

Wake County Family Court Rules – Domestic

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Wake County Family Court Rules - Domestic

RULE 1: GENERAL RULES

1.1 Purpose. The purpose of these Rules is to provide a case management plan for the fair, just, and prompt resolution of domestic cases in Wake County. Wherever possible, these Rules will provide for alternative dispute resolution, minimize repeated delays and attempt to link families with appropriate community resources in order to give them a less adversarial forum. Compliance with Rule 40(a) of the North Carolina Rules of Civil Procedure and Rule 2(A) of the General Rules of Practice for District and Superior Courts shall be monitored by the Family Court Administrator.

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

1.3 Time Standards for Domestic Cases. The North Carolina Family Court Advisory Committee has established a case management plan to aid in the just, fair, and timely resolution of cases filed. Unless otherwise specified, “days” are calendar days. The time frames below represent **maximum** time limits that are “goals.”

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

(c) Post-Separation Support Event	<u>Time from Filing of Complaint</u>
<u>Orders Entered</u>	
In 75% of cases	within 60 days
In 100% of cases	within 90 days
(d) Alimony Event	<u>Time from Filing of Complaint</u>
<u>Orders Entered</u>	
In 90% of cases	within 270 days
In 100% of cases	within 365 days

Equitable Distribution shall be governed by the timetable set forth in Rule 11.16.

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

1.5 Responsibilities of Attorneys. Attorneys must keep the Family Court Office informed at all times of any and all changes in their mailing addresses, email addresses, telephone numbers, and fax numbers.

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

1.7 Prior Domestic Court Local Rules Replaced. These Rules and all amendments thereto shall be filed with the Clerk of Superior Court of Wake County and may be cited accordingly as the Wake County Family Court Rules - Domestic. These Rules supersede and replace all previous local rules controlling actions in Domestic Court. The effective date of these Rules is February 15, 2006.

1.8 Location of Local Rules. These Rules shall be maintained by the Family Court Administrator. These Rules and forms cited herein are available for downloading on the web site of the North Carolina Administrative Office of the Courts at <http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Default.asp>. They are also available on the Wake County Clerk of Court's website at <http://web.co.wake.nc.us/courts/index.html>.

1.9 Definitions. The term “Court” as used in these Rules shall mean the Chief District Court Judge, any of the presiding District Court Judges or their designees (Family Court Administrator or Domestic Case Coordinators). The term “moving party,” “opposing party,” or “responding party,” includes the party and/or his/her attorney.

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

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

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

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

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

(b) **Filing which includes a Child Support Claim**

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

- (4) Any other documents required pursuant to these Rules.

2.3 Judicial Assignment. On or after February 15, 2006, all **new** matters (either a new Complaint or new matters in an existing case where a judge has not been previously assigned), except involuntary commitments, IV-D, U.R.E.S.A. and U.I.F.S.A. support cases, domestic violence (pursuant to Chapter 50B), and Clerk of Superior Court child support enforcement cases shall be accompanied by an Affidavit for Judicial Assignment (**WAKE-DOM-2**). This form shall indicate whether there is a pending or resolved domestic or domestic violence case involving the same parties in this or any other state. In all domestic cases requiring an Affidavit for Judicial Assignment, the Affidavit for Judicial Assignment shall be taken immediately after filing by the moving party to the office of the District Court Judicial Assistant assigned to work with Family Court (hereinafter called the DCJA) in the Wake County Courthouse. Incomplete affidavits or affidavits not taken to the DCJA may result in a case not being promptly assigned to a judge or in undue delay in calendaring or hearing of the case. The DCJA shall assign the case to a District Court Judge who is assigned to preside over domestic cases during the six-month period in which the case is filed. Assignment of judges shall be on a random basis and shall be accomplished without influence from parties, their attorneys or the judges. The Family Court Office shall notify the moving party or the attorney for the moving party of the assigned judge by US Mail or by placement of the notice in the attorney's courthouse mailbox within two business days of initial filing. The moving party shall serve a copy of the completed Affidavit for Judicial Assignment (**WAKE-DOM-2**) on the opposing party. The judge's name and/or corresponding letter or code shall be placed upon all copies of the summons. All subsequent motions and hearings shall be scheduled by the assigned DCC before the judge assigned. See Rule 3 for the calendaring of domestic relations matters.

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

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

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

- (a) **Uncontested Divorce.** In a case in which only an uncontested divorce is sought, the DCJA shall not assign a judge, unless and until, an Answer and/or Counterclaim is filed seeking relief other than the divorce. It shall be the responsibility of the party seeking relief, in addition to the divorce, to file the Affidavit for Judicial Assignment (**WAKE-DOM-2**).
- (b) **Domestic Relations Order.** Cases seeking only the entry of a Domestic Relations Order (DRO) or other pension division order shall not be assigned to a judge and may be heard by any District Court Judge assigned to Domestic Court.
- (c) **Child Support Cases.** All cases in which child support is being enforced through the Wake County Clerk of Superior Court (Clerk's contempt), and all child support cases in which the Wake County Child Support Collection Agency (IV-D) is a party, shall be assigned to the specialized Child Support Court (presently Courtroom 9-D).
- (d) **Domestic Violence Civil Court.** In a case seeking issuance of a Domestic Violence Protective Order pursuant to N.C.G.S. Chapter 50B (Domestic Violence Restraining Orders), the DCJA shall not assign a judge, unless and until, after a Domestic Violence Protective Order containing provisions providing for the custody or support of minor children of the parties is entered and there is a subsequent filing of a complaint or motion in

the cause seeking additional relief in a Chapter 50 action. It shall be the responsibility of the party seeking relief by complaint or motion in the cause to file the Affidavit for Judicial Assignment (**WAKE-DOM-2**). The fact that a particular judge heard the domestic violence action shall not require the assignment of the same judge to the domestic action, but the DCJA may consider the fact that a particular judge heard the 50B matter in determining to whom the case should be assigned.

- (e) **Juvenile Court Cases.** Juvenile Court actions include delinquency, undisciplined children, abuse, neglect, dependency, termination of parental rights, and emancipations. All actions to terminate parental rights are special proceedings and are heard in juvenile court.
- (f) **Criminal Cases.** Criminal cases involving the same parties to a domestic court action shall be tried in criminal court.

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

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

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

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

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

2.9 Consolidated Cases. When there are two (2) or more civil domestic actions (with the exception of cases for absolute divorce only with no other claims attached), involving the same parties, then either

party (or the Court on its own motion) may move to consolidate them under one heading and case number. Unless the opposing party files a response to the motion accompanied by affidavits as to why the cases should not be consolidated within five (5) days of service of a Motion to Consolidate, the consolidation request shall be granted. When cases involving the same parties have been consolidated for trial they will be regarded as one case for calendaring purposes and will appear under the oldest case number and case caption. A copy of the order consolidating the cases for trial shall be filed in all pertinent court files and all pleadings or documents filed thereafter shall be captioned with the oldest file number only.

RULE 3: CALENDARING OF DOMESTIC CASES

3.1 New Actions or Modifications. When a party files a Complaint or has not otherwise received an assignment in an existing case, the DCJA will complete the judicial assignment process. Then, the assigned DCC shall calendar matters as required or allowed by these Rules. When a party files a motion for modification of an existing order, the assigned DCC shall calendar matters as required or allowed by these Rules. Events and/or hearing dates shall be set by the Family Court Office in accordance with the specific Rules herein and within the time standards set out in these Rules. No court date shall be set without a pleading filed. Any pleading filed which has issues for hearing will receive a court date.

3.2 Cases Pending at Implementation of These Rules. Any case which has matters pending (but not yet scheduled for hearing) at the time these Rules are implemented shall be scheduled by the Family Court Office according to a policy designated by the Chief District Court Judge.

3.3 Calendaring Initial Hearing Dates and/or Other Required Events. The moving party shall obtain the date(s) for the first court hearing(s) and/or other event(s), if required by these Rules by telephoning the assigned DCC. Initial date(s) shall be set within the time limits, if any, established by these Rules, during the scheduled court sessions of the assigned judge.

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

3.5 Calendar Request. After consulting with the opposing party, a party may request a hearing date for matters not already calendared by completing a Calendar Request (**WAKE-DOM-4**) and providing a copy to the assigned DCC who shall determine an available date for hearing. Requests must be completely filled out with all required information. Service of the completed Calendar Request (**WAKE-DOM-4**) on the assigned DCC and the opposing party shall be made by hand delivery, US Mail, or facsimile transmission. Failure of any Request to be in compliance with these Rules will result in the matter not being calendared by the assigned DCC. A party wishing to calendar a custody issue which is subject to mediation pursuant to Rules 7 and 8 herein shall attach a copy of the Order to Calendar Custody or Visitation Dispute (**AOC-CV-914M**) to the Calendar Request.

3.6 Notice of Hearing. The courtroom location, date, time and matters to be heard should be cited in the Notice of Hearing (**WAKE-DOM-1**). The moving party shall serve the Notice of Hearing on the opposing party according to Rule 4 of the North Carolina Rules of Civil Procedure and shall also file it

with the Office of the Clerk of Superior Court. Failure of the moving party to notify the opposing party of any court hearing may result in an automatic denial of the relief sought upon objection of the opposing party.

3.7 Removing Hearings from the Calendar. Once calendared, only the assigned judge or the Family Court Office may remove a case from the calendar.

