

**TENTH JUDICIAL DISTRICT  
FAMILY COURT RULES FOR DOMESTIC COURT**

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## **RULE 1: GENERAL RULES**

**1.1 Purpose and Construction.** The purpose of these Rules is to provide for the fair, just, and prompt resolution of domestic cases in Wake County. In the event and to the extent there is a conflict between these Local Rules and established North Carolina law (e.g., Rules of Civil Procedure, Rules of Evidence, North Carolina General Statutes, and case law) the presiding Judge shall resolve the conflict. 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 these Rules fail to address a specific situation which may arise, they should be construed to avoid unnecessary delay, to promote professional courtesy, and to promote the ends of justice.

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 Tenth Judicial District Family Court Rules for Domestic Court. Except as specified herein, these Rules supersede and replace all previous local rules controlling actions in Domestic Court. The effective date of these Rules is **September 1, 2013**. The revised Rules apply to cases filed on or after the effective date of these Rules. For cases pending before the effective date, the presiding Judge will decide in his or her discretion the applicability of the revised Rules should a controversy arise.

**1.2 Pro Se Litigants/Ex Parte Communications.** Parties without attorneys are known as pro se litigants. 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 Family Court Office informed 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 Family Court Office 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 with the Judge assigned to their case. Ex parte communication is any method of communication between a litigant and the Court or an attorney and the Court without all parties being present. The assigned Judge will not return telephone calls, listen to recorded telephone messages, or read mail which is deemed inappropriate 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.

**1.3 Time Standards for Domestic Cases.** The North Carolina Family Court Advisory Committee (NCFCAC) has established a case management plan to aid in the just, fair, and timely resolution of cases filed. Time Standards by definition are benchmark events in the life of the case that provide for effective and efficient case management and resolution. While it is not possible to conclude all family cases within these time standards, striving to meet these goals is important since families need closure. The time frames below represent “goals” as established by the NCFCAC.

<b>(a) Child Custody</b>		
	<b><u>Event</u></b>	<b><u>Time from Filing of Complaint</u></b>
	<u>Temporary Orders Entered</u>	
	In 90% of cases	within 30 days
	In 100% of cases	within 45 days
	<u>Mediation Orientation Scheduled</u>	
	In 100% of cases	within 45 days
	<u>Mediation Session(s) Completed</u>	
	In 90% of cases	within 90 days
	In 98% of cases	within 120 days
	In 100% of cases	within 150 days
	<u>Permanent Orders Entered</u>	
	In 90% of cases	within 150 days
	In 100% of cases	within 180 days
<b>(b) Child Support</b>		
	<b><u>Event</u></b>	<b><u>Time from Filing of Complaint</u></b>
	<u>Temporary Orders Entered (that do not involve paternity determination)</u>	
	In 90% of cases	within 30 days
	In 100% of cases	within 45 days
	<u>Permanent Orders Entered</u>	
	In 75% of cases	within 90 days
	In 90% of cases	within 180 days
	In 100% of cases	within 270 days
<b>(c) Post-Separation Support</b>		<b><u>Time from Filing of Complaint</u></b>
	<b><u>Event</u></b>	
	<u>Orders Entered</u>	
	In 75% of cases	within 60 days
	In 100% of cases	within 90 days
<b>(d) Alimony</b>		
	<b><u>Event</u></b>	<b><u>Time from Filing of Complaint</u></b>
	<u>Orders Entered</u>	
	In 90% of cases	within 270 days
	In 100% of cases	within 365 days

Equitable distribution shall be governed by the timetable set forth in Rule 11.15.



**1.4 Responsibilities of Attorneys.**

**a) Contact Information.** Attorneys must keep the Family Court Office informed of any and all changes in their mailing addresses, e-mail addresses, telephone numbers, and fax numbers.

**b) Secured Leave Policy.** Pursuant to Rule 26 of the North Carolina General Rules of Practice for Superior and District Courts (“N.C. R. Super. & Dist. Cts.”), any attorney may from time to time designate and enjoy one or more secure leave periods each year as provided herein. The following procedure supplements N.C. R. Super. & Dist. Cts., Rule 26 requirements for attorneys appearing in cases pending in the Domestic Courts of Wake County District Court:

(1) The Notice of Secure Leave that is required to be submitted to the Court by N.C. R. Super. & Dist. Cts, Rule 26 must also be submitted to the Wake County Family Court Office at the following mailing address or may be submitted via facsimile at the following telephone number:

Wake County Family Court  
Attn: Secured Leave  
P.O. Box 351  
Raleigh, NC 27602

Fax: (919) 792-4876

(2) As provided in Rule 26 of the North Carolina Rules of Practice for Superior and District Courts, a secure leave period shall consist of one or more complete calendar weeks. During any calendar year, an attorney's secure leave periods shall not exceed, in the aggregate, three calendar weeks.

(3) A Notice of Secured Leave is not filed with the Court and should not contain a file name or caption number.

(4) Designation of secure leave vacation time does not apply if a trial or other matter has already been set on a Domestic Calendar.

(5) The policy and procedures described herein are not exclusive. In extraordinary circumstances the time limitations for notification of designated weeks may be waived by the court when attorneys have been faced with particular or unusual situations. Furthermore, attorneys shall be able to make other requests to be excused from appearing before the court for personal and professional reasons.

**1.5 Use of Forms.** Local forms for use by counsel/*pro se* litigants 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*

litigants may use either the form provided or a form of their own that 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. The AOC website is: <http://www.nccourts.org>.

**1.6 Location of Local Rules.** These Rules shall be maintained by the Family Court Administrator or the Administrator's designee. These Rules and applicable forms cited herein are available on the NC AOC, Wake County Family Court website: <http://www.nccourts.org/County/Wake/Courts/Family/DomRules.asp>. They are also available on the Wake County Clerk of Court's website at <http://web.co.wake.nc.us/courts/index.html>.

**1.7 Definition of "Days" as used herein.** Rule 6 of the North Carolina Rules of Civil Procedure shall apply in computing any period of time prescribed or allowed by these Rules.

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

**2.1 Domestic Family Court Actions.** All domestic complaints, counterclaims, and subsequent motions shall be initiated with the Clerk of Superior Court of Wake County (Clerk of Court). A complaint for breach of contract or rescission involving an unincorporated property settlement or separation agreement shall not be considered a "domestic complaint" for the purpose of these Rules unless: unless the pleading asserting such a claim(s) also includes a claim(s) brought pursuant to Chapter 50 other than a claim for an absolute divorce.

All domestic complaints and counterclaims, except IV-D, U.R.E.S.A. and U.I.F.S.A. child support cases, and domestic violence (pursuant to Chapter 50B) cases, shall be accompanied by a Domestic Civil Action Cover Sheet (**AOC-CV-750**). The cover sheet shall contain the names and addresses of both parties and it shall indicate whether the pleading includes a demand for jury trial, and a copy of the Cover Sheet must be given to the Family Court. The Cover Sheet will be used by the Family Court Case Coordinator (FCCC) 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 or pleading asserting a counterclaim(s) which is not accompanied by a properly executed Cover Sheet is subject to appropriate sanctions.

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

- (a) 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.
- (b) 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 (**WAKE-DOM-01**) shall be included in the order or served contemporaneously with each Complaint or Motion.
- (c) If the filing includes a claim for child support, Child Support Cover Sheet (Non-IV-D Only) (**AOC-CV-640**), 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 name(s) and date(s) of birth of all children for whom support is being sought.
- (d) If the filing includes a claim for child custody, Custody Mediation Cover Sheet (**WAKE-DOM-06**) shall be attached.

**2.3 Judicial Assignment.** On or after February 16, 2006, all new matters (either a new complaint or new matters in an existing case where a Judge has not been previously assigned), shall be accompanied by an Affidavit for Judicial Assignment and Notice of Hearing (**WAKE-DOM-02**). This form shall indicate whether there is a pending or resolved domestic case involving the same parties in this or any other state. In all domestic cases requiring an Affidavit for Judicial Assignment and Notice of Hearing, the Affidavit for Judicial Assignment and Notice of Hearing shall be taken immediately after filing by the moving party to the Family Court Office in the Wake County Courthouse. Incomplete affidavits or affidavits not taken to the Family Court Office may result in a case not being promptly assigned to a Judge or in undue delay in calendaring or hearing of the case. The Family Court Staff shall assign the case to a District Court Judge who is currently assigned to preside over domestic cases. Assignment of Judges shall be on a random basis and shall be accomplished without influence from parties, their attorneys or the Judges; however, the Chief District Court Judge may make judicial assignments in his or her discretion for good cause. The Family Court Office shall notify the moving party or the attorney for the moving party of the assigned Judge at the time of the filing, by United States 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 and Notice of Hearing (**WAKE-DOM-02**) 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 set before the assigned Judge. See Rule 3 for the calendaring of domestic 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 (**WAKE-DOM-03**) is filed and approved pursuant to Rule 2.5 herein.

The Family Court Staff 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 Family Court Administrator 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 Family Court Judge include the following:

- (a) **Absolute Divorce Without a Request to Incorporate Separation Agreement.** In a case in which only an absolute divorce is sought or cases in which the only claims are for an absolute divorce and entry of a Domestic Relations Order (DRO) , the Family Court Staff shall not assign a Judge unless and until an Answer and/or Counterclaim is filed asserting claims for which judicial assignment is appropriate. It shall be the responsibility of the party asserting these other claims to file the Affidavit for Judicial Assignment and Notice of Hearing (**WAKE-DOM-02**). Note that cases in which an annulment is sought shall be assigned a Judge in accordance with Rule 2.3 and scheduled for hearing pursuant to these Rules. If the Complaint for Absolute Divorce includes a request to incorporate the parties' separation agreement, then the Plaintiff shall comply with Rule 2.3 above so that a Judge is assigned to the absolute divorce action.
- (b) **Domestic Relations Order.** Consent Orders 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. However, if the Consent Order is an "Amended" Order, then the Amended Consent Order must be submitted to the Judge who signed the original Consent Order unless that Judge is no longer available.
- (c) **Child Support Cases.** All cases in which child support is being established or enforced through Wake County Child Support Enforcement (IV-D) shall be assigned to the specialized Child Support Court (presently Courtroom 5D). See Rule 6.1 below.
- (d) **Domestic Violence Civil Court.** Except as outlined herein or in the case of extraordinary circumstances, no judicial assignment shall be made in domestic violence matters. In the event a Chapter 50 action exists involving the parties in the domestic violence action, there should already be an assigned Judge (see Rule 18).
- (e) **Juvenile Court Cases.** Juvenile Court actions include delinquency, undisciplined children, abuse, neglect, dependency, termination of parental rights, and emancipations. All actions to terminate parental rights are special proceedings and shall be heard in Juvenile Court unless, for good cause, a termination of parental rights case is assigned to a domestic Family Court Judge. All juvenile actions will be governed by the Tenth

Judicial District Family Court Rules for Juvenile Abuse/Neglect/Dependency or the Tenth Judicial District Family Court Rules Juvenile Delinquency & Undisciplined Proceedings.

