

**TENTH JUDICIAL DISTRICT**

**DOMESTIC COURT RULES**



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# 10<sup>th</sup> Judicial District Domestic Court Rules

## **RULE 1: GENERAL RULES**

**1.1 Purpose.** The purpose of these Rules is to provide for the fair, just, and prompt resolution of domestic cases in the 10<sup>th</sup> Judicial District. Wherever possible, these Rules will provide for alternative dispute resolution, minimize repeated delays and attempt to link families with appropriate community resources in order to give them a less adversarial forum.

**1.2 Construction.** It is recognized that these Rules will not be complete in every detail and will not cover every situation which may arise. In the event that these Rules fail to address a specific situation which may arise, they should be construed to avoid technical or unnecessary delay, to promote professional courtesy, and to promote the ends of justice.

**1.3 Pro Se Litigants/Ex Parte Communications.** Parties without attorneys are known as *pro se* litigants. All parties (including those without attorneys) and attorneys shall be entitled to receive a copy of these Rules upon the filing of a Domestic Court complaint or motion. Although no party is required to have an attorney, any party who is not represented by an attorney must follow all court rules and is presumed to know and understand them. All *pro se* litigants must keep the **CASE COORDINATOR** (hereinafter called the CC) informed at all times of any and all changes in their addresses and telephone numbers. If a party moves before his case is completed and fails to inform the CC of the new address and telephone number, this will not be grounds to continue the case if notices are not received. *Pro se* litigants, like attorneys, may not have, or attempt to have *ex parte* communication (not in open court with all parties present) with the judge assigned to his or her case. The assigned judge will not return telephone calls, listen to recorded telephone messages, or read mail which is deemed *ex parte* communication. The assigned judge will not open mail which does not contain the name and return address of the sender. Violations of the *ex parte* communication rule may, in the discretion of the assigned judge, subject the offending party to sanctions.

**1.4 Use of Forms.** Local forms for use by counsel/*pro se* parties in accordance with these Rules are subject to change as legislation and/or policy dictates. Except as specified herein, where local forms are specified to be used by these Rules, counsel or *pro se* parties may use either the form provided or a form of their own which substantially corresponds to the specified local form and contains the same information. If a Rule specifies use of a form prepared by the Administrative Office of the Courts (AOC), the AOC form must be used.

**1.5 Prior Domestic Court Local Rules Replaced.** These Rules and all amendments thereto shall be filed with the Clerk of Superior Court of Wake County and may be cited accordingly as the 10<sup>th</sup> Judicial District Domestic Court Rules. These Rules supersede and replace all previous local rules controlling actions in Domestic Court. The effective date of these Rules is February 1, 2002.

**1.6 Copies of Local Rules.** A supply of these Rules shall be maintained and copies thereof shall be available upon request in the offices of the Domestic Court Clerk (presently on the 8<sup>th</sup> Floor of the Wake County Courthouse) and from the Domestic Court Case Coordinator (CC) (presently in Room 1140, the Offices of the District Court Judges). These Rules and forms cited herein are also available for downloading on the web site of the Wake County Clerk of Superior Court at <http://www.nccourts.org>.

**1.7 Definitions.** The term “Court” as used in these Rules shall mean the Chief District Court Judge, any of the presiding District Court Judges or the Domestic Court Case Coordinator (CC) as their

designee. The term, “moving party”, “opposing party”, “responding party”, or “calendar party”, includes the party and/or his/her attorney.

## **RULE 2: DOMESTIC CASE FILINGS, ASSIGNMENT TO DISTRICT COURT JUDGES**

**2.1 Commencement of Domestic Court Actions.** All domestic complaints and subsequent motions shall be commenced by filing with the Clerk of Superior Court of Wake County (hereafter “Clerk of Court”). All domestic complaints, except IV-D, U.R.E.S.A. and U.I.F.S.A. support cases, domestic violence (pursuant to §50-B) and Clerk of Court child support enforcement cases shall be accompanied by a Domestic Action Cover Sheet (**AOC-CV-750**). The cover sheet shall contain the names and addresses of both parties. The Cover Sheet will be used by the CC for case tracking purposes. At the time of initial filing, the Clerk of Court shall assign a case number and place the number upon the summons. All subsequent pleadings and papers filed with the Clerk of Court and all subsequent communications to opposing counsel or parties or court personnel shall reference the proper case number as initially assigned by the Clerk of Court. Any Complaint which is not accompanied by a properly executed Cover Sheet is subject to dismissal.

**2.2 Required Documents.** When a Complaint is filed, the filing party shall complete the following:

**(a) Domestic Filing without a Child Support Claim**

- (1)** A Domestic Civil Action Cover Sheet (**AOC-CV-750**) plus one (1) copy, which is to be attached to the pleading at the time of filing. The cover sheet shall contain the address of the moving party and/or the attorney for the moving party and the address of the opposing party.
- (2)** If an emergency and/or temporary hearing is scheduled pursuant to these Rules at the time of filing of the pleading, a copy of the Notice of Hearing (**DOM-1**) shall be attached to the front of each Complaint or Motion before service.
- (3)** Any other documents required pursuant to these Rules.

**(b) Domestic filing which includes a Child Support Claim**

- (1)** A Domestic Civil Action Cover Sheet (**AOC-CV-750**) plus one (1) copy, which is to be attached to the pleading at the time of filing. The cover sheet shall contain the address of the moving party and/or the attorney for the moving party and the address of the opposing party.
- (2)** Child Support Cover Sheet (Non-IV-D Only) (**AOC-CV-640**) (*pink form*), which shall contain the full name of each party including a middle or maiden name along with any suffix; a complete mailing address, to include the street address and post office box (if both); the date of birth of all parties; the Social Security number of all parties; the name(s), date(s) of birth, and Social Security number(s) of all children for whom support is being sought.

- (3) If any emergency and/or temporary hearing is scheduled pursuant to these Rules at the time of filing of the pleading, a copy of the Notice of Hearing (**DOM-1**) shall be attached to the front of each Complaint or Motion before service.
- (4) Any other documents required pursuant to these Rules.

**2.3 Judicial Assignment.** On or after the effective date of these Rules, all **new** matters (either a new Complaint or new matters in an existing case where a judge has not been previously assigned), except involuntary commitments, IV-D, U.R.E.S.A. and U.I.F.S.A. support cases, domestic violence (pursuant to §50-B), and Clerk of Superior Court child support enforcement cases shall be accompanied by an Affidavit for Judicial Assignment (**DOM-2**). This form shall indicate whether there is a pending or resolved domestic or domestic violence case involving the same parties in this or any other state. In all domestic cases requiring an Affidavit for Judicial Assignment, the Affidavit for Judicial Assignment shall be taken immediately after filing by the moving party to the CC's Office in Room 1140 of the Wake County Courthouse. Incomplete affidavits or affidavits not taken to the CC may result in a case not being promptly assigned to a judge or in undue delay in calendaring or hearing of the case. The CC shall assign the case to a District Court Judge who is assigned to preside over domestic cases during the six-month period in which the case is filed. Assignment of judges shall be on a random basis and shall be accomplished without influence from parties, their attorneys or the judges. The CC shall notify the moving party or the attorney for the moving party of the assigned judge by US Mail or by placement of the notice in the attorney's courthouse mailbox within two business days of initial filing. The moving party shall serve a copy of the completed Affidavit for Judicial Assignment (**DOM-2**) on the opposing party. The judge's name and/or corresponding letter or code shall be placed upon all copies of the summons. All subsequent motions and hearings shall be scheduled by the CC before the judge assigned. See Rule 3 for the calendaring of domestic relations matters.

Once a judge has been assigned to a case he/she shall remain the judge for that case for all future hearings unless the judge is no longer available for Domestic Court, the judge recuses himself/herself or a Request for Reassignment (**DOM-3**) is filed and approved pursuant to Rule 2.5 below.

The CC shall assign cases on a random basis so as to attempt to ensure that all judges serving in Domestic Court have an equal caseload. The CC shall periodically review the ongoing status of the caseloads.

**2.4 Matters Not Subject to Judicial Assignment.** Cases which shall **NOT** be assigned to a Domestic Court Judge include the following:

- (a) **Uncontested Divorce.** In a case in which only an uncontested divorce is sought, the CC shall not assign a judge, unless and until, an Answer and/or Counterclaim is filed seeking relief other than the divorce. It shall be the responsibility of the party seeking relief, in addition to the divorce, to file the Affidavit for Judicial Assignment (**DOM-2**).
- (b) **Domestic Relations Order.** Cases seeking only the entry of a Domestic Relations Order (DRO) or other pension division order shall not be assigned to a judge and may be heard by any District Court Judge assigned to Domestic Court.
- (c) **Child Support Cases.** All cases in which child support is being enforced through the Wake County Clerk of Superior Court (Clerk's contempt), and all child support cases in which the Wake County Child Support Collection Agency (IV-D) is a party, shall be assigned to the specialized Child Support Court (presently Courtroom 9-D).

- (d) **Domestic Violence Civil Court.** N.C.G.S. §50-B Domestic Violence actions (i.e. restraining orders), (hereinafter §50-B), using AOC Forms shall be scheduled at sessions specially established for the hearing of those matters.

To avoid confusion among clerks, courts, and law enforcement, all Complaints, Motions, and Orders filed under §50-B shall use the standard AOC forms authorized under that statute and available in the Office of the Clerk of Superior Court.

The fact that a particular judge heard the domestic violence action shall not require the assignment of the same judge to the domestic action, but the CC may consider the fact that a particular judge heard the §50-B matter in determining to whom the case should be assigned.

The presiding judge hearing the §50-B matter (*ex parte* and/or return) shall contact the CC to determine the name of the assigned judge, if any. If a judge has been assigned to a pending domestic action involving the same parties, the two judges shall confer to decide which judge shall hear the §50-B matter.

- (e) **Juvenile Court Cases.** Juvenile Court actions, including delinquency, undisciplined children, abuse, neglect, dependency, Termination of Parental Rights and emancipations.
- (f) **Criminal Cases.** Criminal cases involving the same parties to a domestic court action shall be tried in criminal court.

**2.5 Judicial Recusal/Reassignment.** Should a judge recuse himself/herself from a case, there shall be an Order signed to that effect and placed in the file and the case shall be reassigned immediately to another judge. A Request for Reassignment (**DOM-3**) shall be delivered to the CC for a ruling by the Chief District Court Judge and only for good cause. Good cause shall include, but is not limited to, conflict of interest as defined by the Code of Judicial Conduct, previous recusal prior to the institution of the Rules, or recusal by the judge on his/her own motion due to having heard prior criminal or domestic violence cases involving the same parties. The CC shall monitor the number of cases assigned to each judge. If a case is reassigned pursuant to this Rule, the CC will issue a new Affidavit for Judicial Assignment (**DOM-2**) and shall notify the parties and/or their attorneys of the new assigned judge in the same manner they were notified at the original judicial assignment pursuant to Rule 2.3.

**2.6 Emergency Matters Arising Prior to Judicial Assignment.** All requests for emergency orders or temporary restraining orders (TROs) which are not domestic violence (§50-B) restraining orders, including *ex parte*/emergency custody orders and other orders requiring a 10-day return hearing, shall be addressed to a judge who will be assigned to Domestic Court on the day of the 10-day hearing, pursuant to Rule 4.4(b) herein. In all such cases, there must be an order signed by the judge in question allowing or denying the request.

When a temporary restraining order, which is not a Domestic Violence (§50-B) Order, is requested prior to the permanent assignment of a judge by the CC, the moving party shall immediately request the assignment of a judge from the CC, on an Affidavit for Judicial Assignment (**DOM-2**) who shall then be the assigned judge for the case.