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

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

RULE 4: MOTIONS, PRETRIAL CONFERENCES AND HEARINGS

4.1 Motions.

- (a) **Motions in the Cause for Contempt.** All Motions and Orders to Appear and Show Cause (**WAKE-DOM-5A** and **WAKE-DOM-5B**) shall be filed with the Clerk and shall reference the Order which is alleged to have been violated. One copy of the Order alleged to have been violated shall be delivered by the moving party to the assigned DCC, along with the Motion, for presentation to the assigned judge by the assigned DCC. Thereafter, the Motion and Order to Appear and Show Cause (**WAKE-DOM-5A** and **WAKE-DOM-5B**) shall be submitted to the assigned judge for consideration. If the assigned judge is not available, the motion may be heard by any other judge designated by the Chief District Court Judge.
- (1) **Allegations of Custody Violation.** If the motion alleges a violation as to a custody, visitation, or other parenting issues (other than child support), a Custody Mediation Cover Sheet (**WAKE-DOM-6**) and either a completed Notice to Attend (**WAKE-DOM-7**) or a completed Motion and Order to Waive Custody Mediation (**AOC-CV-632**) must be attached to the motion. If Custody Mediation has previously been waived, a copy of the prior motion and order waiving mediation shall be attached to the Motion and Order to Appear and Show Cause (**WAKE-DOM-5A** and **WAKE-DOM-5B**). Unless the moving party simultaneously files a Motion and Order to Waive Custody Mediation (**AOC-CV-632**), the parties shall first be scheduled for custody mediation pursuant to N.C.G.S §50-13.1 and Rule 8 herein. If mediation is required, a hearing date on the Motion to Show Cause shall be set far enough in advance to allow mediation to occur. If either party files a Motion and Order to Waive Custody Mediation, the assigned DCC shall calendar the motion for hearing before the assigned judge.
- (2) **Allegations not Involving Custody.** In all other matters not concerning custody, visitation or other parenting issues, the assigned DCC shall calendar the case for hearing before the assigned judge upon issuance of the Motion and Order to Appear and Show Cause (**WAKE-DOM-5A** and **WAKE-DOM-5B**) or Motion and Order to Show Cause for Failure to Comply with Order in Child Support (**AOC-CV-601**). Notice of the hearing date shall be contained in the Orders.
- (b) **Fifteen-Minute Motion Hearings.**

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

“Please take notice that the undersigned has scheduled for a Fifteen-Minute Motion Hearing the following matter: _____, to be heard on [date] at 9:00 a.m. or as soon thereafter as this may be heard. [Opposing counsel has consented to this setting.] – OR – (This matter can be fairly presented to the court with 15 minutes for each side because ... Example: *“This is a motion for change of venue. Plaintiff-father lives in Arkansas, and the defendant-mother has lived, with the minor child, in Cumberland County for the past 10 months. No contestant or interested party resides in Wake County”*).
- (6) To object to such scheduling, the opposing party shall file an affidavit setting forth specific reasons why the matter cannot be fairly presented to the court with 15 minutes for each side. (Example: *“The Plaintiff-father contends that he lives in Arkansas and that the defendant-mother resides in Wake County, even though the Notice of Hearing in this matter alleges that she lives in Cumberland County. In reality, the defendant-mother resides in southern Wake County and works in Cumberland County. We have five witnesses who will testify to this contested issue, and it will take longer than 15 minutes for us to present this testimony to try to convince the Court that the venue of this case should remain in Wake County.”*) The affidavit shall be served on the moving party by personal delivery at least three days before the hearing date (or served by mail at least six days before the hearing date).
- (7) If an opposing affidavit is filed, the matter shall not be heard as a Fifteen-Minute Motion.
- (8) Parties with a matter scheduled for a “Fifteen-Minute Motion” shall adhere to a strict 15-minute time limitation per side. Exceeding the time limit will subject the party and/or attorney to sanctions in the discretion of the Court. Any party and/or attorney who begins a hearing without objecting to the time limitation shall be bound by the limit.
- (9) This procedure is for the convenience of parties having short matters which can be resolved quickly. Usually this Rule will be used for motions such as the following: motion to compel, motion for exemption from custody mediation, motion to quash, motion for sanctions, motion for continuance, motion *in limine*, motion to join or sever, motion to dismiss, motion for change of venue, motion to amend or supplement pleadings, motion to extend time (beyond initial extension by Clerk) and

motions to withdraw which have not been consented to by the client. However, any matter, whether designated technically a motion, a hearing or a trial, which complies with the time limitation may be set for hearing as a Fifteen-Minute Motion.

- (c) **Motions to Withdraw.** All motions to withdraw shall be scheduled for hearing pursuant to Rule 3 above and in advance of any assigned trial date. However, motions to withdraw which are consented to by the client **in writing** may be signed in chambers as with any consent order. However, withdrawal of counsel within two weeks of a scheduled hearing shall not be grounds for a continuance of the hearing in question.
- (d) **Scheduling Motions.** All motions shall be scheduled for hearing through the assigned DCC.

4.2 Temporary Non-Emergency Hearings. Unless excused by the Court, both parties shall attend temporary non-emergency hearings. These hearings shall include hearings on non-emergency temporary child custody/visitation (situations involving denial of visitation, lack of access, an imminent move out of state which would seriously impact a visitation schedule, or other such serious but non-emergency matters), temporary child support, post-separation support, and interim distributions under N.C.G.S. §50-20(i1).

- (a) **Length of Hearing.** Temporary hearings shall be limited to one hour per claim, and each party shall be allocated one-half of that time to be used for opening statements, direct examination of the party's witnesses, cross-examination of the opposing party's witnesses, and closing arguments. Cases in which temporary custody/visitation orders are issued after such hearings shall be rescheduled for full hearing within three months after the temporary hearing and the new date shall be stated in the order.
- (b) **Use of Affidavits.** It is anticipated that at the majority of these hearings, evidence will be presented based upon affidavits as allowed by statute. Except for good cause shown, evidence in financial matters shall be by affidavits. All affidavits (excluding attorney's fee affidavits) shall be delivered to the opposing party by any means reasonably calculated to ensure receipt no later than ten (10) business days prior to the scheduled hearing. All rebuttal affidavits, i.e. affidavits that are filed in response to the other party's affidavits, shall be delivered to the opposing party by any means reasonably calculated to ensure receipt no later than five (5) business days in advance of the hearing. The Court will not consider affidavits which are not served on the opposing party in accordance with these Rules. With prior written notice to the opposing party at least seven (7) days prior to the scheduled hearing, either party may request additional time to present complicated cases, which the assigned judge may allow, in his or her discretion.
- (c) **Settlement Negotiations.** In the discretion of the assigned judge, if the parties are engaged in settlement negotiations at the time scheduled for hearing, the assigned judge may hear other matters during this time. While settlement negotiations are strongly encouraged at every phase of the proceedings, negotiations held at the last minute may result in a loss of priority on the calendar.
- (d) **Effect of Failure to Appear.** If the party requesting the temporary hearing fails to appear as scheduled, upon oral motion of the opposing party, the temporary relief sought shall be denied and the matter may proceed to be calendared for trial pursuant to these Rules. If the moving party's attorney fails to appear, that attorney may be subject to sanctions. If the opposing party or his/her attorney fails to appear at the designated time and place, the hearing shall not be delayed unless good cause is shown.
- (e) **Temporary Orders.** Any order entered in a temporary hearing conducted pursuant to these Rules shall be without prejudice to either party and subject to full hearing on the

merits at a later date, unless otherwise agreed by the parties. The temporary order shall be designated as such and shall include a date certain for a full hearing on the merits. No substantial change of circumstances need be shown at the full hearing.

4.3 Pretrial Conferences. Any attorney may request a pretrial conference regarding any substantive matter (i.e., custody, child support, alimony. For equitable distribution, see Rule 11). If a pretrial conference is desired, a Request for Pretrial Conference (**WAKE-DOM-9**) must be filed and given to the assigned DCC for transmittal to the assigned judge. The assigned judge may schedule an appropriate date for the conference but the conference must be placed on the calendar by the assigned DCC. The assigned judge may require a pretrial conference for any matter which is deemed appropriate.

- (a) **Participation in and Purpose of Pretrial Conferences.** If a pretrial conference is scheduled, attendance is mandatory for all attorneys of record and all parties. The purpose of a pretrial conference is to assist the parties in trial preparation by narrowing the issues for trial or for disposition of the case, to set deadlines for the completion of discovery, to determine the need for reference, to seriously explore the prospects of settlement of the case, to finalize proposed witness lists, to determine what facts can be stipulated and agreed upon by the parties, to develop lists of stipulated exhibits, and to agree upon a final pretrial order. Adjustments to the time allocated for trial may be made at this time in the discretion of the trial judge. At a pretrial conference, the Court will address any requests for additional discovery and set a date for trial of the matter or such additional pretrial conferences as are necessary. The assigned judge will require a final pretrial order to be completed and submitted by a certain date. Failure of the moving party to complete the order or failure of the opposing party to cooperate with providing the appropriate information/documents to complete the order may result in the imposition of sanctions pursuant to Rule 37 of the North Carolina Rules of Civil Procedure.
- (b) **Sanctions for Failure to Participate in Pretrial Conferences.** Failure to attend a pretrial conference which is noticed for hearing is a serious breach of these Rules. Such failure may result in a dismissal of the responsible party's claim, the responsible party's proffered testimony (either written or oral) not being allowed into evidence by the Court, or may result in the imposition of other sanctions as provided by Rule 37 of the North Carolina Rules of Civil Procedure.

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

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

Failure of moving counsel to notify opposing counsel, where known, may result in an automatic denial of the relief sought upon objection of opposing counsel and will result in

the Order being set aside to give the opposing counsel the opportunity to be heard along with imposition of appropriate sanctions in the discretion of the judge.

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

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

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

- (c) **Judicial Assignment.**

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

(2) For *ex parte*/emergency orders issued after service of the Complaint, the date for hearing shall be cited in the Order and the Order shall be filed with the Clerk and served upon the opposing party.

- (d) **Return Hearing.** If an *ex parte*/emergency order is executed by a judge, a Return Hearing shall be scheduled by the assigned DCC within ten (10) days of issuance **on the issue of emergency only**. Returns on emergency orders may be heard on affidavits and arguments, without live testimony, in the discretion of the presiding judge. Affidavits are limited to five (5) for each party unless the presiding judge agrees to accept additional affidavits.

- (e) **Sanctions.** *Ex parte*/emergency orders improvidently granted, based on incomplete or erroneous information, may subject the moving party to sanctions pursuant to Rule 11 of the North Carolina Rules of Civil Procedure. This may include payment of attorney's fees for the opposing party.

4.5 Trial Settings. Either party may contact the assigned DCC for a trial setting pursuant to these Rules. The assigned judge may also set cases for trial at a pretrial conference after consultation with each party. Where the assigned judge sets a case for trial, it is the responsibility of counsel or the party to ensure that the matter is calendared pursuant to the judge's instruction through the assigned DCC. No case shall be heard by the Court unless it is calendared through the Family Court Office and service of the

completed Calendar Request (**WAKE-DOM- 4**) on the assigned DCC shall be made by hand delivery, US Mail, or facsimile transmission.

RULE 5: TRIAL CALENDAR

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

5.2 Calendars. Calendars shall be prepared two weeks prior to calendar call by the Family Court Office and provided to the Office of the Clerk of Superior Court for distribution. Cases not calendared in accordance with these Rules will not be heard. No requests for “add-ons” after the calendar is printed will be granted except by the presiding judge and only if such addition will not prejudice the hearing of other matters. Published calendars, forms and these Rules may be downloaded from the following web site: <http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Default.asp> and on the website of the Wake County Clerk of Court: <http://web.co.wake.nc.us/courts/index.html>. It is the responsibility of counsel and *pro se* parties to be aware of cases appearing on trial calendars.

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

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

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

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

RULE 6: CHILD SUPPORT CASES

6.1 Calendaring Temporary Hearing. Upon filing an initial claim for child support pursuant to these Rules, the assigned DCC shall schedule a hearing in accordance with the established time standards.

