D - RETIREMENT BENEFITS**

Equitable Distribution Affidavit of \_\_\_\_\_

ITEM	CLASS		POSSESSION		VALUE	
	Husband's Contention	Wife's Contention	Husband's Contention	Wife's Contention	Husband's Contention	Wife's Contention
Description						



**SCHEDULE F - OTHER PERSONAL  
PROPERTY**

Equitable Distribution Affidavit of \_\_\_\_\_

ITEM	CLASS		POSSESSION		VALUE	
	Husband's Contention	Wife's Contention	Husband's Contention	Wife's Contention	Husband's Contention	Wife's Contention
Description						

**SCHEDULE G- BUSINESS INTEREST**

Equitable Distribution Affidavit of \_\_\_\_\_

ITEM	CLASS		POSSESSION		VALUE	
	Husband's Contention	Wife's Contention	Husband's Contention	Wife's Contention	Husband's Contention	Wife's Contention
Description						





STATE OF NORTH CAROLINA  
COUNTY of \_\_\_\_\_

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs.

\_\_\_\_\_  
Defendant

**APPLICATION/ORDER FOR DESIGNATION  
OF JUDGE FOR EQUITABLE DISTRIBUTION**

The parties hereby request designation of \_\_\_\_\_ as the Judge to determine the equitable distribution claim.

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Attorney for Defendant

Consented to this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Judge of District Court

The parties are unable to agree upon designation of a Judge to determine the equitable distribution issues.  
Plaintiff/Defendant hereby applies to the Court for designation of a Judge.

This the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Attorney for Plaintiff / Defendant

The undersigned Chief Judge of District Court designates Judge \_\_\_\_\_ as the Judge to determine the equitable distribution in this action.

Entered this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
Chief Judge of District Court

The undersigned hereby certifies that a true copy of this Application for Designation of Judge For Equitable Distribution was served upon all other parties to this action on this date by placing a copy in an envelope with adequate postage thereon and depositing the same in an official depository of the United States Postal Service under the exclusive care and custody of the United States Postal Service, said envelope being properly addressed to:

This the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Attorney for \_\_\_\_\_



STATE OF NORTH CAROLINA  
COUNTY

GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO. \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

vs.

**REPORT OF SETTLEMENT BEFORE  
DESIGNATION OF MEDIATOR**

\_\_\_\_\_  
Defendant

Plaintiff reports to the Court that the above captioned equitable distribution was settled by the parties:

- by private mediation
- by other settlement procedure
- the designated equitable distribution judge in this case is \_\_\_\_\_
- No equitable distribution judge was designated for this case.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of this REPORT OF SETTLEMENT was served upon The Chief District Court Judge, any designated equitable distribution Judge, and the Defendant by placing a copy in an envelope with adequate postage thereon and depositing the same in an official depository of the United States Postal Service under the exclusive care and custody of the United States Postal Service, said envelope being properly addressed to the Chief District Court Judge, the designated equitable distribution Judge, and the Defendant.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Attorney for Plaintiff