**2.7 Emergency Matters Arising After Judicial Assignment.** The assigned judge may elect to hear emergency matters arising after the initial filing of the case out of session regardless of the courtroom to which the judge is assigned at that time. If the judge assigned to the case is not available to hear *ex parte* or other emergency matters, the *ex parte* or other emergency matters may be heard by any other judge designated by the Chief District Court Judge to hear emergency matters.

**2.8 Case Tracking.** Each case will be tracked by the CC. Either at the conclusion of each case or in cases in which non-imminent issues remain, the assigned judge and the courtroom clerk will utilize a tracking form to notify the CC.

**2.9 Consolidated Cases.** When there are two (2) or more civil domestic actions (with the exception of cases for absolute divorce only with no other claims attached), involving the same parties, then either party (or the Court on its own motion) may move to consolidate them under one heading and case number. Unless the opposing party files a response to the motion accompanied by affidavits as to why the cases should not be consolidated within five (5) days of service of a Motion to Consolidate, the consolidation request shall be granted. When cases involving the same parties have been consolidated for trial they will be regarded as one case for calendaring purposes and will appear under the oldest case number and case caption. A copy of the order consolidating the cases for trial shall be filed in all pertinent court files and all pleadings or documents filed thereafter shall be captioned with the oldest file number only.

### **RULE 3: CALENDARING OF DOMESTIC CASES**

**3.1 New Actions or Modifications.** When a party files a Complaint or a motion for modification of an existing order in a domestic case, the party shall contact (either in person or by telephone) the CC either at filing or within five (5) business days thereafter to calendar matters as required or allowed by these Rules. Events and/or hearing dates shall be set in accordance with the specific Rules herein. **No court date shall be set without a pleading filed.**

**3.2 Cases Pending at Implementation of These Rules.** Any case which has matters pending (but not yet scheduled for hearing) at the time these Rules are implemented shall be scheduled in accordance with these Rules.

**3.3 Calendaring Initial Hearing Dates and/or Other Required Events.** The date(s) for the first court hearing(s) and/or other event(s), if required by these Rules, shall be scheduled by the moving party through the CC at the initial filing of the complaint or motion in the cause. Initial date(s) shall be set within the time limits, if any, established by these Rules, during the scheduled court sessions of the assigned judge.

**3.4 Consultation with Opposing Party Prior to Calendaring.** Except as set forth above in Rule 3.3, the calendaring party shall consult the opposing party before setting a hearing date. If there is no response in any way to the request to schedule a court date a Calendar Request (**DOM-4**) may be submitted to the CC. The Calendar Request must indicate whether the opposing party consents, objects to the setting and the reason for the objection, if known, or failed to respond to the calendaring party.

**3.5 Scheduling Hearing Length.** In requesting a hearing date, attorneys or *pro se* parties shall confer with the CC regarding an appropriate hearing date and provide the following information: the type of hearing, number of potential witnesses for each side, and the anticipated length of trial. In the event that a matter is scheduled for hearing, if there are any changes in the original time estimate or if either party wishes to schedule additional matters for hearing at the same court setting, the CC must be contacted prior to issuing a Notice of Hearing (**DOM-1**) in order to inquire as to the feasibility of adding additional matters to the trial calendar and, if so, to add those matters to the trial calendar and to adjust the anticipated time required.

**3.6 Calendar Request.** Prior to scheduling any matter for hearing, the calendaring party shall contact the CC to obtain available dates for hearing. No case will be calendared until such time as a copy of the Calendar Request (**DOM-4**), is received by the CC. Requests must be completely filled out with all required information. Service of the completed Calendar Request (**DOM-4**) on the CC and shall be made by hand delivery, US Mail, or facsimile transmission. Failure of any Request to be in compliance with these Rules will result in the matter not being calendared by the CC. A party wishing to calendar a custody issue which is subject to mediation pursuant to Rules 7 and 8 herein shall attach a copy of the Order to Calendar Custody or Visitation Dispute (**AOC-CV-914M**) to the Calendar Request.

**3.7 Notice of Hearing.** The courtroom location, date, time and matters to be heard should be cited in the Notice of Hearing (**DOM-1**). The calendaring party shall serve the Notice of Hearing on the opposing party immediately after calendaring in the manner provided by Rule 4 of the North Carolina Rules of Civil Procedure and shall also file the Notice with the Clerk. Failure of the moving party to notify the opposing party of any court hearing may result in an automatic denial of the relief sought upon objection of the opposing party.

**3.8 Removing Hearings from the Calendar.** If the party who calendars a case wants to remove it from the calendar, he or she shall first notify the opposing party about the desired removal. No matter may be unilaterally removed from a calendar by either party without consent of the opposing party. If the other side does not agree to the removal, then the assigned judge shall resolve the dispute.

**3.9 Matters Continued from the Calendar.** If any matter is not reached or is continued from the Domestic Court Calendar, it must be re-calendared by the moving party through the CC in accordance with Rule 3.6 above. When a matter has been continued by the judge in open court to a specific date, counsel shall provide notice of the new date by service of an Order of Continuance (if applicable) or a new Notice of Hearing (**DOM-1**) to the opposing party, unless the parties otherwise agree.

**3.10 Double Calendaring Matters.** No matter shall be placed on the calendar again if the matter has already been calendared until that matter is resolved, removed or continued by the Court.

## **RULE 4: MOTIONS, PRETRIAL CONFERENCES AND HEARINGS**

### **4.1 Motions.**

(a) **Motions in the Cause for Contempt.** All Motions and Orders to Appear and Show Cause (**DOM-5**) shall be filed with the Clerk and shall reference the Order which is alleged to have been violated. A copy of the Order alleged to have been violated shall be delivered by the moving party to the CC, along with the Motion, for presentation to the assigned judge. Thereafter, the Motion and Order to Show Cause (**DOM-5**) shall be submitted to the assigned judge for consideration. If the assigned judge is not available, another Domestic Court judge may hear the matter.

(1) **Allegations of Custody Violation.** If the motion alleges a violation as to a custody, visitation, or other parenting issues (other than child support), a Custody Mediation Cover Sheet (**DOM-6**) and either a completed Notice to Attend (**DOM-7**) or a completed Motion and Order to Waive Custody Mediation (**AOC-CV-632**) must be attached to the motion. If Custody Mediation has previously been waived, a copy of the prior motion and order waiving mediation shall be attached to the Motion and Order to Show Cause (**DOM-5**). Unless the moving party simultaneously files a Motion to and

Order to Waive Custody Mediation (**AOC-CV-632**), the parties shall first be scheduled for custody mediation pursuant to N.C.G.S. §50-13.1 and Rule 8 herein. If mediation is required, no hearing date on the Motion to Show Cause shall be set until the CC receives the Order to Calendar Custody or Visitation Dispute (**AOC-CV-914M**) from the Custody Mediation Office (CMO). If either party files a Motion and Order to Waive Custody Mediation, the CC shall calendar the motion for hearing before the assigned judge.

- (2) **Allegations not Involving Custody.** In all other matters not concerning custody, visitation or other parenting issues, the CC shall calendar the case for hearing before the assigned judge upon issuance of the Motion and Order to Appear and Show Cause (**DOM-5**) or Motion and Order to Show Cause for Failure to Comply with Order in Child Support (**AOC-CV-601**). Notice of the hearing date shall be contained in the Orders.

(b) **Fifteen-Minute Motion Hearings.**

- (1) There shall be a session to give priority to matters that are designated as a “Fifteen-Minute Motion” to accommodate parties who have short matters which can be heard expeditiously.
- (2) To schedule such a matter, the one who requests the hearing (the “moving party”) shall notify the opposing party or parties in the Notice of Hearing that a “Fifteen-Minute Motion” is being requested.
- (3) If the other side consents to this setting, that shall be stated in the hearing notice. A “Fifteen-Minute Motion” may also be heard on affidavits in the discretion of the presiding judge.
- (4) If there is no such consent, then the moving party shall set out in Notice of Hearing a short and concise statement, made in good faith, as to why this matter can be fairly presented to the court with 15 minutes for each side.
- (5) The following format is sufficient for a Notice of Hearing for a Fifteen-Minute Motion: (**DOM-8**)

“Please take notice that the undersigned has scheduled for a Fifteen-Minute Motion Hearing the following matter: \_\_\_\_\_, to be heard on [date] at 9:00 a.m. or as soon thereafter as this may be heard. [Opposing counsel has consented to this setting.] -- OR -- [This matter can be fairly presented to the court with 15 minutes for each side because ...] (Example: “*This is a motion for change of venue. Plaintiff-father lives in Arkansas, and the defendant-mother has lived, with the minor child, in Cumberland County for the past 10 months. No contestant or interested party resides in Wake County*”).

- (6) To object to such scheduling, the opposing party shall file an affidavit setting forth specific reasons why the matter cannot be fairly presented to the court with 15 minutes for each side. An example of such a statement in an affidavit by the Plaintiff would be: “*The Plaintiff-father contends that he lives in Arkansas and that the defendant-mother resides in Wake County, even though*

*the Notice of Hearing in this matter alleges that she lives in Cumberland County. In reality, the defendant-mother resides in southern Wake County and works in Cumberland County. We have five witnesses who will testify to this contested issue, and it will take longer than 15 minutes for us to present this testimony to try to convince the Court that the venue of this case should remain in Wake County.”* The affidavit shall be served on the moving party by personal delivery at least three days before the hearing date (or served by mail at least six days before the hearing date).

- (7) If an opposing affidavit is filed, the matter shall not be heard as a Fifteen-Minute Motion but shall be called at such time as the Court directs.
- (8) Parties with a matter scheduled for a “Fifteen-Minute Motion” shall adhere to a strict 15-minute time limitation per side. Exceeding the time limit will subject the party and/or attorney to sanctions in the discretion of the Court. Any party and/or attorney who begins a hearing without objecting to the time limitation shall be bound by the limit.
- (9) This procedure is for the convenience of parties having short matters which can be resolved quickly. Usually this Rule will be used for motions such as the following: motion to compel, motion for exemption from custody mediation, motion to quash, motion for sanctions, motion for continuance, motion *in limine*, motion to join or sever, motion to dismiss, motion for change of venue, motion to amend or supplement pleadings, motion to extend time (beyond initial extension by Clerk) and motions to withdraw which have not been consented to by the client. However, any matter, whether designated technically a motion, a hearing or a trial, which complies with the time limitation may be set for hearing as a Fifteen-Minute Motion.
- (c) **Motions to Withdraw.** All motions to withdraw shall be scheduled for hearing pursuant to Rule 3 above and in advance of any assigned trial date. However, motions to withdraw which are consented to by the client **in writing** may be signed in chambers as with any consent order. However, withdrawal of counsel within two weeks of a scheduled hearing shall not be grounds for a continuance of the hearing in question.
- (d) **Other Motions.** All motions shall be scheduled for hearing through the CC prior to the assigned trial date.

**4.2 Temporary Non-Emergency Hearings.** Unless excused by the Court, both parties shall attend temporary non-emergency hearings. These hearings shall include hearings on non-emergency temporary child custody/visitation, temporary child support, post-separation support, and interim distributions under N.C.G.S. §50-20(i1).

