

**LOCAL RULES AND PROCEDURES FOR
THE CALENDARING OF CIVIL CASES
DISTRICT COURT DIVISION**

**THIRTEENTH JUDICIAL DISTRICT
BLADEN – BRUNSWICK – COLUMBUS**

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**JERRY A. JOLLY
CHIEF DISTRICT COURT JUDGE**

STATE OF NORTH CAROLINA
THIRTEENTH JUDICIAL DISTRICT

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

BLADEN, BRUNSWICK, COLUMBUS

IN RE: LOCAL RULES AND PROCEDURES FOR
THE CALENDARING OF CIVIL CASES IN
THE THIRTEENTH JUDICIAL DISTRICT,
DISTRICT COURT DIVISION

ORDER

Pursuant to Rule 40(A), North Carolina Rules of Civil Procedure, and Rule 2(A), General Rules of Practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure as amended, the attached “Local Rules and Procedures for the Calendaring of Civil Cases in the Thirteenth Judicial District, District Court Division” are hereby adopted and shall become effective immediately.

SO ORDERED this the 23rd day of October, 2003.

JERRY A. JOLLY
CHIEF DISTRICT COURT JUDGE

BLADEN, BRUNSWICK, COLUMBUS

RULE 1: GENERAL RULES

1.1 The purpose of these Rules is to institute a case management plan in the District Court Division of the Thirteenth Judicial District - Bladen, Brunswick and Columbus Counties, in compliance with Rule 40(a), Rules of Civil Procedure, and rule 2(a), General Rules of Practice for Superior and District Courts, and to provide for the orderly, prompt, and just disposition of civil matters.

1.2 These Rules shall at all times be construed in such a manner as to avoid unnecessary delay and to promote the ends of justice.

1.3 It is recognized that these Rules are not complete in every detail and will not cover every situation that may arise. In the event that these Rules do not cover a specific matter, the Chief District Court Judge's designee is authorized to act in their discretion subject to consultation with the Chief District Court Judge or presiding judge.

1.4 The calendar for the disposition of civil jury cases and civil non-jury cases in the District Court Division of the Thirteenth Judicial District shall be set by the Chief District Court Judge or his/her designee in accordance with these Rules.

1.5 Where forms are specified to be used by these Rules, counsel may use either the forms provided or a form of their own which substantially corresponds to that specified.

1.6 These Rules and procedures, and all amendments hereafter shall be filed with each Clerk of the Superior Court in the Thirteenth Judicial District and may be cited accordingly.

1.7 The Clerk of the Superior Court for each county in the Thirteenth Judicial District shall distribute a copy of these Rules and any subsequent amendments hereafter to each member of the bar in their respective counties. The Chief District Court Judge or his/her designee shall maintain a supply of printed Rules and Forms to furnish to the clerks and attorneys upon request.

1.8 All pleadings and papers, except wills and exhibits filed with the Clerk of the Superior Courts, shall comply with the 8.5" x 11" standards as specified by Rule 5, General Rules of Practice for Superior and District Courts.

1.9 The Clerk of the Superior Court shall provide a case number at the time of filing and place the number upon the summons. All subsequent pleadings and papers filed with the Clerk and all subsequent communications to opposing counsel or parties or court personnel shall contain the case number.

1.10 All required pleadings under Rule 7(a), Rules of Civil Procedure, or motions filed in lieu of answer pursuant to Rule 12(b), Rules of Civil Procedure, filed in any civil action with the Clerk of Superior Court shall be accompanied by a completed Case Action Cover Sheet (Local

Form LGF-CV101) which, for jury cases, the Clerk shall forward to the Chief District Court Judge's office.

1.11 The Chief District Court Judge shall designate one of his or her administrative assistants to carry out the duties of the Trial Court Administrator in District Court.

RULE 2: READY CASES

2.1 The Chief District Court Judge shall establish and maintain a case tracking system.

2.2 A case shall be deemed ready for trial when the Chief District Court Judge or his/her designee has determined that at least one of the following has occurred:

- A. One hundred and twenty (120) days will have elapsed since the filing of the last required pleading by the start of the scheduled session.
- B. All counsel shall have filed with the Chief District Court Judge's designee a Calendar Request form (Local Form LGF-CV402) requesting that the case be placed on a trial calendar prior to the expiration of the 120-day period.
- C. A case has been transferred to the District Court Division on appeal from the Magistrate's Small Claims Court and 30 days have elapsed since the date of appeal.
- D. A case has been remanded for trial by the Appellate Division.
- E. A case is entitled to priority hearing by statute.

2.3 The Chief District Court Judge's designee shall place those cases that he or she has determined to be ready for trial on a trial calendar pursuant to Rule 3.

2.4 Trial of a case shall not be delayed to complete discovery unless, for good cause shown by motion, the Chief District Court Judge or presiding judge extends the discovery period prior to expiration of the 120-day period.

RULE 3: TRIAL CALENDARS

3.1 The Chief District Court Judge's designee shall place cases on a trial calendar pursuant to Rule 2.3 by notifying all counsel of record or unrepresented parties in writing of the trial date.

3.2 Upon receipt of the tentative trial date, counsel may request an earlier court date pursuant to Rule 2.2(B) or request an extension of time pursuant to Rule 6.

3.3 A final trial calendar shall be distributed by the Chief District Court Judge's designee to all counsel of record or unrepresented parties and the Presiding Judge at least four (4) weeks prior to the beginning of the session.

3.4 Cases on the final trial calendar will be set in order by case number, oldest first and newest last, except for peremptorily set cases and statutory priority settings, which will be first, unless otherwise directed by the Chief District Court Judge or Presiding Judge.

3.5 When cases have been consolidated for trial, they will be regarded as one case for calendaring purposes, and will be listed under the oldest case number.

3.6 Motions may be added to the final trial calendar if the appropriate notice is given or the notice period has been waived. However, motions are not to be scheduled during jury sessions without the Court's permission.

3.7 Pursuant to Rule 2(g), General Rules of Practice for Superior and District Courts, when a case on a published calendar is settled, attorney of record for the Plaintiff must notify the Chief District Court Judge's designee within twenty-four (24) hours of the settlement and advise who will prepare and present the judgment or dismissal, and when.

3.8 When a case is calendared for trial and is not settled prior to the scheduled hearing date but is settled on the day of hearing, counsel and parties to the action shall prepare and execute a Memorandum of Judgment form (Local Form LGF-CV1308) which shall be filed with the presiding judge prior to the announcement of the settlement.

3.9 Cases continued or not reached during a scheduled trial session may be rescheduled by the Chief District Court Judge's designee to another trial date without further calendar notice. Counsel may also file a calendar request as provided in Rule 4 requesting rescheduling of such cases.

3.10 If cases are removed from the trial calendar at the request of counsel, or if cases are not placed on the trial calendar after notice has been given, then no additional calendar notice need be given but the Chief District Court Judge's designee may reschedule the case for trial at a subsequent term.

RULE 4: CALENDAR REQUESTS BY COUNSEL

4.1 Any party desiring to have a civil matter set for trial may file a calendar request as provided by Rule 4.2. The Chief District Court Judge's designee shall consider all such requests in preparation of trial calendars.

4.2 Calendar Requests shall be in writing using Local Form LGF-CV402 in which all appropriate sections shall be completed. The Calendar Request shall be directed to the Chief District Court Judge's designee with copies to all opposing counsel and unrepresented parties at least six (6) weeks prior to the requested session.

4.3 Responses from opposing counsel or unrepresented parties to a requested trial session must be mailed to the Chief District Court Judge's designee within five (5) working days after the mailing date of the Calendar Request. If no response is received, the Chief District Court Judge's designee shall presume that all parties are in agreement with the requested setting date.