- (f) **Criminal Cases.** Criminal cases involving the same parties to a Domestic Court action shall be tried in Criminal Court.
- (g) **Contract Related Claims.** Pleadings asserting claims relating to a breach or rescission of an unincorporated property settlement agreement or separation agreement shall be scheduled through the Trial Court Administrator's office and shall be tried in Civil Court unless the pleading asserting such a claim(s) also includes a claim(s) brought pursuant to Chapter 50 other than a claim for an absolute divorce. In that event, the scheduling of the contract related claims will be in accordance with these Rules.

**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 by the Chief District Court Judge. A Request for Reassignment (**WAKE-DOM-03**) shall be ruled upon by the Chief District Court Judge and granted 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. The Family Court Administrator shall monitor the number of cases assigned to each Judge. If a case is reassigned pursuant to this Rule (**WAKE-DOM-03A**), the Family Court Office will issue a new judicial assignment and immediately notify the parties and/or their attorneys of the new assigned Judge.

**2.6 Emergency Matters Arising Prior to Judicial Assignment.** All requests for emergency orders or temporary restraining orders (TRO) that require a 10-day return hearing (excluding domestic violence protective orders pursuant to Chapter 50B) shall be scheduled before a Judge who will be presiding in Domestic Court on the day of the 10-day hearing pursuant to Rule 5.3 herein. In all such cases, there must be an order entered allowing or denying the request. When possible, the Judge conducting the 10-day return hearing shall be the assigned Judge.

When a temporary restraining order is requested prior to the permanent assignment of a Judge, the moving party shall immediately request the assignment of a Judge on an Affidavit for Judicial Assignment and Notice of Hearing (**WAKE-DOM-02**) 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 domestic family court judge or other judge designated by the Chief District Court Judge to hear emergency matters.

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

**3.1 Calendaring Matters.** The Wake County Family Court Calendar (“Calendar”) is available online at <http://www.wcfcc.com/>. The Calendar provides attorneys and *pro se* litigants immediate access to the calendars for each judge presiding in domestic court. *Pro se* litigants and attorneys are expected to use the Calendar to determine available dates for a hearing.

Once the attorney or *pro se* litigant has selected a date for a hearing, he or she shall contact the FCCC via telephone, e-mail, facsimile or United States Mail to reserve the chosen date. If the chosen date has not been closed (see below), the FCCC shall tentatively set the matter on the Calendar on the requested date. Within 5 business days, the requesting party must follow up this reservation with a Calendar Request (**WAKE-DOM-04**) or the matter may be removed from the Calendar. Prior to submitting a calendar request, the attorney or *pro se* litigant shall communicate with the opposing attorney or *pro se* litigant about the date to be requested. The case priority on the Calendar shall be deemed set upon the making of a reservation so long as the setting is timely confirmed with the FCCC.

A date is deemed “closed” when it reaches the maximum number of hours established by the assigned Judge or if the presiding Judge is unavailable on that date. If a party desires to set a matter on a date that is closed, the FCCC shall consult with the assigned Judge to determine whether to allow that matter to be scheduled as requested.

**3.2 Calendar Request.** A Calendar Request (**WAKE-DOM-04**) shall be completed and a copy provided to the assigned FCCC. Requests must be completely filled out with all required information. Service of the completed Calendar Request (**WAKE-DOM-04**) on the assigned FCCC and the opposing party shall be made by hand delivery, United States Mail, facsimile transmission or e-mail. The Calendar Request shall not serve as notice of hearing. If the parties are unable to agree on the Court date or if the opposing party does not respond, the party seeking to calendar the matter may request that the FCCC calendar the matter in accordance with these Rules.

**3.3 Scheduling Hearing Length.** In requesting a hearing date, attorneys or *pro se* litigants shall provide to the FCCC the following information: the type of hearing(s) and the anticipated length of trial. At any time after a case has been 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 party seeking additional time or seeking to add matters to the calendar must contact the assigned FCCC in writing (including email, facsimile) at least seven days prior to the scheduled hearing. If the assigned Judge approves the request, the FCCC will notify both parties and will add those matters to the Calendar and/or adjust the anticipated time required. In any event, timely notice of the change must be provided to the opposing party (*pro se* litigant or attorney).

**3.4 Notice of Hearing.** The Courtroom location, date, time and matters to be heard shall be cited in the Notice of Hearing (**WAKE-DOM-01**). The moving party shall serve

the Notice of Hearing on the opposing party pursuant to Rule 5 of the North Carolina Rules of Civil Procedure and shall also file the Notice with the Clerk of Court.

**3.5 Removing Hearings from the Calendar.** Once calendared, a case may be removed by the attorney/*pro se* litigant who scheduled the matter for hearing, by mutual consent of counsel and/or *pro se* litigants or by an order of continuance signed by the assigned Judge. However, if the hearing to be removed is one that is listed in Rule 1.3 or Rule 11.15 herein, then the hearing may be removed only by order of continuance signed by the assigned Judge or in accordance with Rule 16 herein. Removal from the calendar by mutual consent of the attorneys/*pro se* litigants shall be done by way of a Stipulation of Continuance signed by both parties and/or their attorneys of record. A copy of the filed Stipulation shall immediately be delivered to the assigned FCCC at the time of filing. If the matter is removed by mutual consent of counsel and/or *pro se* litigants or by the attorney/*pro se* litigant who scheduled the matter for hearing, unless there is an order of continuance, then Rule 3 herein governs the recalendaring of this matter.

**3.6 Double Calendaring Cases.** No claim within a case shall be calendared on more than one date simultaneously. A claim within a case must be properly removed or continued before being recalendared.

**3.7 Jury Trials.** When calendaring a case in which there has been a demand for a jury trial, the Calendar Request must specifically include this information. Before scheduling a case in which a jury trial has been demanded, the assigned FCCC shall consult with the assigned Judge to assure that the matter is calendared in the appropriate courtroom. Calendar Requests for hearings in which a jury trial has been demanded must be submitted to the assigned FCCC at least ninety (90) days in advance of the requested date.

## **RULE 4: TRIAL CALENDAR**

**4.1 Courtroom 2B.** Cases set in Courtroom 2B shall be limited to three hours or less; however, the FCCC, in consultation with the assigned Judge, may alter this limit for good cause. Cases shall be set on a specific date. On Monday through Thursday, Calendar call for 2B cases shall be at 9:00 a.m. each morning for cases set on that day. The Friday 2B Calendar shall begin at 9:00 a.m. with summary judgment and testimonial divorces involving attorneys and at 10:00 a.m. with *pro se* divorces. If cases other than divorces are set in Courtroom 2B on a Friday, these cases will begin at the time set by the Court or as soon thereafter as the Court may reach them.

**4.2 Courtroom 2C and 2D.** These Courtrooms shall operate on two-week sessions. A case may be calendared for any specific day in 2C or 2D during the two-week session. If the case is not reached on the day it is calendared, it may be reached on the next day, subject to the cases already set on that second day. If a case is not reached by the close of Court on the second day, it shall be recalendared. (This is known as the “two day rule.”)

**4.3 Calendar Call for 2nd Floor Cases.** Calendar call for 2nd floor cases shall be at 9:00 a.m. each morning for cases set on the calendar that day and for any cases that were scheduled for the day before that carried to the bottom of the calendar. It shall be the responsibility of each attorney in a case to keep the FCCC informed of any changes in the status of the case that would affect the Calendar. It shall also be the responsibility of each attorney to confer with other attorneys with cases scheduled for the same date to determine any changes that may affect the Calendar.

**4.4 Appearance at Calendar Call by Counsel or *Pro Se* Litigant Required.** Unless excused by the assigned Judge, counsel or *pro se* litigants who have a case appearing on a Domestic Calendar are required to be present at calendar call. Attorneys may have a partner, associate or another attorney familiar with the case present on his or her behalf. Attendance at calendar call is not required when a case has been properly removed from the Calendar and notice of the removal given to the FCCC (those situations may include, but are not limited to, continuance order, notice of voluntary dismissal, or entry of a consent order or memorandum of judgment). See Rule 16 below for the procedure to follow if a matter settles prior to trial.

**4.5 Appearance at Trial by Counsel or *Pro Se* Litigant Required.** Any case noticed for hearing is subject to dismissal for failure to prosecute, when appropriate, if, at the time the case is called for hearing, the attorneys or *pro se* litigants 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 and/or ready to proceed.

## **RULE 5: MOTIONS, PRETRIAL CONFERENCES AND EMERGENCY HEARINGS**

### **5.1 Motions.**

- (a) Motion for Order to Show Cause and Motion for Contempt.** All Motions for Order to Show Cause and Motions for Contempt (**WAKE-DOM-05A**) shall be filed with the Clerk and must include a copy of the order which is alleged to have been violated. The Motion for Order to Show Cause and Motion for Contempt shall be submitted by the moving party, along with the Order to Appear and Show Cause (**WAKE-DOM-05A** and **WAKE-DOM-05B**) to the assigned Judge for consideration. If the Motion for Order to Show Cause and Motion for Contempt alleges a violation as to a custody, visitation, or other parenting issue (other than child support), then the provisions of Rule 5.1(c)(1) regarding custody mediation shall apply.
- (b) Motions for Contempt.** If a motion for contempt is filed separately without a Motion for Order to Show Cause, the Motion for Contempt shall be filed with the Clerk. If the Motion for Contempt alleges a violation as to a custody, visitation, or other parenting issue (other than child support), then the provisions of Rule 5.1(c)(1) regarding custody mediation shall apply.



- (c) **Calendaring Show Cause Hearings and/or Motions for Contempt.** The assigned FCCC shall calendar the case for hearing before the assigned Judge upon issuance of the Order to Appear and Show Cause (**WAKE-DOM-05B**). If the Order to Show Cause is denied, the movant shall submit a Calendar Request to schedule a Motion for Contempt. Calendar Requests to schedule a Motion for Contempt must be accompanied by a copy of the Order(s) alleged to have been violated. If an Order to Appear and Show Cause is issued, notice of the hearing date shall be contained in the Order; otherwise, the movant shall properly file and serve a Notice of Hearing with regard to the Motion for Contempt.
- (1) **Allegations of Custody Violation.** If the motion alleges a violation as to custody, visitation, or other parenting issues (other than child support), a Custody Mediation Cover Sheet (**WAKE-DOM-06**) **and** either a completed Order to Attend (**WAKE-DOM-07**) 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 Appear and Show Cause (**WAKE-DOM-05A** and **WAKE-DOM-05B**). Unless the moving party simultaneously files a Motion 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, a hearing date on the Order to Appear and Show Cause shall be set far enough in advance to allow mediation to occur. If either party files a Motion and Order to Waive Custody Mediation, the motion will be handled in accordance with Rule 8.4 herein.
- (2) **Allegations not Involving Custody.** In all other matters not concerning custody, visitation or other parenting issues the assigned FCCC shall calendar the case for hearing before the assigned Judge upon issuance of the Order to Appear and Show Cause (**WAKE-DOM-05A** and **WAKE-DOM-05B**) 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 Order.
- (d) **Motions to Withdraw.** All Motions to Withdraw shall be calendared in advance of any assigned trial date. Motions to Withdraw that are consented to in writing by the client may be signed in chambers; however, prior to submitting the order to the assigned Judge the motion to withdraw must be served on opposing counsel or the opposing party if he or she is appearing *pro se* five days before submission for signature. Withdrawal of counsel within two weeks before a scheduled hearing shall not be the sole grounds for a continuance of the hearing in question, and the Motion or Order to Withdraw (whichever is signed by the party) must contain such acknowledgment by the party. Further, the Motion to Withdraw must

indicate if there are any outstanding orders in a case (including orders from matters taken under advisement and orders to be drafted by opposing counsel).