- (a) **Length of Hearing.** Temporary hearings shall be limited to two hours, and each party shall be allocated one-half of that time to be used for opening statements, direct examination of the party’s witnesses, cross-examination of the opposing party’s witnesses, and closing arguments. Cases in which temporary custody/visitation orders are issued after such hearings shall be rescheduled for full hearing within three months after the temporary hearing and the new date shall be stated in the order.
- (b) **Use of Affidavits.** It is anticipated that at the majority of these hearings, evidence will be presented based upon affidavits as allowed by statute. Except for good cause shown, evidence

in financial matters shall be by affidavits. All affidavits shall be delivered to the opposing party by any means reasonably calculated to ensure receipt no later than ten (10) business days prior to the scheduled hearing. All rebuttal affidavits, i.e. affidavits that are filed in response to the other party's affidavits, shall be delivered to the opposing party by any means reasonably calculated to ensure receipt no later than five (5) business days in advance of the hearing. The Court will not consider affidavits which are not served on the opposing party in accordance with these Rules. With prior written notice to the opposing party at least seven (7) days prior to the scheduled hearing, either party may request additional time to present complicated cases, which the assigned judge may allow, in his or her discretion.

- (c) **Settlement Negotiations.** In the discretion of the assigned judge, if the parties are engaged in settlement negotiations at the time scheduled for hearing, the assigned judge may hear other matters during this time. While settlement negotiations are strongly encouraged at every phase of the proceedings, negotiations held at the last minute may result in a loss of priority on the calendar.
- (d) **Effect of Failure to Appear.** If the party requesting the temporary hearing fails to appear as scheduled and upon oral motion of the opposing party, the temporary relief sought shall be denied and the matter may proceed to be calendared for trial pursuant to these Rules. If the moving party's attorney fails to appear, that attorney may be subject to sanctions. If the opposing party or his/her attorney fails to appear at the designated time and place, the hearing shall not be delayed without good cause shown.
- (e) **Temporary Orders.** Any order entered in a temporary hearing conducted pursuant to these Rules shall be without prejudice to either party and subject to full hearing on the merits at a later date, unless otherwise agreed by the parties. The temporary order shall be designated as such and shall include a date certain for a full hearing on the merits. No substantial change of circumstances need be shown at the full hearing.

**4.3 Pretrial Conferences.** Any attorney may request a pretrial conference regarding any substantive matter (i.e., custody, child support, alimony). If a pretrial conference is desired, a Request for Pretrial Conference (**DOM-9**) must be filed and given to the CC for transmittal to the assigned judge. The assigned judge may schedule an appropriate date for the conference but the conference must be placed on the calendar by the CC. The assigned judge may require a pretrial conference for any matter which is deemed appropriate. Pretrial conferences will be scheduled at least 30 days prior to the scheduled trial. The final pretrial order shall be submitted no later than seven (7) days prior to the scheduled trial.

- (a) **Participation in and Purpose of Pretrial Conferences.** If a pretrial conference is scheduled, attendance is mandatory for all attorneys of record and all parties. The purpose of a pretrial conference is to assist the parties in trial preparation by narrowing the issues for trial or for disposition of the case, to set deadlines for the completion of discovery, to determine the need for reference, to seriously explore the prospects of settlement of the case, to finalize proposed witness lists, to determine what facts can be stipulated and agreed upon by the parties, to develop lists of stipulated exhibits, and to agree upon a final pretrial order. Adjustments to the time allocated for trial may be made at this time in the discretion of the trial judge. At a pretrial conference, the Court will address any requests for additional discovery and set a date for trial of the matter or such additional pretrial conferences as are necessary. The assigned judge will require a final pretrial order to be completed and submitted by a certain date. Failure of the moving party to complete the order or failure of the opposing party to cooperate with providing the appropriate information/documents to

complete the order may result in the imposition of sanctions pursuant to Rule 37 of the North Carolina Rules of Civil Procedure.

- (b) **Sanctions for Failure to Participate in Pretrial Conferences.** Failure to attend a pretrial conference which is noticed for hearing is a serious breach of these Rules. Such failure may result in a dismissal of the responsible party's claim, the responsible party's proffered testimony (either written or oral) not being allowed into evidence by the Court, or may result in the imposition of other sanctions as provided by Rule 37 of the North Carolina Rules of Civil Procedure.

**4.4 Ex Parte/Emergency Matters.** *Ex Parte* and/or emergency orders (hereinafter *ex parte/emergency*) shall not be sought except from the assigned judge and then only for such circumstances as are allowed by the Rules of Civil Procedure, statute or other law.

- (a) **Notice to Opposing Party.** In cases wherein the moving party knows the other litigant to be represented by counsel, reasonable notice shall be given to opposing counsel who shall be given the opportunity to be present at the time of making the motion before the Court. Reasonable notice shall be presumed to be oral notice given at least two (2) hours prior to appearance before the Court for the purpose of making the motion. At all times practicable, and unless emergency circumstances warrant otherwise, reasonable notice of the motion shall also be given to an opposing party not represented by counsel. The reason for the irreparable harm must be stated in the verified motion in conformance with Rule 65 of the North Carolina Rules of Civil Procedure. If the opposing party is notified, the opposing counsel or a *pro se* party shall be given an opportunity to review the motion and proposed order prior to the emergency hearing.

Failure of moving counsel to notify opposing counsel, where known, may result in an automatic denial of the relief sought upon objection of opposing counsel and will result in the Order being set aside to give the opposing counsel the opportunity to be heard along with imposition of appropriate sanctions in the discretion of the judge.

*Ex parte* communications shall not be abused and are subject to the Rules of Professional Conduct and the Canons of Judicial Conduct. When seeking an *ex parte* ruling, a party shall inform the Court of the identity of opposing counsel, if any. Before considering a request for an *ex parte* ruling, the Court should inquire about the existence of any opposing counsel and of steps taken to advise opposing counsel in advance of the *ex parte* contact.

- (b) **Emergency Hearings.** Motions for *ex parte/emergency* orders shall be submitted in writing to the assigned judge through the CC. Emergency matters may be heard by the judge assigned to the case regardless of the session at which the judge may be presiding. If the judge assigned to the case is not available to hear *ex parte* or other emergency matters, the *ex parte* or other emergency matters may be heard by any other judge designated by the Chief District Court Judge to hear emergency matters.

An emergency/temporary hearing pursuant to this section may be conducted in chambers in the discretion of the judge.

- (c) **Judicial Assignment.**

- (1) For *ex parte/emergency* orders issued prior to the service of the Complaint, the date for hearing shall be cited in the Order and the Order shall be filed with the Clerk and

served upon the opposing party. *Ex parte*/emergency orders sought prior to service of the initial Complaint shall be sought from a judge assigned to Domestic Court at the 10-day hearing date. The CC will inform the moving party which judge will hear the *ex parte*/emergency matter prior to the moving party approaching the judge with the Complaint and request for emergency relief. The CC shall also inform the judge assigned to hear the emergency matter of the assignment. Any ruling on an *ex parte*/emergency request must be reflected in a written order which shall become a part of the file. If an *ex parte*/emergency request is denied, the party requesting such an order, shall not, thereupon, approach another judge about the matter. Permanent assignment of a judge to the case will be accomplished pursuant to the provisions of Rules 2.3 and 2.6 above.

- (2) For *ex parte*/emergency orders issued after service of the Complaint, the date for hearing shall be cited in the order and the order shall be filed with the Clerk and served upon the opposing party.
- (d) **Return Hearing.** If an *ex parte*/emergency order is executed by a judge, a Return Hearing shall be scheduled within ten (10) days of issuance on the issue of emergency only. The moving party shall notify the CC of the date for the Return Hearing issued by the assigned judge. Failure to notify the CC of the hearing date will result in the matter not being calendared and may result in dismissal. Returns on emergency orders will be heard on affidavits and arguments, without live testimony, unless the presiding judge elects to hear testimony. Affidavits are limited to five (5) for each party unless the presiding judge agrees to accept additional affidavits.
- (e) **Sanctions.** *Ex Parte*/emergency orders improvidently granted, based on incomplete or erroneous information, may subject the moving party to sanctions pursuant to Rule 11 of the North Carolina Rules of Civil Procedure. This may include payment of attorney's fees for the opposing party.

**4.5 Trial Settings.** Either party may contact the CC for a trial setting pursuant to these Rules. The assigned judge may also set cases for trial at a pretrial conference after consultation with each party. Where the assigned judge sets a case for trial, it is the responsibility of counsel or the party to ensure that the matter is calendared pursuant to the judge's instruction through the CC. No case shall be heard by the Court unless it is calendared through the CC and service of the completed Calendar Request (**DOM- 4**) on the CC shall be made by hand delivery, US Mail, or facsimile transmission.

## **RULE 5: TRIAL CALENDAR**

**5.1 Miscellaneous.** All issues to be determined by jury trial in any appropriate Domestic Relations case shall be resolved in General Civil District Court pursuant to the case management plan enacted by the Chief District Judge or the Trial Court Administrator. Whether a Domestic Relations case is appropriate for General Civil District Court shall be in the discretion of the Trial Court Administrator.

**5.2 Calendars.** The respective individual scheduling notices provided for in these Rules shall serve as the basis for the preparation of the final calendar, which shall be distributed to all counsel/*pro se* parties.

The calendars for domestic relations sessions (except for the uncontested divorce calendar and ten (10) day emergency return hearings) shall be printed two weeks prior to the court date. At that time,

copies of the calendars shall be available in the office of the CC and in the domestic courtrooms. Each attorney with a scheduled case shall receive a copy of the calendar in the attorney's box in the Office of the Clerk of Superior Court. The calendar will be mailed to attorneys out of Wake County and all *pro se* parties. Cases not calendared in accordance with these Rules will not be heard. No requests for "add-ons" will be granted except by the presiding judge. Published calendars, forms and these Rules may be downloaded from the following web site: <http://www.nccourts.org>. It is the responsibility of counsel and *pro se* parties to be aware of cases appearing on trial calendars.

**5.3 Calendar Call.** Counsel or *pro se* parties with cases appearing on the printed calendar are required to appear at calendar call. If they have not already contacted the CC prior to the start of the scheduled court hearing, attorneys should contact the courtroom clerk, by 9:00 a.m. on the court date, with information that a party has not been served, that a continuance is requested, or a case resolved without a hearing. At calendar call, each attorney and/or litigant with a case on the calendar will be present and will indicate to the presiding judge and courtroom clerk, the following:

- (a) status of the case, progress of settlement negotiations or whether settlement options have been exhausted. In the discretion of the trial judge, the judge may schedule a pretrial conference prior to the case being called for hearing to assist in moving the case forward, entering stipulations, and narrowing issues for trial;
- (b) number of potential witnesses for each side and good faith estimate of the length of the hearing;
- (c) scheduling limitations and conflicts for attorneys, litigants, and/or potential witnesses; and
- (d) age of case, whether it has been bumped from any prior calendar(s), number of prior settings, and/or prior continuances.

**5.4 Appearance at Hearings by Counsel Required.** Pursuant to Rule 2(e), General Rules of Practice for Superior and District Courts, counsel for all parties in an action, when notified to appear for a pretrial conference, hearing of a motion, or for trial, must, consistent with ethical requirements, appear or have a partner, an associate, or another attorney familiar with the case present.

**5.5 Dismissal for Failure to Appear.** Any case noticed for trial is subject to dismissal for failure to prosecute if, at the time it is called for trial, the attorneys or *pro se* parties are not present or ready to proceed and have failed to notify the Court of any emergency or conflict which would preclude the attorney or party from being present. No case will be dismissed for failure to appear prior to 9:30 AM on any given court day.

## **RULE 6: CHILD SUPPORT CASES**

**6.1 Calendaring Temporary Hearing.** Upon filing an initial claim for child support pursuant to these Rules, the moving party shall immediately seek a court hearing for temporary child support. The CC shall set all child support cases for a temporary hearing within forty-five (45) days after filing before the assigned judge.