<b>STATE OF NORTH CAROLINA</b>		<i>File No.</i>
_____ County		In The General Court Of Justice District Court Division
<i>Name Of Plaintiff</i>	<p><b>ORDER FOR MEDIATED SETTLEMENT CONFERENCE IN FAMILY FINANCIAL CASE</b></p> <p>G.S. 7A-38.4A; Rules 1 and 2 of the Rules for Settlement Procedures in District Court Family Financial Cases</p> <p><i>Deadline For Completion Of Settlement Procedure (for court use only)</i></p> <p><i>Tentative Trial Date</i></p>	
<i>Name Of Plaintiff's Attorney(s)</i>		
<b>VERSUS</b>		
<i>Name Of Defendant</i>		
<i>Name Of Defendant's Attorney(s)</i>		
<p>In accordance with the Rules for Settlement Procedures in District Court Family Financial Cases, it is ORDERED that a mediated settlement conference be held in this case. The procedure shall be completed by the deadline shown above. This Order shall remain in effect unless and until another settlement procedure is ordered by the Court upon motion of the parties.</p> <p>The parties may, by agreement, select a certified mediator to conduct their mediated settlement conference. The parties shall notify the Court of their designation of a certified mediator, or their failure to agree on a mediator on a Designation Of Mediator form, AOC-CV-825. (Fillable form is available at: <a href="http://www.nccourts.gov/documents/forms/designation-of-mediator-in-family-financial-case">www.nccourts.gov/documents/forms/designation-of-mediator-in-family-financial-case</a>.) If the parties cannot agree on a mediator or take no action to select one, the Court shall appoint a certified mediator under a procedure set out in local rule.</p> <p>As an aid to mediator selection, the NC Dispute Resolution Commission maintains a list of certified family financial mediators on its website at: <a href="http://www.NCDRC.gov">www.NCDRC.gov</a> (You may search for mediators by name of mediator, by city, or by court district. Once a mediator's name appears on your screen, click on it for a complete contact and availability listing.)</p> <p>A mediator selected by agreement of the parties shall be compensated at a rate agreed upon between the mediator and the parties. A court-appointed mediator shall be compensated at the rate of \$150 per hour for time spent in the mediated settlement conference, to be billed in quarter hour segments. In addition, a \$175 administrative fee shall be paid pursuant to Rule 7(b). The conference fee shall be paid as provided for in Rule 7(d).</p> <p>All persons required by Rule 4(a)(1) to attend the mediated settlement conference shall attend the conference using remote technology unless all parties and persons required to attend and the mediator agree to conduct the conference in person and to comply with all federal, state, and local safety guidelines that have been issued, or unless the conference is to be conducted in person by order of the Court, upon motion of a party and with notice to all parties and persons required to attend and the mediator.</p> <p>The mediator shall schedule the date, time and location of the mediated settlement conference or other settlement procedure and timely notify all attorneys and unrepresented parties. The conference shall be completed by the deadline for completion set forth above and the mediator shall report the results on form AOC-CV-827 to the court within ten (10) days after the conference is completed.</p>		
<i>Date Of Order</i>	<i>Name Of Judge Or Designee (type or print)</i>	<i>Signature Of Judge Or Designee</i>

# STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice  
District Court Division

\_\_\_\_\_ County

Name Of Plaintiff

Name And Address Of Plaintiff's Attorney (or Pro Se Plaintiff)

Telephone No. Fax No. (if applicable)

Plaintiff's Attorney's Email Address (or Pro Se Plaintiff's Email Address)

**VERSUS**

Name Of Defendant

Name And Address Of Defendant's Attorney (or Pro Se Defendant)

Telephone No. Fax No. (if applicable)

Defendant's Attorney's Email Address (or Pro Se Defendant's Email Address)

Tentative Trial Date

**DESIGNATION OF MEDIATOR  
IN FAMILY FINANCIAL CASE**  
**NOTICE:** Check and complete only one of the three Sections below, sign on the reverse, file with the Court, and distribute copies as noted below.

G.S. 7A-38.4A; Rule 2 of the Rules for Settlement Procedures in District Court Family Financial Cases  
Deadline For Completion Of Settlement Procedure

## SECTION 1 - NOTICE OF DESIGNATION OF CERTIFIED MEDIATOR BY AGREEMENT

The parties have selected the mediator named below who has agreed to serve in this case and is certified pursuant to the Rules for Settlement Procedures in District Court Family Financial Cases.

Name And Address Of Certified Mediator	Telephone No.
	Fax No.
Mediator's Email Address	

The parties and the mediator have agreed upon the mediator's rate of compensation as follows: (Specify all terms of the compensation agreement.)

**NOTE:** As an aid to mediator selection, the NC Dispute Resolution Commission maintains a list of certified family financial mediators at [www.NCDRC.gov](http://www.NCDRC.gov). Click on "Find a Mediator" from the left-hand menu then click on "Family Financial Settlement Mediators (District Court)." You may search for mediators by name or by judicial district. Once a mediator's name appears on your screen, click on it for a complete contact and availability listing.

## SECTION 2 - MOTION FOR COURT APPOINTMENT OF MEDIATOR

After a full and frank discussion, the parties have been unable to agree upon the selection of a mediator. Pursuant to Rule 2(b) of the Rules for Settlement Procedures in District Court Family Financial Cases, the parties move the Court to appoint a certified mediator to conduct the mediated settlement conference.