**5.2 Pretrial Conferences.** Any attorney may request, by way of a calendar request, a pretrial conference regarding any substantive matter (for equitable distribution, see Rule 11). The assigned Judge may require a pretrial conference for any matter which is deemed appropriate.

**5.3 Ex Parte / Emergency Matters.** *Ex parte* and/or emergency orders (*ex parte*/emergency) shall not be sought except from the assigned Judge and then only for such circumstances as are allowed by the North Carolina Rules of Civil Procedure, statute or other law. A party seeking an *ex parte*/emergency order must present his/her paperwork to the Family Court Office no later than 4:30 pm or the motion may not be reviewed by the assigned Judge until the next business day. If an order has been entered addressing the claim that is the basis of the *ex parte*/emergency request, a copy of that order must be provided to Family Court Office at the time the *ex parte*/emergency paperwork is presented.

- (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. If the opposing party is notified, the opposing counsel or a *pro se* litigant 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 a denial of the relief sought upon objection of opposing counsel and may 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. When seeking an *ex parte* ruling, a party **must** inform the Court of the identity of opposing counsel, if any.
- (b) **Emergency Hearings.** Motions for *ex parte*/emergency orders shall be submitted in writing to the assigned Judge. 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 Family Court Judge currently assigned to Domestic Court or 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) **Return Hearing.** If an *ex parte*/emergency order is entered by a Judge, a return hearing must be scheduled within ten (10) days of issuance and the order shall include the date for the return hearing. The FCCC shall schedule the date for the return hearing and a Calendar Request shall not be required.

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

### **6.1 5D Child Support Cases.**

- (a) All IV-D child support cases - cases in which Wake County Child Support Enforcement (CSE) is a party to the action - shall be calendared and set in the specialized Child Support Court.
- (b) If CSE is not a party to the case, but the matter has been previously heard in the specialized Child Support Court (for example, a Voluntary Support Agreement, a former “clerk’s case”, or CSE was released from the case by court Order), then the case shall continue to be heard in the specialized Child Support Court unless a motion is filed and an order signed pursuant to subsection (c).
- (c) If CSE is not a party to the case, the obligor or obligee may move to have a case previously heard in the specialized Child Support Court (for example, a Voluntary Support Agreement, a former “clerk’s case”, or CSE was released from the case by court Order), scheduled in Family Court rather than the specialized Child Support Court. This motion may be heard out of court by the assigned Judge in consultation with the lead child support judge as assigned by the Chief District Court Judge. The party who is requesting that the motion be heard shall take said completed Motion to the Case Coordinator and shall simultaneously serve a copy on (1) the opposing party or his/her attorney and (2) the Child Support Enforcement/IV-D Agency.

The motion shall state that the opposing party or his attorney and the CSE/IV-D Agency shall have ten (10) days to file a Statement to oppose the matter being heard in Family Court. After the ten (10) day period has passed, the Court shall enter an Order granting or denying the Motion.

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Once the Motion is granted or denied, the moving party shall serve a copy of the Order on the opposing party or his/her attorney and the CSE/IV-D Agency.

- (d) All other non-IV-D cases that have an assigned Judge shall be set for hearing by the FCCC in accordance with Rule 3.0 except as provided below:

If CSE files a Motion to Intervene and Sever in a non-IV-D child support case, that Motion shall be calendared and set in the specialized Child Support Courtroom. Upon filing, CSE shall provide a copy of the Motion to Intervene and Sever to the FCCC of the Judge assigned to the case, and upon entry of an order either granting or denying the Motion, CSE shall provide a copy of the order to the FCCC of the Judge assigned to the case.

**6.2 Financial Information Required in Child Support Cases.** See Rule 10.

**6.3 Temporary Child Support Hearings.** A hearing shall be set and a temporary child support order entered pursuant to N.C.G.S. §50-32. Only upon the request of an attorney or party shall the assigned FCCC schedule a temporary child support hearing in accordance with these Rules.

- (a) **Length of Hearing.** Temporary child support hearings shall be limited to 1 hour. Each party will have up to thirty minutes to present his or her case, including direct and cross-examination, opening statements and closing arguments. 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, which the assigned Judge may allow in his or her discretion. The party seeking additional time must contact the assigned FCCC in writing (including email, facsimile) contemporaneous with sending notice to the opposing party. If the assigned Judge approves the request, the FCCC will notify both parties and will adjust the anticipated time required. In any event, timely notice of the change must be provided to the opposing party (*pro se* litigant or attorney).
- (b) **Use of Affidavits.** Evidence in temporary child support hearings may be by affidavits. An affidavit is a sworn statement of fact, written down, signed, and witnessed by a taker of oaths such as a notary public. Parties wishing to use affirmative affidavits from the parties, accountants, private investigators or other third parties must deliver the affidavits (excluding attorney's fee affidavits) to the other party by any means reasonably calculated to ensure receipt no later than ten (10) days prior to the scheduled hearing. Rebuttal affidavits, i.e., affidavits that are a direct response to the opposing party's affirmative affidavits, shall be delivered to the other party by any means reasonably calculated to ensure receipt no later than five (5) 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) **Temporary Order.** The temporary child support order shall be non-prejudicial to both parties. In Guidelines cases, a completed Child Support Worksheet (**AOC-CV-627, 628 or 629**) shall be attached to the temporary order which is filed with the Clerk of Court.
- (d) **Dismissal of Temporary Child Support Claim.** If a party asserts a claim for temporary child support, he or she must schedule the claim for hearing so that it is heard within sixty (60) days of the filing of the claim.

If the claim is not timely scheduled for hearing, the claim may be involuntarily dismissed without prejudice for failure to comply with these Rules.

**6.4 Child Support Orders.** All child support orders for payments that are ordered to be paid through North Carolina Child Support Centralized Collections shall have a current Child Support Cover Sheet (**AOC-CV-640**) and shall be submitted with the order to the FCCC.

**6.5 Child Support Payment Directions.** If the party paying child support is ordered to pay directly to Centralized Collections, then the payment should be mailed to: N.C. Child Support Centralized Collections, P.O. Box 900006, Raleigh, North Carolina, 27675. If the party is paying child support through wage withholding, then the payment should be mailed to: N.C. Child Support Centralized Collections, P.O. Box 900012, Raleigh, North Carolina, 27675. Military payments for child support should be mailed to: N.C. Child Support Centralized Collections, P.O. Box 900015, Raleigh, North Carolina, 27675. For other payors not previously listed, including out of state payors or bonds, payments should be mailed to: N.C. Child Support Centralized Collections, PO Box 900020, Raleigh, N.C. 27675.

## **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 of Wake County.

**7.2 Custody Mediation.** Each custody case shall be subject to mediation pursuant to N.C.G.S. §50-13.1 and Rule 8 herein. Upon the filing of a custody case, custody mediation orientation shall be scheduled in accordance with Rules 8.2 and 8.3 herein unless an Order to Waive Custody Mediation (**AOC-CV-632**) is entered in accordance with Rule 8.4 herein. A Motion and Order to Waive Custody Mediation shall not be required if prior to the scheduled custody mediation orientation or mediation sessions the parties submit a consent order resolving all pending custody issues.

**7.3 Temporary Custody Hearings.** Only upon the request of an attorney or party shall the assigned FCCC schedule a temporary custody hearing pursuant to Rule 3 herein. The moving party shall serve upon the opposing party or counsel a Notice of Hearing. Temporary custody hearings shall be before the assigned Judge.

- (a) **Length of Hearing.** Temporary custody hearings shall be limited to two (2) hours. Each party will have up to one (1) hour to present his or her case, including direct and cross-examination, opening and closing arguments. 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, which the assigned Judge may allow in his or her discretion. The party seeking additional time must contact the assigned FCCC in writing (including email, facsimile) contemporaneous with

sending notice to the opposing party. If the assigned Judge approves the request, the FCCC will notify both parties and will adjust the anticipated time required. In any event, timely notice of the change must be provided to the opposing party (*pro se* litigant or attorney).

- (b) **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.
- (c) **Dismissal of Temporary Child Custody Claim.** If the parties are unable to reach a temporary parenting agreement or a consent order for temporary child custody, then the claim(s) for temporary child custody may be involuntarily dismissed if within thirty (30) days following declaration of an impasse (or entry of an order waiving mediation) neither party has calendared a temporary child custody hearing in accordance with Rule 3 herein.

**7.4 Child's Representation in Custody Cases.** In all matters where the custody of a child is at issue (Chapter 50 or 50B), the presiding Judge may appoint an attorney or guardian *ad litem* for the child(ren) in accordance with current law and procedure.

## **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 and modifications, shall participate in mandatory mediation unless exempted by the Court. The Family Court Office 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. Unless exempted, the parties shall proceed with mediation in accordance with these Rules.

**8.2 Scheduling Mediation Orientation.** Orientation shall be scheduled for each initial custody and visitation case. A copy of the Order to Attend (**WAKE-DOM-07**) containing the orientation date shall be served by the initiating party on the opposing parties or their counsel of record. Orientation shall be scheduled as follows: within forty-five (45) days of the filing of the pleading in 100% of the cases; for cases in which a Stipulation for Expedited Mediation (**WAKE-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.

**8.3 Scheduling Mediation.** If the parties have previously attended orientation, the FCCC shall refer the moving party to the CMO to obtain a mediation date. The moving party shall serve a copy of the Order to Attend (**WAKE-DOM-07**), 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 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 as set forth 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; 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 a party that he or she 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**). The Court, in its discretion, may grant these motions *ex parte* or may require a hearing. If the parties have a domestic violence protective order (DVPO), then a copy of the DVPO should be attached to the Motion and Order to Waive Custody Mediation. The Court, on its own motion and for good cause, may waive custody mediation.

If the parties are required to participate in custody mediation because of a pending Show Cause Hearing or Motion for Contempt, (see Rule 5.1(c)(1) herein), the appointment of a parenting coordinator also may constitute “good cause” to exempt the parties from custody mediation.

**8.5 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 8.4 herein. Discovery may proceed regarding financial information; however, depositions of the parties shall not be had until custody mediation has concluded.

**8.6 Confidentiality.** All oral or written communications made during or in furtherance of mediation pursuant to these Rules by either or both 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. There is no privilege as to communications made in furtherance of a crime or fraud. 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. §108A-102.

**8.7 Parenting Agreements.** If the parties are able to reach a 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 promptly present each final signed agreement to the assigned Judge. 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 Court.