**6.2 Financial Information Required.** In all cases involving child support (except those filed under IV-D, U.R.E.S.A. and U.I.F.S.A.), each party shall file and exchange a Financial Affidavit (**DOM-10**). The moving party shall serve his/her completed Financial Affidavit with his/her pleading on the opposing

party. The opposing party shall file and serve the moving party with his/her completed Financial Affidavit (**DOM-10**) within the time period required by the North Carolina Rules of Civil Procedure for responsive pleadings, or fifteen (15) days prior to the date the matter is scheduled for hearing, whichever occurs first.

In addition to service of their completed Financial Affidavits, the parties shall exchange financial information as required by Rule 10 entitled “Initial Disclosures Regarding Financial Issues in Child Support, Post-Separation Support, and Alimony.”

**6.3 Moving Party’s Responsibility.** The party seeking child support or the modification of an existing order, must attach his/her completed Financial Affidavit (**DOM-10**) to the initial pleading. The moving party shall serve upon the opposing party the following: the pleading, the completed Financial Affidavit (**DOM-10**), the Affidavit of Judicial Assignment (**DOM-2**) (if required by these Rules), Notice of Hearing (**DOM-1**), a blank Financial Affidavit (**DOM-10**), and a *Notice of Financial Information Required (DOM-11)*.

**6.4 Employer Wage Affidavits.** Each party shall submit an Employer Wage Affidavit (**DOM-12**) to his or her employer(s) for completion. The affidavit completed by the employer must be filed with the court and served on the opposing party at least five (5) business days prior to the first hearing or conference on the pending request for support or modification thereof, or upon receipt, whichever is later.

**6.5 Temporary child support hearings.** To ensure compliance with North Carolina regulations, a temporary child support order shall be entered in each new child support case within sixty (60) days of service of the request. All child support matters seeking the initial establishment of child support shall be set for a temporary hearing within forty-five (45) days after filing. If a claim for post-separation support is also pending, it shall be heard along with the claim for temporary child support, if practicable.

- (a) **Length of Hearing.** Temporary child support hearings shall be limited to two hours. Each party will have up to one (1) hour to present his or her case, including opening statements, direct and cross-examination, and closing arguments, although a judge may elect to reduce such time or to decide a case on affidavits, without evidence or argument, as permitted by statute. With written notice to the opposing party at least seven (7) days prior to the scheduled hearing date, parties may request from the Court additional time to present complicated cases, which the assigned judge may allow, in his or her discretion.
- (b) **Use of Affidavits.** Except for good cause shown, evidence in temporary child support hearings shall be by affidavits. Parties wishing to use affidavits from the parties, accountants, private investigators or other third parties must deliver the affidavits to the other party by any means reasonably calculated to ensure receipt no later than ten (10) business days prior to the scheduled hearing. Rebuttal affidavits, i.e., affidavits that are filed in response to the opposing party’s affidavits, shall be delivered to the other party by any means reasonably calculated to ensure receipt no later than five (5) business days before the scheduled hearing. The Court will not consider affidavits which are not served on the opposing party in accordance with these Rules.
- (c) **Continuances.** In those cases where service has not been perfected, the case will be continued to a date certain at the call of the calendar. Continuances involving temporary child support hearings will only be granted at the call of the calendar and then always to a date certain. Moving counsel shall notify any *pro se* parties of the continuance date, if the *pro se* party is not present in court when the continuance is granted.

- (d) **Temporary Order.** At the temporary child support hearing, an order shall be entered establishing some reasonable amount of child support to be paid by the non-custodial or supporting parent. This order shall be non-prejudicial to both parties pending the final disposition of matters of custody and child support. The order shall be based on the North Carolina Child Support Guidelines, but properly served written motions for deviations may be considered. If, at the temporary hearing, both parties and the presiding judge agree, the parties may proceed with a hearing for the establishment of a permanent order of child support.
- (e) **Child Support Worksheet.** Attorneys shall attach a Child Support Worksheet (**AOC-CV-627, 628, or 629**) to the Temporary Order which is filed with the Clerk of Court. The worksheet shall include the name, address, and Social Security Number of each party. A copy of all orders dealing with ongoing support, or support arrearage shall be provided to the Child Support Division of the Office of the Clerk of Superior Court if child support is to be paid through North Carolina Support Centralized Collections and/or is ordered to be enforced by the Child Support Division of the Office of the Clerk of Superior Court.

**6.6 Child Support Orders.** All child support orders for payments which are going to be paid through NC Child Support Centralized Collections (“Centralized Collections”) and/or enforced by the Wake County Clerk of Superior Court shall have a current Child Support Cover Sheet (Non-IV-D only) (**AOC-CV-640**) in the court file and must contain the following information:

- (a) **Direct Payment to Centralized Collections.** Amount of current support; date that current support will begin; frequency of payment (i.e., monthly, weekly, bi-weekly, semi-monthly); amount of arrears, if any; date that payment towards arrears will begin; amount of arrears payment and frequency of payment (i.e., monthly, weekly, bi-weekly, semi-monthly); any extraordinary expenses that are to be paid through Centralized Collections and/or any extraordinary expenses that are to be paid directly to the payee; statement that all payments are to be sent to NC Child Support Centralized Collections; and the address of the party to which the child support is to be mailed.
- (b) **Direct Payment to Centralized Collections and Enforcement by the Clerk of Superior Court.** Amount of current support; date that current support will begin; frequency of payment (i.e., monthly, weekly, bi-weekly, semi-monthly); amount of arrears, if any; date that payment towards arrears will begin; amount of arrears payment and frequency of payment (i.e., monthly, weekly, bi-weekly, semi-monthly); any extraordinary expenses that are to be paid through Centralized Collections and/or any extraordinary expenses that are to be paid directly to the payee; date that purge is to be paid; credit against arrearages for time served in jail, if any; payor’s employer; amount which payor earns, and the number of hours worked; frequency of payment from employer to payor (i.e., monthly, weekly, bi-weekly, semi-monthly); provide for wage withholding; credit given for payment made directly to payee; any payments made directly in Court; if payor is placed on Electronic House Arrest or is incarcerated, specify what conditions will allow payor to be removed from Electronic House Arrest or release from jail; statement that all payments are to be sent to NC Child Support Centralized Collections; and the address of the party to which the child support is to be mailed. All payors must complete an Employer’s Information Sheet (**DOM-13**). The Court will execute an Order to Withhold Wages to Enforce Child Support (**AOC-CV-618**).

Direct payments may be transferred to the Clerk of Superior Court for enforcement purposes **only by order of the Court.**

## **RULE 7: CHILD CUSTODY CASES**

**7.1 Definitions.** As used herein, “Custody” includes custody, visitation, or other parenting issues (not including child support). “CMO” is the Custody Mediation Office, Tenth Judicial District.

**7.2 Custody Mediation Cover Sheet.** The party filing a Complaint, Answer, Counterclaim, Motion or other pleading for custody, visitation or other parenting issues (not including child support) shall complete a Custody Mediation Cover Sheet (**DOM-6**) with all required information and immediately deliver it to the CC. The CC shall notify the CMO of all actions involving custody which are subject to mediation.

**7.3 Custody Mediation.** Each custody case shall be subject to mediation pursuant to N.C.G.S. §50-13.1 and Rule 8 below entitled “Mandatory Custody Mediation.” Upon filing a custody case, the moving party shall immediately schedule orientation in accordance with Rule 8.2 below, unless the moving party simultaneously files a Motion and Order to Waive Custody Mediation (**AOC-CV-632**). If a Motion and Order to Waive Custody Mediation (**AOC-CV-632**) is filed, the moving party must submit a Calendar Request (**DOM-4**) to the CC to schedule the Motion pursuant to Rule 3 above. Unless mediation is waived, the parties shall proceed with mediation in accordance with Rule 8 below.

Upon submission for signature to the assigned judge, consent orders in custody issues which have not been through the mediation process shall be accompanied by a Motion and Order to Waive Custody Mediation (**AOC-CV-632**). A copy of the executed Motion and Order to Waive Custody Mediation (**AOC-CV-632**) mediation shall be provided to the CC and the CMO. A copy of the dismissal of any custody issue must be delivered to the CC and the CMO upon filing.

**7.4 Moving Party’s Responsibility.** The party filing a Complaint, Answer, Counterclaim, Motion or other pleading for custody, visitation or other parenting issues (not including child support) shall serve the following upon the opposing party: the pleading, Notice to Attend (**DOM-7**) setting the orientation date or mediation date **or** the Motion and Order to Waive Custody Mediation (**AOC-CV-632**) setting the hearing date for the Motion and Order to Waive Custody Mediation, and the Affidavit for Judicial Assignment (**DOM-2**) (if required by these Rules).

**7.5 Scheduling of Temporary Custody Hearing.** Upon request of the party filing the Complaint, the CC will schedule a temporary hearing date pursuant to Rules 3 and 4.2 above; however, the scheduled court hearing date shall not be prior to the completion of mediation unless expressly allowed by the assigned judge. If a temporary hearing date has been set, the moving party shall immediately serve upon the opposing party or counsel a Notice of Hearing (**DOM-1**) in addition to the documents named in Rule 7.4 above.

### **7.6 Temporary Custody Hearings.**

- (a) **Length of Hearing.** Temporary custody hearings shall be limited to two hours. Each party will have up to one (1) hour to present his or her case, including direct and cross-examination and closing arguments, although a judge may elect to reduce such time or to decide a case on affidavits, without evidence or argument, as permitted by statute. With written notice to the opposing party at least seven (7) days prior to the scheduled hearing date parties may request from the Court additional time to present complicated cases, which the assigned judge may allow, in his or her discretion.

- (b) **Use of Affidavits.** Parties wishing to use affidavits from the parties, accountants, private investigators or other third parties must deliver the affidavits to the opposing party by any means reasonably calculated to ensure receipt no later than ten (10) business days prior to the scheduled hearing. Rebuttal affidavits, i.e., affidavits that are filed in response to the other party's affidavits, shall be delivered to the other party by any means reasonably calculated to ensure receipt no later than five (5) business days before the scheduled hearing. The Court will not consider affidavits which are not served on the opposing party in accordance with these Rules.
- (c) **Effect of Failure to Appear at Temporary Custody Hearing.** If the party requesting the hearing fails to appear, the temporary relief sought shall be denied and the matter may proceed to be calendared for trial pursuant to these Rules. If the moving party's attorney fails to appear, that attorney may be subject to sanctions. If the opposing party or his/her attorney fails to appear at the designated time and place, the hearing shall not be delayed without good cause shown.
- (d) **Temporary Custody Order.** Any order entered in a temporary custody hearing shall be without prejudice to either party and subject to full hearing on the merits at a later date, unless otherwise agreed by the parties. The temporary custody order shall be designated as such and shall be rescheduled for full hearing within three months after the temporary hearing. The order shall include a date certain for a full hearing on the merits. No substantial change of circumstances need be shown at the full hearing.

## **RULE 8: MANDATORY CUSTODY MEDIATION**

*[NOTE: These Rules incorporate by reference the "Uniform Rules Regulating Mediation of Child Custody and Visitation Disputes Under the North Carolina Custody and Visitation Mediation Program" as contained in CUSTODY AND VISITATION MEDIATION PROGRAM PROCEDURES MANUAL, North Carolina Administrative Office of the Courts, October 1999.]*

**8.1 Custody Mediation.** The parties to any custody and/or visitation case, including initial filings, modifications or enforcement, shall participate in mandatory mediation prior to any pretrial conference or other hearing of these issues unless exempted by the Court. The CC shall notify the Custody Mediation Office (CMO) of all actions involving custody/visitation subject to mediation as set forth in N.C.G.S. §50-13.1. If a motion for exemption from mediation is filed, the CC shall schedule a hearing on the motion before the assigned judge. Unless exempted, the parties shall proceed with mediation in accordance with these Rules.