### SIGNATURE

Date	Name Of Plaintiff's Attorney (or Pro Se Plaintiff)	Signature Of Plaintiff's Attorney (or Pro Se Plaintiff)
------	--	---

Date	Name Of Defendant's Attorney (or Pro Se Defendant)	Signature Of Defendant's Attorney (or Pro Se Defendant)
------	--	---

Original-File Copy-Plaintiff Copy-Defendant Copy-Mediator Copy-Judge or Designee  
(Over)

**ORDER OF APPOINTMENT**

The parties having reported their failure to agree upon the designation of a mediator, or the parties having failed to notify the court of their designation or nomination of a mediator, the court appoints the following certified mediator to conduct the mediated settlement conference.

Name And Address Of Certified Mediator

Telephone No.

Fax No.

Mediator's Email Address

Date

Name Of Judge (type or print)

Signature Of Judge

**TENTATIVE CALENDARING NOTICE**

[This section is optional, to be used at the discretion of the judge; however, mediated settlement shall not delay other proceedings, including trial (Rule 3(e)).]

Parties are notified of the following tentative calendaring schedule adopted by the Court. Final calendar notices will be provided through a published calendar, should settlement not be reached.

Tentative Date For Hearing Of Motions

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of the foregoing Designation of Mediator in the matter before the district court was served on the above-selected mediator and the parties at the addresses below by placing a copy of the same in the United States Mail, postage prepaid. (Please provide names and addresses for the mediator and parties served in the spaces below. Attach additional sheets if necessary.)

Mediator

Party Or Attorney

Party Or Attorney

Party Or Attorney

Party Or Attorney

Party Or Attorney

Party Or Attorney

Party Or Attorney

Date

Name Of Party (type or print)

Signature Of Party Or Party's Attorney

**NOTE TO MEDIATOR:** The mediator shall be responsible for reserving a place and making arrangements for the conference and giving timely notice to all attorneys and unrepresented parties of the time and location of the conference. The mediated settlement conference shall be completed by the completion deadline set forth on Side One, and the mediator shall report the results of the conference to the court within ten (10) days after the conference is completed or within ten (10) days of being advised by a party that the case settled or was otherwise disposed of prior to the mediation.

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

County

Name Of Plaintiff
VERSUS
Name Of Defendant
Name And Address Of Mediator
Telephone No. Of Mediator
Fax No. Of Mediator (if applicable)

REPORT OF MEDIATOR
IN FAMILY FINANCIAL CASE

G.S. 7A-38.4A; Rule 6(b)(4) of the Rules for
Settlement Procedures in District Court Family
Financial Cases

- 1. The undersigned mediator reports the following results of a mediated settlement conference either ordered or voluntarily conducted in this case:
a. A mediation was held. was not held.
b. If the conference was held, give the date completed:
c. If not held, the reasons were:
2. If the case was reported settled prior to or during a recess of the conference, provide the name of the person(s) who reported the case settled:
3. Names of parties, attorneys, or others who attended the conference:
4. At the conference the parties reached: an agreement on all issues. an agreement on some issues. an impasse.
5. If the parties reached an impasse or a partial agreement, state what issues remain for trial:
alimony. child support. equitable distribution. post-separation support.
claims arising out of contracts between the parties pursuant to G.S. 50-20(d), 52-10, 52-10.1, or Chapter 52B.
other (please specify)
6. a. If the case was settled, then, as required by FFS Rule 6(b)(4)(b), the mediator has advised the parties that FFS Rule 4(b)(2) [4(c)(2)] requires that closing documents be filed with the court within 30 days of settlement or before expiration of the mediation deadline, whichever is longer. The following closing document is to be filed:
consent judgment. voluntary dismissal with prejudice. voluntary dismissal without prejudice.
b. Name, address, email address, and telephone number of party or attorney who will file consent judgment or dismissal:
Name:
Address:
Telephone number: ( ) - Email Address:

Original-File Copy-District Court Judge or his/her designee Copy-Plaintiff Copy-Defendant
(Over)