**8.8 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 may be attached. As with a Parenting 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 approval and will refer the unresolved issues for calendaring if necessary. Calendaring will be as in other domestic matters. The assigned Judge shall review each agreement and, if appropriate, make the Partial Parenting Agreement an order of the Court by signing an Order Approving Partial Parenting Agreement (**AOC-CV-635**). The CMO will file this order with the Clerk of Court. The mediator will notify the FCCC of the unresolved issues for calendaring.

**8.9 Distribution of Orders.** Copies of all orders entered under Rules 8.7 and 8.8 herein shall be mailed by the CMO to the parties and/or their counsel.

**8.10 No Agreement Reached at Mediation.** If the parties do not reach a permanent Parenting Agreement or if one or both parties fail to attend the custody mediation orientation or the custody mediation session, then the CMO will notify the Family Court Office and Notice of Status of Mediation/Order to Calendar (**WAKE-DOM-29**) shall be entered. If the Assigned judge orders that the issue be calendared for hearing, calendaring will be as in other domestic matters. If a party fails to appear at mediation, the Assigned judge may order sanctions pursuant to Rule 19.

**8.11 Parenting Education Program.** At any time after the filing of a claim for child custody and or visitation, the Court may in its discretion order one or both of the parents to attend a parenting education program.

**8.12 Removal from Mediation Process.** When custody and/or visitation issues have been completely settled by consent or dismissed, the issues shall be removed from the mediation process. Upon submission to the FCCC of a written dismissal or consent order, the parties shall not be required to file a Motion and Order to Waive Custody Mediation (**AOC-CV-632**).

## **RULE 9: POSTSEPARATION SUPPORT & ALIMONY**

**9.1 Calendaring Hearing.** Only upon the request of an attorney or party shall the FCCC calendar issues of postseparation support for hearing in accordance with these Rules.

**9.2 Financial Information Required.** In all cases involving postseparation support and/or alimony, each party shall serve a Financial Affidavit (**WAKE-DOM-10**) upon the opposing party. Individual judges may request that the parties use a specific format (either Word or Excel) for the Financial Affidavit. The moving party shall serve his/her completed Financial Affidavit on the opposing party within thirty (30) days after the filing of his/her claim. The opposing party shall serve the moving party with his/her



completed Financial Affidavit (**WAKE-DOM-10**) within forty-five (45) days after the date he/she is served with the claim or fifteen (15) days before the hearing date, whichever comes first. In any case, each party shall serve his/her Financial Affidavit within fifteen (15) days before the hearing date. The Financial Affidavit shall not be filed with the Court. However a certificate of service of the Financial Affidavit shall be filed with the Clerk.

In addition to service of their completed Financial Affidavits, the parties shall exchange financial information as required by Rule 10 herein entitled “Initial Disclosures Regarding Financial Issues in a Chapter 50 Action for Child Support, Postseparation Support and/or Alimony.”

**9.3 Moving Party’s Responsibility.** In addition to the service of financial information as set forth above, the party seeking postseparation support and/or alimony or the modification of an existing spousal support order, shall serve upon the opposing party the following: the pleading (or motion); the Affidavit for Judicial Assignment and Notice of Hearing (**WAKE-DOM-02**) (if required by these Rules); a blank Financial Affidavit (**WAKE-DOM-10**); and a Notice of Financial Information Required (**WAKE-DOM-11**). A Notice of Hearing shall be served in accordance with Rule 3 and the North Carolina Rules of Civil Procedure.

**9.4 Employer Wage Affidavits.** Upon request of the opposing party/opposing counsel, a party shall submit an Employer Wage Affidavit (**WAKE-DOM-12**) to his or her employer(s) for completion. The affidavit completed by the employer must be served on the opposing party at least seven (7) days before the hearing on the pending request for support or modification thereof. The affidavit completed by the employer shall not be filed with the Court. However a certificate of service of the Employer Wage Affidavit shall be filed with the Clerk.

**9.5 Postseparation Support Hearings.** If a claim for temporary child support is also pending, it shall be heard along with the claim for postseparation support, if practicable.

- (a) **Duration.** Postseparation support hearings shall be limited to one (1) hour. Each party will have up to thirty (30) minutes to present his or her case, including opening statements, direct and cross-examination and closing arguments. With written notice to the opposing party at least seven (7) days prior to the scheduled hearing date, either party may request from the Court additional time to present complicated cases, which the assigned Judge may allow, in his or her discretion. The party seeking additional time must contact the assigned FCCC in writing (including email, facsimile) contemporaneous with sending notice to the opposing party. If the assigned Judge approves the request, the FCCC will notify both parties and will adjust the anticipated time required. In any event, timely notice of the change must be provided to the opposing party (*pro se* litigant or attorney).
- (b) **Use of Affidavits.** Evidence in postseparation support hearings may be by affidavits. Parties wishing to use affidavits from the parties, accountants,

private investigators or other third parties must deliver the affidavits (excluding attorney's fee affidavits) to the other party by any means reasonably calculated to ensure receipt no later than ten (10) days prior to the scheduled hearing. Rebuttal affidavits (i.e., affidavits that are a direct 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) days before the scheduled hearing. The Court will not consider affidavits which are not served on the opposing party in accordance with these Rules. Such affidavits shall not be filed with the Court. However, certificate of service of the affidavit(s) shall be filed with the Clerk.

- (c) **Establishment of Alimony.** If, at the postseparation 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 postseparation support is entered, either party may proceed to calendar the alimony hearing pursuant to Rule 3.
- (d) **Dismissal of Postseparation Support Claim.** If a party asserts a claim for postseparation support, he or she must schedule the claim for hearing so that it is heard within sixty (60) days of the filing of the claim. If the claim is not timely scheduled for hearing, the claim may be involuntarily dismissed without prejudice for failure to comply with these Rules.

## **RULE 10: INITIAL DISCLOSURES REGARDING FINANCIAL ISSUES IN A CHAPTER 50 ACTION FOR CHILD SUPPORT, POSTSEPARATION SUPPORT AND/OR ALIMONY**

**10.1 Duty of Financial Disclosure.** Every party to an action in which child support (other than IV-D and other child support issues heard in the specialized Child Support Court), postseparation support, or alimony is an issue has the duty to provide the documents designated by this Rule to other parties or their counsel. The designated documents are defined as "Initial Disclosures (Support)."

- (a) **Party Claiming Support.** The party who is filing a complaint, claim or motion for support should be aware of the requirement for Initial Disclosures and start the accumulation process prior to filing the complaint, claim or motion so the Initial Disclosures can be made soon after filing. The party claiming support shall provide his or her Initial Disclosures and a filed Certification of Initial Disclosures (Support) (**WAKE-DOM-17A**) fifteen (15) days after service of his or her complaint, claim, or motion for support. In no event shall the party seeking support provide the Initial Disclosures less than ten (10) days before any scheduled hearing.
- (b) **Party from Whom Support is Claimed.** The party from whom support is claimed shall provide his or her Initial Disclosures and a filed Certification of Initial Disclosures (Support) (**WAKE-DOM-17A**) within twenty-five (25) days of service of the complaint, claim or motion. In no event shall

the party from whom support is claimed provide the Initial Disclosures less than ten (10) days before any scheduled hearing.

- (c) **Certification of Initial Disclosures.** When the Certification of Initial Disclosures is filed with the Court, copies of the disclosed documents must not be included with this filing. These documents should not be included in the Court file.

**10.2 Documents to be provided as Initial Disclosures where a claim for Child Support has been filed or where a claim for a modification to an existing Child Support obligation has been filed:**

- (a) **If the North Carolina Child Support Guidelines apply, produce the following:**
- Documents reflecting income (as defined in the North Carolina Child Support Guidelines) from any and all sources for the last two (2) years preceding the filing of the claim;
  - Income tax returns for the last two (2) years, including W-2, all schedules and attachments;
  - Pay stubs for the last three (3) months;
  - Documents reflecting expenses for current child care and payments made for which reimbursement is sought;
  - Documents reflecting expenses for current healthcare insurance and payments made for which reimbursement is sought;
  - Documents reflecting expenses for uninsured medical expenses paid for which reimbursement is sought;
  - Documents reflecting any extraordinary expenses;
  - Documents regarding any obligation for child support for any child(ren) for whom support is not sought; and
  - Documents reflecting ownership of stock or stock options.
- (b) In any case in which a deviation from the North Carolina Child Support Guidelines is sought, or in which there is an unincorporated separation agreement establishing child support, and/or in which the Guidelines do not apply due to high incomes, produce the following:
- All of the information requested above in 10.2(a);
  - Bank statements for the last six (6) months, including cancelled checks, check register, online statements, and evidence of checks paid (i.e., Quicken, general ledgers, etc.);
  - Credit card statements for the last six (6) months for any credit card for which you are an authorized user;
  - List of all financial accounts, including account number, name of account holder, institution, address and phone number, of all in

which you have or have had any interest in the last twelve (12) months;

- Business tax returns for the past two (2) years, including K-1 and all attachments and schedules;
- Business bank statements, including cancelled checks, check register, online statements and evidence of checks paid for the last six (6) months;
- Credit card statements used for business expenses for the last six (6) months for any credit card for which you are an authorized user; and
- Financial Affidavit (the non-moving party shall file his or her responsive Financial Affidavit fifteen (15) days after service of the Financial Affidavit of the moving party).

(c) If a party is self-employed and/or receives income from any other source in addition to salary (other than dividends, interest income and/or capital gains of less than \$3,000 per year), then regardless of whether the North Carolina Child Support Guidelines apply, that party shall produce the following:

- All of the information requested above in 10.2(a); and
- All of the information requested above in 10.2(b).

**10.3 Documents to be provided as Initial Disclosures where a claim for Postseparation Support and/or Alimony has been filed or where a claim for a modification to an existing Postseparation Support and/or Alimony obligation has been filed:**

- All of the information requested above in 10.2(a) and 10.2(b), except for documents related to expenses for minor child(ren).

**10.4 Employer Wage Affidavits.** Upon request of the opposing party/opposing counsel, the other party shall submit an Employer Wage Affidavit (**WAKE-DOM-12**) to his or her employer(s) for completion. The affidavit completed by the employer shall not be filed with the Court but must be served on the opposing party at least five (5) days prior to the first hearing or conference on the pending request for support or modification thereof. However, a certificate of service of the Employer Wage Affidavit shall be filed with the Clerk.

**10.5 Scope.** Unless previously disclosed by either party, the disclosing party is required to provide the documents specified in Rule 10.2 and/or 10.3 which are in his or her custody or control. Documents are defined to be in the custody or control of the party if: (a) they can be obtained by him or her because the party is a joint title or account holder; or (b) the documents were prepared by another person (e.g. CPA, accountant, bookkeeper) at the party's direction or on his or her behalf whether the account is held individually or jointly with another.

**10.6 Method of Disclosure.** The Initial 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 not represented (*pro se*), by furnishing the disclosures to the opposing party via the United States Mail or by hand-delivery on or before the required due date. By mutual consent of the parties and/or counsel, the Initial Disclosures may also be served by electronic mail or facsimile.