RULE 5: PEREMPTORY, PRIORITY AND REMANDED CASES

5.1 All requests for peremptory settings shall be made using Local Form LGF-CV503 (Request for Peremptory Setting), accompanied by the Calendar Request form (Local Form LGF-CV402) in accordance with Rule 4. The request for peremptory setting shall be directed to the Chief District Court Judge's designee and state the specific reasons for the request.

5.2 The Chief District Court Judge's designee may grant a peremptory setting for good cause shown and shall notify all counsel or parties in writing of his/her decision.

5.3 If a peremptorily set case is continued by a party or counsel not requesting the setting, the case may be set peremptorily at the next session of court; otherwise a new request for peremptory setting must be made in accordance with Rule 5.1.

5.4 Cases entitled to priority by statute shall be brought to the attention of the Chief District Court Judge's designee in writing with copies to all counsel of record and cite the statutory authority for such setting (see form LGF-CV402).

5.5 When a case is remanded for trial from the Appellate Division, appellant's counsel shall promptly notify the Chief District Court Judge's designee who shall tentatively assign the case for trial.

RULE 6: CONTINUANCE REQUESTS

6.1 All requests for continuances shall be received by the Chief District Court Judge's designee in writing using the Continuance Request Form (Local Form LGF-CV604) at least ten (10) working days prior to the beginning of the scheduled session and specify with particularity the reason for continuance and state when the case may be rescheduled for trial.

6.2 Copies of the request for continuance shall be mailed to all opposing counsel or unrepresented parties unless the response of all opposing counsel or parties is included in the request. Objections by opposing counsel shall be made using form LGF-CV605. If response is not received from opposing counsel or unrepresented parties within five (5) working days of the mailing date of the request, it will be assumed that the opposing party does not desire to be heard on the request.

6.3 Any failure to comply with the Rules concerning notice of continuance request to opposing counsel or unrepresented parties shall result in the voiding of any continuance granted, should an objection arise upon notification from the Court that a continuance has been granted.

6.4 Cases which have been peremptorily set or set by other court order may be continued only by the Chief District Court Judge or Presiding Judge.

6.5 Continuance Requests made after the time limit specified in Rule 6.1 will be heard at the calendar call preceding the session scheduled and granted only for good cause shown.

6.6 The Trial Court shall make a prompt determination in writing of a request for continuance. Any party disagreeing with the ruling shall have the right to appeal the decision to the Chief District Court Judge or the Presiding Judge by submission of a motion and order for continuance, which motion and order shall set forth that the request was denied by the Chief District Court Judge's designee. Ex parte requests for continuance, requests for continuance without notice to the opposing party to be heard, will not be considered by the Court.

RULE 7: CALENDARING OF MOTIONS

7.1 All motions in which calendaring is requested shall be scheduled for hearing through the Chief District Court Judge's designee.

7.2 Motions may be calendared in one of the following ways:

- A. Before a motion is filed, moving counsel shall contact the Chief District Court Judge's designee to set a hearing date for the motion. Such hearing is then confirmed by moving counsel, using Local Form LGF-CV706, to the Chief District Court Judge's designee and, with the service of motion to opposing counsel.
- B. Requests may be made in writing, in the form of a calendar request using the Calendar Request form (Local Form LGF-CV402) at least five (5) working days before the date of publication of the final trial calendar as provided by these rules. The Chief District Court Judge's designee shall then notify moving counsel and opposing counsel or parties of the hearing date.
- C. At the initiative of the Presiding Judge.

7.3 The Chief District Court Judge's designee shall calendar motions to be heard **only during non-jury sessions**. Motions of a serious urgency may be set at other times at the discretion of the Presiding Judge.

7.4 Motions for continuance shall be pursuant to Rule 6.

RULE 8: CALENDAR CALLS, ATTORNEY PRESENCE

8.1 The call of the District Court calendar shall be at 9:30 A.M. on the first day of the session.

8.2 Cases will be called in the order in which they appear on the trial calendar unless otherwise set by the Presiding Judge.

8.3 Pursuant to Rule 2(e), General Rules of Practice for Superior and District Courts, counsel for all parties in an action, when notified to appear at pretrial conferences and hearings on a motion or at trial, must, consistent with ethical requirements, appear or have a partner, associate or other attorney familiar with the case present. Unless excused by Statutory Rule, or unless an attorney has been excused in advance by the Judge before whom the matter has been scheduled, and has given prior notice to his opponent; a case will not be continued.

RULE 9: DELINQUENT ORDERS OR JUDGMENTS

9.1 Cases or motions scheduled on trial calendars and removed due to consent or settlement shall be considered delinquent if the Order or Judgment of Disposition is not filed within thirty (30) working days after the case was last calendared.

9.2 If at the beginning of a session for which delinquent cases identified pursuant to Rule 9.1 are calendared, counsel have not filed the required Order or Judgment, the delinquent case may be dismissed at the discretion of the Chief District Court Judge or Presiding Judge; or the Presiding Judge may order such sanctions or impose such penalties as he/she deems appropriate and are allowed by law.

9.3 Where Orders are to be drawn in Juvenile Cases, such Orders shall be presented to the Presiding Judge for signature within the lesser period of: (a) fifteen (15) working days, or (b) at least two (2) days prior to the next scheduled hearing concerning the juvenile. Failure to comply with this Rule shall be considered Contempt of Court and delinquent counsel or parties may be fined \$10.00 per day that the Orders are so delinquent.

9.4 Cases or motions scheduled on trial calendars and heard by the Judge or by Jury shall be considered delinquent if the Order or Judgment of Disposition is not filed within fifteen (15) working days after the hearing, unless otherwise directed by the Presiding Judge.

9.5 Cases so delinquent in Rule 9.4 may be dismissed by the Chief District Court Judge or the Presiding Judge. This may be accomplished either upon motion of the party against whom the judgment or order was to be taken, or upon motion of the Clerk bringing the cases to the Judge's attention, after notice is provided to counsel pursuant to Local Rule 9.2.

RULE 10: PRE-TRIAL ORDERS

10.1 There shall be a pre-trial conference and order in every civil case, unless counsel for all parties stipulate to the contrary and the Court has approved the stipulation. The purpose of the conferences is to explore settlement possibilities, define and narrow the issues for trial, and to generally review the case scheduled to ensure a firm trial calendar.

10.2 The plaintiff attorney shall, at least three (3) weeks prior to the trial session, arrange the pre-trial conference with the defendant attorney, which conference shall be held and a pre-trial order prepared and signed by all attorneys of record and filed with the court at least one (1) week prior to the trial session.

10.3 The pre-trial order shall substantially conform with Rule 7, General Rules of Practice for Superior and District Courts.

10.4 If, after due diligence, plaintiff's attorney cannot arrange a conference with the defendant attorney, he/she may apply to the Chief District Court Judge or Presiding Judge who shall make an appropriate order.

10.5 The defense attorney may initiate pre-trial under the same rules applicable to the plaintiff attorney. A party who has not requested a pre-trial conference may not move for a continuance on the ground that it has not been held.

10.6 If counsel fails to file a pre-trial order within the time allowed by Rules 10.2, the Presiding Judge, in his/her discretion, may order the exclusion of certain evidence, enter an order of dismissal, or order other sanctions he/she deems appropriate and are allowed by law.

RULE 11: ANSWERS, OBJECTIONS TO INTERROGATORIES

11.1 The Clerk of the Superior Court shall not extend the time for answering any complaint or filing any pleading beyond the thirty (30) days allowed pursuant to N.C.G.S. 1A-1, Rule 6, by consent, or otherwise.

11.2 An objection to any interrogatory, deposition, request or application shall be written and shall be filed within thirty (30) days of the service of interrogatory, deposition, request or application, except that a defendant may serve objections within forty-five (45) days after service of the summons and complaint upon that defendant, or unless otherwise ordered by the Court. Any objection shall be specific and the reasons for the objection shall be stated. Any such objection shall not extend the time within which the objecting party must otherwise answer or respond to any discovery matter not specifically objected to.