6.2 Financial Information Required. In all cases involving child support (except those filed under IV-D, U.R.E.S.A. and U.I.F.S.A.), each party shall serve a Financial Affidavit (**WAKE-DOM-10**) upon the opposing party. The moving party shall serve his/her completed Financial Affidavit within 15 days of the filing of his/her claim on the opposing party. The opposing party shall serve the moving party with his/her completed Financial Affidavit (**WAKE-DOM-10**) within 15 days of the date he/she is served with the claim.

In addition to service of their completed Financial Affidavits, the parties shall exchange financial information as required by Rule 10 entitled "Initial Disclosures Regarding Financial Issues in a Chapter 50 Action for Child Support, Post-Separation Support and/or Alimony." The exchange of these initial disclosures shall be completed within the same 15 day periods set out in the preceding paragraph.

6.3 Moving Party's Responsibility. The party seeking child support or the modification of an existing order, must serve his/her completed Financial Affidavit (**WAKE-DOM-10**) within 15 days of the filing of his/her claim. The moving party shall serve upon the opposing party the following: the pleading, the completed Financial Affidavit (**WAKE-DOM-10**), a blank Financial Affidavit (**WAKE-DOM-10**), and a Notice of Financial Information Required (**WAKE-DOM-11**).

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

6.5 Temporary Child Support Hearings. A hearing shall be set and a temporary child support order shall be entered in each new child support case within forty-five (45) days of filing of the request. If a claim for post-separation support is also pending, it shall be heard along with the claim for temporary child support, if practicable.

- (a) **Length of Hearing.** Temporary child support hearings shall be limited to one hour. Each party will have up to one-half (½) hour to present his or her case, including opening statements, direct and cross-examination, and closing arguments, although a judge may elect to reduce such time or to decide a case on affidavits, without evidence or argument, as permitted by statute. With written notice to the opposing party at least seven (7) days prior to the scheduled hearing date, parties may request from the Court additional time to present complicated cases, which the assigned judge may allow, in his or her discretion.
- (b) **Use of Affidavits.** Except for good cause shown, evidence in temporary child support hearings shall be by affidavits. Parties wishing to use affidavits from the parties, accountants, private investigators or other third parties must deliver the affidavits (excluding attorney's fee affidavits) to the other party by any means reasonably calculated to ensure receipt no later than ten (10) business days prior to the scheduled hearing. Rebuttal affidavits, i.e., affidavits that are filed in response to the opposing party's affidavits, shall be delivered to the other party by any means reasonably calculated to ensure receipt no later than five (5) business days before the scheduled hearing. The Court will not consider affidavits which are not served on the opposing party in accordance with these Rules.

- (c) **Continuances.** In those cases where service has not been perfected, the case will be continued to a date certain at the call of the calendar. Continuances, due to lack of service, of temporary child support hearings will only be granted at the call of the calendar and then always to a date certain. Moving counsel shall notify any *pro se* parties of the continuance date, if the *pro se* party is not present in court when the continuance is granted.
- (d) **Temporary Order.** At the temporary child support hearing, an order shall be entered establishing some reasonable amount of child support to be paid by the non-custodial or supporting parent. This order shall be non-prejudicial to both parties pending the final disposition of matters of custody and child support. The order shall be based on the North Carolina Child Support Guidelines, but properly served written motions for deviations shall be considered. If, at the temporary hearing, both parties and the presiding judge agree, the parties may proceed with a hearing for the establishment of a permanent order of child support.
- (e) **Child Support Worksheet.** Attorneys shall attach a completed Child Support Worksheet (AOC-CV-627, 628, or 629) to the Temporary Order which is filed with the Clerk of Court. A copy of all orders dealing with ongoing support, or support arrearage shall be provided to the Child Support Division of the Office of the Clerk of Superior Court if child support is to be paid through North Carolina Child Support Centralized Collections (“Centralized Collections”) and/or is ordered to be enforced by the Child Support Division of the Office of the Clerk of Superior Court.

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

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

(WAKE-DOM-13). The Court will execute an Order to Withhold Wages to Enforce Child Support **(AOC-CV-618)**.

- (c) Direct payments may be transferred to the Clerk of Superior Court for enforcement purposes only by order of the Court, and as allowed by statute. **Child Support Payment Directions.** If the party paying child support is ordered to pay directly, then the payment should be mailed to the N.C. Child Support Centralized Collections, P.O. Box 900006, Raleigh, North Carolina, 27695-9006. If the party is paying child support through wage withholding, then the payment should be mailed to the N.C. Child Support Centralized Collections, P.O. Box 900012, Raleigh, North Carolina, 27695-9012. Military payments for child support should be mailed to the N.C. Child Support Centralized Collections, P.O. Box 900015, Raleigh, North Carolina, 27695-9015.

RULE 7: CHILD CUSTODY CASES

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

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

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

(WAKE-DOM-4) to the assigned DCC to schedule the Motion pursuant to Rule 3 above. Unless mediation is waived, the parties shall proceed with mediation in accordance with Rule 8 below.

Upon submission for signature to the assigned judge, consent orders involving custody issues which have not been through the mediation process shall be accompanied by a Motion and Order to Waive Custody Mediation **(AOC-CV-632)**. A copy of the executed Motion and Order to Waive Custody Mediation

(AOC-CV-632) shall be provided to the assigned DCC **and** the CMO. A copy of the dismissal of any custody issue must be delivered to the assigned DCC **and** the CMO upon filing.

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

7.5 Scheduling of Temporary Custody Hearings. Upon the filing of a pleading requesting temporary custody, the assigned DCC will schedule a temporary hearing pursuant to Rules 3 and 4.2 above which may occur prior to custody mediation orientation. The moving party shall immediately serve

upon the opposing party or counsel a Notice of Hearing (**WAKE-DOM-1**) in addition to the documents named in Rule 7.4 above. The assigned DCC shall set all child custody cases in which temporary custody is requested for temporary hearing before the assigned judge in compliance with the recommended Time Standards set forth in Rule 1.3 above.

7.6 Temporary Custody Hearings.

- (a) **Length of Hearing.** Temporary custody hearings shall be limited to one hour. Each party will have up to one-half (1/2) hour to present his or her case, including direct and cross-examination and closing arguments, although a judge may elect to reduce such time or to decide a case on affidavits, or upon the verified pleadings, without evidence or argument, as permitted by statute. With written notice to the opposing party at least seven (7) days prior to the scheduled hearing date parties may request from the Court additional time to present complicated cases, which the assigned judge may allow, in his or her discretion.
- (b) **Use of Affidavits.** Parties wishing to use affidavits from the parties, accountants, private investigators or other third parties must deliver the affidavits (excluding attorney's fee affidavits) to the opposing party by any means reasonably calculated to ensure receipt no later than ten (10) business days prior to the scheduled hearing. Rebuttal affidavits, i.e., affidavits that are filed in response to the other party's affidavits, shall be delivered to the other party by any means reasonably calculated to ensure receipt no later than five (5) business days before the scheduled hearing. The Court will not consider affidavits which are not served on the opposing party in accordance with these Rules.
- (c) **Effect of Failure to Appear at Temporary Custody Hearing.** If the party requesting the hearing fails to appear, the temporary relief sought shall be denied and the matter may proceed to be calendared for trial pursuant to these Rules. If the moving party's attorney fails to appear, that attorney may be subject to sanctions. If the opposing party or his/her attorney fails to appear at the designated time and place, the hearing shall not be delayed without good cause shown.
- (d) **Temporary Custody Order.** Any order entered in a temporary custody hearing shall be without prejudice to either party and subject to full hearing on the merits at a later date, unless otherwise agreed by the parties. The temporary custody order shall be designated as such and shall be rescheduled for full hearing within three months after the temporary hearing. The order shall include a date certain for a full hearing on the merits. No substantial change of circumstances need be shown at the full hearing.

RULE 8: MANDATORY CUSTODY MEDIATION

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

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

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

- (a) Orientation shall be scheduled as follows: within forty-five (45) days of the filing of the pleading in 100% of the cases. For cases in which a Stipulation for Expedited Mediation (**WAKE-DOM-14**) has been filed (where the parties or their counsel have stipulated to an earlier orientation date), orientation shall be scheduled on the first available date.
- (b) The attorney representing the moving party shall schedule orientation in the Scheduling Binder in the DCJA's office.
- (c) Where there is no counsel of record, the moving party shall submit the Custody Mediation Cover Sheet (**WAKE-DOM-6**) to the DCJA, and the DCJA shall schedule the parties for orientation.
- (d) After scheduling orientation, the moving party shall obtain two (2) copies of a Notice to Attend (**WAKE-DOM-7**) and shall immediately serve a copy of this notice on the opposing party.

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

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

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

8.6 No Discovery. No discovery regarding a custody or visitation claim shall be served, noticed, or conducted until the mediation process is complete or the claim has been exempted from mediation by judicial order pursuant to Rule 8.4 above. Except for oral depositions of parties, discovery may proceed regarding financial information.

8.7 Workload. The CMO shall monitor the number of contested custody and/or visitation case filings as they relate to mediator staffing levels. In the mediator's discretion, and with the consent of the Chief District Court Judge, a contested case or post-decree motion may bypass mediation and shall be

scheduled for hearing by the assigned DCC with notice to the attorneys/parties. This action **shall only** be taken when the next regularly available mediation would result in undue delay to the parties.

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

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

8.10 Partial Parenting Agreements. If a partial parenting agreement is reached, the mediator will prepare a final draft of the partial agreement and mail copies to both parties and their attorneys. A list of the unresolved issues shall be attached. As with a full agreement, the parties will be scheduled to return and sign the final draft once they have reviewed the copies with their attorneys. The CMO will refer the partial parenting agreement to the assigned judge for Court approval and will refer the unresolved issues for calendaring by notifying the assigned judge who shall enter an Order to Calendar Custody or Visitation dispute (**AOC-CV-914M**). Calendaring will be as in other domestic matters. The assigned judge shall review each agreement and, if appropriate, make the partial parenting agreement an Order of the Court by signing an Order Approving Partial Parenting Agreement (**AOC-CV-635**). The CMO will file this order with the Clerk of Superior Court. The mediator will notify the Family Court Office of the unresolved issues for calendaring, and the parties shall register to attend a parenting education program pursuant to Rule 8.13 below.

8.11 Distribution of Orders. Copies of all orders entered under Rules 8.9 and 8.10 above shall be mailed by the CMO to the parties and/or their counsel.

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

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

8.14 Sanctions for Failure to Attend Custody Mediation Orientation or Mediation Session or Parent Education Program. Any party who fails to attend a scheduled Custody Mediation Orientation or Mediation session or fails to enroll and attend a required Parent Education Program after the failure to reach a mediated Parenting Agreement shall be subject to sanctions as follows:

- (a) If the party has documented good cause and fails to reschedule the session in advance, the Family Court Administrator or his/her designee is authorized to notify the offending party of the possible sanctions and may reschedule the session.
- (b) If a party fails to appear for any session, the offending party is subject to the contempt powers of the Court, and penalties, after a contempt hearing before the assigned judge, that may include, but are not limited to, fine, imprisonment, or payment of the other party's expenses.