**10.7 Effect of Failure to Comply.** The Rules herein providing for a duty of disclosure shall constitute a discovery request within the meaning of the North Carolina Rules of Civil Procedure. Failure to establish good cause for noncompliance with the disclosure rules by the party seeking support may be grounds for continuation of the hearing or such other sanction as provided by Rule 37 of the North Carolina Rules of Civil Procedure. Failure to establish good cause for noncompliance with the disclosure rules by the party from whom support is sought may be grounds for denying that party the right to defend the claim for support or such other sanction as provided by Rule 37 of the North Carolina Rules of Civil Procedure.

**10.8 Duty to Amend Initial Disclosures.** After the Initial Disclosures are made pursuant to these Rules, each party shall be under a continuing duty to amend or supplement in a timely manner the original documentation if there has been a substantial change in any of the original information provided (i.e., an amended tax return, adjusted or revised financial statements, or documents reflecting a change in income).

**10.9 Confidentiality.** Documents provided by a party pursuant to Rule 10.2 and/or 10.3 to the opposing party and/or his or her attorney are deemed confidential and may be disclosed only to the opposing party, his or her attorneys and other professional or financial advisors. Either party may seek additional restrictions against disclosure as may be provided by the North Carolina Rules of Civil Procedure; however, filing a motion for a protective order will not be grounds for failure to serve the Initial Disclosures on a timely basis.

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

**11.1 Application.** These Rules shall apply to all equitable distribution claims that may be filed on or after **September 1, 2013**. Equitable distribution claims filed before **September 1, 2013**, shall be governed by the Local Rules in effect at the time the equitable distribution claim was filed; however, for good cause shown, the presiding Judge can decide in his or her discretion the applicability of the revised Rules should a controversy arise.

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

- (a) by written consent of both counsel/parties and approval of the assigned Judge; or
- (b) by entry of an order by the assigned Judge 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.
- (c) **“Equitable Distribution Inventory Affidavit” (EDIA)** - A full and complete disclosure of all marital, separate and divisible property and debt existing on the date of separation and as of the date of the submission of the EDIA to the opposing party, with each party’s best estimate as to the date of separation and present value of all assets and debts (**WAKE-DOM-19**).

**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 FCCC a date for a Scheduling and Discovery Conference to be conducted by the FCCC unless a party requests the conference be conducted by the assigned Judge;
- (b) immediately serve upon the responding party notice of the date, time and location in which the Scheduling and Discovery Conference is set; and
- (c) serve the appropriate notice of hearing on the responding party.

**11.6 Initial Disclosures Regarding Property and Financial Issues in Equitable Distribution.**

- (a) **Duty of Financial Disclosure.** Every party to an action in which equitable distribution is an issue has a duty to provide the documents designated in this Rule to the other party or his or her counsel of record without a formal discovery request. The designated documents are defined as “Initial Disclosures (Equitable Distribution).”
  - (1) **First Party to File Equitable Distribution Claim.** The party who is first to file a claim for equitable distribution is required to provide his or her Initial Disclosures and a filed Certification of Initial Disclosures (Equitable Distribution) (**WAKE-DOM-17B**) along with his or her EDIA (**WAKE-DOM-19**) within ninety (90) days after filing the claim for equitable distribution.
  - (2) **Party Responding to or Second to File Equitable Distribution Claim.** The party responding to an equitable distribution claim (i.e. second to file) is required to provide his or her Initial Disclosures and a filed Certification of Initial Disclosures (Equitable Distribution) (**WAKE-DOM-17B**) and EDIA (**WAKE-DOM-19**)

thirty (30) days after service of the initiating party's Initial Disclosures and EDIA.

(3) **Certification of Initial Disclosures.** When the Certification of Initial Disclosures is filed with the Court, copies of the disclosed documents must not be included with this filing. These documents should not be included in the Court file.

(b) **Documents to be Provided as Initial Disclosures.** As a general rule, a party's Initial Disclosures should be those documents that support the entries made on the party's EDIA. For example, if a party lists real property on his or her EDIA, then he or she should produce: all documents reflecting the fair market value on the date of separation and currently; any note and Deed of Trust related to the property; and any document showing the principal balance of any note as of the date of separation and currently. In other words, the purpose of the Initial Disclosures is to provide verification for the entries made on the EDIA as of the date of separation (or closest to the date of separation) and currently. In particular, such Initial Disclosures should be produced for any real estate, vehicles of any kind, monetary accounts of any kind, retirement accounts of any kind, business interests and debts of any kind. To the extent such backup documents exist for other categories of property listed by a party on the various schedules of the EDIA, those should be produced as well. For example, if a party lists as an asset a life insurance policy, he or she should produce as an Initial Disclosure a statement showing the cash surrender value, if any, of the policy on the date of separation. The actual supporting documents required to be produced as Initial Disclosures are listed on each schedule of the EDIA.

(c) **Scope.** The disclosing party is required to provide the documents specified in Rule 11.6(b) 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 if: (1) a party is title or account holder; or (2) the documents were prepared by a third party (i.e., CPA, accountant, bookkeeper) at a party's direction or on his or her behalf. If the party who is first to file an equitable distribution claim has already produced in his or her Initial Disclosures a document that the responding party should also produce as an Initial Disclosure, the responding party is not required to produce the same document.

The EDIA and Initial Disclosures shall not be filed in the Clerk's office, but a certificate of service of the EDIA and Initial Disclosures shall be filed with the Clerk.

**11.7 Method of Disclosure.** The Initial 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 not represented (*pro se*), by furnishing the disclosures to the opposing party via the United States Mail or hand-

delivery on or before the required due date. The Initial Disclosures may also be made by electronic mail or facsimile by mutual consent of the parties or their counsel.

**11.8 Effect of Failure to Comply.** The Rules herein providing for a duty of disclosure shall constitute a discovery request within the meaning of the North Carolina Rules of Civil Procedure and any non-complying party shall be subject to all applicable sanctions.

**11.9 Duty to Amend Initial Disclosures.** After the Initial Disclosures are made pursuant to this Rule, each party shall be under a continuing duty to amend or supplement the original documentation if there has been a substantial change in any of the original information provided. The duty to amend initial disclosures extends to production of updated account statements, tax returns and other documents up to the date of trial.

**11.10 Confidentiality.** Documents provided by a party pursuant to Rule 11.6(b) to the opposing party and/or his or her attorney are deemed confidential and may be disclosed only to the opposing party, his or her attorneys and other professional or financial advisors who will be equally bound by the requirement of confidentiality. Either party may seek additional restrictions against disclosure or other relief as may be provided by the North Carolina Rules of Civil Procedure; however, filing of a motion for a protective order will not be grounds for failure to timely serve all Initial Disclosures to which no objection is pending.

**11.11 Scheduling and Discovery Conference.** The Court or the FCCC (see Rule 11.5 above) shall discharge each of the duties set forth in N.C.G.S. §50-21(d) and on the timetable in Rule 11.15; shall take such further action as may be necessary to resolve pending motions or other issues between the parties; shall order a mediated settlement conference or other alternative dispute resolution pursuant to Rule 12 herein; and shall set dates for an Initial Pretrial Conference, a Final Pretrial Conference, and a trial date. The parties need not attend the Scheduling and Discovery Conference if they submit a signed consent Scheduling and Discovery Order (Wake-DOM-09), along with an Order Submission (Wake-DOM-22) to the assigned Judge prior to or at the time of the Scheduling and Discovery Conference.

If only one party (or his/her attorney) appears for the Scheduling and Discovery Conference, the FCCC may, at the preference of the assigned Judge, proceed with the conference such that a Scheduling and Discovery Order (Wake-DOM-09) may be submitted to the assigned Judge.

If neither party (nor his/her attorney) appears for the Scheduling and Discovery Conference, the FCCC may, at the preference of the assigned Judge, reset the hearing date for the conference and serve a Continuance Order upon both parties (or his/her attorney). A party's failure to appear at a second Scheduling and Discovery Conference may result in dismissal of that party's claim for equitable distribution.

**11.12 Expedited Equitable Distribution Cases.** At the Scheduling and Discovery Conference, a party or attorney shall indicate if he/she believes that the case may be



appropriate for disposition as an expedited equitable distribution case. The following rules shall apply to such cases:

- (a) If the parties agree and the Court approves, an equitable distribution case may be processed as an expedited equitable distribution case. In general, a case may be appropriate for expedited equitable distribution procedures if the total net fair market value of the marital estate is less than \$25,000.00, not including marital real estate and marital vested pensions.
- (b) A case designated as an expedited equitable distribution case may be given a trial setting within ninety (90) days of the Scheduling and Discovery Conference. A discovery schedule and mediation deadline for each expedited equitable distribution case shall be set at the Scheduling and Discovery Conference and an order entered setting out the dates for discovery, mediation and trial.

**11.13 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 11.15, 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 their attorneys at the time of this conference. The parties need not attend the Initial Pretrial Conference if they submit a signed consent order to the assigned Judge prior to or at the time of the Initial Pretrial Conference.

**11.14 Final 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 11.15. All parties shall be present in Court or available by telephone to their attorneys at the time of this conference.

**11.15 Equitable Distribution Claims Timetable.**

Time	Event	Responsible Person
Upon filing of the first equitable distribution claim	Set Scheduling and Discovery Conference within 120 days from the date the first claim is filed.	Moving Party or FCCC or parties by consent
90 days after filing of first claim for equitable distribution	Serve on responding party an EDIA and Initial Disclosures pursuant to Rule 11.6. Only a certificate of service of the EDIA and Initial Disclosures shall be filed in the Clerk’s office.	Moving Party
30 days after service of first EDIA	Serve EDIA and Initial Disclosures pursuant to Rule 11.6. (See above for what is to be filed)	Responding Party

<p>120 days after filing of first claim for equitable distribution</p>	<p><b>Scheduling and Discovery Conference:</b></p> <ul style="list-style-type: none"> <li>• Schedule discovery, including dates for completion and any motions to compel.</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>• Appoint expert witnesses.</li> <li>• Determine date of separation or, if the parties do not agree as to the date of separation, include in S&amp;D Order a hearing to determine date of separation.</li> <li>• Set date for disclosure of expert witnesses.</li> <li>• Set date for Initial Pretrial Conference.</li> <li>• Set date for Final Pretrial Conference.</li> <li>• Determine trial date</li> </ul> <p>Each party should be present in court or available by telephone with his or her attorney at the time of this conference. It is strongly recommended that the attorneys and parties meet before the day of the conference to discuss stipulations, discovery, expert witnesses and other matters that can be resolved at this conference.</p>	<p>Assigned Judge or FCCC or parties by consent</p>
<p>No later than 210 days after filing of first claim for equitable</p>	<p>Court ordered mediated settlement conference held.</p>	<p>Moving party, responding party and mediator</p>
<p>No later than 210 days after filing of the first claim for equitable distribution</p>	<p>Certification from mediator that impasse was declared or settlement reached.</p>	<p>Mediator</p>
<p>No later than 210 days after filing of first claim for equitable distribution</p>	<p><b>Initial Pretrial Conference:</b></p> <ul style="list-style-type: none"> <li>• Review status of case.</li> <li>• Enter date for completion of discovery.</li> <li>• Enter date for filing and service of motions, and determine date on which the Final Pretrial Conference shall be held.</li> <li>• Determine trial date.</li> <li>• Set dates for service and completion of Final Pretrial Order.</li> </ul> <p>Each party should be present in Court or available by telephone with his or her attorney at the time of this conference.</p>	<p>Assigned Judge</p>

Prior to Final Pretrial Conference	Moving party serves proposed Final Pretrial Order on opposing party subject to date established in Initial Pretrial Order.	Moving party
No later than 240 days after the first equitable distribution claim is filed	<p><b>Final Pretrial Conference:</b></p> <ul style="list-style-type: none"> <li>• Conference is conducted pursuant to the General Rules of Practice Superior and District Court</li> <li>• Each party shall be present in Court or available by telephone at the time of this conference.</li> <li>• The Final Pretrial Order shall be prepared and submitted to the assigned Judge in accordance with the assigned Judge's direction.</li> </ul>	Assigned Judge
No later than 270 days after first equitable distribution claim is filed	Trial	Assigned Judge
Within 270 days (90% of cases) Within 365 days (100% of cases)	Order entered	Party designated by 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 (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. In the event of a conflict between these Rules and the North Carolina Supreme Court Rules, the Supreme Court Rules shall govern.