<b>MEDIATOR'S FEE</b>		
	<b>Court-Appointed Mediator</b>	<b>Party-Selected Mediator</b>
Administrative Fee (Pursuant to Rule 7(b) for court-appointed mediator or privately agreed upon.)	\$ 175.00	\$
Mediation Fee (\$150.00 per hour for time spent in conference for court-appointed mediator, billed in quarter hour segments, or privately-set fee for party-selected mediator.) Total Time Spent in Mediated Settlement Conference(s): _____ Hours _____ Minutes	\$	\$
Postponement Fee (Pursuant to Rule 7(f) for court-appointed mediator or privately agreed upon.)	\$	\$
<b>TOTAL FEE</b>	\$ 175.00	\$

All fees of the mediator have been paid, except as follows:

Name of Party Owning Balance	Address of Party	Amount of Balance
		\$
		\$
		\$

**Name of any party filing Petition For Relief From Obligation To Pay Mediator's Fee:** *(Attach Petition.)*

I have filed this report with the Court as required within ten (10) days after conclusion of the conference or within ten (10) days of being advised by a party that this case settled before the date scheduled for mediation or during a recess of the conference.

<i>Date</i>	<i>Name Of Mediator (type or print)</i>	<i>Signature Of Mediator</i>
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## **Motions for Continuance of Criminal Cases and Infractions**

The policy of the District Court in the Seventh Judicial District is that criminal cases and infractions should be disposed of, removed from district court or otherwise tried by the court within a reasonable time. It is our commitment to have an efficient judicial system that appropriately respects the rights of the alleged victims as well as those charged with offenses and truly justifies the community's trust. This rule applies to all infractions and criminal cases except those felonies in classification A- E and their related felonies and misdemeanors.

### **1. Appropriate Court Official**

Prior to the opening of court on the day in which a case is first calendared, the district attorney shall have continuing authority to remove or re-calendar the case. Upon the opening of court and within 180 days of the first court setting, the district attorney and defense counsel or defendant have authority to enter into a continuance agreement consistent with the time limitations of 2, notification requirements of 4 and the evaluation factors of 6. Otherwise, within the first 180 days and whenever reasonable, the judge should allow the district attorney and defense attorney or defendant discretion to enter into a continuance agreement consistent with these rules and policies. Only the presiding judge may continue a case past the 179<sup>th</sup> day except for an additional two-week period to facilitate a plea or submission.

### **2. Time**

All relevant criminal cases and infractions should be disposed or resolved in less than 180 days from the first court setting.

A request for a continuance from the first setting should be for good cause only considering the interests and convenience of those concerned. No continuance should be automatically allowed, or agreement entered into unless required by statute.

Once a case has been continued 179 days from the first setting, any further continuance may only be allowed by the presiding judge except for an additional two-week period to facilitate a plea or submission.

Once a case has been continued by court order to a specific date, any change from that date may only be allowed by a district court judge. If the district attorney and defense attorney or defendant agree, however, the case may be calendared and heard earlier than the new trial date without additional court order where that would be both appropriate and reasonable.

If a case has been dismissed with leave by the district attorney and is later reinstated, a continuance 90 days or more after the first new setting may only be allowed by the presiding judge. A failure to appear and order of arrest does not enlarge the time period

except where a party is prejudiced by administrative error in setting a new court date or surprise.

### **3. Right to Hearing**

All parties have the right to be heard by the presiding judge on any objection to a motion to continue.

### **4. Notification**

The party requesting a continuance shall give notice of the motion to the other party as soon as possible and if agreement is reached or continuance granted then appropriate notification shall be made to all concerned, including witnesses.

### **5. Procedure**

Any disagreement between the district attorney and defense attorney or defendant as to a continuance prior to the 180-day bar shall be heard by the presiding judge. While the judge has the ultimate authority to rule on a continuance of any case set on the calendar, the judge is to allow the district attorney and defense attorney or defendant reasonable discretion to enter into a continuance agreement during the initial 180 days with the court granting the continuance by acquiescence when not inconsistent with the interests of justice.

Once the 180-day bar is reached, or 90 days after re-instatement where the case was dismissed with leave, there are only three conditions for a case to then be continued further. One is if a continuance is required by statute (i.e. federal court, higher state court including priority district court or legislative conflict). Another is for extraordinary cause (e.g. death or verifiable serious illness of a critical participant or close relative which makes trial unreasonable). The third is where the only charge is an infraction with no accompanying misdemeanor and there is a civil claim resulting from an accident. Any such continuance motion shall be oral and heard in open court as well as written unless clearly unreasonable based on the circumstances while any motion based on a statutory excuse shall be written. No written motion or order is required if the offense is an infraction.