8.15 Removal from Mediation Process. When custody and/or visitation issues have been completely settled by consent or dismissed, the issues will not be removed from the mediation process until a file-stamped copy of a Motion and Order to Waive Custody Mediation (**AOC-CV-632**) or a dismissal is provided to the assigned DCC and the CMO. When a signed consent order for custody and/or visitation is presented to the assigned judge for approval, it must be accompanied by a Motion and Order to Waive Custody Mediation (**AOC-CV-632**), specifying under paragraph #2 "entry of a consent order" as the basis for the motion.

RULE 9: POST-SEPARATION SUPPORT & ALIMONY

9.1 Calendaring Hearing. The assigned DCC shall schedule issues of post-separation support for hearing within 90 days of filing pursuant to Rule 3 above.

9.2 Financial Information Required. In all cases involving post-separation support and alimony, each party shall serve a Financial Affidavit (**WAKE-DOM-10**) upon the opposing party. The moving party shall serve his/her completed Financial Affidavit within 15 days of the filing of his/her claim on the opposing party. The opposing party shall serve the moving party with his/her completed Financial Affidavit (**WAKE-DOM-10**) within 15 days of the date he/she is served with the claim.

In addition to service of their completed Financial Affidavits, the parties shall exchange financial information as required by Rule 10 entitled "Initial Disclosures Regarding Financial Issues in a Chapter 50 Action for Child Support, Post-Separation Support and/or Alimony." The exchange of these initial disclosures shall be completed within the same 15 day periods set out in the preceding paragraph.

9.3 Moving Party's Responsibility. The party seeking post-separation support and/or alimony or the modification of an existing order, must serve his/her completed Financial Affidavit (**WAKE-DOM-10**) within 15 days of the filing of his/her claim. The moving party shall serve upon the opposing party the following: the pleading, the completed Financial Affidavit (**WAKE-DOM-10**), the Affidavit of Judicial Assignment (**WAKE-DOM-2**) (if required by these Rules), Notice of Hearing (**WAKE-DOM-1**), a blank Financial Affidavit (**WAKE-DOM-10**), and a Notice of Financial Information Required (**WAKE-DOM-11**).

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

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

- (a) **Duration.** Post-separation support hearings shall be limited to one hour. Each party will have up to one-half (1/2) hour to present his or her case, including opening statements, direct and cross-examination, and closing arguments, although a judge may elect to reduce such time or to decide a case on affidavits, or upon the verified pleadings, without evidence or argument, as permitted by statute. With written notice to the opposing party at least seven (7) days prior to the scheduled hearing date, parties may request from the Court additional time to present complicated cases, which the assigned judge may allow, in his or her discretion.
- (b) **Use of Affidavits.** Except for good cause shown, evidence in post-separation support hearings shall be by affidavits. Parties wishing to use affidavits from the parties, accountants, private investigators or other third parties must deliver the affidavits (excluding attorney's fee affidavits) to the other party by any means reasonably calculated to ensure receipt no later than ten (10) business days prior to the scheduled hearing. Rebuttal affidavits, i.e., affidavits that are filed in response to the other party's affidavits, shall be delivered to the opposing party by any means reasonably calculated to ensure receipt no later than five (5) business days before the scheduled hearing. The Court will not consider affidavits which are not served on the opposing party in accordance with these Rules.
- (c) **Establishment of Alimony.** If, at the post-separation support hearing, both parties and the presiding judge agree, the parties may proceed with a hearing for the establishment of an order for alimony. If an order for post-separation support is entered, either party may proceed to calendar the alimony hearing pursuant to Rule 3.

RULE 10: INITIAL DISCLOSURES REGARDING FINANCIAL ISSUES IN A CHAPTER 50 ACTION FOR CHILD SUPPORT, POST-SEPARATION SUPPORT AND/OR ALIMONY

10.1 Duty of Financial Disclosure. In addition to completion of the Financial Affidavit (**WAKE-DOM-10**) required by Rules 6 and 9 above, every party to an action in which child support (other than IV-D, U.R.E.S.A. and U.I.F.S.A.), post-separation support, or alimony is an issue has the duty to provide the documents designated by this Rule to other parties or their counsel without awaiting a formal discovery request. The designated documents are defined hereinafter as "Initial Disclosures (Support)"

- (a) **Party Claiming Support.** The party who is filing a complaint, claim or motion for support should be aware of the requirement for Initial Disclosures and start the accumulation process **PRIOR TO** filing the complaint, claim or motion so that the Initial Disclosures can be made shortly after filing. The party claiming support has a duty to provide his or her Initial Disclosures 15 days after filing of his or her complaint, claim or motion for support. Within 15 days after filing a claim for support, the moving party shall file and serve on the opposing party a Certification of Initial Disclosure (Support) (**WAKE-DOM-17A**) certifying that he or she has provided the documents required by Rule 10.2, and for any documents not provided, a detailed explanation of the grounds for not providing the required documents. In no event will the party seeking support provide the Initial Disclosures less than 10 business days before any scheduled hearing.

- (b) **Party From Whom Support is Claimed.** The party from whom support is claimed will provide his or her Initial Disclosures within 15 days of service of the complaint, claim or motion. Within 15 days after service upon him or her of a claim for support, the responding party shall file and serve on the moving party a Certification of Initial Disclosures (Support) (**WAKE-DOM-17A**) certifying that he or she has provided the documents required by Rule 10.2, and for any documents not provided, a detailed explanation of the grounds for not providing the required documents. In no event will the party from whom support is claimed provide the Initial Disclosures less than 10 business days before any scheduled hearing.

10.2 Documents to be Provided as Initial Disclosures (Support).

- (a) **Period For Which Disclosure Required.** Unless otherwise specified, the documents identified in Rule 10.2 (c) and (d) shall be provided for the full calendar year preceding the date of separation through the date of service of the Initial Disclosures. For motions to modify an existing order, the documents identified shall be provided for the twelve months preceding the date of the filing of the motion through the date of the initial disclosures.
- (b) **General Definition of Gross Income.** “Gross Income” means all income from whatever source derived, including (but not limited to) the following items:
- Compensation for services, including but not limited to: fees, tips, commissions, fringe or employment benefits (e.g., health insurance, child care benefits, paid vacation, etc.), salaries, wages, bonuses, deferred compensation, perquisites, and severance pay;
 - Income derived from a business including but not limited to distributive share of partnership, shareholder or LLC income, advances or draws against distributive share and retained earnings;
 - Short or long term capital or other gains derived from dealings in real or personal property;
 - Interest;
 - Rents;
 - Intellectual property income (copyrights, royalties on patents, etc.);
 - Dividends;
 - Alimony and/or separate maintenance payments (taxable or non-taxable) received from a person or persons other than the party from whom support is claimed;
 - Annuities;
 - Income from life insurance and endowment contracts;
 - Pensions, retirement pay, distributions and loans from retirement plans;
 - Income from discharge of indebtedness;
 - Income from an interest in an estate or trust;
 - Social security benefits, worker’s compensation benefits, unemployment insurance benefits, disability pay;
 - Gifts or loans;
 - Prizes;
 - Child support received for children other than the biological or adopted children of the parties;

- Stock or stock options in lieu of income;
 - Tax refunds received in the last 12 months or applied to the next calendar year tax return;
 - Tax credits;
 - Personal injury, condemnation or other settlements or awards.
- (c) **Documentary Evidence of Gross Income.** Documentary evidence of Gross Income as detailed in §10.2(b) which will be provided shall include, but is not limited to the following:
- pay stubs, statements, vouchers and/or direct deposit receipts;
 - employee benefit statements;
 - stock and stock option statements;
 - W-2's, 1099's, K-1's and other income reporting statements;
 - if a party is self-employed or a partner, shareholder or member holding a 5% or greater interest in a company, business, partnership, joint venture, LLC, corporation or other entity; company financial statements (whether audited, reviewed or compiled or internal), including, but not limited to, balance sheets and profit and loss statements for the past three calendar years and through the date of production;
 - if a party is self-employed or a partner, shareholder or member holding a 5% or greater interest in a company, business, partnership, joint venture, LLC, corporation or other entity: company tax returns or personal tax returns (if the party is self-employed) for the past three calendar years and through the date of production;
 - federal and state individual tax return(s) filed by the party, or on the party's behalf (whether filed individually or jointly with another), including all schedules and attachments (W-2 forms, 1099 forms, etc.) for the past 3 years, together with all year-end documentation (W-2 forms, 1098 forms, 1099 forms, extension requests, etc.). If any of the last 3 years' tax returns have not been filed (including the most recent year's return), any requests for extension of time to file and correspondence with the taxing agency (e.g. state department of revenue and/or IRS) for the past three calendar years and through the date of production.
- (d) **Additional Documents To Be Provided.**
- Documents pertaining to health, life (term or whole life), casualty, automobile and liability insurance, including, but not limited to, policies, booklets describing benefits of all medical, dental or other health insurance coverage which is or could be available for a child or spouse;
 - statements evidencing all accounts in banks, credit unions, brokerage accounts and other financial institutions for which the party has been a signatory;
 - complete statements for all installment and credit card accounts;
 - bills, statements, invoices, mortgage payment booklets or other evidence of all outstanding debts, which show the principal balance currently owed and the payment terms;
 - personal financial statements furnished to any third party (i.e., bank, other financial institutions) during the previous two (2) years preceding the date of separation and/or two (2) years prior to filing of the complaint, claim or motion;

- computer generated reports or data (or which can be generated) utilizing personal accounting software programs such as Quicken or Microsoft Money including reports showing: income, expenses, profit and loss, deposits and withdrawals.

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

10.4 Method of Disclosure. The Initial Disclosures required under this Rule shall be made by furnishing copies of the documents to the attorney of record for the opposing party at his/her business address, or, if the opposing party is not represented (*pro se*), by furnishing the disclosures to the opposing party via the U. S. Postal Service, on or before the required due date. The Initial Disclosures may be made by electronic mail providing that the documents are complete, readable and in PDF format. The disclosing party will request a "read receipt" to document receipt of the Initial Disclosures. If no e-mail read receipt is obtained within 24 hours of emailing the Initial Disclosures, the disclosing party will serve the Initial Disclosures using the U.S. Postal Service.

10.5 Certification of Initial Disclosures. Each party making his or her Initial Disclosures shall simultaneously serve on the opposing party or his or her counsel of record and file with the Court a Certification of Initial Disclosure (Support) (**WAKE-DOM-17A**) signed by the disclosing party stating, on an itemized basis, that each required disclosure has taken place on or before the due date. If the Initial Disclosures are incomplete, the party from whom the Initial Disclosures are due will have the burden to show good cause why particular items of the required Initial Disclosures cannot or were not made on or before the date the disclosures are/were due.