**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, postseparation support, or claims arising out of contracts between the parties under N.C.G.S. §50-20(d), §52-10, §52-10.1 or §52B, shall advise his or her client regarding the ADR procedures approved by this Rule and, at or prior to the Scheduling and Discovery

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 and Discovery Conference.** At the Scheduling and Discovery Conference mandated by N.C.G.S. §50-21(d) and Rule 11.11, the Court shall include in the Scheduling and Discovery Order (Wake-DOM-09) 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.
- (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 herein.
- (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 of these 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 Settlement Procedure Other Than Mediated Settlement Conference or Judicial Settlement Conference in Family Financial Case (AOC-CV-826) shall be filed at or before the Scheduling and Discovery 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; and
  - (4) that all parties consent to the motion.
- (d) **Content of Order.** The Scheduling and Discovery Order (Wake-DOM-09) 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. Any order entered at the completion of a Scheduling and Discovery 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 ten (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 (c) 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. The party filing such a motion shall schedule the matter for hearing pursuant to Rule 3 herein. 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 family financial mediator certified pursuant to these Rules by agreement during the Scheduling and Discovery 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 counsel/ *pro se* litigant have agreed upon the selection and rate of compensation, and state that the mediator is certified pursuant to these Rules. A copy of the Scheduling and Discovery Order shall be delivered to the mediator by the FCCC.

**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 Family Court Administrator shall prepare and keep current a central directory of information on all mediators certified pursuant to these Rules. Such information shall be kept in one or more notebooks made available for inspection by attorneys and parties in the Family Court Office.

**12.7 Disqualification of Mediator.** Any party may move the Court for an order disqualifying the mediator by submitting the request, including the basis for disqualification, to the assigned FCCC for submission to the assigned Judge. The assigned Judge will determine whether the request can be determined *ex parte* or if a hearing shall be required. 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 herein. Nothing in this provision shall preclude mediators from disqualifying themselves.

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

- (a) The mediated settlement conference shall be held in any location agreed upon by 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* litigants.
- (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. The mediator shall set a date and time for the conference pursuant to Rule 12.16(f).

**12.9 Requests to Expedite or Extend.**

- (a) **Expedite.** Either party may file a motion to expedite mediation for good cause shown. Said motions shall be filed and served according to the North Carolina Rules of Civil Procedure, shall be submitted to the assigned Judge, and shall state the reasons for the motion. The motion shall be calendared pursuant to Rule 3 herein.
- (b) **Extend.** Upon consent of both parties, the initial mediation deadline may be extended so long as it does not affect other dates or deadlines established in the Scheduling & Discovery Order. In this instance, a consent order or stipulation shall be filed with the Court, signed by all parties, submitted to and approved by the assigned Judge. Any further requests to extend the mediation deadline 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) the parties, and
  - (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 North Carolina 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 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 assigned FCCC. In the event the parties fail to agree on the wording or terms of a final agreement or Court order, the mediator may schedule such other sessions as the mediator determines 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 herein.

**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 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 North Carolina 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. The mediator shall inquire of and consider the desires of the parties to cease or continue the conference.
- (e) **Reporting Results of Conference.** In accordance with the North Carolina Supreme Court Rules, the mediator shall provide a Report of Mediator in Family Financial Case (**AOC-CV-827**) to the assigned FCCC within ten (10) days of the completion of the conference, stating 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 hourly rate then in effect for FFS Certified Mediators. The parties shall also pay to the mediator a one-time per case administrative fee (at the rate then in effect for FFS Certified Mediators), 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 or as otherwise required by the mediator and agreed by the parties.
- (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) herein 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**.

The party filing such a motion shall schedule the matter for hearing pursuant to Rule 3 herein. 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 postpone the conference only in accordance with Rule 7 of the Family Financial

Settlement (FFS) Rules. 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 in the FFS Rules or as agreed when the mediator is selected, and consent of the mediator and the opposing party. 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 be qualified in accordance with Rule 8 of the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases.

**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, 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 herein) wherein a neutral person (evaluator) 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 evaluator, disqualification of the evaluator, compensation and authority and duties of the evaluator 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:
    - i. The process of the proceeding;
    - ii. 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);
    - iii. The costs of the proceeding;
    - iv. The fact that any settlement reached will be only by mutual consent of the parties;
    - v. The inadmissibility of conduct and statements made during the conference in any subsequent Court proceedings; and

- vi. The duties and responsibilities of the evaluator 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 opinion 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 Neutral Conducting Settlement Procedure Other Than Mediated Settlement Conference in Family Financial Case (**AOC-CV-834**) to the assigned FCCC, 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, 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.

**12.22 Judicial Settlement Conference.** An assigned Judge may, in his or her discretion, require the parties to participate in a judicial settlement conference at any point prior to trial but after the parties have been unsuccessful in reaching a settlement through equitable distribution mediation.

- (a) **Settlement Judge.** The assigned Judge shall not be the settlement conference Judge. The settlement conference Judge shall be selected by the assigned Judge and must agree to participate in the judicial settlement conference.
- (b) **Conducting the Conference.** The form and manner of conducting the conference shall be in the discretion of the settlement conference Judge. The settlement conference Judge may not impose a settlement on the parties but will assist them in reaching a resolution of all claims.
- (c) **Confidential Nature of the Conference.** The judicial settlement conference shall be conducted in private. No stenographic or other record may be made of the conference. Only the parties and their counsel may

attend. Any communications made during the conference may not be used in any Court proceeding or communicated to the assigned Judge. The settlement Judge may report that a settlement conference was reached and the settlement shall be reduced to writing before leaving the conference.

- (d) **Report of the Judge.** Within ten (10) days after the completion of the judicial settlement conference, the settlement conference Judge shall file a written report with the Court using the Report of Neutral Conducting Settlement Procedure Other Than Mediated Settlement Conference in Family Financial Case (AOC-CV-834), stating when and where the conference was held, the names of the persons in attendance, whether an agreement was reached, and the name of the person designated to file judgments or dismissals concluding the action. A copy must also be delivered to the FCCC.

### **RULE 13: ARBITRATION, REFERENCE, PARENTING COORDINATORS AND COLLABORATIVE LAW**

**13.1 Arbitration.** Arbitration of family law cases is available upon consent of the parties under the Family Law Arbitration Act as set forth in N.C.G.S. §50-41 *et seq.* Issues which can be heard in District Court (custody, child support, alimony, postseparation support, equitable distribution, attorney's fees) may also be arbitrated, often with a savings of time and money. The consent order for arbitration shall state, at a minimum, 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 between the parties, their attorneys and the arbitrator. In the consent order for arbitration, the parties may suspend these Rules or otherwise stay the action pursuant to N.C.G.S. §50-43(d) while the arbitration is in progress.

**13.2 Reference.** 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) of the North Carolina Rules of Civil Procedure. This procedure can save time and money in the scheduling and trial of property division cases.

### 13.3 Parenting Coordinators.

#### (a) General:

- (1) A Judge may appoint a parenting coordinator at any time during the proceedings of a child custody action if all parties consent to the appointment without making a finding that the case is a high-conflict case as defined by N.C.G.S. §50-90. The parties may agree to limit the parenting coordinator's decision-making authority to specific issues or areas. If the parties consent to the appointment of a selected parenting coordinator, the appointment order must acknowledge that the parenting coordinator has agreed to the appointment.
- (2) A Judge may appoint a parenting coordinator without the consent of the parties only if the Court makes a finding that the action is a high-conflict action and that the appointment is in the best interests of the child. To be classified as a high-conflict case, the parties must demonstrate an ongoing pattern of excessive litigation, anger and distrust, verbal abuse, physical aggression or threats of physical aggression, communication issues regarding the child or other conditions that the Court determines warrant the appointment of a parenting coordinator as set out in N.C.G.S. §50-90. Before selecting a parenting coordinator for a family, the Court must make sure that the parenting coordinator agrees to the appointment.
- (3) Before appointing a parenting coordinator, an order for child custody must be entered along with an Order Appointing Parenting Coordinator (**WAKE-DOM-24**) setting forth the authority and duties of the parenting coordinator.
- (4) Unless the parties consent to the appointment of the parenting coordinator, the assigned Judge must make a finding before appointing a parenting coordinator that the parties have the ability to pay the parenting coordinator fees.
- (5) Parenting coordinators should be chosen from a list maintained by the Wake County District Court Family Court Office and must meet and maintain those qualifications listed in N.C.G.S. §50-93 (**WAKE-DOM-25**).

#### (b) Roles of Parenting Coordinator.

- (1) The roles of a parenting coordinator shall be specified in the Order Appointing Parenting Coordinator (**WAKE-DOM-24**) and shall be limited to matters that will aid the parties to identify disputed issues; reduce misunderstandings; clarify priorities; explore possibilities for compromise; develop methods of collaboration in parenting; and comply with the Court's order of custody, visitation or guardianship.
- (2) A Judge may authorize a parenting coordinator to decide issues regarding the implementation of the parenting plan that are not

specifically governed by the Court order and which the parties are unable to resolve.