11.3 Failure to comply with these orders may result in objections to interrogatories, requests or applications being sustained. Failure to comply with orders relating to objections may result in objections being denied.

RULE 12: ADMINISTRATIVE AND SUPPLEMENTAL CALENDARS

12.1 The Chief District Court Judge's designee and Clerk of Superior Court may, as necessary, set supplemental calendars during administrative weeks, during other scheduled non-jury terms, or with motion calendars for the purpose of judicial review of case status where cases appear to be delinquent in some respect or have been continued for reasons such as extended discovery, or for complex cases, and at which the Presiding Judge may dispose of pending motions and set dates for ending discovery, pre-trial orders and trial.

12.2 The following cases shall be eligible for placement on administrative calendars for judicial review and appropriate disposition:

- A. Cases in bankruptcy or removed to U.S. District Court.
- B. Defendant making payments.
- C. Service not made and time expired.
- D. Answers to complaint or cross-claim, third party answers, or reply to counterclaims not filed and time expired.

12.3 In cases in which answers or reply have not been filed and time has expired, plaintiff's attorney or the claimant's attorney shall file an entry of default prior to the date of the assigned session. Failure to comply will result in a dismissal with prejudice unless counsel appears at the call of the calendar and shows good cause why such dismissal or default should not be filed.

12.4 The Chief District Court Judge's designee or the Clerk, upon review of the cases pending categories 12.2(A) through 12.2(C) and after consultation with counsel if necessary, shall prepare orders which will be signed by the Presiding Judge dismissing the cases without prejudice unless counsel appear at the administrative session with valid objections to such action.

12.5 Parties or counsel who move to have a case transferred to the U.S. District Court for hearing or who file for bankruptcy in the U.S. Bankruptcy Court shall file with the Clerk of Court the appropriate orders staying the proceedings in the 13th Judicial District.

NON-JURY AND DOMESTIC RELATIONS CASES

RULE 13: CIVIL NON-JURY CALENDARS

13.1 The following Rules shall apply for the calendaring and trial of non-jury and domestic relations cases.

13.2 Any party desiring to have a non-jury case placed on a calendar shall file with the Clerk of Superior Court a calendar request using Local Form LGF-CV402 no later than three weeks

prior to the beginning of the session requested, and shall give notice of the hearing date to opposing counsel or party in accordance with The Rules of Civil Procedure.

13.3 Temporary custody, domestic violence, restraining orders and other pendente lite motions for emergency relief shall be calendared by the Clerk of Superior Court upon filing of the Motion and, in those situations where the Court enters an order of emergency relief the Court can make an evidentiary finding that either notice of the application for such order would result in the very harm sought to be prevented or that all reasonable means calculated to give the notice of the emergency hearing were used but were unsuccessful, then the hearing on the relief granted shall be conducted within ten (10) days of the entry of the emergency relief. Ex parte orders may be signed at any time by a judge in chambers upon good cause shown and a hearing on the merits shall be scheduled by the Presiding Judge and the date, time and place noted thereon.

13.4 The calendar for non-jury and domestic relations cases shall be published by the Chief District Court Judge's designee or the Clerk of Superior Court two weeks preceding the scheduled session.

13.5 When a case scheduled to appear on a calendar or appearing on a published calendar is settled, plaintiff counsel of record shall immediately notify the Clerk or the Chief District Court Judge's designee of the settlement and note who will prepare the judgment and when it will be presented.

CONTINUANCES

13.6 All continuance requests made prior to the publication of the calendar shall be filed in the office of the Chief District Court Judge's designee, using the Request for Continuance Form (Local Form LGF-CV604) and in compliance with Local Rules 6.2 and 6.3 for action by the Chief District Court Judge. Continuance Requests made after the publication of the calendar will be heard by the Presiding Judge before whom the matter is scheduled at the call of the calendar.

13.7 All cases shall be continued to a date certain.

13.8 If a child support or post-separation case is continued at the request of the party from whom support is sought, an order of support that is thereafter entered may require payment of support from the date on which the case was to have been heard.

13.9 It is the responsibility of counsel to determine whether the opposing party has been served. If they have not been served, he or she must notify the Clerk prior to the publication of the schedule so that the case may be deleted from the calendar. No request for continuance is required or necessary where service has not been obtained.

13.10 Unless waived by the Presiding Judge, or, in a case brought by the Department of Social Services under the IV-D provisions, the party is receiving welfare benefits, in all domestic relations actions involving Child Support and/or Alimony, and/or post-separation support, the party seeking support for the minor child (ren) and/or herself/himself shall file an "Affidavit of

Financial Standing of Party Seeking Support" (LDF-CV1309), with a copy to opposing counsel or party at the time of initial pleading or motion containing the request for support. The party from whom support is sought shall file an "Affidavit of Financial Standing of Party From Whom Support is Sought" (LDF-CV1310), with a copy to opposing counsel or party with his answer or reply to the pleading or motion, at least ten (10) days prior to the Hearing.

13.11 Where both parties are seeking child support and/or alimony, and/or post-separation support, each party shall file LDF-CV1309/LDF-CV1310, the intent being to file a financial statement providing information preparatory to settlement or trial.

13.12 All motions to amend or modify pending support orders shall include amended Affidavits of Financial Standing.

EQUITABLE DISTRIBUTION

13.13 Unless a consent judgment is otherwise filed, within ninety (90) days of the service of the complaint in equitable distribution and no later than ten (10) days prior to the scheduling/discovery conference, whichever occurs first, each party shall file an "Affidavit of Equitable Distribution" (Local Form LDF-CV1311) with the Clerk with a copy to opposing counsel, and within thirty (30) days after service opposing party shall serve same upon the other. Failure to do so may result in the imposition of sanctions as set forth in Rules 26, 33, and 37 of the Rules of Civil Procedure, or as set out in these Rules at Rule 9.

13.14 Within 120 days of the filing of a pleading asserting an equitable distribution claim, initiating counsel or party must request from the Clerk a date for a scheduling and discovery conference, at which the Court will review the affidavits, determine the need for further discovery, attempt to settle the case, determine the need for reference, and set a date for a initial pre-trial conference, final pre-trial, and for trial. Initiating counsel shall be responsible for notifying opposing counsel or party of the conference date in the manner required by the Civil Rules of Procedure and under N.C.G.S. 50-20 et. sec.

13.14(a) Each party **shall** mediate each case in accordance with **Rule 13A** of these Rules.

13.14(b) The initiating party shall prepare and serve 30 days prior to the final pre-trial conference a pre-trial order [Form LDF-CV1311(a)] to the opposing party. Opposing counsel shall also complete their portion of said order prior to the final pre-trial conference. Said pre-trial order shall be in the form set out in Form LDF-CV1311(a) attached hereto. This pre-trial order is a single listing of property and values: Schedule A being the agreed upon marital or partly marital property; Schedule A1 is listing of property upon which both parties stipulate as to both classification and value; Schedule B is property contended by one party to be completely separate with values; Schedule C is listing of property which existence is in dispute with values; Schedule D is a listing of marital debts; and Schedule G is a listing of divisible property.

13.14(c) Both parties and their respective attorneys are to be present at each conference and the trial as established by Statute and by these local rules.

13.15 The Court may, in its discretion and pursuant to Rules 53 and 16(5), Rules of Civil Procedure, order a reference before proceeding further, or entering final judgments, and may provide for an apportionment of costs of said reference, a filing deadline, and its scope as it deems to be in furtherance of the disposition of the claim.

13.16 Any expenses incurred pursuant to discovery of marital assets expended for expert witness fees or other expenses such as to banks, etc. which a party wishes to have assessed as costs shall be brought to any final judgment being entered by the Court or any consent judgment being entered by the Court. Failure to comply with this Rule will result in the expense being borne solely by the party or attorney incurring the expense.