10.6 Effect of Failure to Comply. This Rule providing for a duty of disclosure shall constitute a discovery request within the meaning of the North Carolina Rules of Civil Procedure. Failure to establish good cause by the party claiming support may be grounds for continuation of the hearing or such other sanction as provided by Rule 37 of the NC Rules of Civil Procedure. Failure to establish good cause by the party from whom support is claimed may be grounds for denying that party the right to defend the claim for support or such other sanction as may be provided by Rule 37 of the NC Rules of Civil Procedure.

10.7 Duty to Amend Initial Disclosures. After the Initial Disclosures are made pursuant to this Rule, each party shall be under a continuing duty to amend or supplement the original documentation if there has been a change in the form or substance of any of the original information provided (e.g., an amended tax return, adjusted or revised financial statements).

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

RULE 11: EQUITABLE DISTRIBUTION CLAIMS

11.1 Application. These Rules shall apply to all equitable distribution claims that may be filed on or after February 15, 2006.

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

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

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

11.4 Definitions.

- (a) “Moving party”--the spouse who first files a claim for equitable distribution;
- (b) “Responding party”--the spouse against whom the first claim for equitable distribution has been filed;
- (c) “Equitable Distribution Inventory”(EDI) --A good faith disclosure of all assets and liabilities within the party’s knowledge as of the date of the submission of the Inventory to the opposing party which is not intended to be exhaustive or binding (**WAKE-DOM-18**);
- (d) “Equitable Distribution Affidavit”(EDA)--A full and complete disclosure of all marital, separate, and divisible property and debt existing on the date of separation and as of the date of the submission of the Affidavit to the opposing party, with each party’s best estimate as to the date of separation and present value of all assets and debts (**WAKE-DOM-19**).

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

- (a) obtain from the assigned DCC a date for a status conference, and
- (b) immediately serve upon the responding party notice of the date, time and courtroom in which the scheduling and discovery conference is set, and
- (c) serve the Affidavit for Judicial Assignment (**WAKE-DOM-2**) on the responding party (if required by these Rules).

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

- (a) **Duty of Financial Disclosure.** In addition to the Equitable Distribution Inventory referred to in Rule 11.4 (c), every party to an action in which equitable distribution is an issue has a duty to provide the documents designated in this Rule to the other party or their counsel of record without awaiting a formal discovery request. The designated documents are defined hereinafter as “Initial Disclosures (Equitable Distribution)”
 - (1) **First Party to File Equitable Distribution Claim.** The party who is first filing a claim for equitable distribution should be aware of the requirement for Initial Disclosures and start the accumulation process **PRIOR TO** filing of the claim so that the Initial Disclosures can be made shortly after filing. The party first filing a claim for equitable distribution is required to provide his or her Initial Disclosures within 30 days of filing the claim for equitable distribution. Within 30 days after filing a claim for equitable distribution, the moving party shall file and serve on the opposing party a Certification of Initial Disclosure (Equitable Distribution) (**WAKE-DOM-17B**) certifying that he or she has provided the documents required by Rule 11.6(b),

and for any documents not provided, a detailed explanation of the grounds for not providing the required documents.

- (2) **Party Responding to or Second to File Equitable Distribution Claim.** The party responding to an equitable distribution claim or counterclaiming for equitable distribution (i.e. second to file) is required to provide his or her Initial Disclosures within 30 days of service of the initiating party's complaint, claim or motion for equitable distribution. Within 30 days after service upon him or her of a claim for equitable distribution, the responding party shall file and serve on the opposing party a Certification of Initial Disclosures (Equitable Distribution) (**WAKE-DOM-17B**) certifying that he or she has provided the documents required by Rule 11.6(b), and for any documents not provided, a detailed explanation of the grounds for not providing the required documents.

(b) **Documents to be Provided as Initial Disclosures.** ****UNLESS OTHERWISE SPECIFIED, THE DOCUMENTS AND INFORMATION PROVIDED SHALL BE FOR THE FULL CALENDAR YEAR PRECEDING THE DATE OF SEPARATION THROUGH THE DATE OF SERVICE OF THE INITIAL DISCLOSURES.**

- (1) All documents pertaining to any real property in which the party claims a legal or equitable interest during the marriage, and owned on the date of separation, whether or not currently owned on the date of service of the Initial Disclosures, including, but not limited to, deeds, deeds of trust, promissory notes, closing documents, amortization schedules, appraisals or listing contracts.
- (2) All documents pertaining to any motor vehicle (land, water, or air), owned on the date of separation, in which the party claims a legal or equitable interest during the marriage, whether or not currently owned on the date of service of the Initial Disclosures, including, but not limited to, titles, bills of sale, promissory notes, and amortization schedules.
- (3) All documents pertaining to any defined contribution plan, defined benefit plan, pension plan, SEP, IRA, Keogh, retirement, profit-sharing plan or other deferred compensation or retirement plan in which the party claims a legal or equitable interest during the marriage and owned on the date of separation whether or not currently owned on the date of service of the Initial Disclosures, including, but not limited to, account statements, plan descriptions, benefit statements, and account valuations.
- (4) All documents pertaining to any life, casualty or liability insurance in which the party claims a legal or equitable interest during the marriage and owned on the date of separation, including, but not limited to, policy contracts or descriptions, statements, and premium payment vouchers.
- (5) All documents pertaining to any secured or non-secured debt for which the party claims the opposing party has a legal or equitable obligation acquired during the marriage and owed on the date of separation, including, but not limited to, consumer credit account (credit card) statements, installment debt payment vouchers, promissory notes, account statements, and credit reports.
- (6) All documents pertaining to any stocks, bonds, mutual funds or other investments in which the party claims a legal or equitable interest during the marriage and owned on the date of separation, whether or not currently owned on the date of service of the Initial Disclosures, including, but not limited to, investment account statements, company stock plan descriptions or statements and stock certificates.

- (7) All documents pertaining to any checking, savings or other financial account in which the party claims a legal or equitable interest during the marriage and owned on the date of separation, whether or not currently owned on the date of service of the Initial Disclosures, including, but not limited to, monthly account statements and check registers.
 - (8) Complete copies of signed and filed federal and state individual tax return(s) filed by the party, or on the party's behalf (whether filed individually or jointly with another) including all schedules and attachments (W-2 forms, 1099 forms, etc.) for the past 5 years, together with all year-end documentation (W-2 forms, 1098 forms, 1099 forms, extension requests, etc.). For the most recent tax year, in the event the tax return or returns have yet to be filed, or if any of the last 5 years tax returns have not been filed, any requests for extension of time to file and correspondence with the taxing agency (e.g. state department of revenue and/or IRS).
 - (9) If the party has or had an interest of 5% or greater, as a shareholder in a closely held corporation, partner in a partnership, member of a limited liability company or joint venture during the marriage and owned on the date of separation, whether or not currently a shareholder, partner or member on the date of service of the Initial Disclosures the following must be provided: (1) 5 years signed and filed corporate, partnership, LLC or other entity federal and state tax returns including all schedules and attachments filed with the returns; (2) fiscal year end financial statements (whether internal, audited, reviewed or compiled) for each full calendar year preceding the date of separation; (3) monthly financial statements (profit, loss and balance sheets) for each month preceding the date of separation if the separation occurred in a year for which a tax return had not yet been filed; and (4) a monthly financial statement for the month preceding, the month of and the month following the date of separation.
 - (10) All personal financial statements provided to any financial institution or other entity or person in last three calendar years preceding the date of separation through the date of service of the Equitable Distribution Certification.
 - (11) All opinions of value or appraisals of any real or personal acquired by the parties during the marriage and prior to the date of separation.
 - (12) All bills of sales or other documentation of real or personal property sold or transferred in the 12 months preceding the date of separation or after the date of separation through the date of service of the Initial Disclosures.
 - (13) Documents showing all income from all sources since the party's last filed tax return.
- (c) **Scope.** The disclosing party is required to provide the documents specified in Rule 11.6 (b) which are in his or her custody or control. Documents are defined to be in the custody or control of the party if such documents can be obtained by him or her if: (a) a party is a joint title or account holder; or (b) the documents were prepared by a third party (e.g., CPA, accountant, bookkeeper) at his or her direction or on his or her behalf whether individually or jointly with another.

11.7 Purpose of Inventory and Affidavit. The purpose of the Equitable Distribution Inventory (EDI) (WAKE-DOM-18) is for each party to make a good faith disclosure of all known marital property and debt existing on the date of separation, and the value of such property or debt. Because this inventory shall be served on the opposing party within thirty days of filing an equitable distribution claim (for the moving party) or thirty days of receipt of the other party's inventory (for the responding party), and prior to completion of discovery, it shall not be deemed complete or binding, but is in the nature of a "best efforts" listing prior to discovery.

The purpose of the Equitable Distribution Affidavit (EDA) (**WAKE-DOM-19**) is to have a sworn statement which is a complete listing, on one form, of all of the marital, separate, and divisible property and debt, along with date of separation and current values, by no later than the final pre-trial conference, so that the assigned judge may review the affidavit, place it in the court file, and have it available at trial.

Neither the inventory nor the affidavit shall be filed by the parties in the Clerk's office. A certificate of service of both the inventory and the affidavit shall be filed in the Clerk's office.

11.8 Method of Disclosure. The Initial Disclosures required under this Rule shall be made by furnishing copies of the documents to the attorney of record for the opposing party at his/her business address, or, if the opposing party is not represented (*pro se*), by furnishing the disclosures to the opposing party via the U. S. Postal Service, on or before the required due date. The Initial Disclosures may be made by electronic mail provided that the documents are complete, readable and in PDF format. If so, the disclosing party will request a "read receipt" to document receipt of the Initial Disclosures. If no e-mail read receipt is obtained within 24 hours of emailing the Initial Disclosures, the disclosing party will serve the Initial Disclosures using the U.S. Postal Service or hand delivery.

11.9 Certification of Initial Disclosures (Equitable Distribution). Each party making his or her Initial Disclosures shall simultaneously serve on the opposing party or his or her counsel of record, if the opposing party is represented, and file with the Court a Certification of Initial Disclosure (**WAKE-DOM-17B**) signed by the disclosing party stating, on an itemized basis, that each required disclosure has taken place on or before the due date. If the Initial Disclosures are incomplete, the party from whom the Initial Disclosures are due will have the burden to show good cause why particular items of the required Initial Disclosures cannot or were not made on or before the date the disclosures are/were due.

11.10 Effect of Failure to Comply. This Rule providing for a duty of disclosure shall constitute a discovery request within the meaning of the North Carolina Rules of Civil Procedure. Failure to establish good cause by the party claiming equitable distribution may be grounds for continuation of a hearing for an interim or partial distribution of marital property or return of separate property or such other sanction as provided by Rule 37 of the NC Rules of Civil Procedure. Failure to establish good cause by the party responding to a claim for equitable distribution (second person to file) may be grounds for denying that party the right to defend a motion for interim or partial distribution or for return of separate property or such other sanction as may be provided by Rule 37 of the NC Rules of Civil Procedure.