**8.2 Scheduling Orientation.** The party filing a Complaint, Answer, Counterclaim, Motion or other pleading for custody, visitation or other parenting issues (not including child support) shall bring a completed Custody Mediation Cover Sheet (**DOM-6**) to the CC's office for the scheduling of orientation.

- (a) Orientation shall be scheduled as follows:
  - (1) For an initial action, orientation shall be scheduled no earlier than forty-five (45) days after filing.
  - (2) For a motion to modify or enforce an existing custody and/or visitation order, orientation shall be scheduled no earlier than twenty-five (25) days after filing.

- (3) For cases in which a Stipulation for Expedited Mediation (**DOM-14**) has been filed (where the parties or their counsel have stipulated to an earlier orientation date), orientation shall be scheduled on the first available date.
- (4) No more than twenty (20) cases shall be scheduled for each orientation.
- (b) The attorney representing the moving party shall schedule orientation in the Scheduling Binder in the CC's office.
- (c) Where there is no counsel of record, the moving party shall submit the Custody Mediation Cover Sheet (**DOM-6**) to the CC, and the CC shall schedule the parties for orientation.
- (d) After scheduling orientation, the moving party shall obtain two (2) copies of a Notice to Attend (**DOM-7**) and shall immediately serve a copy of this notice on the opposing party.

**8.3 Scheduling Mediation.** If the parties have previously attended orientation, the CC shall refer the moving party to the CMO to obtain a mediation date. The moving party shall serve a copy of the Notice to Attend (**DOM-7**), containing the mediation date, on the opposing party. If the parties have not previously attended orientation, then the CMO shall schedule mediation at the time of orientation.

**8.4 Attendance.** Any party who fails to attend and participate in mediation as ordered shall be subject to sanctions, including the contempt powers of the court.

**8.5 Exemption from Custody Mediation.** A party may move for an exemption from mediation for good cause. Good cause may include, but is not limited to, the following in N.C.G.S. §50-13.1(c): a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to Court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or spouse abuse; or allegations of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty (50) miles from the court shall be considered good cause. Counsel or parties desiring an exemption shall complete, file and serve on the opposing party a Motion and Order to Waive Custody Mediation (**AOC-CV-632**), and shall simultaneously deliver it to the CC for calendaring.

**8.6 Moving Party's Responsibility.** The moving party shall serve the following upon the opposing party or his or her counsel: the pleading, the Notice to Attend (**DOM-7**) setting the orientation date or mediation date **or** the Motion and Order to Waive Custody Mediation (**AOC-CV-632**) setting the hearing date for the Motion and Order to Waive Custody Mediation (**AOC-CV-632**), and the Affidavit for Judicial Assignment (**DOM-2**) (if required by these Rules).

**8.7 No Discovery.** No discovery regarding a custody or visitation claim shall be served, noticed, or conducted until the mediation process is complete or the claim has been exempted from mediation by judicial order pursuant to Rule 8.5 above. Except for oral depositions of parties, discovery may proceed regarding financial information.

**8.8 Workload.** The CMO shall monitor the number of contested custody and/or visitation case filings as they relate to mediator staffing levels. In the mediator's discretion, and with the consent of the Chief District Court Judge, a contested case or post-decree motion may bypass mediation and shall be scheduled for hearing by the CC with notice to the attorneys/parties. This action **shall only** be taken when the next regularly available mediation would result in undue delay to the parties.

**8.9 Confidentiality.** All oral or written communications, made during or in furtherance of mediation pursuant to these Rules, by either or both the parties to the mediator, or between the parties in the presence of the mediator, are absolutely privileged and inadmissible in court. Neither the mediator nor any party or other person involved in mediation under these Rules shall be called to testify as to communications made during or in furtherance of such mediation sessions; provided there is no privilege as to communications made in furtherance of a crime or fraud. However, under this Rule, an individual shall not obtain immunity from prosecution for criminal conduct or be excused from the reporting requirement of N.C.G.S. §7A-543 or N.C.G.S. §108A-102.

**8.10 Full Parenting Agreements.** If the parties are able to reach a full parenting agreement, the mediator will prepare a draft and distribute copies to all parties and their attorneys, advising the parties to review the agreement with their attorneys. A time will be scheduled for the parties to return to the CMO to sign the final draft (usually within ten days). The CMO shall present each final signed agreement to the judge assigned to the case. The assigned judge shall review each agreement and, if appropriate, make the parenting agreement an order of the Court by signing an Order Approving Parenting Agreement (**AOC-CV-631**). The CMO will file this order with the Clerk of Superior Court.

**8.11 Partial Parenting Agreements.** If a partial parenting agreement is reached, the mediator will prepare a final draft of the partial agreement and mail copies to both parties and their attorneys. A list of the unresolved issues shall be attached. As with a full agreement, the parties will be scheduled to return and sign the final draft once they have reviewed the copies with their attorneys. The CMO will refer the partial parenting agreement to the assigned judge for Court approval and will refer the unresolved issues for calendaring by notifying the assigned judge who shall enter an Order to Calendar Custody or Visitation dispute (**AOC-CV-914M**). Calendaring will be as in other domestic matters. The assigned judge shall review each partial parenting agreement and, if appropriate, make the agreement an Order of the Court by signing an Order Approving Partial Parenting Agreement (**DOM-15**). The CMO will file this order with the Clerk of Superior Court. The mediator will notify the CC of the unresolved issues, and the parties shall register to attend a parenting education program pursuant to Rule 8.14 below.

**8.12 Distribution of Orders.** Copies of all orders entered under Rules 8.10 and 8.11 above shall be mailed by the CMO to the parties and/or their counsel.

**8.13 No Agreement Reached at Mediation.** If the parties fail to agree, then the CMO will notify the assigned judge, who shall enter an Order to Calendar Custody or Visitation Dispute (**AOC-CV-914M**). Calendaring will be as in other domestic matters. The parties shall register to attend a parenting education program pursuant to Rule 8.14 below.

**8.14 Parenting Education Program.** Parties who do not reach a full parenting agreement in mediation, or who do not otherwise completely settle all custody and/or visitation issues by consent or dismissal, as set forth in Rule 8.15, shall attend a parenting education program (minimum of four hours) approved by the judge assigned to their case. Each party shall attend the parenting education program within thirty (30) days of the failure of the parties to reach a full parenting agreement (if parenting education classes are available within thirty (30) days), unless the case has been removed from mediation under Rule 8.15. The parties shall only be required to attend a parenting education program once. Any party who fails to attend a court-approved parenting education program shall be subject to sanctions, including the contempt powers of the court.

**8.15 Removal from Mediation Process.** When custody and/or visitation issues have been completely settled by consent or dismissed, the issues will not be removed from the mediation process until a file-stamped copy of a Motion and Order to Waive Custody Mediation (**AOC-CV-632**) or a dismissal is provided to the CC and the CMO. When a signed consent order for custody and/or visitation is presented

to the assigned judge for approval, it must be accompanied by a Motion and Order to Waive Custody Mediation (AOC-CV-632), specifying under paragraph #2 “entry of a consent order” as the basis for the motion.

## **RULE 9: POST-SEPARATION SUPPORT & ALIMONY.**

**9.1 Calendaring Hearing.** Upon request of either party, the CC shall schedule the issue of post-separation support for hearing within 90 days of the filing pursuant to Rule 3 above.

**9.2 Financial Information Required.** In all cases involving post-separation support and/or alimony, both parties shall file and exchange a Financial Affidavit (DOM-10). The moving party shall serve his/her completed Financial Affidavit (DOM-10) with their pleading on the opposing party. The opposing party shall file and serve the moving party with their completed Financial Affidavit (DOM-10) within the time period required by the North Carolina Rules of Civil Procedure for responsive pleadings, or fifteen (15) days prior to the date the matter is scheduled for hearing, whichever occurs first.

In addition to service of their completed Financial Affidavit, the parties shall exchange financial information as required by Rule 10 below “Initial Disclosures Regarding Financial Issues in Child Support, Post-Separation Support and Alimony”.

**9.3 Moving Party’s Responsibility.** The party seeking post-separation support and/or alimony or the modification of an existing order, must attach his/her completed Financial Affidavit (DOM-10) to their initial pleading. The moving party shall serve upon the opposing party the following: the pleading, the completed Financial Affidavit (DOM-10), the Affidavit for Judicial Assignment (DOM-2) (if required by these Rules), a Notice of Hearing (DOM-1) if a hearing is scheduled, a blank Financial Affidavit (DOM-10) and a Notice of Financial Information Required (DOM-11).

**9.4 Employer Wage Affidavits.** Each party shall submit an Employer Wage Affidavit (DOM-12) to his or her employer(s) for completion. The affidavit completed by the employer must be filed with the court and served on the opposing party at least five (5) business days prior to the first hearing or conference on the pending request for support or modification thereof, or upon receipt, whichever is later.

**9.5 Post-separation Support Hearings.** If a claim for child support is also pending, it shall be heard along with the claim for post-separation support, if practicable.

- (a) **Duration.** Post-separation support hearings shall be limited to two hours. Each party will have up to one (1) hour to present his or her case, including opening statements, direct and cross-examination, and closing arguments, although a judge may elect to reduce such time or to decide a case on affidavits, without evidence or argument, as permitted by statute. With written notice to the opposing party at least seven (7) days prior to the scheduled hearing date, parties may request from the Court additional time to present complicated cases, which the assigned judge may allow, in his or her discretion.
- (b) **Use of Affidavits.** Except for good cause shown, evidence in post-separation support hearings shall be by affidavits. Parties wishing to use affidavits from the parties, accountants, private investigators or other third parties must deliver the affidavits to the other party by any means reasonably calculated to ensure receipt no later than ten (10) business days prior to the scheduled hearing. Rebuttal affidavits, i.e., affidavits that are filed in response to the other party’s affidavits, shall be delivered to the opposing party by any means

reasonably calculated to ensure receipt no later than five (5) business days before the scheduled hearing. The Court will not consider affidavits which are not served on the opposing party in accordance with these Rules.

- (c) **Establishment of Alimony.** If, at the post-separation support hearing, both parties and the presiding judge agree, the parties may proceed with a hearing for the establishment of an order for alimony. If an order for post-separation support is entered, either party may proceed to calendar the alimony hearing pursuant to Rule 3.

## **RULE 10: INITIAL DISCLOSURES REGARDING FINANCIAL ISSUES IN CHILD SUPPORT, POST-SEPARATION SUPPORT AND ALIMONY**

**10.1 Duty of Financial Disclosure.** In addition to completion of the Financial Affidavit (**DOM-10**) required by Rules 6 and 9 above, every party to an action in which child support (other than IV-D, U.R.E.S.A. and U.I.F.S.A.), post-separation support, or alimony is an issue has the duty to provide information and documents to other parties or their counsel without awaiting a formal discovery request. The party requesting support has a duty to provide such information within thirty (30) days of filing the request for support but, in no event, less than ten (10) business days before a scheduled hearing. The party from whom support is sought is to provide this information within forty-five (45) days of service of the complaint or motion, but not less than five (5) business days before any scheduled hearing.