CHILD SUPPORT

13.17 In any complaint/petition, counterclaim, answer or motion where the initiating party is seeking child support (excluding paternity cases), the party shall concurrently with the filing of the pleading obtain a Hearing date from the Clerk of Superior Court.

13.18 The Clerk of Superior Court will schedule all child support actions for hearing within fifty (50) days from the date of filing.

13.19 The initiating Party is responsible for giving proper notice of the Hearing date to the opposing party in accordance with the Rules of Civil Procedure and along with it a notice of deadlines for filing the “Affidavit of Financial Standing of Party From Whom Support is Sought.”

13.20 The moving party is responsible for insuring that the opposing party is notified of any request for continuance prior to the session of court for which the Hearing is scheduled or as soon as a conflict becomes known.

13.21 In all actions involving child support (excluding paternity), a case may be continued to a date certain not exceeding 30 days where the parties have consented to the continuance or when allowed by the presiding judge for good cause shown.

IV-D

13.22 IV-D cases will be calendared for child support sessions by the Clerk of Superior Court using the Orders to Show Cause that are filed and the Calendar Requests submitted by private counsel.

U.I.F.S.A. (N.C.G.S. 52C)

13.23 When a U.I.F.S.A. complaint, petition, counterclaim answer or motion is received by the Clerk of Superior Court involving child support (excluding paternity cases), the Clerk will schedule the Child Support action for hearing within fifty (50) days from the date of filing.

13.24 The Clerk of Superior Court is responsible for preparing and giving notice of hearing to all parties with a copy to the District Attorney's office.

13.25 The District Attorney will be responsible for insuring that all U.I.F.S.A. cases are calendared in compliance with G.S. 50-32.

RULE 13A: ESTABLISHES THE RULES FOR MEDIATION IN EQUITABLE DISTRIBUTION ACTIONS (AS MANDATORY) AND ALL OTHER FAMILY FINANCIAL ACTIONS (AS VOLUNTARY)

13A.1 INITIATING SETTLEMENT PROCEDURES

A. PURPOSE OF MANDATORY SETTLEMENT PROCEDURES.

Pursuant to G.S. 7A-38.4A, these Rules are promulgated to implement a system of settlement events which are designed to focus the parties' attention on settlement rather than on trial preparation and to provide a structured opportunity for settlement to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time before or after those ordered by the Court pursuant to these Rules.

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

In furtherance of this purpose, counsel, upon being retained to represent any party to a district court case involving family financial issues, including equitable distribution, child support, alimony, post-separation support action, or claims arising out of contracts between the parties under G.S. 50-20(d), 52-10, 52-10.1 or 52B shall advise his or her client regarding the settlement procedures approved by these Rules and, at or prior to the scheduling conference mandated by G.S. 50-21(d), shall attempt to reach agreement with opposing counsel on the appropriate settlement procedure for the action. However, family financial issues involving child support, alimony, post-separation support, and claims arising out of contracts between the parties under G.S. 50-20(d), 52-10, 52-10.1, or 52B shall only be subject to voluntary mediation under this set of local rules. All actions for equitable distribution are subject to mandatory mediation.

C. ORDERING SETTLEMENT PROCEDURES.

- (1) **Equitable Distribution Scheduling Conference.** At the scheduling conference mandated by G.S. 50-21(d) in an equitable distribution action, or at such earlier time as specified by local rule, the Court shall include in its scheduling order a requirement that the parties and their counsel attend a mediated settlement conference or, if the parties agree, other settlement procedure conducted pursuant to these rules, unless excused by the Court pursuant to Rule 13A.1.C.(6) or by the Court or mediator pursuant to Rule 13A.4.A.
- (2) **Scope of Settlement Proceedings.** All other financial issues existing between parties when the equitable distribution settlement proceeding is ordered, or at any time thereafter, may be discussed, negotiated or decided at the proceeding. In this district, where a child custody and visitation mediation program has been established pursuant to G.S. 7A-494, child custody and visitation issues may be the subject of settlement proceedings ordered pursuant to these Rules only in those cases in which the parties and the mediator have agreed to include them and in which the parties have been exempted from, or have fulfilled the program requirements.
- (3) **Authorizing Settlement Procedures Other Than Mediated Settlement Conference.** The parties and their attorneys are in the best position to know which settlement procedure is appropriate for their case. Therefore, the Court shall order the use of a settlement procedure authorized by Rules 10-12 herein or by local rules of the District Court in the county where the action is pending if the parties have agreed upon the procedure to be used, the neutral to be employed and the compensation of the neutral. If the parties have not agreed on all three items, then the Court shall order the parties and their counsel, in equitable distribution actions, to attend a mediated settlement conference conducted pursuant to these Rules.

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

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

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

(5) Court-Ordered Settlement Procedures in Other Family Financial Cases.

Any party to an action involving family financial issues not previously ordered to a mediated settlement conference may move the Court to order the parties to participate in a settlement procedure. Such motion shall be made in writing, state the reasons why the order should be allowed and be served on the non-moving party. Any objection to the motion or any request for hearing shall be filed in writing with the Court within 10 days after the date of the service of the motion. Thereafter, the Judge shall rule upon the motion and notify the parties or their attorneys of the ruling. If the Court orders a settlement proceeding, then the proceeding shall be a mediated settlement conference conducted pursuant to these Rules. Other settlement procedures may be ordered if the circumstances outlined in subsection (3) above have been met.

(6) Motion to Dispense With Settlement Procedures. A party may move the Court to dispense with the mediated settlement conference or other settlement procedure. Such motion shall be in writing and shall state the reasons the relief is sought. For good cause shown, the Court may grant the motion. Such good cause may include, but not be limited to, the fact that the parties have participated in a settlement procedure such as non-binding arbitration or early neutral evaluation prior to the court's order to participate in a mediated settlement conference or have elected to resolve their case through arbitration under the Family Law Arbitration Act (G.S. 50-41 et seq) or that one of the parties has alleged domestic violence. The Court may also dispense with the mediated settlement conference for good cause upon its own motion or by local rule.

13A.2 SELECTION OF MEDIATOR

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

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

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

- B. APPOINTMENT OF CERTIFIED FAMILY FINANCIAL MEDIATOR BY THE COURT.** When the parties do not timely select a mediator, the general procedure for judicial appointment shall be to appoint the next certified mediator on the appropriate list who currently resides or maintains an office in this judicial district or a contiguous judicial district or who certifies in writing annually to the Chief District Judge that he or she wished to mediate in this judicial district, is familiar with these Local Mediation Rules, and will comply with them and the Supreme Court Rules. The Chief District Judge shall retain discretion to depart from the general procedure in particular circumstances such as the appointment of one mediator to multiple related cases, appointment of a newly certified mediator, or to withhold a mediator who has not followed Local or Supreme Court Rules from appointment.

The Dispute Resolution Commission shall furnish for the consideration of the District Court Judges of any district where mediated settlement conferences are authorized to be held a list of those certified family financial mediators who request appointments in said district. Said list shall contain the mediators' names, addresses and phone numbers and shall be provided in writing or on the Commission's web site.

- C. MEDIATOR INFORMATION DIRECTORY.** To assist the parties in the selection of a mediator by agreement, the Chief District Court Judge having authority over any county participating in the mediated settlement conference program shall prepare and keep current for such county a central directory of information on all mediators certified pursuant to these Rules who wish to mediate in that county. Such information shall be collected on loose leaf forms provided by the Dispute Resolution Commission and be kept in one or more notebooks made available for inspection by attorneys and parties in the office of the Clerk of Court in such county and the office of the Chief District Court Judge or Trial Court

Coordinator in such county or, in a single county district, in the office of the Chief District Court Judge or said judge's designee.

- D. DISQUALIFICATION OF MEDIATOR.** Any party may move a Court of the district where the action is pending for an order disqualifying the mediator. For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to Rule 13A.2. Nothing in this provision shall preclude mediators from disqualifying themselves.