- (3) The parties must comply with the parenting coordinator's decisions on matters authorized in the Order Appointing Parenting Coordinator (**WAKE-DOM-24**) and in the custody order until the Court reviews the decision.
  - (4) The parenting coordinator, any party or the attorneys for any party may request an expedited hearing to review a parenting coordinator's decision. The motion for review must put the parties on notice of the specific decision(s) for which review is sought, and the motion must be served on all parties as well as the parenting coordinator. The movant must schedule the hearing in accordance with Rule 3 herein and must comply with the North Carolina Rules of Civil Procedure in noticing this hearing. Only the presiding Judge may issue subpoenas to a parenting coordinator to appear and testify at the hearing (N.C.G.S. §50-92(b)).
- (c) **Appointment Conference.** Once the Court has made the decision to appoint a parenting coordinator, an appointment conference must be held. The appointment conference must be scheduled within thirty (30) days of entry of the Order providing for the appointment of a parenting coordinator (e.g., Custody Order, Order Granting Motion to Appoint a Parenting Coordinator). The party first asserting a claim for custody shall schedule this conference pursuant to Rule 3 herein. The parties, their attorneys, the proposed parenting coordinator and the assigned Judge must all attend the appointment conference.
- (d) **Fees and Expenses.** Parenting coordinators are entitled to reasonable compensation and retainers as required in their contracts. The parenting coordinator may request a hearing from the Court in the event of a fee dispute.
- (e) **Termination or Modification of Appointment of Parenting Coordinator.** The Court may modify or terminate the Order Appointing Parenting Coordinator for good cause upon motion (**WAKE-DOM-27A**) of either party; at the request of the parenting coordinator; upon agreement of the parties and the parenting coordinator; or upon the Court's own motion.

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**13.4 Collaborative Family Law.** Collaborative Family Law is also available upon the consent of the parties. Under N.C.G.S. §50-70 *et seq.*, Collaborative Family Law is a procedure in which the parties and their counsel agree in writing to use their best efforts and to make a good faith attempt to resolve all issues affecting the dissolution of the marriage by agreement and without judicial intervention except to have the Court approve the settlement agreement, make the necessary legal pronouncements, and sign the orders that may be required by law to effectuate the agreement of the parties. When the parties consent to Collaborative Family Law, the following conditions shall apply:

- (a) The parties' collaborative counsel may not serve as litigation counsel except to ask the Court to approve the settlement agreement(s) and/or enter orders necessary to effectuate the parties' agreement.
- (b) The confidentiality of statements made or documents exchanged during collaborative law conferences and other procedures shall be recognized by the Court, and all verbal or written communications or work product among the parties, their attorneys and any third party experts utilized pursuant to the collaborative law agreement are absolutely privileged and inadmissible in Court.
- (c) To the extent that the Court finds issues are being reasonably addressed in a collaborative law process, the Court may extend the filing deadlines for discovery and mediation as set forth in these Rules.

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

**14.1 Scheduling Hearings.** In scheduling hearings, both parties and/or their counsel are expected to work with the assigned FCCC in calendaring matters within the Family Court Time Standards and in such a way as to avoid conflicts with other scheduled hearings, personal commitments (such as doctor's appointments, family obligations, etc.), designated secured leave, and other already scheduled matters. Further, both parties and/or their counsel are encouraged to make every attempt to work together to resolve any scheduling conflicts which may arise while still keeping within the established time standards. Scheduling conflicts should be resolved in accordance with Rule 3.1 of the General Rules of Practice and any Local Administrative Orders designating priorities of cases.

**14.2 Form of Motions.** In the event that it becomes necessary for one party to file a Motion to Continue, the rules and procedures below shall apply. Except as provided herein for oral motions, a Motion to Continue (**WAKE-DOM-20A**) shall be in writing and shall contain the following information:

- (a) Caption and file number of the case;
- (b) What issues are pending for hearing and the term and/or date for which the case is set;
- (c) Reason for the request to continue. 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, the issue set for hearing in the other Court; 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, and, if known, whether opposing counsel objects to the continuance.

Oral motions to continue may be made when the reason for the continuance is the result of an illness, death, no service on opposing party, when an attorney was recently retained or for any other reason determined by the Court to be reasonable.



**14.3 Time Limits and Service of Motions.** The original of a Motion to Continue shall be filed with the Clerk of Court and a copy shall be timely delivered to the assigned Judge along with the proposed Order (**WAKE-DOM-20C**). The Motion to Continue shall be served upon all parties and/or opposing counsel in a manner designed to give notice as expeditiously as possible. In addition, the moving party shall contact the opposing party/counsel by telephone, facsimile and/or e-mail to inform him/her of the filing of a motion to continue. Any objection (**WAKE-DOM-20B**) must be filed and delivered to the assigned Judge and served upon the movant no later than two (2) business days after the filing of the request for continuance unless time does not allow. When appropriate, the assigned Judge shall rule upon the motion without a hearing, and the assigned FCCC shall communicate the Judge's decision on the motion to the parties and/or counsel in a manner designed to give notice as expeditiously as possible. It is in the discretion of the Judge whether to require a hearing on the motion.

**14.4 Case Management and Continuances.** When a case is continued or the Court is not able to reach the case during a court session, when required by the assigned Judge, an Order of Continuance shall be entered on or before the day of the originally scheduled court hearing. If the Order of Continuance is not entered on that day, then the parties have ten (10) days in which to calendar the case for hearing on all claims that were continued or not reached, and the party(ies) whose claim(s) was continued shall be responsible for assuring the matter(s) is recalendared. If the parties fail to timely calendar the case for hearing, then the FCCC may schedule the claim(s) for hearing and send a Notice of Hearing or Continuance Order to both parties.

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

Requests for peremptory settings for cases involving a party or an essential witness who must travel long distances, have numerous expert witnesses or where other extraordinary reasons for such a request exist must be ruled upon by 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 (**WAKE-DOM-21A**) and the proposed Order for Peremptory Setting (**WAKE-DOM-21B**) must be in writing and a copy thereof must be served upon the opposing party and a copy provided to the assigned Judge. 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 assigned Judge who shall promptly render his or her decision. The Judge's decision shall be promptly transmitted to the moving party by the FCCC. The moving party shall then notify the opposing party immediately. The assigned Judge may set a case peremptorily on his/her own motion. Once a peremptory setting has occurred, the designation shall be immediately added to the trial calendar and parties notified.

## **RULE 16: SETTLEMENTS**

Pursuant to Rule 2(g) of the General Rules of Practice for Superior and District Courts, when a case is settled, all attorneys of record must notify the assigned FCCC within twenty-four (24) hours of the settlement and advise who will prepare and present the order or judgment and the date by which the order or judgment 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 assigned FCCC. Parties are encouraged to engage in settlement discussions at every opportunity. Family 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, *pro se* litigants and counsel are required to appear as scheduled; however, the assigned Judge may agree to hold the matter open to a date certain for presentation of the settlement documents. If the settlement documents are not submitted to the assigned Judge prior to the date certain agreed upon by the parties, then the *pro se* litigants and counsel shall appear before the assigned Judge on that date.

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 Voluntary Dismissal (**AOC-CV-405**) must be timely filed with the Clerk of Court in order to close the Court file. The attorney, or the *pro se* litigant, who files a dismissal must deliver a copy of the dismissal to the FCCC. In cases that involve a claim for child custody, a copy of the dismissal must also be delivered to the Custody Mediation Office.

## **RULE 17: SUBMISSION OF ORDERS OR JUDGMENTS**

**17.1 Preparation and Time Limits.** In general, orders/judgments shall be entered within thirty (30) days of the date of the completion of the hearing or trial. Unless otherwise agreed by counsel for the parties or 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/judgment to the opposing counsel (or the opposing party if *pro se*) no later than fifteen (15) days after a ruling 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/judgments within ten (10) days from the date the proposed order/judgment is

delivered. All orders and judgments shall be captioned in such a way as to clearly designate all issues being adjudicated.

**17.2 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 (**WAKE-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.

**17.3 Full Agreement on Contents of Order.** If the parties agree on a proposed order, hard copies of the order shall be submitted to the assigned Judge for signature. The party submitting the order must fully complete and sign the Order Submission (**WAKE-DOM-22**), attach it to the submitted order, and serve a copy of the Order Submission (**WAKE-DOM-22**) on the opposing party or attorney.

**17.4 Disagreement on Contents of Order.** In the event that the parties disagree about the terms of the order, the following shall be submitted to the Court for review via hand-delivery or United States Mail:

- A hard copy of the order as proposed by the attorney charged with preparing the order;
- A hard copy of the competing order with proposed changes “tracked”; and
- An electronic copy of the proposed order (CD or e-mail) with the proposed order and the competing order saved in Microsoft Word.
- Optional submission: letters setting out the disputed issues.

The party submitting the order must fully complete and sign the Order Submission (**WAKE-DOM-22**), attach it to the submitted orders and provide a copy to the opposing counsel or party. The Judge, in his/her discretion, may resolve the disputed issues based upon these written submissions or may set the matter on his/her calendar for an order entry conference to resolve the dispute.

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

**17.6 Exhibits.**

(a) Exhibits shall be pre-marked with appropriate stickers with sequential numbers or alphabetic identification. A list of all exhibits in sequential order shall be provided to the courtroom clerk at the beginning of the hearing or trial. If publication of hard copies to the jury is intended, attorneys and *pro se* parties are encouraged to provide a sufficient number of copies of exhibits for use by the jury.

(b) Absent a finding of good cause, all exhibits admitted into evidence during a trial shall be returned to the attorney of record who tendered the exhibits into

evidence, and he or she shall maintain these exhibits pending any period of appeal. If only one party is represented by an attorney, that attorney shall maintain all exhibits pending any period of appeal. If all parties are appearing *pro se*, then the Judge shall, in his or discretion, determine what exhibits shall be returned to the parties and what exhibits shall be maintained by the Court.

(c) Exhibits shall be redacted of all but the last four (4) digits of any identifying information, which includes, but is not limited to:

- Social security numbers
- Taxpayer identification numbers
- Drivers license numbers
- State identification numbers
- Passport numbers
- Financial (checking, savings, investment) account numbers
- Credit or debit card numbers
- Personal identification numbers (PIN) and passwords

However, if the exhibit is to be maintained by an attorney following a hearing, the exhibit does not have to be redacted as provided herein. The Order shall include language in the decree documenting the disposition of the exhibits if the exhibits are not to be maintained by the Clerk.

**17.7 Orders that Resolve Issues from Multiple Cases.** Even if multiple cases have been consolidated for hearing, an original of the order signed by the assigned Judge should be entered in each case file, and the caption should include all file numbers.

**17.8 Captions in Orders.** The caption in each Order shall indicate what issue(s) is(are) resolved by the Order.

## **RULE 18: DOMESTIC VIOLENCE ACTIONS (CHAPTER 50B)**

**18.1 Filing and Hearing.** All orders filed under Chapter 50B and all complaints, motions and other pleadings shall use the standard forms authorized by the AOC and available in the Clerk's office. When a Chapter 50B Domestic Violence action is filed, or when a motion is filed concerning the enforcement, modification, or renewal of a domestic violence protection order, and there is no existing civil action filed pursuant to Chapter 50 between the parties, the hearing of the matter shall be scheduled at sessions established specifically for the hearing of civil domestic violence matters. If there is an existing Chapter 50 case between the parties, the 50B matter shall be set as outlined in Rule 18.4 below.

**18.2 Length of Hearing.** Hearings on domestic violence (including requests for temporary custody pursuant to Chapter 50B) shall be limited to a total of two (2) hours, unless the presiding Judge, in his or her discretion determines that the allegations of the complaint and the administration of justice require that additional time be allowed.