### **10.2 Information to be Provided.**

- (a) If not attached to a previously filed Financial Affidavit (**DOM-10**) of either party, evidence of gross income from all sources for the previous three (3) months, including, but not limited to:
- Salaries
  - Wages
  - Commissions
  - Bonuses
  - Severance Pay
  - Pensions
  - Interest and dividends
  - Trust income
  - Annuity income
  - Capital gains
  - Social Security benefits
  - Worker's compensation benefits
  - Unemployment insurance benefits
  - Disability pay
  - Gifts
  - Prizes
  - Alimony or maintenance received from persons other than parties to this action
  - Child support received for children other than the children which are the subject of this action
  - Rental income

- Intellectual property income (copyrights, royalties on patents, etc.)
  - Documents pertaining to life, casualty and liability insurance, including, but not limited to, policies, booklets describing benefits of all medical, dental or other health insurance coverage which is or could be available for a child or spouse.
- (b) Evidence of the above-captioned income shall include, but not be limited to, the following:
- Pay stubs
  - Vouchers
  - Employee Benefit statements
  - Stock options statements
  - Company financial statements, including, but not limited to balance sheets, profit and loss statements, accounts receivables and accounts payable (if the party is self-employed)
  - Company tax returns or Schedule C (if the party is self-employed)
- (c) Statements for the previous three (3) months evidencing all accounts in banks, credit unions, brokerage accounts and other financial institutions for which the party has been a signatory.
- (d) A listing of all outstanding debts, together with written documentation or account statements for each creditor indicating the principal balance currently owed and the payment terms.
- (e) Federal tax return filed by the party, or on the party's behalf, including all schedules and attachments (W-2 forms, 1099 forms, etc.) for the past two (2) years, together with all year-end documentation (W-2 forms, 1098 forms, 1099 forms, extension requests, etc.) for the most recent tax year in the event the tax return has yet to be filed (or if either of the last two tax year returns have not been filed).
- (f) Personal financial statements furnished to any third party (i.e., bank, other financial institutions) during the previous two (2) years.

**10.3 Scope.** The party is required to provide the foregoing documents which are in his or her custody or control. Documents are defined to be in the custody or control of the party if such documents can be obtained by him or her as a result of being a joint title or account holder. Production of the documents shall not be excused on the basis of a claim that the document is in the possession of, more easily available, or equally available to the opposing party if the document can be obtained by the moving party without subpoena or discovery.

Unless otherwise specified, the documents provided shall be for the year preceding the date of separation through the date of production.

**10.4 Effect of Failure to Comply.** This Rule providing for a duty of disclosure shall constitute a discovery request within the meaning of the North Carolina Rules of Civil Procedure and failure to comply therewith may be grounds for sanctions as provided by Rule 37 of the North Carolina Rules of Civil Procedure.

**10.5 Method of Disclosure.** The disclosures required under this Rule shall be made by furnishing the information and copies of documents to the attorney of record for the opposing party at his/her business address, or, if the opposing party is *pro se*, by furnishing the disclosures to the opposing party by mail. Each party making disclosure shall promptly file a Certification of Initial Disclosure (**DOM-17**) with the Court stating that the required disclosure has taken place.

**10.6 Duty to Amend and/or Supplement.** After the initial disclosure is made pursuant to this Rule, each party shall be under a continuing duty to amend the information if the information originally provided was incomplete or incorrect when made or to supplement the original information if there has been a substantial change in the information.

## **RULE 11: EQUITABLE DISTRIBUTION CLAIMS**

**11.1 Application.** These Rules shall apply to all pending equitable distribution claims and to all equitable distribution claims that may be filed hereafter.

**11.2 Time.** The times set forth in these Rules may be modified either by:

- (a) by written consent of both parties/counsel and approval of the presiding judge, or
- (b) upon motion of either counsel/party and for good cause shown.

**11.3 Sanctions.** Failure to comply with these Rules may result in sanctions, including: dismissal of a claim with or without prejudice, award of attorney fees to the non-offending party, refusal to allow evidence from the offending party as to some or all of the issues in the case, contempt and any other sanction allowed by law.

**11.4 Definitions.**

- (a) “Moving party”-the spouse who first files a claim for equitable distribution;
- (b) “Responding party”-the spouse against whom the first claim for equitable distribution has been filed.

**11.5 Duties upon Filing a Claim.** At the time the first claim for equitable distribution is filed, the moving party shall:

- (a) obtain from the CC a date for a scheduling and discovery conference, which date shall be on a Friday morning and shall be as close as practicable to 75 days from the date the claim is filed, and
- (b) immediately serve upon the responding party notice of the date, time and courtroom in which the scheduling and discovery conference is set, and
- (c) serve the Affidavit for Judicial Assignment (**DOM-2**) on the responding party (if required by these Rules).

## 11.6 Initial Disclosures Regarding Financial Issues in Equitable Distribution.

(a) **Duty of Financial Disclosure.** In addition to the Equitable Distribution Inventory Affidavits referred to in Rule 11.7 below, every party to an action in which equitable distribution is an issue has a duty to provide the information and documents specified below to the other party or their counsel without awaiting a formal discovery request. The party first filing a claim for equitable distribution has a duty to provide such information within thirty (30) days of filing the request for equitable distribution. The responding party is required to provide the information and documents within thirty days (30) days of receiving the information from the moving party.

(b) **Documents to be Provided.**

- All documents pertaining to any real property in which the party claims an equitable interest, including, but not limited to, deeds, deeds of trust, promissory notes, closing documents, amortization schedules, appraisals or listing contracts.
- All documents pertaining to any motor vehicle (land, water, or air) in which the party claims an equitable interest, including, but not limited to, titles, bills of sale, promissory notes, and amortization schedules.
- All documents pertaining to any defined contribution plan, defined benefit plan, pension plan, SEP, IRA, Keough, retirement, profit-sharing or other deferred compensation or retirement plan in which the party claims an equitable interest including, but not limited to, account statements, plan descriptions, benefit statements, and account valuations.
- All documents pertaining to any life, casualty or liability insurance in which the party claims an equitable interest, including, but not limited to, policy contracts or descriptions, statements, and premium payment vouchers.
- All documents pertaining to any secured or non-secured debt for which the party claims the opposing party has a legal or equitable obligation, including, but not limited to, consumer credit account (credit cards) statements, installment debt payment vouchers, promissory notes, account statements, and credit reports.
- All documents pertaining to any stock or bonds in which the party claims an equitable interest, including, but not limited to, investment account statements, company stock plan descriptions or statements, stock options or bonds.
- All documents pertaining to any checking, savings or other financial account in which the party claims an equitable interest including, but not limited to, monthly account statements and check registers.
- Three (3) years prior signed and filed individual federal and state tax returns, whether filed jointly or separately, including all schedules and attachments.
- If the party is a shareholder in a closely held corporation, partner in a partnership, or member of a limited liability company, three (3) years signed and filed corporate, partnership or LLC tax returns and year end financial statements.
- The party's most recent payroll check stub.

(c) **Scope.** The party is required to provide the foregoing documents which are in his or her custody or control. Documents are defined to be in the custody or control of the party if such documents can be obtained by him or her as a result of being a joint title or account holder. Production of the documents shall not be excused on the basis of a claim that the document is in the possession of, more easily available, or equally available to the opposing party if the document can be obtained by the moving party without subpoena or discovery.

Unless otherwise specified, the documents provided shall be for the year preceding the date of separation through the date of production.

- (d) **Effect of Failure to Comply.** The Rule providing for disclosure shall constitute a discovery request within the meaning of the North Carolina Rules of Civil Procedure and failure to comply therewith may be grounds for sanctions as provided by Rule 37 of the North Carolina Rules of Civil Procedure.
- (e) **Method of Disclosure.** The disclosures required under this Rule shall be made by furnishing copies of the documents to the attorney of record for the opposing party at his/her business address or, if the opposing party is *pro se*, by furnishing the disclosures to the opposing party by mail. Each party making disclosure shall promptly file a Certification of Initial Disclosure (**DOM-17**) with the Court stating that the required disclosure has taken place.
- (f) **Duty to Amend and/or Supplement.** After the initial disclosure is made pursuant to this Rule, each party shall be under a continuing duty to reasonably amend the information if the information originally provided was incomplete or incorrect when made and to supplement if there has been a substantial change in the information provided.

#### **11.7 Filing, Service and Form of Inventory Affidavits.**

- (a) No later than 30 days after filing a claim for equitable distribution, the moving party shall file with the Clerk of Superior Court and serve upon the responding party a Wake County Equitable Distribution Inventory Affidavit (**DOM-18**) (hereafter “Inventory Affidavit”) which complies with the requirements of N.C.G.S. §50-21(a) and with these Rules; along with the Inventory Affidavit (**DOM-18**), the moving party shall also serve upon the responding party Notice Regarding Inventory Affidavit (**DOM-19**): (1) that the responding party is required by local Rules to file his/her responsive Inventory Affidavit (**DOM-18**) within thirty days, and (2) that the responsive Inventory Affidavit (**DOM-18**) is required to comply with these Rules.
- (b) No later than 30 days after service of the moving party’s Inventory Affidavit (**DOM-18**), the responding party shall file with the Clerk of Superior Court and serve upon the moving party an Inventory Affidavit (**DOM-18**) which complies with the requirements of N.C.G.S. §50-21(a) and with these Rules.
- (c) Although “not binding at trial as to completeness or value” (see N.C.G.S. §50-21(a)), the Inventory Affidavit (**DOM-18**) of each party shall be the result of a good faith effort by each party to the list each and every item of marital and separate property (including debts) and the party’s best opinion as to the date of separation fair market value of each item:
- (d) The Inventory Affidavit of each party shall be completed on Inventory Affidavit (**DOM-18**) and shall be completed according to the instructions contained in the Inventory Affidavit (**DOM-18**).

**11.8 Scheduling and Discovery Conference.** The Court shall discharge each of the duties set forth in N.C.G.S. §50-21(d) and on the timetable in Rule 11.11, shall take such further action as may be necessary to resolve pending motions or other issues between the parties, and shall order a mediated settlement conference or other alternative dispute resolution pursuant to Rule 12 and shall set a definite date for an initial pretrial conference. All parties shall either be present in court or available by telephone to his or her attorney at the time of the Scheduling and Discovery Conference.

**11.9 Initial Pretrial Conference.** The Court shall discharge each of the duties set forth in N.C.G.S. §50-21(d) and on the timetable in Rule 11.11, shall take such further action as may be necessary to prepare the case for trial and shall set a definite date for a final pretrial conference and for the trial of the case. All parties shall either be present in court or available by telephone to his/her attorney at the time of this conference.

**11.10 Final Pretrial Conference.** The Court shall discharge each of the duties set forth in N.C.G.S. §50-21(d) and set forth on the timetable in Rule 11.11. Each party shall be present in court at the time of this conference.