13A.3 THE MEDIATED SETTLEMENT CONFERENCE

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

The Court's order issued pursuant to Rule 13A.1 shall state a deadline for completion of the conference which shall be not more than 150 days after issuance of the Court's order, unless extended by the Court. The mediator shall set a date and time for the conference pursuant to Rule 13A.6.B.(5).

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

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

- D. RECESSES.** The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set during the conference, no further notification is required for persons present at the conference.
- E. THE MEDIATED SETTLEMENT CONFERENCE IS NOT TO DELAY OTHER PROCEEDINGS.** The mediated settlement conference shall not be

cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.

13A.4 DUTIES OF PARTIES, ATTORNEYS AND OTHER PARTICIPANTS IN MEDIATED SETTLEMENT CONFERENCES

A. ATTENDANCE

- (1) The following persons shall attend a mediated settlement conference:
 - (a) **Parties.**
 - (b) **Attorneys.** At least one counsel of record for each party whose counsel has appeared in the action.
- (2) Any person required to attend a mediated settlement conference shall physically attend until such time as an agreement has been reached or the mediator, after conferring with the parties and their counsel, if any, declares an impasse. No mediator shall prolong a conference unduly.

Any such person may have the attendance requirement excused or modified, including allowing a person to participate by phone, by agreement of both parties and the mediator or by order of the Court. Ordinarily, attorneys for the parties may be excused from attending only after they have appeared at the first session.

- #### **B. FINALIZING BY NOTARIZED AGREEMENT, CONSENT ORDER AND/OR DISMISSAL.** The essential terms of the parties' agreement shall be reduced to writing as a summary memorandum at the conclusion of the conference unless the parties have reduced their agreement to writing, have signed it and in all other respects have complied with the requirements of Chapter 50 of the General Statutes. The parties and their counsel shall use the summary memorandum as a guide to drafting such agreements and orders as may be required to give legal effect to its terms.

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

- #### **C. PAYMENT OF MEDIATOR'S FEE.** The parties shall pay the mediator's fee as provided by Rule 13A.7.

13A.5 SANCTIONS FOR FAILURE TO ATTEND MEDIATED SETTLEMENT CONFERENCES

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

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

13A.6 AUTHORITY AND DUTIES OF MEDIATORS

A. AUTHORITY OF MEDIATOR

(1) **Control of Conference.** The mediator shall at all times be in control of the conference and the procedures to be followed. However, the mediator's control shall be governed by standards of conduct promulgated by the Supreme Court upon the recommendation of the Dispute Resolution Commission, which shall contain a provision prohibiting mediators from prolonging a conference unduly.

(2) **Private Consultation.** The mediator may communicate privately with any participant during the conference. However, there shall be no *ex parte* communication before or outside the conference between the mediator and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this rule prevents the mediator from engaging in *ex parte* communications, with the consent of the parties, for the purpose of assisting settlement negotiations.

B. DUTIES OF MEDIATOR.

- (1) The mediator shall define and describe the following at the beginning of the conference:
- (a) The process of mediation;
 - (b) The differences between mediation and other forms of conflict resolution;
 - (c) The costs of the mediated settlement conference;
 - (d) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement;
 - (e) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;

- (f) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
 - (g) The inadmissibility of conduct and statements as provided by G.S. 7A-38.4A(j);
 - (h) The duties and responsibilities of the mediator and the participants; and
 - (i) The fact that any agreement reached will be reached by mutual consent.
- (2) **Disclosure.** The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- (3) **Declaring Impasse.** It is the duty of the mediator to determine in a timely manner that an impasse exists and that the conference should end. To that end, the mediator shall inquire of and consider the desires of the parties to cease or continue the conference
- (4) **Reporting Results of Conference.** The mediator shall report to the Court, or its designee, using an AOC form, within 10 days of the completion of the conference, whether or not an agreement was reached by the parties. If the case is settled or otherwise disposed of prior to the conference, the mediator shall file the report indicating the disposition of the case, 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. The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the mediator to provide statistical data in the report for evaluation of the mediated settlement conference program.

Mediators who fail to report as required pursuant to this rule shall be subject to the contempt power of the Court and sanctions.

- (5) **Scheduling and Holding the Conference.** The mediator shall schedule the conference and conduct it prior to the conference completion deadline set out in the Court's order. The mediator shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the mediator shall select a date and time for the conference. Deadlines for completion of the conference shall be strictly observed by the mediator unless changed by written order of the Court.

- (6) **Informal Brochure.** Before the conference, the mediator shall distribute to the parties or their attorneys a brochure prepared by the Dispute Resolution Commission explaining the mediated settlement conference process and the operations of the Commission.
- (7) **Evaluation Forms.** The mediator shall distribute to the parties and their attorneys at the conference an evaluation form prepared by the Dispute Resolution Commission. All participants are encouraged to fill out and return the forms to the mediator to further the mediator's professional development.

3A.7 COMPENSATION OF THE MEDIATOR AND SANCTIONS

- A. **BY AGREEMENT.** When the mediator is selected by agreement of the parties, compensation shall be as agreed upon between the parties and the mediator.
- B. **BY COURT ORDER.** When the mediator is appointed by the Court, the parties shall compensate the mediator for mediation services at the rate of \$125 per hour. The parties shall also pay to the mediator a one-time, per case administrative fee of \$125, which accrues upon appointment and shall be paid if the case settles prior to the mediated settlement conference or if the Court approves the substitution of a mediator selected by the parties for a Court appointed mediator.
- C. **PAYMENT OF COMPENSATION BY PARTIES.** Unless otherwise agreed to by the parties or ordered by the Court, the mediator's fee shall be paid in equal shares by the parties. Payment shall be due and payable upon completion of the conference.
- D. **INABILITY TO PAY.** No party found by the Court to be unable to pay a full share of a mediator's fee shall be required to pay a full share. Any party required to pay a share of a mediator fee pursuant to Rule 13A.B and Rule 13A.C may move the Court to pay according to the Court's determination of that party's ability to pay.

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

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

- E. **POSTPONEMENT FEES.** As used herein, the term "postponement" shall mean rescheduling or not proceeding with a settlement conference once a date for the settlement conference has been scheduled by the mediator. After a settlement conference has been scheduled for a specific date, a party may not postpone the

conference without good cause. A conference may be postponed only after notice to all parties of the reason for the postponement, payment to the mediator of a postponement fee as provided below or as agreed when the mediator is selected, and consent of the mediator and the opposing attorney.

In cases in which the Court appoints the mediator, if a settlement conference is postponed without good cause within seven (7) business days of the scheduled date, the fee shall be \$125. If the settlement conference is postponed without good cause within three (3) business days of the scheduled date, the fee shall be \$250.

Postponement fees shall be paid by the party requesting the postponement unless agreed to by the parties. Postponement fees are in addition to the one-time, per case administrative fee provided for in Rule 13A.7.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 power of the Court.

13A.8 MEDIATOR CERTIFICATION AND DECERTIFICATION

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

- A. Training and Experience.**
1. Be an Advanced Practitioner member of the Association for Conflict Resolution who is subject to requirements equivalent to those in effect for Practitioner Members of the Academy of Family Mediators immediately prior to its merger with other organizations to become the Association for Conflict Resolution; or
 2. Have completed a 40 hour family and divorce mediation training approved by the Dispute Resolution Commission pursuant to Rule 9 and have additional experience as an attorney and/or judge of the General Court of Justice for at least four years who is either:
 - a.) a member in good standing of the North Carolina State Bar, pursuant to Title 27, N.C. Administrative Code. The N.C. State Bar, Chapter 1, Subchapter A, Section .0201(b) or Section .0201(c), as those rules existed January 1, 2000; or
 - b.) a member similarly in good standing of the Bar of another state; demonstrates familiarity with North Carolina court structure, legal terminology and civil procedure; and provides to the Dispute Resolution Commission three letters of reference as to the applicant's good character, including at least one letter from a person with knowledge of the applicant's practice as an attorney.