Prior to granting the continuance, the judge should confer with counsel to fully explore how to properly resolve the case.

An order granting a continuance beyond-the 180-day bar or the 90-day bar where the case was dismissed with leave shall be written with the Seventh Judicial District continuance order form completed and appropriately filled out. The moving party shall also provide one extra copy of the order to the clerk who will forward it to the Chief District Court Judge's office. The case will thereafter be tracked under a case management plan.

## **6. Evaluation of Motion**

The following are factors to be considered by the appropriate court officials during the initial 180 days in deciding whether a case should be continued:

- \* opportunity to have effective assistance of counsel;
- \* age of the case and seriousness of the charge;
- \* incarceration status of the defendant;
- \* effect on children if the issue is continued and not resolved;
- \* impact of a continuance on the safety of the parties or other persons;
- \* status of the trial calendar for the session;
- \* number, moving party, and grounds for previous continuances;
- \* due diligence of counsel in promptly making a motion for continuance as soon as practicable and notifying opposing counsel and witnesses;
- \* period of delay caused by the continuance requested;
- \* presence of witnesses or their availability for the present session or for a future session;
- \* a legitimate conflict with another court
- \* availability of counsel;
- \* consideration of the financial consequences to the public, the parties, the attorneys or witnesses if the case is continued;
- \* previously scheduled CLE;
- \* availability of an interpreter;
- \* any other factor that promotes the fair administration of justice.

## **7. Court Conflicts**

Any court conflict shall be resolved according to applicable statutes unless otherwise agreed. The various courts should communicate and if possible resolve any such conflict as best serves the proper and efficient administration of justice.

Juvenile cases should take precedence if there is a conflict among the District Courts.

## **8. Case Rescheduling**

All cases which are continued should be rescheduled with the new date chosen to be one which will most likely lead to a resolution. All necessary participants should review their schedules, checking for such matters as Superior Court, CLE, vacation and other readily discernible conflicts, to make sure they will be available and that the date is not one likely to lead to a further continuance.

## **9. Other Cases**

The District Court shall have continuing authority over all cases not subject to these rules consistent with the North Carolina General Statutes and case law.

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NC vs \_\_\_\_\_

FILE NO: \_\_\_\_\_  
IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

COUNTY OF \_\_\_\_\_

COURT LOCATION \_\_\_\_\_

COURT DATE \_\_\_\_\_

**MOTION TO CONTINUE**

Now comes the (attorney for the defendant) (attorney for the state) and moves for a continuance based on:

1.(a)\_\_\_ Conflict with Federal / Superior / Priority District Court and it is impossible for the conflict to be reasonably resolved during the entire session of this court.

or

(b)\_\_\_ Extraordinary cause in that \_\_\_\_\_

2. This case was first set on \_\_\_\_\_

3. There have been \_\_\_\_\_ prior continuance orders by a judge in this case.

4. Counsel on the other side \_\_\_\_\_ (consents to) (opposes) this motion.  
(Signature)

\_\_\_\_\_  
Signature of movant & date

\_\_\_\_\_  
(print name)

**ORDER**

The motion is allowed and the new court date is \_\_\_\_\_  
(Judge to complete)

or

The motion is denied.

\_\_\_\_\_  
JUDGE PRESIDING

\_\_\_\_\_  
Date signed

Seventh District Form 7/2000 (This form is not mandatory for infractions. See Sect. 5 of Continuance Rules.)

## WITHDRAWAL OF COUNSEL

After the initial 90-day period from the date of first setting, attorneys will not be allowed to withdraw as counsel in criminal cases because of nonpayment of fees to the attorney unless:

- 1) the defendant is in court, has signed a waiver of appointed counsel and is ready to proceed OR
- 2) the defendant is in court with new counsel and is ready to proceed OR
- 3) the defendant is not in court after due notification or reasonable attempted notification and an order for arrest is issued.