**11.11 Equitable Distribution Claims Timetable.**

<b>Time</b>	<b>Event</b>	<b>Responsible Person</b>
Upon first filing of equitable distribution claim	Obtain from CC and set Scheduling and Discovery conference 75 days from date claim is filed	Moving Party
30 days after filing of claim for equitable distribution	Serve on responding party an Equitable Distribution Inventory Affidavit setting out all marital and separate property and debts with fair market value for each item and serve Initial Disclosure documents pursuant to Rule 11.6	Moving Party
30 days after service of first Equitable Distribution Inventory Affidavit	Serve an Inventory Affidavit and Initial Disclosure documents pursuant to Rule 11.6	Responding Party
75 days after filing of first pleading	Scheduling and Discovery Conference	Moving Party and Responding Party if Moving Party fails to act
At scheduling and discovery conference	<ul style="list-style-type: none"> <li>• Schedule discovery</li> <li>• Appoint Mediator if no designation of mediator or stipulation for other alternative dispute resolution procedure</li> <li>• Enter date for completion of mediated settlement conference</li> <li>• Appointment of expert witness</li> <li>• Determine date of separation</li> <li>• Set date for disclosure of expert witnesses</li> <li>• Set date for initial pre-trial conference</li> <li>• Each party should be present in court or available by telephone with their attorney at the time of this conference</li> <li>• It is strongly recommended that the attorneys and parties meet before the day of scheduling &amp; discovery conference to discuss stipulations, discovery, expert witness and other matters which can be resolved at this conference</li> </ul>	Assigned judge
No earlier than day 120 and no later than 180	Court ordered mediated settlement conference held	Moving party, responding party & mediator
No earlier than day 130 and no later than 180	Certification from court appointed mediator that impasse was declared or settlement reached	Court appointed mediator

At initial pre-trial conference	Determine: <ul style="list-style-type: none"> <li>• Status of case</li> <li>• Enter date for completion of discovery</li> <li>• Enter date for filing and service of Motions</li> <li>• Determine date on which the final pre-trial conference shall be held</li> <li>• Determine date when case shall proceed to trial</li> <li>• Assigned presiding judge will set dates for service and completion of final pre-trial order</li> <li>• Each party should be present in court or available by telephone with their attorney at the time of this conference</li> </ul>	Assigned judge
At final pre-trial conference	<ul style="list-style-type: none"> <li>• Pre-trial conference conducted pursuant to Rules of Civil Procedure. Rule on any matters reasonably necessary to effect a fair and prompt disposition of the case in the interest of justice.</li> <li>• Each party shall be present in court at the time of this conference</li> </ul>	Assigned judge
Trial date	Trial	Assigned judge

**RULE 12: ALTERNATIVE DISPUTE RESOLUTION PROCEDURES IN EQUITABLE DISTRIBUTION AND OTHER FAMILY FINANCIAL CASES**

**12.1 Purpose of Mandatory Alternative Dispute Resolution Procedures.** Pursuant to N.C.G.S. §7A-38.4A, Rule 12 is promulgated to implement a system of alternative dispute resolution (hereafter “ADR”) 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 ADR procedures voluntarily at any time before or after those ordered by the Court pursuant to these Rules.

**12.2 Duty of Counsel to Consult with Clients and Opposing Counsel about ADR Procedures.** Counsel, upon being retained to represent any party to a district court case involving family financial issues, including equitable distribution, child support, alimony, post-separation support, or claims arising out of contracts between the parties under N.C.G.S. §50-20(d), §52-10, §52-10.1 or §52-B shall advise his or her client regarding the ADR procedures approved by this Rule and, at or prior to the scheduling conference mandated by N.C.G.S. §50-21(d), shall attempt to reach agreement with the opposing party on the appropriate ADR procedure for the action.

### 12.3 Ordering ADR Procedures.

- (a) **Equitable Distribution Scheduling Conference.** At the scheduling and discovery conference mandated by N.C.G.S. §50-21(d) and Rule 11.8, the Court shall include in its scheduling order a requirement that the parties and their counsel, if any, attend a mediated settlement conference or, if the parties agree, other ADR procedures conducted pursuant to these Rules, unless excused by the Court pursuant to these Rules. The Court shall also execute an Order for Mediated Settlement Conference in Family Financial Case (**AOC-CV-824**).
- (b) **Scope of ADR Proceedings.** All other financial issues existing between the parties when the equitable distribution ADR proceeding is ordered, or at any time thereafter, may be discussed, negotiated or decided at the proceeding.

Child custody and visitation issues may be the subject of ADR 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, or have fulfilled the requirements of, the custody and visitation mediation program established pursuant to Rule 8.

- (c) **Authorizing ADR Procedures Other Than Mediated Settlement Conference.** The parties and their attorneys are in the best position to know which ADR procedure is appropriate for their case. Therefore, the Court shall order the use of an ADR procedure authorized by Rule 12.19 if the parties have agreed upon the procedure to be used, the neutral person to be employed and the compensation of the neutral person. 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 an ADR procedure other than a mediated settlement conference shall be filed on Motion for an Order to Use Settlement Procedure other than Mediated Settlement Conference or Judicial Settlement Conference in Family Financial Case (**AOC-CV-826**) at the scheduling conference and shall state:

- (1) the ADR procedure chosen by the parties;
  - (2) the name, address and telephone number of the neutral person selected by the parties;
  - (3) the rate of compensation of the neutral person;
  - (4) that all parties consent to the motion.
- (d) **Content of Order.** The Court's order shall (1) require that a mediated settlement conference or other ADR 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 person's fee at the conclusion of the mediated settlement conference or proceeding unless otherwise ordered by the Court.

The order shall be contained in the Court's scheduling order. Any scheduling order entered at the completion of a scheduling conference 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.

- (e) **Court-Ordered ADR 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 an ADR procedure. Such motion shall be made in writing, state the reasons why the order should be allowed and be served on the opposing 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 assigned judge shall Rule upon the motion and notify the parties or their attorneys of the ruling. If the Court orders an ADR proceeding, then the proceeding shall be a mediated settlement conference conducted pursuant to these Rules. Other ADR procedures may be ordered if the circumstances outlined in subsection (e) above have been met.
- (f) **Motion to Dispense With ADR Procedures.** A party may move the Court to dispense with the mediated settlement conference or other ADR 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 the fact that the parties have participated in an ADR procedure prior to the scheduling and discovery conference or have elected to resolve their case through arbitration or referee pursuant to Rule 13 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.

**12.4 Selection of Certified Family Financial Mediator by Agreement of the Parties.** The parties may select a certified family financial mediator certified pursuant to these Rules by agreement by filing with the Court a Designation of Mediator in Family Financial Case (**AOC-CV-825**) 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. A copy of the completed Designation of Mediator in Family Financial Case (**AOC-CV-825**) 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.

**12.5 Appointment of Certified Family Financial Mediator by the Court.** If the parties cannot agree upon the selection of a mediator, they shall so notify the Court at the scheduling and discovery conference and the Court shall appoint a mediator in the scheduling and discovery order. The parties shall complete a Designation of Mediator in Family Financial Case (**AOC-CV-825**) and bring it to the scheduling and discovery conference. The Court shall include the name, address, and telephone number of the mediator appointed by the Court.

**12.6 Mediator Information Directory.** To assist the parties in the selection of a mediator by agreement, the CC shall prepare and keep current a central directory of information on all mediators certified pursuant to these Rules. Such information shall be collected on loose-leaf forms and be kept in one or more notebooks made available for inspection by attorneys and parties in the clerk's office of each domestic courtroom and the offices of the District Court Judges.

**12.7 Disqualification of Mediator.** Any party may move the Court 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 12.4 or 12.5. Nothing in this provision shall preclude mediators from disqualifying themselves.

**12.8 Site and Time of the Mediated Settlement Conference.**

- (a) The mediated settlement conference shall be held in any location agreeable to the parties and the mediator. If the parties cannot agree on 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) 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 Court's order issued pursuant to Rule 12.3(a) shall state a deadline for completion of the conference which shall be not earlier than 120 days and not more than 180 days after filing of the action, unless extended by the Court. The mediator shall set a date and time for the conference pursuant to Rule 12.16(e).

### **12.9 Requests to Expedite, Extend, or Exempt.**

- (a) Expedite or Exempt - Either party may file a motion to expedite or exempt from mediation for good cause shown. Said motions shall be filed and served according to the North Carolina Rules of Civil Procedure and shall state the reasons for the motion.
- (b) Extend – Upon consent of both parties, mediation may be extended. In this instance, a Consent Order or Stipulation shall be filed with the Court, signed by all parties and approved by the assigned judge. Any further requests shall be made by filing a motion with the Court.

**12.10 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.

**12.11 Delay of 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.

### **12.12 Duties of Parties, Attorneys and Other Participants in Mediated Settlement Conferences.**

- (a) The following persons shall attend a mediated settlement conference:
  - (1) Parties.
  - (2) At least one attorney of record for each party whose counsel has appeared in the action.
- (b) 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.
- (c) Any 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.

**12.13 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 reduced their agreement to writing, have signed it and in all other

respects have complied with the requirements of Chapter 50 of the General Statutes. 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 terms.

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 Clerk of Court and a copy shall be delivered to the CC. 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.

**12.14 Payment of the Mediator’s Fee.** The parties shall pay the mediator’s fee as provided by Rule 12.17.

**12.15 Sanction 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 any appropriate monetary sanction including, but not limited to, the payment of attorneys fees, mediator fees, expenses and loss of earnings incurred by persons attending the conference.

A party to the action seeking sanctions shall file 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.

**12.16 Authority and Duties of the Mediator**

- (a) **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.
- (b) **Disclosure.** The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- (c) **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.
- (d) **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.
- (e) **Reporting Results of Conference.** The mediator shall provide a Report of Mediator or other Neutral in Family Financial Case (**AOC-CV-827**) to the CC, within 10 days of the completion of the conference, whether 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, the person who informed the mediator that settlement had been reached, and the person who will present final documents to the Court.

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.

Mediators who fail to report as required pursuant to this Rule shall be subject to the contempt powers of the court and sanctions.

- (f) **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.

#### **12.17 Compensation of the Mediator and Sanctions.**

- (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 per hour. The parties shall also pay to the mediator a one-time, per case administrative fee of \$125, which accrues upon appointment and shall be paid if the case settles prior to the mediated settlement conference or if the Court approves the substitution of a mediator selected by the parties for a court-appointed mediator.
- (c) **Payment of Compensation by the 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 12.17 (b) and (c) may move the Court to pay according to the Court's determination of that party's ability to pay. This motion shall be submitted on **AOC-CV-828**.

In ruling on such motions, the assigned judge may consider the income and assets of the moving party 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 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.

- (e) **Postponement Fees.** As used herein, the term "postponement" shall mean rescheduling or not proceeding with a settlement conference once a date for the settlement conference has been scheduled by the mediator. After a settlement conference has been scheduled for a specific date, a party may not postpone the conference without good cause. A conference may be postponed only after notice to all parties of the reason for the postponement, payment to

the mediator of a postponement fee as provided below or as agreed when the mediator is selected, and consent of the mediator and the opposing party.

In cases in which the Court appoints the mediator, if a settlement conference is postponed without good cause within seven (7) business days of the scheduled date, the fee shall be \$125. If the settlement conference is postponed without good cause within three (3) business days of the scheduled date, the fee shall be \$250. Postponement fees shall be paid by the party requesting the postponement unless otherwise agreed to by the parties. Postponement fees are in addition to the one-time, per case administrative fee provided for in Rule 12.17(b).

- (f) **Sanctions for Failure to Pay Mediator's Fee.** Willful failure of a party to make timely payment of that party's share of the mediator's fee (whether the one-time per case administrative fee, the hourly fee for mediation services, or any postponement fee) shall subject that party to the contempt powers of the court.

**12.18 Mediator Certification and Decertification.** In order to be a certified mediator pursuant to these Rules, an individual shall:

- (a) Be designated as a certified family financial mediator by the Dispute Resolution Commission pursuant to the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and other Family Financial Cases **or** be designated as a certified Superior Court Mediator by the Dispute Resolution Commission pursuant to the Supreme Court Rules for Mediated Settlement Conferences **and** be certified as a family law specialist by the North Carolina State Bar Board of Legal Specialization; **and** agree to be placed on the mediator appointment list for the Tenth Judicial District and accept appointments, unless the mediator has a conflict of interest which would justify disqualification as a mediator.
- (b) 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 qualifications established or has not faithfully observed the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases or those of this district. 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.