Any current or former attorney who is disqualified by the attorney licensing authority of any state shall be ineligible to be certified under this Rule.

- B.** If not licensed to practice law in one of the United States, have completed a six-hour training course on North Carolina legal terminology, court structure and civil procedure provided by a trainer certified by the Dispute Resolution Commission.
- C.** Be a member in good standing of the State Bar of one of the United States or have provided to the Dispute Resolution Commission three letters of reference as to the applicant's good character and experience as required by Rule 13A.8.A.(2).
- D.** Have observed with the permission of the parties five mediated settlement conferences as a neutral observer:
 - (1)** three of which shall be settlement conferences involving custody or family financial issues conducted by a mediator who is certified pursuant to these rules, who is an Advanced Practitioner Member of the Association for Conflict Resolution and subject to requirements equivalent to those in effect for Practitioner Members of the Academy of Family Mediators immediately prior to its merger with other organizations to become the Association for Conflict Resolution, or who is an A.O.C. mediator.
 - (2)** two of which may be mediated settlement conferences ordered by a Superior Court, the North Carolina Office of Administrative Hearings, Industrial Commission or the U.S. District Courts for North Carolina, and conducted by a certified Superior Court mediator.
- E.** Demonstrate familiarity with the statutes, rules and standards of practice and conduct governing mediated settlement conferences conducted pursuant to these Rules.
- F.** Be of good moral character and adhere to any standards of practice for mediators acting pursuant to these Rules adopted by the Supreme Court. Applicants for certification and recertification and all certified family financial mediators shall report to the Commission any criminal convictions, disbarments or other disciplinary complaints and actions as soon as the applicant or mediator has notice of them.
- G.** Submit proof of qualifications set out in this section on a form provided by the Dispute Resolution Commission.
- H.** Pay all administrative fees established by the Administrative Office of the Courts in consultation with the Dispute Resolution Commission.
- I.** Agree to accept as payment in full of a party's share of the mediator's fee as ordered by the Court pursuant to Rule 13A.7.D.

- J.** Agree to be placed on at least one district's mediator appointment list and accept appointments, unless the mediator has a conflict of interest that would justify disqualification as mediator.
- K.** Comply with the requirements of the Dispute Resolution Commission for continuing mediator education or training. (These requirements may include advanced divorce mediation training, attendance at conferences or seminars relating to mediation skills or process, and consultation with other family and divorce mediators about cases actually mediated. Mediators seeking recertification beyond one year from the date of initial certification may also be required to demonstrate that they have completed 8 hours of family law training, including tax issues relevant to divorce and property distribution, and 8 hours of training in family dynamics, child development and interpersonal relations at any time prior to that recertification.)

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

Certification of mediators who have been certified as family financial mediators by the Dispute Resolution Commission prior to the adoption of these Rules may not be revoked or not renewed solely because they do not meet the experience and training requirements in Rule 13A.8.

The Dispute Resolution Commission may certify applicants who satisfy the requirements of Rule 13A.8.B and Rule 13A.8.D within six (6) months of the adoption of these Rules if they have satisfied, on the date of the adoption of these Rules, all other requirements of Rule 13A.8 as it existed immediately prior to the adoption of these Rules.

13A.9 CERTIFICATION OF MEDIATION TRAINING PROGRAMS

- A.** Certified training programs for mediators certified pursuant to these rules shall consist of a minimum of forty hours of instruction. The curriculum of such programs shall include the subjects in each of the following sections.
 - (1) Conflict resolution and mediation theory.
 - (2) Mediation process and techniques, including the process and techniques typical of family and divorce mediation.
 - (3) Knowledge of communication and information gathering skills.
 - (4) Standards of conduct for mediators.
 - (5) Statutes, rules, and practice governing mediated settlement conferences conducted pursuant to these Rules.

- (6) Demonstrations of mediated settlement conferences with and without attorneys involved.
 - (7) Simulations of mediated settlement conferences, involving student participation as mediator, attorneys and disputants, which simulations shall be supervised, observed and evaluated by program facility.
 - (8) An overview of North Carolina law as it applies to custody and visitation of children, equitable distribution, alimony, child support, and post separation support.
 - (9) An overview of family dynamics, the effect of divorce on children and adults, and child development.
 - (10) Protocols for the screening of cases for issues of domestic violence and substance abuse.
 - (11) Satisfactory completion of an exam by all students testing their familiarity with the statutes, rules and practice governing mediated settlement conferences in North Carolina.
- B.** A training program must be certified by the Dispute Resolution Commission before attendance at such program may be used for compliance with Rule 13A.8.A. Certification need not be given in advance of attendance.

Training programs attended prior to the promulgation of these rules or attended in other states or approved by the Association for Conflict Resolution (ACR) with requirements equivalent to those in effect for the Academy of Family Mediators immediately prior to its merger with other organizations to become the Association for Conflict Resolution may be approved by the Dispute Resolution Commission if they are in substantial compliance with the standards set forth in this rule. The Dispute Resolution Commission may require attendees of an ACR approved program to demonstrate compliance with the requirements of Rule 13A.9.A.(5) and 13A.9.A.(8), either in the ACR approved training or in some other acceptable course.

- C.** To complete certification, a training program shall pay all administrative fees established by the Administrative Office of the Courts in consultation with the Dispute Resolution Commission.
- D.** A list of Certified Family Financial Mediators is attached hereto.

13A.10 OTHER SETTLEMENT PROCEDURES

A. ORDER AUTHORIZING OTHER SETTLEMENT PROCEDURES.

Upon receipt of a motion by the parties seeking authorization to utilize a settlement procedure in lieu of a mediated settlement conference, the Court may order the use of those procedures listed in Rule 13A.10.B unless the Court finds: that the parties did not agree upon the procedure to be utilized, the neutral to conduct it, or the neutral's compensation; or that the procedure selected is not appropriate for the case

of the parties. Judicial settlement conferences may be ordered only if permitted by local rule.

B. OTHER SETTLEMENT PROCEDURES AUTHORIZED BY THESE RULES.

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

- (1) **Neutral Evaluation** (Rule 13A.11), in which a neutral offers an advisory evaluation of the case following summary presentations by each party.
- (2) **Judicial Settlement Conference** (Rule 13A.12), in which a District Court Judge assists the parties in reaching their own settlement, if allowed by local rules.
- (3) **Other Settlement Procedures** described and authorized by local rule pursuant to Rule 13A.10.

The parties may agree to use arbitration under the Family Law Arbitration Act (G.S. 50-41 et seq) which shall constitute good cause for the court to dispense with settlement procedures authorized by these rules [Rule 13A.1.C.(6)].

C. GENERAL RULES APPLICABLE TO OTHER SETTLEMENT PROCEDURES.

- (1) **When Proceeding is Conducted.** The neutral shall schedule the conference and conduct it no later than 150 days from the issuance of the Court's order or no later than the deadline for completion set out in the Court's order, unless extended by the Court. The neutral shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the neutral shall select a date and time for the conference. Deadlines for completion of the conference shall be strictly observed by the neutral unless changed by written order of the Court.
- (2) **Extensions of Time.** A party or a neutral may request the Court to extend the deadlines for completion of the settlement procedure. A request for an extension shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the neutral. The Court may grant the extension and enter an order setting a new deadline for completion of the settlement procedure. Said order shall be delivered to all parties and the neutral by the person who sought the extension.
- (3) **Where Procedure is Conducted.** Settlement proceedings shall be held in any location agreeable to the parties. If the parties cannot agree to a location, the neutral shall be responsible for reserving a neutral place and making

arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and *pro se* parties.