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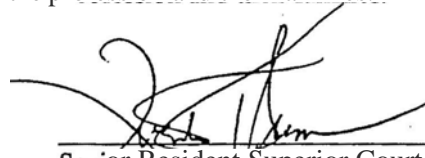
**7TH JUDICIAL DISTRICT VACATION POLICY**

The following policy shall apply in the 7th Judicial District:

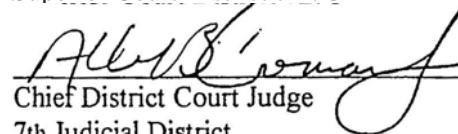
1. An attorney may designate three weeks each calendar year as vacation during which that attorney will not be required to appear before tribunals of the 7th Judicial District.
2. If the attorney designates such times, either consecutively or at intervals, 90 days or more in advance of such vacation, and no trial or other matter has already been set by a Presiding Judge, the attorney will be assured of having the vacation period.
3. An attorney has an obligation to be ready for the trial of any criminal district court case preceding the designated vacation period if the case will exceed the six-month mark under the District Court Continuance Policy during the designated vacation.
4. An attorney may designate vacation by filing a letter listing such weeks in the offices of the Clerk of Superior Court of the 7th District and providing a file-stamped copy to the offices of the Senior Resident Judges, District Attorney, and Chief District Court Judge. A "filed" copy shall be retained by the attorney and provided to judges and opposing counsel as needed.
5. The policy and procedures described herein are not exclusive. In extraordinary circumstances, time limitations may be waived by the court and attorneys may make other requests to be excused from appearing before a tribunal for personal and other reasons.

This policy is adopted in recognition of the need for time away from the demands of professional responsibilities and to improve the overall professional performance of the bar as well as the quality of life of members of the profession and their families.

Adopted this 14th day of September, 1998.

  
\_\_\_\_\_  
Senior Resident Superior Court Judge  
Superior Court District 7A

\_\_\_\_\_  
Senior Resident Superior Court Judge  
Superior Court District 7 B/C

  
\_\_\_\_\_  
Chief District Court Judge  
7th Judicial District

**IN THE GENERAL COURT OF JUSTICE**  
**DISTRICT COURT DIVISION**  
**SEVENTH JUDICIAL DISTRICT**  
**TO WILSON COUNTY CLERK OF SUPERIOR**

**COURT ORDER**

This matter coming on to be heard upon the court's own motion, the following standing order is hereby entered for the District Court in Wilson County:

1. If a failure to appear is recalled in a criminal case the bond forfeiture that accompanies it is to be stricken by the Clerk unless otherwise ordered at the time of recall.
  
2. If a bondsman surrenders a defendant as a result of an order for arrest but prior to service of that same order for arrest, and the defendant posts bond for the new court date, the Clerk is to then strike that outstanding order for arrest and the bond forfeiture unless otherwise ordered by the court.

This order is effective as of the date of signing and is to remain in effect until modified by the court.

This the 14th day of MAY, 1999.



Senior Resident Superior Court Judge  
Superior Court District 7A



Chief District Court Judge

**IN THE GENERAL COURT OF  
JUSTICE DISTRICT COURT  
DIVISION  
SEVENTH JUDICIAL DISTRICT  
TO EDGECOMBE COUNTY CLERK OF SUPERIOR**

**COURT ORDER**

This matter coming on to be heard upon the court's own motion. the following standing order is hereby entered for the District Court in Edgecombe County:

1. If a failure to appear is recalled in a criminal case the bond forfeiture that accompanies it is to be stricken by the Clerk unless otherwise ordered at the time of recall.
2. If a bondsman surrenders a defendant as a result of an order for arrest but prior to service of that same order for arrest, and the defendant posts bond for the new court date, the Clerk is to then strike that outstanding order for arrest and the bond forfeiture unless otherwise ordered by the court.

This order is effective as of the date of signing and is to remain in effect until modified by the court.

This the 14th day of MAY, 1999.

  
\_\_\_\_\_  
Chief District Court Judge

**IN THE GENERAL COURT OF JUSTICE**

**SUPERIOR COURT DIVISION**

**DISTRICT COURT**

**DIVISION SEVENTH**

**JUDICIAL DISTRICT**

**TO NASH COUNTY CLERK OF SUPERIOR  
COURT**

**ORDER**

This matter coming on to be heard upon the court's own motion, the following standing order is hereby entered for the Superior and District Courts in Nash County:

If a failure to appear is recalled in a criminal case the bond forfeiture that accompanies it is to be stricken by the Clerk unless otherwise ordered at the time of recall.