**12.19 Other ADR Procedures.** Upon receipt of a motion by the parties seeking authorization to utilize an ADR procedure in lieu of a mediated settlement conference, the Court may order the use of those procedures listed in subsections (a) or (b) below, unless the Court finds: that the parties did not agree upon the procedure to be utilized, the neutral person to conduct it, or the neutral person's compensation; or that the procedure selected is not appropriate for the case or the parties. In addition to mediated settlement conferences, the following ADR procedures are authorized by these Rules:

- (a) Neutral Evaluation (see Rule 12.21) wherein a neutral person (hereinafter "neutral") offers an advisory evaluation of the case following summary presentations by each party.
- (b) Arbitration wherein the parties agree to arbitrate under the Family Law Arbitration Act (N.C.G.S. §50-41*et seq.*) pursuant to Rule 13 of these Rules, which shall constitute good cause for the Court to dispense with ADR procedures authorized by these Rules.

**12.20 General Rules Applicable to Other ADR Procedures.** The same general Rules governing when a proceeding is conducted, extensions of time, where the procedure is to be conducted, delay, inadmissibility of proceedings, records, *ex parte* communications, duties of the parties, sanctions, selection of the neutral, disqualification of the neutral, compensation, and authority and duties of the neutral shall apply to other ADR procedures as set forth herein for mediation.

**12.21 Rules for 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.

- (a) **Pre-Conference Submissions.** No later than twenty (20) days prior to the date established for the neutral evaluation conference, each party shall furnish the evaluator with written information about the case, and shall, at the same time, certify to the evaluator that the party has served a copy of such summary on all other parties to the case. The information provided to the evaluator and the other parties 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 party's summary. Information provided to the evaluator and to the other parties pursuant to this paragraph shall not be filed with the Court.
- (b) **Replies to Pre-Conference Submissions.** No later than ten (10) days prior to the date established for the neutral evaluation conference, 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 the response shall certify service to the evaluator, but this response shall not be filed with the Court.
- (c) **Conference Procedures.** Prior to a neutral evaluation conference, the evaluator 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.
- (d) **Modification of Procedure.** Subject to approval of the evaluator, the parties may agree to modify the procedures required by these Rules for neutral evaluation.
- (e) **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:
    - (a) The process of the proceeding;
    - (b) The differences between the proceeding and other forms of conflict resolution (i.e., 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);
    - (c) The costs of the proceeding;

- (d) The fact that any settlement reached will be only by mutual consent of the parties;
  - (e) The inadmissibility of conduct and statements made during the conference in any subsequent court proceedings; and
  - (f) The duties and responsibilities of the neutral and the participants.
- (2) **Oral Report to Parties by Evaluator.** In addition to the written report to the Court required by these Rules, at the conclusion of the neutral evaluation conference, the evaluator orally shall advise the parties of the evaluator's 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 therefore. 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 provide a Report of Mediator or Other Neutral in Family Financial Case (**AOC-CV-827**) to the CC, 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 if an agreement was reached, the name of the person designated to file judgments or dismissals concluding the action.
- (f) **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 a 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.

## **RULE 13: ARBITRATION AND REFERENCE**

Arbitration of family law cases is available upon consent of the parties under N.C.G.S. §50-41 *et seq.*, the Family Law Arbitration Act. Issues which can be heard in District Court (e.g. custody, child support, alimony, post-separation support, equitable distribution, attorney's fees) can also be arbitrated, often at a savings of time and money. The consent order for arbitration need only, at a minimum, state the particular issue that is designated for arbitration and name the arbitrator; the remaining issues (such as rules, deadlines, notices and documents required) can be resolved in the initial attorneys' meeting with the arbitrator.

Judges and parties' attorneys are also reminded that Rule 53 of the North Carolina Rules of Civil Procedure may be useful in the appointment of a referee in equitable distribution cases. Rule 53(a)(2) states that a referee may be appointed:

- “a. Where the trial of an issue requires the examination of a long or complicated account; in which case the referee may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein.
- b. where the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.”

Appointment of a referee is also available by consent under Rule 53 (a)(1). This procedure can save time and money in the scheduling and trial of property division cases.

## **RULE 14: MOTIONS TO CONTINUE**

**14.1 Form of Motions.** Any Motion to Continue (**DOM-20**) shall be in writing and shall contain the following information:

- (a) Caption and file number of the case;
- (b) Term and/or date for which the case is set;
- (c) Reason for the request to continue (position on the calendar will ordinarily not be considered a valid reason for a continuance). When a conflict in another court is the reason for continuance, the request must state the case number, the court in which the other case is pending, and the date when the matter in the other court was set;
- (d) The number of times the case has previously been continued;
- (e) A statement that all opposing counsel and/or parties have been sent a copy of the request.

Oral motions to continue may be allowed only when the reason for the continuance did not become known until immediately preceding the start of court.

**14.2 Service of Motions.** The motion to continue shall be served upon all parties and/or opposing counsel pursuant to the rules set out in the North Carolina General Statutes. Also, on the date of such service, a copy of the Motion shall be delivered to the CC by hand delivery, facsimile and/or electronic mail. Should counsel or a *pro se* litigant fail to comply with the provisions of Rule 14.1 or 14.2, the request for a continuance is deemed denied without a hearing.

**14.3 Factors to be Considered.** Factors to be considered by the Court when deciding whether to grant or deny a motion for continuance may include, but not be limited to:

- The effect on children and spouses if the issue is continued;
- Whether a temporary order is in effect that deals with the issue that is the subject of a motion to continue;
- The impact of a continuance on the safety of the parties or any other persons;
- Whether the subject matter has a statutorily prescribed time for resolution (i.e., child support);
- The age of the case or motion;
- The status of the trial calendar;
- The number of previous continuances;
- The extent to which the moving had input into the scheduling of the trial date;

- The due diligence of the moving party on promptly making a motion for continuance as soon as practicable;
- Whether the reason for continuance is a short-lived event which would resolve prior to the scheduled court date;
- The existence of a legitimate conflict with another court setting;
- The period of delay caused if the motion is allowed;
- The position of the opposing party or counsel;
- Whether the request is consented to by the opposing party or counsel;
- Present or future inconvenience or unavailability of witnesses/parties, or attorneys if the case is continued;
- Any other factor that promotes the fair administration of justice.

**14.4 New Date.** Upon the granting a motion to continue, the matter shall be rescheduled to a date certain by the assigned judge.

**14.5 Resolution of Pending Cases.** In considering a motion to continue, the Court should be mindful that pursuant to the North Carolina Supreme Court’s Case Flow Management Plan, all domestic cases should be disposed of within 18 months of filing, with 90% disposed of 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.

## **RULE 15: REQUESTS FOR PEREMPTORY SETTINGS**

Requests for peremptory settings for cases involving a party or essential witness who must travel long distances, have numerous expert witnesses or where other extraordinary reasons for such a request exist must be made to the assigned judge. All matters which are scheduled before this Court are important to the parties and/or children involved and a peremptory setting shall be granted only for good cause and compelling reasons.

Requests for a Peremptory Setting (**DOM-21**) must be in writing and a copy thereof must be served upon the opposing party and a copy provided to the CC. No request for a peremptory setting shall be submitted prior to consultation with the opposing party. The consent or lack thereof of the opposing party shall be noted on the request form. Requests for a peremptory setting shall set out the issues to be heard and indicate with specificity the reasons for the request. The request shall be submitted to the CC for review by the assigned judge who shall render his or her decision. The judge’s decision shall be transmitted to the moving party who shall then notify the opposing party. The assigned judge may set a case peremptorily on his/her own motion.

## **RULE 16: SETTLEMENTS.**

Pursuant to Rule 2(g), General Rules of Practice for Superior and District Courts, when a case is settled, all attorneys of record must notify the assigned CC within twenty-four (24) hours of the settlement and advise who will prepare and present the judgment and the date by which the order will be submitted to the assigned judge.

Cases will not be removed from the trial calendar or custody mediation requirements until a copy of a file-stamped consent order, Memorandum of Judgment/Order (**AOC-CV-220**), or dismissal is provided

to the CC. A copy of said documents must also be provided to the CMO if required by Rule 8.15. Parties are encouraged to engage in settlement discussions at every opportunity. The Domestic Court recognizes the importance to the family of bringing closure to these disputes, of minimizing misunderstandings that frequently occur when resolutions are not yet committed to writing, and the Court's responsibility to assist the parties in resolving these disputes. Unless agreements have been reduced to writing, signed by the parties, their attorneys, and the assigned judge prior to the time of the court date, parties and counsel are required to appear as scheduled. If a resolution has been reached but not drawn up by the time of the court date, the parties and attorneys are required to appear as scheduled and execute a Memorandum of Judgment/Order (**AOC-CV-220**).

If any domestic case is resolved by a non-judicial disposition (i.e., separation agreement/property settlement, other contract, or a party decides not to pursue a court action), a notice of dismissal must be timely filed with the Clerk of Court in order to close the court file. A copy of the dismissal must be delivered to the CC. A copy of the dismissal must also be delivered to the CMO if required by Rule 8.15.

## **RULE 17: CLOSING CASES**

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

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

## **RULE 18: SUBMISSION OF ORDERS OR JUDGMENTS**

**18.1 Preparation and Time Limits.** Unless otherwise agreed by counsel for the parties or unless otherwise ordered by the Court, orders and judgments shall be prepared by the prevailing party. The prevailing party shall submit a draft of the proposed order to the opposing counsel (or the opposing party if *pro se*) no later than fifteen (15) days after judgment is announced in open court or otherwise communicated to the parties. The opposing party shall make written response to the drafting party of any objections, modifications or additions to the proposed order within ten (10) days from the date the proposed order was transmitted.

**18.2 No Communication from Opposing Party.** If no disagreement or difference is communicated to the person who prepared the proposed order, the order shall be submitted to the assigned judge for signature after ten (10) days have passed since delivery to the opposing party. The party submitting the order must fully complete and sign an Order Submission (**DOM-22**) and attach it to the submitted order.

No order shall be submitted to the assigned judge before the ten (10) days have expired since delivery to the opposing party.

**18.3 Full Agreement on Contents of Order.** If the parties agree on an order or judgment, the order shall be submitted to the assigned judge for signature. The party submitting the order must fully complete and sign the Order Submission (**DOM-22**) and attach it to the submitted order.

**18.4 Disagreement on Contents of Order.** In the event that the parties disagree about the terms of the order, a copy of the proposed order, or a diskette with the order saved in Word 6.0 or earlier versions, and letters setting out the disputed issues shall be submitted to the Court for review. The party submitting the order must fully complete and sign the Order Submission (**DOM-22**) and attach it to the submitted order. The judge, in his/her discretion, may resolve the disputed issues based upon these written submissions. At the discretion of the assigned judge, the matter may be set on judge's calendar for an order entry conference for resolution of the dispute.

**18.5 Sanctions.** Non-compliance with any section of this Rule shall result in the imposition of sanctions or penalties as deemed appropriate and as allowed by law.

## **RULE 19: SANCTIONS.**

Failure to comply with any section of these Rules shall subject the parties, and/or their counsel to sanctions as allowed by law and deemed appropriate at the discretion of the presiding judge including, but not limited to, dismissal of any or part of any claim for relief, striking the pleadings, disallowance of evidence and/or testimony, a fine, and payment of costs and/or the opposing party's reasonable legal fees.

## **RULE 20: AMENDMENTS AND MODIFICATIONS**

These Rules are subject to amendment or modification as experience dictates and requires.

ADOPTED BY THE COURT, as amended February 3, 2003.

This the 3<sup>rd</sup> day of February, 2003.

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Joyce A. Hamilton  
Chief District Court Judge  
Tenth Judicial District