- (4) **No Delay of Other Proceedings.** Settlement proceedings shall not be cause for delay of other proceedings in the case, including but not limited to the conduct or completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.
- (5) **Inadmissibility of Settlement Proceedings.** Evidence of statements made and conduct occurring in a settlement proceeding conducted under this section shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except in proceedings for sanctions or proceedings to enforce a settlement of the action. No settlement agreement reached at a settlement proceeding conducted pursuant to these Rules shall be enforceable unless it has been reduced to writing and signed by the parties and in all other respects complies with the requirements of Chapter 50 of the General Statutes. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

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

- (6) **No Record Made.** There shall be no stenographic or other record made of any proceedings under these Rules.
- (7) **Ex Parte Communication Prohibited.** Unless all parties agree otherwise, there shall be no *ex parte* communication prior to the conclusion of the proceeding between the neutral and any counsel or party on any matter related to the proceeding except with regard to administrative matters.
- (8) **Duties of the Parties.**
 - (a) **Attendance.** All parties and attorneys shall attend other settlement procedures authorized by Rule 13A.10 and ordered by the Court.
 - (b) **Finalizing Agreement.** If agreement is reached during the proceeding, the essential terms of the agreement shall be reduced to writing as a summary memorandum unless the parties have reduced their agreement to writing, signed it and in all other respects have complied with the

requirements of Chapter 50 of the General Statutes. The parties and their counsel shall use the summary memorandum as a guide to drafting such agreements and orders as may be required to give legal effect to its terms. Within 30 days of the proceeding, all final agreements and other dispositive documents shall be executed by the parties and notarized, and judgments or voluntary dismissals shall be filed with the Court by such persons as the parties or the Court shall designate.

- (c) **Payment of Neutral's Fee.** The parties shall pay the neutral's fee as provided by Rule 13A.10.C.(12), except that no payment shall be required or paid for a judicial settlement conference.
- (9) **Sanctions for Failure to Attend Other Settlement Procedures.** If any person required to attend a settlement proceeding fails to attend without good cause, the Court may impose upon that person any appropriate monetary sanction including, but not limited to, the payment of fines, attorneys' fees, neutral fees, expenses and loss of earnings incurred by persons attending the conference.
- (10) **Selection of Neutrals in Other Settlement Procedures.**

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

Notice of such selection shall be given to the Court and to the neutral through the filing of a motion to authorize the use of other settlement procedures at the scheduling conference or the court appearance when settlement procedures are considered by the Court. The notice shall be on an AOC form as set out in Rule 13A.2 herein. Such notice shall state the name, address and telephone number of the neutral selected; state the rate of compensation of the neutral; and state that the neutral and opposing counsel have agreed upon the selection and compensation.

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

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

(12) Compensation of Neutrals. Payment of neutral's fees shall be the same as the mediator's, as set out in Rule 13A.7.

(13) Authority and Duties of Neutrals.

(a) Authority of Neutrals.

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

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

(b) Duties of Neutrals.

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

(a) The process of the proceeding;

(b) The differences between the proceeding and other forms of conflict resolution;

(c) The costs of the proceeding;

(d) The inadmissibility of conduct and statements as provided by G.S. 7A-38.1(1) and Rule 10.C.(6) herein; and

(e) The duties and responsibilities of the neutral and the participants.

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

(iii) Reporting Results of the Proceeding. The neutral shall report the result of the proceeding to the Court in writing within ten (10) days in accordance with the provisions of Rules 13A.11, 13A.12 and 13A.13 herein on an AOC form. The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the neutral to provide statistical data for evaluation of other settlement procedures.

(iv) Scheduling and Holding the Proceeding. It is the duty of the neutral to schedule the proceeding and conduct it prior to the completion deadline set out in the Court's order. Deadlines for completion of the proceeding shall be strictly

observed by the neutral, unless said time limit is changed by a written order of the Court.

13A.11 RULES FOR NEUTRAL EVALUATION

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

G. EVALUATOR’S DUTIES.

- (1) **Evaluator’s Opening Statement.** At the beginning of the conference the evaluator shall define and describe the following points to the parties in addition to those matters set out in Rule 13A.10.C.(8):
- (a) The facts that the neutral evaluation conference is not a trial, the evaluator is not a judge, the evaluator’s opinions are not binding on any party, and the parties retain their right to trial if they do not reach a settlement.
 - (b) The fact that any settlement reached will be only by mutual consent of the parties.
- (2) **Oral Report to Parties by Evaluator.** In addition to the written report to the Court required under these rules, at the conclusion of the neutral evaluation conference the evaluator shall issue an oral report to the parties advising them of his or her opinions of the case. Such opinion shall include a candid assessment of the merits of the case, estimated settlement value, and the strengths and weaknesses of each party’s claims if the case proceeds to trial. The oral report shall also contain a suggested settlement or disposition of the case and the reasons 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 file a written report with the Court using an AOC form, stating when and where the conference was held, the names of those persons who attended the conference, whether or not an agreement was reached by the parties, and the name of the person designated to file judgments or dismissals concluding the action.

H EVALUATOR’S AUTHORITY TO ASSIST NEGOTIATIONS. If all parties at the neutral evaluation conference request and agree, the evaluator may assist the parties in settlement discussions. If the parties do not reach a settlement during such discussions, however, the evaluator shall complete the neutral evaluation conference and make his or her written report to the Court as if such settlement discussions had not occurred. If the parties reach agreement at the conference, they shall reduce their agreement to writing as required by Rule 13A.10.C.(8)(b).

13A.12 JUDICIAL SETTLEMENT CONFERENCE

A. Settlement Judge. A judicial settlement conference shall be conducted by a District Court Judge who shall be selected by the Chief District Court Judge. Unless specifically approved by the Chief District Court Judge, the District Court Judge who presides over the judicial settlement conference shall not be assigned to try the action if it proceeds the trial.

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

13A.13 LOCAL RULE MAKING

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

13A.14 DEFINITIONS

- (A)** The word, Court, shall mean a judge of the District Court in the district in which an action is pending who has administrative responsibility for the action as an assigned or presiding judge, or said judge's designee, such as a clerk, trial court administrator, case management assistant, judicial assistant, and trial court coordinator.
- (B)** The phrase, AOC forms, shall refer to forms prepared by, printed, and distributed by the Administrative Office of the Courts to implement these Rules or forms approved by local rule which contain at least the same information as those prepared by AOC. Proposals for the creation or modification of such forms may be initiated by the Dispute Resolution Commission.
- (C)** The term, Family Financial Case, shall refer to any civil action in district court in which a claim for equitable distribution, child support, alimony, or post separation support is made, or in which there are claims arising out of contracts between the parties under G.S. 50-20(d), 52-10, 52-10.1 or 52B.

13A.15 TIME LIMITS

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

RULE 14: MEDIATION OF CUSTODY AND VISITATION DISPUTES

The Judicial District 13 Custody and Visitation Dispute Program is established under North Carolina General Statutes 7A-494, 7A-495, and 50-13.1. The following rules shall apply:

14.1 Referral to Mediation

All actions involving unresolved or temporary issues of custody and visitation of a minor child shall be ordered to mediation on such issues either prior to hearing or after a temporary order has been issued by the Court, unless the Court waives mediation.

- A. Issues that arise in motions for modification as well as in other pleadings shall be set for mediation unless mediation is waived by the Court.
- B. In motions for contempt, the presiding judge may determine whether to hear the motion or to refer the matter to mediation.

14.2 Procedures for Referral to Mediation

A. Attorney Referral

(1) Calendar for Orientation

Unless mediation has been waived by the court, (see 14.3) any party filing a custody action, motion or claim must simultaneously schedule the matter for Mediation Orientation. This request for mediation orientation occurs within 45 days of the original filing. Scheduling a case for orientation requires the case file number, the names of both parties, and the names and phone numbers of all attorneys representing all parties in the case.

(Note: The calendar for orientation is located in the Office of the Clerk of Court.)

