

STATE OF NORTH CAROLINA

THE GENERAL COURT OF JUSTICE

EIGHTH JUDICIAL DISTRICT

DISTRICT COURT DIVISION

FAMILY COURT

ADMINISTRATIVE ORDER ADOPTING TEMPORARY LOCAL RULE

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

WHEREAS, it is necessary and appropriate that reasonable measures be taken to address certain critical matters pending in Domestic Court, the attached Rule 4 of the Local Family Court Domestic Rules is hereby temporarily adopted and shall apply to all temporary hearings as defined by Rule 4.1 until further order of the court, and

This Temporary Rule 4 supersedes all previous versions of Rule 4 of the Local Family Court Domestic Rules in the District Court Division of Eighth Judicial District. This Temporary Rule 4 is subject to modification by subsequent Administrative Order. All other Local Domestic Rules remain in place as previously adopted.

It is so ordered this the 12 day of May, 2020



Beth Heath
CHIEF DISTRICT COURT JUDGE
JUDICIAL DISTRICT 8

Rule 4: Temporary or Interim Hearings

- 4.1 Temporary Hearings.** Temporary hearings shall include hearings of request for custody, visitation, temporary child support, post-separation support, reviews of Ex Parte Orders (except domestic violence cases) and interim partial distributions pursuant to NCGS Section 50-20(i1).
- 4.2 Temporary Hearings by Affidavit.** All cases requesting temporary relief shall be reviewed by the Family Court Case Coordinator to determine whether the temporary hearing shall be conducted by affidavit. Affidavit hearings will be scheduled by the Family Court Case Coordinator after consultation with the presiding judge. The Case Coordinator will issue a date for the Affidavit Hearing set within 30-45 days, or sooner if appropriate based on the nature of the hearing. The Family Court Case Coordinator shall serve notice of this date to all parties along with a copy of this Rule.
- 4.3 Affidavits.** For hearings regarding temporary child support, the parties must comply with the exchange of income and insurance information outlined in Rule 6. For hearings regarding postseparation support, the parties must comply with the mandatory use of the financial affidavit form and exchange of income information as outlined in Rule 7. In addition, each party may submit testimony affidavits that are made on the personal knowledge of the witness, that set forth facts that would be admissible in evidence and that show the witness is competent to testify to the matters stated in the affidavit. Any supporting documents or exhibits must be attached to an affidavit that establishes a proper foundation for admissibility pursuant to the Rules of Evidence. The court will indicate in its ruling which attachments were considered or excluded from consideration.
- 4.4 Affirmation.** Affidavits shall be notarized. If the Chief Justice's Emergency Directive is in place (currently through June 1, 2020), the following affirmation may be substituted for a notarized signature:

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

Signed _____

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

- 4.6 **Service of Affidavits.** Testimony affidavits and any attachments shall be served on all other parties. Service may be by personal delivery, fax or mail. Testimony affidavits and any attachments may be served by email to any party that consents to be served by email. A Certificate of Service shall be filed with the Clerk of Court.
- 4.7 **Arguments.** Written arguments, including any objections to affidavits or attachments, shall be submitted to the Family Court Case Coordinator and served on all other parties at least 3 days prior to the scheduled hearing. Written arguments may be submitted and served by personal delivery, fax, mail or email. Written arguments shall not be filed with the Clerk of Court, but a Certificate of Service shall be filed.
- 4.8 **Failure to Comply.** The court, in its discretion, may decline consideration of any affidavit or argument that fails to comply with these rules or any other governing rules of procedure or evidence.
- 4.9 **Supplemental Affidavits.** The court, in its discretion, may request supplemental affidavits.
- 4.10 **Expedited Affidavit Hearing.** If both parties file and serve all affidavits and arguments earlier than the deadlines require, the parties may submit a written request to the Family Court Case Coordinator (fax, email or personal delivery) requesting that the temporary hearing by affidavit be conducted earlier than the scheduled hearing date. For return hearings and reviews of Ex Parte Child Custody Orders and other emergency matters, the court, in its discretion, may shorten any deadlines under this rule as necessary to expedite the hearing.
- 4.11 **Presence at the Hearing.** Parties and attorneys shall not be present at a temporary affidavit hearing. For temporary custody, parties may request a supplemental remote hearing for the limited purpose of presenting testimony and cross-examination of any party or subject child. All parties must consent in writing to the scheduling of a supplemental remote hearing. Remote hearings will be scheduled by the Family Court Case Coordinator after consultation with the presiding judge.
- 4.12 **Time Limits.** Remote hearings shall be limited in time and scope by the presiding judge. Temporary custody hearings held remotely shall be limited to one hour. Each party shall be allocated one-half of the time to be used for direct examination of the party's witnesses, cross-examination of the other party's witnesses, examination of affidavits, opening and closing statements. It is anticipated that most temporary hearings will conclude within these time limits because of the exchange of information between the parties before the hearing; however, this time limit may be extended in the discretion of the presiding Family Court Judge for good cause.