11.11 Duty to Amend Initial Disclosures. After the Initial Disclosures are made pursuant to this Rule, each party shall be under a continuing duty to amend or supplement the original documentation if there has been a change in the form or substance of any of the original information provided (e.g., an amended tax return, adjusted or revised financial statements).

11.12 Confidentiality. Documents provided by a party pursuant to Rules 11.6, 11.8, and 11.9 to the opposing party and/or his or her attorney are deemed confidential and may be disclosed only to the opposing party, his or her attorneys and other professional or financial advisors who will be equally bound by the requirement of confidentiality. Either party may seek additional restrictions against disclosure or relief therefrom as may be provided by the NC Rules of Civil Procedure; however, filing of a motion for a protective order will not be grounds for failure to serve the Initial Disclosures on a timely basis.

11.13 Status Conference. The Court shall discharge each of the duties set forth in N.C.G.S. §50-21(d) and on the timetable in Rule 11.16, shall take such further action as may be necessary to resolve pending motions or other issues between the parties, shall order a mediated settlement conference or other alternative dispute resolution pursuant to Rule 12 and shall set a definite date for an initial pretrial

conference. All parties shall either be present in court or available by telephone to his or her attorney at the time of the status conference.

11.14 Initial Pretrial Conference. The Court shall discharge each of the duties set forth in N.C.G.S. §50-21(d) and on the timetable in Rule 11.16, shall take such further action as may be necessary to prepare the case for trial and shall set a definite date for a final pretrial conference and for the trial of the case. All parties shall either be present in court or available by telephone to his/her attorney at the time of this conference.

11.15 Final Pretrial Conference. The Court shall discharge each of the duties set forth in N.C.G.S. §50-21(d) and set forth on the timetable in Rule 11.16. Each party shall be present in court at the time of this conference.

11.16 Equitable Distribution Claims Timetable.

Time	Event	Responsible Person
Upon first filing of equitable distribution claim	Set status conference within 75 days from date claim is filed	Moving Party and DCC
30 days after filing of claim for equitable distribution	Serve on responding party an Equitable Distribution Inventory (WAKE-DOM-18) as set out in Rule 11.7 and serve Initial Disclosure documents pursuant to Rule 11.6. A certificate of service of the EDI and the Certification of Initial Disclosures (Equitable Distribution) (WAKE-DOM-17B) shall be filed in the Clerk’s office.	Moving Party
30 days after service of first Equitable Distribution Inventory	Serve an Inventory and Initial Disclosure (WAKE-DOM-17B) documents pursuant to Rule 11.6	Responding Party
75 days after filing of first pleading	Status Conference: <ul style="list-style-type: none"> • Schedule discovery, including dates for completion and any motions to compel • Appoint mediator if no designation of mediator or stipulation for other alternative dispute resolution procedure • Enter date for completion of mediated settlement conference • Appoint expert witnesses • Determine date of separation • Set date for disclosure of expert witnesses • Set date for initial pre-trial conference • Set date for final pretrial conference • Each party should be present in court or available by telephone with their attorney at the time of this conference It is strongly recommended that the attorneys and parties meet before the day of status conference to discuss stipulations,	DCC

	discovery, expert witness and other matters which can be resolved at this conference	
No later than 210 days	Court ordered mediated settlement conference held	Moving party, responding party & mediator
No later than 210 days	Certification from court appointed mediator that impasse was declared or settlement reached	Court appointed mediator
At initial pre-trial conference (to be held between the time of the status conference and the final pretrial conference)	<ul style="list-style-type: none"> • Review status of case • Enter date for completion of discovery • Enter date for filing and service of Motions, and determine date on which the final pre-trial conference shall be held • Determine date when case shall proceed to trial • Set dates for service and completion of final pre-trial order • Each party should be present in court or available by telephone with their attorney at the time of this conference 	Assigned judge
20 days before final pretrial	Moving party serves his/her Equitable Distribution Affidavit (WAKE-DOM-19) pursuant to Rule 11.7 on the other party, and files certificate of service in the Clerk's office.	Moving party
10 days after service of Equitable Distribution Affidavit (WAKE-DOM-19)	Responding party serves completed Equitable Distribution Affidavit (WAKE-DOM-19) pursuant to Rule 11.7 on the other party, and files certificate of service in the Clerk's office.	Responding party
At final pre-trial conference (within 240 days after first equitable distribution claim is filed)	<ul style="list-style-type: none"> • Pre-trial conference conducted pursuant to Rules of Civil Procedure. Rule on any matters reasonably necessary to effect a fair and prompt disposition of the case in the interest of justice. • Each party shall be present in court at the time of this conference • Equitable Distribution Affidavit (WAKE-DOM-19) shall be completed prior to this conference and provided to the judge at the final pretrial conference. 	Assigned judge
Trial date (no later than 270 days after first equitable distribution claim is filed)	Trial	Assigned judge

11.17 COMPLEX EQUITABLE DISTRIBUTION CASES

(a) **Motion for Designation of An Exceptional Case as a Complex Equitable Distribution Case.** Within five (5) days of the filing of a motion by any party, or *ex mero motu* (on the judge's own motion), a judge assigned to a particular case may recommend to the Chief District Court Judge that a particular case is exceptional and should be designated a "Complex Equitable Distribution Case." The Chief District Court Judge may accept or reject the recommendation of the assigned judge. If the recommendation is accepted, the Chief District Court Judge shall enter an Order of Designation

(**WAKE-DOM-29**) designating the case as a Complex Equitable Distribution Case.

- (1) One or more of the following factors may be grounds for designation of an equitable distribution case or claim as a Complex Equitable Distribution Case:
 - a) the valuation of one or more significant business interests defined as a corporation (S-corporation and C-corporation), partnership, LLC, sole proprietorship, joint venture or other entity:
 - 1) requiring independent valuation of assets owned by the business such as real estate, personal property, copyrights, trademark or intellectual property and valuation of the business interest as a whole, a majority or minority interest; and/or
 - 2) multiple valuation dates such as date of marriage, date of separation and date of distribution for business interest(s); and/or
 - 3) unique valuation issues.
 - b) significant classification issues of monies and assets typically arising in longer marriages (15 years or longer) requiring identification of pre-marital assets and/or gifts and inherited assets and tracing of funds and assets through sales and purchases over a period of years and/or multiple accounts to determine appropriate classification as of the date of separation.
 - c) a large number of significant or substantial assets requiring valuation including:
 - 1) real estate (5 or more pieces of property); and/or
 - 2) stock and stock options; and/or
 - 3) retirement plan benefits not to be divided by QDRO (3 or more); and/or
 - 4) business interests (see above).

For purposes of this rule, "significant" or "substantial" should be defined as considerable in importance to the marital estate, value, degree, volume, or complexity. Consideration should be given to the amount and nature of anticipated pre-trial discovery, including the documents that must be provided and depositions taken to have sufficient information to perform a valuation or valuations, complete valuation of multiple assets or perform tracing sufficient to classify assets as separate, marital and/or divisible.
- (2) **Case Caption.** For any case designated a Complex Equitable Distribution Case, the case caption shall include the reference "CEDC" directly beneath the case file number.

- (b) **Case Management Conference for Complex Equitable Distribution Cases.** For any case that is designated as a Complex Equitable Distribution Case, all counsel, the assigned judge and assigned DCC will, within ten (10) days of the Order of Designation (**WAKE-DOM-29**) or such shorter or longer time as the Court shall order, meet to discuss the following potential components of a Case Management/Scheduling and Discovery Order:
- (1) A preliminary listing of the principal legal and factual issues which counsel believe will need to be decided in the case including the identification, classification and valuation of separate, marital and/or divisible property;
 - (2) The length of the discovery period, dates for response to document requests, supplementation and means for expeditious resolution of discovery disputes;
 - (3) An estimate of the volume of documents and/or computerized information likely to be the subject of discovery in the case from parties and nonparties and whether there are technological means which may render document discovery more manageable at an acceptable cost;
 - (4) An estimate of the nature and number of assets needing to be valued, the anticipated number of valuations and estimated time needed for completion of the valuations;
 - (5) The anticipated number of fact and expert witnesses and a preliminary schedule for depositions of such persons and entities as the parties are able to identify;
 - (6) The scheduling of any mediated settlement conference and the selection of a mediator or group of mediators;
 - (7) The number of interrogatories which shall be allowed each party;
 - (8) Any modification of deadlines for required filings including the Initial Disclosures or Equitable Distribution Affidavit (**WAKE-DOM-19**); and
 - (9) Such other matters as the Court may assign to the parties for their consideration.
- (c) **Case Management/Scheduling and Discovery Order.** The assigned judge will enter a Case Management/Scheduling and Discovery Order following the case management conference setting forth the deadlines and other obligations of the parties and counsel necessary for the efficient management of the case. The Case Management/Scheduling and Discovery Order may be modified by consent of the parties and the assigned DCC or by the assigned judge for good cause shown.

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

12.1 Purpose of Mandatory Alternative Dispute Resolution Procedures. Pursuant to N.C.G.S. §7A-38.4A, Rule 12 is promulgated to implement a system of alternative dispute resolution (hereafter “ADR”) designed to focus the parties’ attention on settlement rather than on trial preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in ADR procedures voluntarily at any time before or after those ordered by the Court pursuant to these Rules. In the event of a conflict between these Rules and the North Carolina Supreme Court Rules, the Supreme Court Rules shall govern.

12.2 Duty of Counsel to Consult with Clients and Opposing Counsel about ADR Procedures. Counsel, upon being retained to represent any party to a district court case involving family financial issues, including equitable distribution, child support, alimony, post-separation support, or claims arising

out of contracts between the parties under N.C.G.S. §50-20(d), §52-10, §52-10.1 or §52-B shall advise his or her client regarding the ADR procedures approved by this Rule and, at or prior to the status conference mandated by N.C.G.S. §50-21(d), shall attempt to reach agreement with the opposing party on the appropriate ADR procedure for the action.

12.3 Ordering ADR Procedures.

(a) **Equitable Distribution Status Conference.** At the status conference mandated by N.C.G.S. §50-21(d) and Rule 11.13, the Court shall include in its scheduling order a requirement that the parties and their counsel, if any, attend a mediated settlement conference or, if the parties agree, other ADR procedures conducted pursuant to these Rules, unless excused by the Court pursuant to these Rules. The Court shall also execute an Order for Mediated Settlement Conference in Family Financial Case (**AOC-CV-824**).

(b) **Scope of ADR Proceedings.** All other financial issues existing between the parties when the equitable distribution ADR proceeding is ordered, or at any time thereafter, may be discussed, negotiated or decided at the proceeding.