This order is effective as of the date of signing and is to remain in effect until modified by the court.

This the 14th day of MAY, 1999.



Senior Resident Superior Court Judge



Chief District Court Judge

**PROCEDURES WHERE POSSIBLE INCOMPETENT DETAINED AFTER  
BEING CHARGED WITH A MISDEMEANOR  
(WILSON COUNTY ONLY)**

In cooperation with all of the governmental authorities involved, the following procedure is now in effect in Wilson County only:

When a defendant is admitted to the Wilson County Jail after being charged with a misdemeanor and it is believed by the detention supervisor that the defendant may be incompetent to proceed and/or mentally ill and a danger to himself or others; the detention official shall notify the District Attorney's office during normal office hours.

If the district attorney plans to proceed with the case, the district attorney shall then notify the clerk's office and an attorney will be appointed with the affidavit waived.

At the next criminal court setting or at the one currently in session if that is possible, the district attorney and defense attorney are to notify the court and consider a motion/order for competency evaluation.

The detention supervisor shall notify the District Attorney's office as soon as the defendant returns from the evaluation.

If the finding is competency, the district attorney will consider adding the case to a calendar as soon as possible consistent with due process. If the finding is incompetency, the case shall be added to a calendar as soon as possible for consideration of a civil commitment where the charge is a violent crime. If the charge is not a violent crime and no one is willing/able to procure an involuntary commitment through the magistrate, the District Attorney should consider dismissing the case with or without leave or moving for appropriate release with conditions.



## **DOMESTIC VIOLENCE PRE-TRIAL RELEASE HEARINGS**

At the earliest possible opportunity the Sheriff's Department should notify the clerk who is to then notify any judge available in the court house that someone is being held without bond and that N.C.G.S. 15A-534.1 is applicable.

Upon notification, the judge should hold the appropriate bond hearing as soon as practical.

If the charge is criminal, the district attorney's office should be notified in order to participate in the bond hearing. Additionally, at this hearing, the judge should make inquiry as to court-appointed counsel for the trial itself in order to prevent delay at the first court setting.

It is the duty of the magistrate to set pre-trial release conditions where the statutory 48-hour period has elapsed and no judge has been available to consider bond.

## **SANCTIONS**

Any party not in compliance with these rules shall be subject to statutory sanctions and remedies including but not limited to the contempt authority of the court.

In civil cases, willful failure to comply shall subject the non-complying party to sanctions including restitution for any attorney fees or other costs incurred by a complying party as a result of the improper action/inaction.

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SEVENTH JUDICIAL DISTRICT

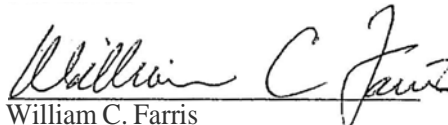
DISTRICT COURT DIVISION

**ORDER**

The undersigned Chief District Court Judge of the Seventh Judicial District hereby amends and supplements the local rules of the District so as to delegate his general authority as follows:

IT IS ORDERED, ADJUDGED AND DECREED, that the Chief District Court Judge shall prepare courtroom assignments for each judge and designate those matters to which each judge should give primary emphasis. Each District Court Judge is hereby authorized by the Chief District Court Judge, subject to further orders to hear all matters within the jurisdiction of the District Court Division, in session or out of session, including in chambers matters, temporary restraining orders, injunctions, and any other matter which can be delegated, authorized or assigned. The court assignment is intended to designate those matters to which the assigned judge shall give primary attention. The conduct of the Court, once assigned, is solely within the discretion of the presiding judge. All assignments are subject to change, and a judge assigned to any court has full authority to hear matters assigned to other courts upon conferring with the judge having primary authority over the matter, and all judges are authorized to preside over any session, and may open and operate such courtroom sessions as may be appropriate to dispose of all pending matters in the most expeditious manner. No actions of any judge shall be subject to collateral attack or jurisdictionally challenged for the reason that authority was not delegated or assigned by the Chief District Court Judge, it being the intent of this provision to fully confer such jurisdiction as may be allowed by law, unless and until such authority is divested by a specific order subsequently entered.

This the 3 day of March, 2006.



William C. Farris  
Chief District Court Judge  
Seventh Judicial District

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