(2) Noticing all Parties to Attend Orientation

The party scheduling the Custody Mediation Orientation date is responsible for noticing all opposing parties using **Form LDF-CV1502 Notice for Custody Mediation Orientation** and **LDF-CV1505 Letter to Parents from the Chief District Court Judge**. (Master copies of these forms are available from the Mediation Office.) All parties should be given at least 10 days notice prior to the scheduled orientation. (Each law office should generate their own stock of forms from the master copies provided.)

B. Request for Expedited Mediation

A written request for expedited mediation (see form **Stipulation for Expedited Mediation, LDF-CV1506**), signed by both parties or their attorneys, will waive the notice period. The attorney must notify the Custody Mediator by telephone and delivering to the Custody Mediator LDF-CV1506 as soon as possible to facilitate setting of a mediation appointment. Form LDF-CV1506 will also be filed with the Clerk's Office. In expedited mediation cases, the parties will be provided an abbreviated orientation session prior to mediation. Mediation will take place immediately or as soon as an appointment can be practically arranged, but in no case longer than 7 days.

C. Time Referral

Should counsel for the parties fail to schedule mediation within 45 days of the filing of the action, an Order for Mediation, (Form LDF-CV1502-1 shall be issued. The Custody Mediator will notice the parties 10 days prior to the Mediation Orientation date. Parties failing to comply with this Order will be subject to the contempt powers of the Court.

D. Referral by Judge

A case may be ordered to mediation from the bench.

14.3 Waiver of Mediation

On its own motion or the motion of either party, the Court may waive the mediation of a contested custody or visitation matter (including modification or contempt motions) for good cause. Good cause includes but is not limited to, a showing of undue hardship to a party, an agreement between the parties for voluntary mediation, allegations of abuse or neglect of a minor child, allegations of alcoholism, drug abuse, spousal abuse, or allegations of severe psychological, psychiatric, or emotional problems.

Waivers of mediation will be made to and approved by the Court. The moving attorney may approach the judge *ex parte* to seek an exemption, then if the opposing counsel thinks that mediation is appropriate, they must set the matter for the motions calendar.

If civil court is not in session or has been cancelled, then the Chief District Court Judge shall rule on the motions for exemption. The motion for exemption may be made at any time prior to the scheduled mediation orientation.

Where the parties reside more than 50 miles from the court, such distance can be considered good cause at the discretion of the court. If the party residing outside the area is amenable, mediation may still take place. Note: The mediator may be able to arrange an orientation session closer to home for parents who reside more than 50 miles from the courthouse, or expedited mediation may be arranged if needed.

A. Case Closure: Exemption, Settlement or Dismissal

The Custody Mediation Office will be notified, by way of a copy of the signed agreement, of any change in status of a pending case including: a signed consent order, voluntary dismissal, or exemption. The Custody Mediation Office will receive a copy at the same time that the order, **Form AOC-CV-632, Order as to Exemption from Mediation**, is filed with the Clerk of Court.

B. Holds on Discovery

No discovery regarding a custody or visitation claim shall be served, noticed or conducted until the mediation process is complete or has been exempted by judicial order. Except for oral deposition of parties discovery may proceed regarding financial information.

14.4 The Mediation Process

All parties are mandated to attend the group orientation and at least one private mediation session before withdrawing from the process. The required private mediation session must occur within two weeks of group orientation, if the mediation program has mediation appointments available.

A. Orientation

Orientation will be held twice a month in a courtroom to be announced. Orientation is an educational group session during which the goals and procedures of the mediation process are explained to the parties as a group. Orientation is open to the public. Children should not attend orientation or private mediation. If one or more of the parties does not attend, the Judge will sign an Order to Mediation. If the parties fail to comply they may be subject to the contempt powers of the Court.

(It is recommended that attorneys practicing domestic law in the 13th Judicial District attend one of the orientation sessions.)

B. Scheduling of First Private Mediation Session

The parties involved generally schedule their private mediation sessions at the group orientation.

- (1) If circumstances require and if consented to by both parties (or their counsel) a request may be made for expedited mediation which will waive the normal waiting period.
- (2) At the discretion of the presiding judge, a case may be ordered to expedited mediation from the bench.

C. Private Mediation Sessions

Each session lasts approximately two hours. It is not uncommon for parenting parties to spend from one to three sessions to fully resolve the issues around parenting the children. Children should not attend mediation sessions.

The mediator facilitates communication and problem-solving, which assists the parties in focusing on the needs of their children, the need to recognize the family

and use its strengths, the need to maintain a continuity of relationships, stability in the child's life, and the options available to the parties that would accomplish these goals. The mediator does not decide nor recommend issues but encourages parents to assume responsibility for parenting decisions. Parents are not required to reach an agreement in mediation.

D. Outcomes

As a result of mediation, the parties may enter into a full agreement, a partial agreement, or remain unresolved. The agreement records all issues surrounding custody and visitation that have been addressed and agreed to. The partial agreement will state those issues that have been resolved and those still remaining open to litigation. Both the court and representing attorneys will be notified of the disposition of each mediated case.

The mediator has a responsibility to solicit from the parents the issues that are significant to them and then to facilitate the mediation of those issues, provided they do not go outside the specific limits of child custody mediation. Financial matters will not be mediated in custody mediation.

E. Pending Cases

Any custody mediation case that is open beyond sixty days of orientation will not retain its open status, but shall be referred to the bench as "unresolved". At which time an **Order to Calendar Custody Visitation Dispute, Form LDF-CV1507** is issued unless there is a valid reason to keep it open. This reason must be expressed to the Mediation Office. Any case that remains open after ninety days will require a letter to the judge stating the special circumstances that require consideration.

F. Confidentiality

Mediation proceedings shall be held in private and shall be confidential.

Except as provided in G.S. 50-13.1, all verbal or written communications from either or both parties to the mediator or between the parties in the presence of the mediator made in a proceeding pursuant to appropriate sections of G.S. 50-13.1.S. are absolutely privileged and inadmissible.

The mediator shall not at any time disclose to any judge or Court Personnel the reason that the mediation was not successful. The Court will not inquire of the parties or the mediator as to the reasons for success or failure of the mediation.

G. Review of Agreement with Counsel and The Signing of Agreements

Parents or custodians have approximately 10 business days after the receipt of the agreement to consider the agreement before signing. A copy of the parenting agreement will be sent to each parent and attorney for review. *The mediator recommends that each party review the agreement with legal counsel before signing.*

The mediator will schedule signings through the mediation office. Parents will not be required to sign at the same time, however they may be required to sign on the same day. A copy of any signed agreements will be file-stamped and sent to each parent and attorney.

Minor changes to proposed agreements may be initiated by parents with the mediator by telephone. Major changes that are desired will require both parties to return to mediation.

H. Agreements Become Orders of the Court

The signed agreement is presented to a District Court Judge for review and signature, along with the **Parenting Agreement Order (AOC-CV-631, rev. 7/95)** making the agreement a custody order within the meaning of Chapter 50A of the General Statutes G.S. 14-320.1, G.S. 110-239.1 or other places where those terms appear.

I. Enforcement

Custody orders agreed to in mediation are enforced as any other court order through the legal system in place. They are not enforced by the mediation office. If problems arise, parents may return to mediation; often they agree to this step in their parenting agreement.

J. Who Attends Mediation

Parties present at mediation are those named in the suit. Attorneys and other interested parties may be present at the mediation sessions with the consent of both parties and the mediator.

K. Mediator May Terminate Process

In the event that the mediator ascertains that mediation is inappropriate, or there are safety issues which mediation will not address appropriately, he or she may terminate the mediation process and return the case to court. In the event that mediation is deemed inappropriate, the mediator will still utilize the standard release form for the file, indicating that “the parties met the requirements of the mediation program but did not reach a mediated parenting agreement.”

RULE 15: SANCTIONS

15.1 Failure to comply with any section of these Rules may subject an action to dismissal or other sanctions allowed by law and deemed appropriate at the discretion of the Presiding Judge, and/or as previously established under Rule 9 of these Rules.