Child custody and visitation issues may be the subject of ADR proceedings ordered pursuant to these Rules only in those cases in which the parties and the mediator have agreed to include them **and** in which the parties have been exempted from, or have fulfilled the requirements of, the Custody and Visitation Mediation Program established pursuant to Rule 8.

(c) **Authorizing ADR Procedures Other Than Mediated Settlement Conference.** The parties and their attorneys are in the best position to know which ADR procedure is appropriate for their case. Therefore, the Court shall order the use of an ADR procedure authorized by Rule 12.19 if the parties have agreed upon the procedure to be used, the neutral person to be employed and the compensation of the neutral person. If the parties have not agreed on all three items, then the Court shall order the parties and their counsel to attend a mediated settlement conference conducted pursuant to these Rules.

The motion for an order to use an ADR procedure other than a mediated settlement conference shall be filed on Motion for an Order to Use Settlement Procedure other than Mediated Settlement Conference or Judicial Settlement Conference in Family Financial Case (**AOC-CV-826**) at the status conference and shall state:

- 1) the ADR procedure chosen by the parties;
- 2) the name, address and telephone number of the neutral person selected by the parties;
- 3) the rate of compensation of the neutral person; and
- 4) that all parties consent to the motion.

(d) **Content of Order.** The Court's order shall (1) require that a mediated settlement conference or other ADR proceeding be held in the case; (2) establish a deadline for the completion of the conference or proceeding; and (3) state that the parties shall be required to pay the neutral person's fee at the conclusion of the mediated settlement conference or proceeding unless otherwise ordered by the Court.

The order shall be contained in the Court's scheduling order. Any order entered at the completion of a status conference may be signed by the parties or their attorneys in lieu of submitting the forms referred to hereinafter relating to the selection of a mediator.

(e) **Court-Ordered ADR Procedures in Other Family Financial Cases.** Any party to an action involving family financial issues not previously ordered to a mediated settlement conference may move the Court to order the parties to participate in an ADR procedure.

Such motion shall be made in writing, state the reasons why the order should be allowed and be served on the opposing party. Any objection to the motion, or any request for hearing, shall be filed in writing with the Court within 10 days after the date of the service of the motion. Thereafter, the assigned judge shall rule upon the motion and notify the parties or their attorneys of the ruling. If the Court orders an ADR proceeding, then the proceeding shall be a mediated settlement conference conducted pursuant to these Rules. Other ADR procedures may be ordered if the circumstances outlined in subsection (c) above have been met.

- (f) **Motion to Dispense With ADR Procedures.** A party may move the Court to dispense with the mediated settlement conference or other ADR procedure. Such motion shall be in writing and shall state the reasons the relief is sought. For good cause shown, the Court may grant the motion. Such good cause may include the fact that the parties have participated in an ADR procedure prior to the status conference or have elected to resolve their case through arbitration or referee pursuant to Rule 13 or that one of the parties has alleged domestic violence. The Court may also dispense with the mediated settlement conference for good cause upon its own motion.

12.4 Selection of Certified Family Financial Mediator by Agreement of the Parties. The parties may select a family financial mediator certified pursuant to these Rules by agreement by filing with the Court a Designation of Mediator in Family Financial Case (**AOC-CV-825**) at the status conference. Such designation shall state the name, address and telephone number of the mediator selected, state the rate of compensation of the mediator, state that the mediator and opposing counsel have agreed upon the selection and rate of compensation, and state that the mediator is certified pursuant to these Rules. A copy of the completed Designation of Mediator in Family Financial Case (**AOC-CV-825**) submitted to the Court and a copy of the Court's order requiring a mediated settlement conference shall be delivered to the mediator by the parties.

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

12.6 Mediator Information Directory. To assist the parties in the selection of a mediator by agreement, the Family Court Administrator shall prepare and keep current a central directory of information on all mediators certified pursuant to these Rules. Such information shall be collected on loose-leaf forms and be kept in one or more notebooks made available for inspection by attorneys and parties in the Family Court Office.

12.7 Disqualification of Mediator. Any party may move the Court for an order disqualifying the mediator by submitting the request to the assigned DCC. For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to Rule 12.4 or 12.5. Nothing in this provision shall preclude mediators from disqualifying themselves.

12.8 Site and Time of the Mediated Settlement Conference.

- (a) The mediated settlement conference shall be held in any location agreeable to the parties and the mediator. If the parties cannot agree on a location, the mediator shall be responsible for reserving a neutral place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and *pro se* parties.

- (b) The conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date. The Court's order issued pursuant to Rule 12.3(a) shall state a deadline for completion of the conference which shall be no later than 210 days after filing of the action, unless extended by the Court. The mediator shall set a date and time for the conference pursuant to Rule 12.16(f).

12.9 Requests to Expedite, Extend, or Exempt.

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

12.10 Recesses. The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set during the conference, no further notification is required for persons present at the conference.

12.11 Delay of Other Proceedings. The mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.

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

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

12.13 Finalizing by Notarized Agreement, Consent Order and/or Dismissal. The essential terms of the parties' agreement shall be reduced to writing as a summary memorandum at the conclusion of the conference unless the parties have reduced their agreement to writing, have signed it and in all other respects have complied with the requirements of Chapter 50 of the North Carolina General Statutes. The parties and their counsel shall use the summary memorandum as a guide to drafting such agreements and orders as may be required to give legal effect to the its terms.

Within thirty (30) days of reaching agreement at the conference, all final agreements and other dispositive documents shall be executed by the parties and notarized, and judgments or voluntary dismissals shall be filed with the Clerk of Court and a copy shall be delivered to the assigned DCC. In the

event the parties fail to agree on the wording or terms of a final agreement or court order, the mediator may schedule such other sessions as the mediator determines would assist the parties.

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

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

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

12.16 Authority and Duties of the Mediator

- (a) **Control of Conference.** The mediator shall at all times be in control of the conference and the procedures to be followed. However, the mediator's conduct shall be governed by standards of conduct promulgated by the North Carolina Supreme Court upon the recommendation of the Dispute Resolution Commission, which shall contain a provision prohibiting mediators from prolonging a conference unduly.
- (b) **Disclosure.** The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- (c) **Private Consultation.** The mediator may communicate privately with any participant during the conference. However, there shall be no *ex parte* communication before or outside the conference between the mediator and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this Rule prevents the mediator from engaging in *ex parte* communications, with the consent of the parties, for the purpose of assisting settlement negotiations.
- (d) **Declaring Impasse.** It is the duty of the mediator to determine in a timely manner that an impasse exists and that the conference should end. The mediator shall inquire of and consider the desires of the parties to cease or continue the conference.
- (e) **Reporting Results of Conference.** In accordance with the North Carolina Supreme Court Rules, the mediator shall provide a Report of Mediator or other Neutral in Family Financial Case (AOC-CV-827) to the assigned DCC, within 10 days of the completion of the conference, stating whether an agreement was reached by the parties. If the case is settled or otherwise disposed of prior to the conference, the mediator shall file the report indicating the disposition of the case, the person who informed the mediator that settlement had been reached, and the person who will present final documents to the Court.

If an agreement was reached at the conference, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the persons designated to file such consent judgment or dismissals. If partial agreements are reached at the conference, the report shall state what issues remain for trial. The mediator's report shall inform the Court of the absence without permission of any party or attorney from the mediated settlement conference.

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

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

12.17 Compensation of the Mediator and Sanctions.

- (a) **By Agreement.** When the mediator is selected by agreement of the parties, compensation shall be as agreed upon between the parties and the mediator.
- (b) **By Court Order.** When the mediator is appointed by the Court, the parties shall compensate the mediator for mediation services at the rate of \$125 per hour. The parties shall also pay to the mediator a one-time, per case administrative fee of \$125, which accrues upon appointment and shall be paid if the case settles prior to the mediated settlement conference or if the Court approves the substitution of a mediator selected by the parties for a court-appointed mediator.
- (c) **Payment of Compensation by the Parties.** Unless otherwise agreed to by the parties or ordered by the Court, the mediator's fee shall be paid in equal shares by the parties. Payment shall be due and payable upon completion of the conference.
- (d) **Inability to Pay.** No party found by the Court to be unable to pay a full share of a mediator's fee shall be required to pay a full share. Any party required to pay a share of a mediator fee pursuant to Rule 12.17 (b) and (c) may move the Court to pay according to the Court's determination of that party's ability to pay. This motion shall be submitted on **AOC-CV-828**.

In ruling on such motions, the assigned judge may consider the income and assets of the moving party and the outcome of the action. The Court shall enter an order granting or denying the party's motion. In so ordering, the Court may require that one or more shares be paid out of the marital estate. Any mediator conducting a settlement conference shall accept as payment in full of a party's share of the mediator's fee that portion paid by or on behalf of the party pursuant to an order of the Court.

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

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

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

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

- (a) Be designated as a certified family financial mediator by the Dispute Resolution Commission pursuant to the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and other Family Financial Cases, **or** be designated as a certified Superior Court Mediator by the Dispute Resolution Commission pursuant to the North Carolina Supreme Court Rules for Mediated Settlement Conferences **and** be certified as a family law specialist by the North Carolina State Bar Board of Legal Specialization, **and** agree to be placed on the mediator appointment list for the Tenth Judicial District and accept appointments, unless the mediator has a conflict of interest which would justify disqualification as a mediator.
- (b) Certification may be revoked or not renewed at any time if it is shown to the satisfaction of the Dispute Resolution Commission that a mediator no longer meets the qualifications established or has not faithfully observed the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases or those of this district. Any person who is or has been disqualified by a professional licensing authority of any state for misconduct shall be ineligible to be certified under this Rule.

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

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

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

12.21 Rules for Neutral Evaluation. Neutral evaluation is an informal, abbreviated presentation of facts and issues by the parties to an evaluator at an early stage of the case. The neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, providing a candid assessment of the merits of the case, settlement value, and a dollar value or range of potential awards if the case proceeds to trial. The evaluator is also responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.