Hearings on whether a year-long Domestic Violence Protective Order (DVPO) shall issue that are conducted in Domestic Court shall be calendared for one (1) hour unless a party notifies the assigned FCCC that additional time is needed. Once the domestic violence hearing is on the assigned Judge's calendar, if a party seeks additional time, he/she must contact the assigned FCCC in writing (including email, facsimile) contemporaneous with sending notice to the opposing party. If the assigned Judge approves the request, the FCCC will notify both parties and will adjust the anticipated time required. In any event, timely notice of the change must be provided to the opposing party (*pro se* litigant or attorney).

**18.3 Consent Orders.** No consent Domestic Violence Protective Order (DVPO) shall be entered except as authorized by statute and case law. Consent orders pursuant to Chapter 50B involving the sale or transfer of property are discouraged but if no Chapter 50 action is pending, may be entered in the discretion of the Judge presiding over the Chapter 50B hearing.

**18.4 Previously Pending Chapter 50 Actions.** When an action has been filed under Chapter 50 and a subsequent action is filed under Chapter 50B, the presiding Judge hearing the 50B *ex parte* matter (or the courtroom clerk) shall contact the Family Court Office 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 and an *ex parte* 50B order is entered, the domestic violence Clerk shall contact the assigned Judge's FCCC so that the 10-day hearing will be scheduled, if possible, before the assigned Judge in Domestic Court. If the assigned Judge is presiding in a domestic courtroom at the time of the 10-day return hearing, then the matter must be scheduled in front of the assigned Judge. In the event it cannot be set before the assigned Judge within ten (10) days, it shall be set as any other domestic violence 10-day hearing. If a Judge has been assigned to a pending domestic action involving the same parties and the domestic violence complaint is set for hearing but no *ex parte* 50B order is entered, the domestic violence Clerk shall contact the assigned Judge's FCCC to schedule the hearing before the assigned Judge in Domestic Court. The FCCC must add the hearing to the assigned Judge's calendar to be heard within a reasonable time. The only issues to be heard shall be those raised in the Chapter 50B action.

**18.4A Chapter 50 Actions Filed After Chapter 50B Action.** When an action seeking a DVPO is filed, and prior to the hearing on this Complaint, a subsequent Chapter 50 action involving the same parties is filed to which a Judge has been assigned, the hearing on the DV Complaint will be scheduled, if possible, before the assigned Judge in Domestic Court. If the assigned Judge is presiding in a domestic courtroom at the time of the scheduled hearing on the DV Complaint (either the 10-day return hearing if an *ex parte* 50B order was entered, or the hearing on the merits if no *ex parte* 50B order was entered), then the matter should be heard by the assigned Judge. In the event the hearing cannot be set before the assigned Judge within the statutory time frame, it shall be set in 5A as any other domestic violence hearing.

Before a DV hearing commences in 5A, attorneys or *pro se* litigants must inform the Judge presiding in 5A if a Complaint asserting Chapter 50 claims has been filed such that the parties have an assigned Judge.

### **18.5 Requests for Custody Pursuant to Chapter 50B.**

- (a) **Consent Orders.** No orders for custody will be entered, even by consent, unless a DVPO is entered. If there is no pending Chapter 50 action, and the parties, upon entry of a DVPO, consent to entry of a temporary order for custody, said Order may be entered by the Judge presiding in the Chapter 50B action. If there is an existing Chapter 50 action, a consent custody order shall be entered in the Chapter 50 action only by the assigned Judge.
- (b) **Trial.** Where custody is properly sought pursuant to Chapter 50B or such a determination is necessary to protect minor children and a protective order is being entered, the Judge shall first determine whether cause exists for entry of a DVPO prior to hearing issues relating to the matter of custody and the best interests of the minor children. Before making a temporary child custody determination, the Judge shall consider the factors set out in N.C.G.S. §50B-3. (See also **WAKE-DOM-28**).
- (c) **Use of Custody Addendum.** If either party has made a request for child custody in the domestic violence action, then the presiding Judge must complete and attach the Temporary Child Custody Addendum to Domestic Violence Protective Order (**AOC-CV-306A**) to the Domestic Violence Protective Order even if the Judge declines to award temporary child custody to either party. Any custody-related provisions (such as custody exchange locations, visitation schedules, visitation supervisors, etc.) must be specified on the Custody Addendum and not in the body of the DVPO.
- (d) **Chapter 50 Custody Order Supersedes Chapter 50B Custody Order.** If the presiding Judge awards temporary child custody as part of the DVPO, the custody addendum must provide that the custody provisions terminate on a date certain. Pursuant to N.C.G.S. §50B-3(a1)(4), entry of a child custody order arising from a Chapter 50 action supersedes all provisions in the DVPO custody addendum.

### **18.6 Child Support and Spousal Support Provisions.**

- (a) **Determination of a Child or Spousal Support Obligation Pursuant to Chapter 50B.** No order for child or spousal support shall be entered pursuant to Chapter 50B if there is a pre-existing claim pursuant to Chapter 50. If there is no Chapter 50 action pending, the Judge, in his or her discretion, may provide for the payment of child or spousal support pursuant to Chapter 50B. If such relief is granted, the Judge presiding over the 50B hearing may determine a specific child or spousal support amount or refer the parties to Child Support Enforcement Office (CSE).

- (b) **Subsequent Motions.** If either party files a subsequent motion alleging violation or modification of the child or spousal support provisions of the 50B order, the party shall be referred to CSE or Wake Family Court, whichever is appropriate.

**18.7 Orders to Show Cause.** A motion for an order to show cause for alleged violations of a DVPO involving individuals who are parties to a domestic action filed pursuant to Chapter 50 shall be heard by the assigned Judge. The Judge presiding in the domestic violence civil courtroom shall review the motion for order to show cause. If an order to show cause is signed, the domestic violence Clerk shall contact the assigned Judge's FCCC to schedule the hearing before the assigned Judge in Domestic Court. The FCCC must add the hearing to the assigned Judge's calendar to be heard within a reasonable time.

**18.8 Motion to Renew Domestic Violence Protective Orders.** The Judge presiding in the domestic violence civil courtroom may hear motions to renew domestic violence protective orders that were entered by another Judge.

Motions to renew a DVPO involving individuals who are parties to a domestic action filed pursuant to Chapter 50 shall be heard by the assigned Judge. Upon presentation of the motion, the domestic violence Clerk shall contact the assigned Judge's FCCC to schedule the hearing before the assigned Judge in Domestic Court. The FCCC must add the hearing to the assigned Judge's calendar to be heard within a reasonable time.

**18.9 Rule 60 Motions, including a Motion to Set Aside Domestic Violence Protective Order.** All Rule 60 motions (specifically including a motion to set aside a DVPO) shall be heard by the Judge who signed the DVPO unless that Judge is no longer presiding in Wake County District Court or is not available to hear the motion in a timely manner. If the Judge is no longer presiding in Wake County District Court or is not available to hear the motion in a timely manner, then the Chief District Court Judge, or his designee, can hear the motion.

**18.10 Motion for Return of Weapons.** A Motion for Return of Weapons in a DV action involving individuals who are parties to a domestic action filed pursuant to Chapter 50 shall be heard by the assigned Judge. Upon presentation of the motion, the domestic violence Clerk shall contact the assigned Judge's FCCC to schedule the hearing before the assigned Judge in Domestic Court. The FCCC must add the hearing to the assigned Judge's calendar to be heard within a reasonable time.

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## **RULE 19: SANCTIONS**

Failure to comply with any section of these Rules subjects the parties and/or their counsel to sanctions as allowed by law and deemed appropriate at the discretion of the assigned 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: REQUESTING AUDIO RECORDING**

Audio recordings are available from the Courtroom Clerk upon request. To obtain a copy of the audio recording, the person making the request must complete the Request for Duplicate Copy of Verbatim Audio Court Record (**AOC-G-114**). This form must be filled out in its entirety, including the Courtroom where the hearing was held, the date of the hearing, and the caption. This form is to be presented directly to the appropriate Courtroom Clerk.

## **RULE 21: SUBPOENAS.**

- (a) **Subpoenas Submitted to Assigned Judge for Signature.** Any subpoena that is submitted to the assigned Judge by a *pro se* litigant or an attorney will not be considered unless it is accompanied by a completed Order Submission sheet that indicates: (1) that the requesting *pro se* party/attorney has communicated with the opposing *pro se* party/attorney about the subpoena; (2) whether the opposing *pro se* party/attorney consents or objects to the assigned Judge signing the subpoena; and (3) that a copy of the Order Submission sheet and all documents submitted to the assigned Judge have been sent to the opposing *pro se* party/attorney. A copy of the Order Submission Sheet and the Subpoena sent to the assigned Judge must be delivered to the opposing *pro se* party/attorney in the same (or quicker) manner as the manner used to convey it to the assigned Judge. Subpoenas issued to persons residing out of state must comply with Rule 45(f). The assigned judge has discretionary authority to execute subpoenas pursuant to Rule 45 of the North Carolina Rules of Civil Procedure and will not consider a request to sign a subpoena requesting documents which are statutorily or otherwise protected from disclosure such that an Order is required (e.g. healthcare records, substance abuse records).
- (b) **Public Records or Healthcare Records Sought Pursuant to Rule 45(c)(2):** Any subpoena seeking public or healthcare records that allows for the production of documents to the Court prior to trial shall provide that the documents are to be delivered to the Wake County Trial Court Administrator at the office's then current address. The Trial Court Administrator shall maintain these records until the records are released to the Court. No subpoena should direct the delivery of records to the Judge or to Family Court.
- (c) **Subpoenas Allowing Production of Documents to Court Prior to Trial.** Except as set forth in subsection (b) above, no party or attorney shall issue a subpoena (or seek to have a subpoena issued) that allows for the production of records directly to the Court prior to the date of trial or hearing.



**RULE 22: ESTABLISHMENT OF DOMESTIC FAMILY COURT ADVISORY COMMITTEE**

The Chief District Court Judge shall establish a Domestic Family Court Advisory Committee whose function shall be to periodically review these Rules, to address issues and concerns related to Domestic Court, to serve as a liaison between Family Court and the community, to bring issues affecting families to the attention of Family Court, to inform Family Court of services and programs within the community available to assist families in crisis, to communicate and inform Family Court of the current and emerging needs of families in the community and to make recommendations to Family Court as to how the Court can best serve families in the community within the framework of Family Court.

The Domestic Family Court Advisory Committee shall consist of the following individuals:

- The Chief District Court Judge
- The Family Court Administrator
- The Lead Domestic Court Judge and other domestic court Judges as the Chief District Court Judge designates
- Four family law attorneys whose concentration is domestic relations law selected by the Chief District Court Judge

The Domestic Family Court Advisory Committee shall meet as often as deemed necessary by the chair but at least twice a year at a date and site selected by the Chief District Court Judge. Attorney representatives shall serve two year terms which, in the case of more than one representative, shall be staggered.

Signed this the 1<sup>ST</sup> day of August, 2013  
and effective September 1, 2013.



Robert B. Rader  
*Chief District Court Judge*  
*Tenth Judicial District*

FILED

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WAKE CO., C.S.C.  
BY \_\_\_\_\_