- (a) **Pre-Conference Submissions.** No later than twenty (20) days prior to the date established for the neutral evaluation conference, each party shall furnish the evaluator with written information about the case, and shall, at the same time, certify to the evaluator that the party has served a copy of such summary on all other parties to the case. The information provided to the evaluator and the other parties shall be a summary of the significant facts and issues in the party's case and shall have attached to it copies of any documents supporting the party's summary. Information provided to the evaluator and to the other parties pursuant to this paragraph shall not be filed with the Court.
- (b) **Replies to Pre-Conference Submissions.** No later than ten (10) days prior to the date established for the neutral evaluation conference, any party may, but is not required to, send additional written information to the evaluator responding to the submission of an opposing party. The response furnished to the evaluator shall be served on all other parties, and the party sending the response shall certify service to the evaluator, but this response shall not be filed with the Court.
- (c) **Conference Procedures.** Prior to a neutral evaluation conference, the evaluator may request additional written information from any party. At the conference, the evaluator may address questions to the parties and give them an opportunity to complete their summaries with a brief oral statement.
- (d) **Modification of Procedure.** Subject to approval of the evaluator, the parties may agree to modify the procedures required by these Rules for neutral evaluation.
- (e) **Evaluator's Duties.**
 - (1) **Evaluator's Opening Statement.** At the beginning of the conference the evaluator shall define and describe the following points to the parties:
 - a) The process of the proceeding;
 - b) The differences between the proceeding and other forms of conflict resolution (i.e., that the neutral evaluation conference is not a trial, the evaluator is not a judge, the evaluator's opinions are not binding on any party, and the parties retain their right to trial if they do not reach a settlement);
 - c) The costs of the proceeding;
 - d) The fact that any settlement reached will be only by mutual consent of the parties;
 - e) The inadmissibility of conduct and statements made during the conference in any subsequent court proceedings; and
 - f) The duties and responsibilities of the neutral and the participants.
 - (2) **Oral Report to Parties by Evaluator.** In addition to the written report to the Court required by these Rules, at the conclusion of the neutral evaluation conference, the evaluator orally shall advise the parties of the evaluator's opinion of the case. Such opinion shall include a candid assessment of the merits of the case, estimated settlement value, and the strengths and weaknesses of each party's claims if the case proceeds to trial. The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefore. The evaluator shall not reduce his or her oral report to writing and shall not inform the Court thereof.
 - (3) **Report of Evaluator to Court.** Within ten (10) days after the completion of the neutral evaluation conference, the evaluator shall provide a Report of Mediator or Other Neutral in Family Financial Case (**AOC-CV-827**) to the assigned DCC, stating when and where the conference was held, the names of those persons who attended

the conference, whether or not an agreement was reached by the parties, and if an agreement was reached, the name of the person designated to file judgments or dismissals concluding the action.

- (f) **Evaluator's Authority to Assist Negotiations.** If all parties at the neutral evaluation conference request and agree, the evaluator may assist the parties in settlement discussions. If the parties do not reach a settlement during such discussions, the evaluator shall complete the neutral evaluation conference and make a written report to the Court as if such settlement discussions had not occurred. If the parties reach agreement at the conference, they shall reduce their agreement to writing.

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

- (a) **Settlement Judge.** The assigned judge shall not be the settlement judge. The settlement judge shall be selected by the assigned judge and must agree to participate in the judicial settlement conference.
- (b) **Conducting the Conference.** The form and manner of conducting the conference shall be in the discretion of the settlement judge. The settlement judge may not impose a settlement on the parties but will assist them in reaching a resolution of all claims.
- (c) **Confidential Nature of the Conference.** The judicial settlement conference shall be conducted in private. No stenographic or other record may be made of the conference. Only the parties and their counsel may attend. Any communications made during the conference may not be used in any Court proceeding or communicated to the assigned judge. The settlement judge may report that a settlement was reached and the settlement shall be reduced to writing before leaving the conference.
- (d) **Report of the Judge.** Within ten (10) days after the completion of the judicial settlement conference, the settlement judge shall file a written report with the Court using the Report Of Neutral Conducting Settlement Procedure Other Than Mediated Settlement Conference In Family Financial Case (**AOC-CV-834**) form, stating when and where the conference was held, the names of the persons in attendance, whether or not an agreement was reached between the parties and the name of the person designated to file judgments or dismissals concluding the action.

RULE 13: ARBITRATION, REFERENCE, PARENTING COORDINATORS, AND COLLABORATIVE LAW PROCEEDINGS

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

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

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

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

13.3 Parenting Coordinators.

(a) **General:**

- (1) Judges may appoint a parenting coordinator in a high conflict case if the appointment would serve the best interest of the children (**WAKE-DOM-24**). To be classified as a high conflict case, the parties must demonstrate an ongoing pattern of excessive litigation, anger and distrust, verbal abuse, physical aggression or threats of physical aggression, communication issues regarding the children or other conditions that the court determines warrant the appointment of a parenting coordinator.
- (2) The Court may appoint a parenting coordinator on the motion of either party, motion of a GAL or on the Court's own motion.
- (3) Judges may not appoint a parenting coordinator without the consent of the parties if no custody order or parenting plan has been entered; however, once an order (except *ex parte*) or parenting plan is entered, the Court may appoint a parenting coordinator at any time upon a finding that the case is a high conflict case and the parties have the ability to pay for the parenting coordinator.
- (4) Parenting coordinators are chosen from a list maintained by the District Court. To be included on the Court's list of parenting coordinators, the person must meet all of the following requirements:
 - a) Hold a masters or doctorate degree in psychology, law, social work, counseling, medicine or a related subject area;
 - b) Have at least five years of related professional post-degree experience;
 - c) Hold a current license in the parenting coordinator's area of practice, if applicable; and
 - d) Participate in 24 hours of training in topics related to the developmental stages of children, the dynamics of high conflict families, the stages and effects of divorce, problem solving techniques, mediation and other legal issues.
 - e) To remain eligible to serve as a parenting coordinator, the individual must attend parenting coordinator seminars as required by statute.
 - f) File a Request for Inclusion on the Parenting Coordinator List (**WAKE-DOM-25**) with the Family Court Office for approval by the Chief District Court Judge.

- (b) **Roles of Parenting Coordinator.** The roles of a parenting coordinator are as follows:
- (1) Assist parents in implementing a custody/visitation order on an ongoing basis;
 - (2) Reduce conflict between parents;
 - (3) Facilitate both parents' relationships with the children;
 - (4) Provide attorneys and any party with written summaries of developments in the case;
 - (5) Act to resolve any minor issues that may or may not be specifically governed by the court order, over which the parents reach an impasse, until further orders are entered;
 - (6) Empower the parties to successfully resolve conflicts over the children on their own;
 - (7) Provide the attorneys, parties and any person in the process of making a custody recommendation to the Court with written summaries of developments in the case following every meeting with the parents. Any written communication shall be sent to all attorneys (or parties if no attorneys) and any GAL. The parenting coordinator must maintain notes or records of all meetings with parents, and such records or notes may be subpoenaed only by the assigned judge. The Court shall review the records in camera and release them to the parties or their attorneys only if they would assist the parties in the presentation of their case at trial.
- (c) **Authority of Parenting Coordinator**
- (1) Parties must follow the decision of the parenting coordinator until such time as the court reviews the parenting coordinator's decision;
 - (2) Any party, the parenting coordinator, or the attorney for any party may request a hearing to review the parenting coordinator's decision;
 - (3) Parenting coordinators shall not address financial issues, but shall refer them to the attorneys;
 - (4) Parenting coordinators may not have any ex parte communication with the Court. However, the parenting coordinator may have ex parte communication with the parties or their attorneys.
 - (5) Parenting coordinators shall not provide professional services or counseling to either party or the children;
 - (6) Parenting coordinators may not have acted as a mediator or arbitrator in any dispute between the parties other than in their role as a parenting coordinators;
 - (7) Parenting coordinators shall maintain a conflicts checking system to ensure that they do not serve in a dual role for the parties or children;
 - (8) Parenting coordinators may report to Court if they believe the current custody order is not in the best interest of the minor children. If such a report to the Court is made, the Court must set a hearing on the parenting coordinator's report. A request for a hearing on the parenting coordinator's report shall be set forth on **WAKE-DOM-26**. Additionally, if the parenting coordinator perceives that there is a serious safety issue involving any child of the parties, the parent coordinator shall first contact the parties and their attorneys. If the issue is not addressed and resolved, the parent coordinator shall make his/her report to the court and the parties and request a hearing date on the issue.

- (9) Parenting coordinators shall not make fundamental changes to any custody order; however, should the parties agree to a fundamental change, the parenting coordinator shall submit the parties' agreement to the parties' attorneys for the preparation of a consent order.
 - (10) Parenting coordinators may only be subpoenaed by the assigned judge. The parties shall divide the cost of preparation and testimony on the part of the parenting coordinator based on the percentages set forth in the appointment order unless the Court in its discretion changes the allocation.
 - (11) Failure to follow a parenting coordinator's decision is punishable by the contempt powers of the Court.
- (d) **Appointment Conference.** Once the Court has made the decision to appoint a parenting coordinator, an appointment conference must be scheduled by the assigned DCC. The parties, their attorneys, the proposed parenting coordinator, and the assigned judge must all attend the appointment conference. At the appointment conference, the parties must provide a Financial Affidavit (**WAKE-DOM-10**), if relevant, along with any child support order or agreement entered by the parties.
- (1) At the appointment conference, the assigned judge shall:
 - a) Explain to the parties the parenting coordinator's role, authority and responsibilities as set forth in the order;
 - b) Determine what information each party must provide to the parenting coordinator;
 - c) Assign respective percentages of the parenting coordinators fees to be paid by each party;
 - d) Authorize the parenting coordinator to assess each party separate fees, if necessary, resulting from the negative conduct of a party;
 - e) Inform the parenting coordinator, the parties and the attorneys about the rules regarding communication with the court; and
 - f) Enter the appointment order.
 - (2) At the appointment conference, the parenting coordinator shall:
 - a) Bring all necessary releases, contracts and consents to be executed by the parties;
 - b) Set the first sessions with the parties.
- (e) **Fees and Expenses.** Parenting coordinators are entitled to reasonable compensation and retainers as required in their contracts. Any person desiring to act as a parenting coordinator must provide a written contract to the parties and obtain signatures on the contract before beginning to provide services. Either party or the parenting coordinator may request a hearing from the court in the event of a fee dispute. Failure to pay the fees of the parenting coordinator as set forth in the appointment order is punishable by the contempt powers of the court.
- The payment percentages shall be as directed by the judge.
- (f) **Termination or Modification of Appointment of Parenting Coordinator.** The court may modify or terminate the parenting coordinator appointment order for good cause upon motion of either party, at the request of the parenting coordinator (**WAKE-DOM-27**), upon agreement of the parties and the parenting coordinator or upon the Court's own motion.

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

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

RULE 14: MOTIONS TO CONTINUE

14.1 In scheduling hearings, both parties and/or their counsel are expected to work with the assigned DCC in calendaring matters within the Family Court Time Standards and in such a way as to avoid conflicts with other scheduled hearings, personal commitments (such as doctor's appointments, family obligations, etc.), designated secured leave, and other already scheduled matters. Further, both parties and/or their counsel are encouraged to make every attempt to work together to resolve any scheduling conflicts which may arise while still keeping within the established time standards. In the event that it becomes necessary for one party to file a motion to continue, the rules and procedures below shall apply.

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

- (a) Caption and file number of the case;
- (b) Term and/or date for which the case is set;
- (c) Reason for the request to continue. When a conflict in another court is the reason for continuance, the request must state the case number, the court in which the other case is pending, and the date when the matter in the other court was set;
- (d) The number of times the case has previously been continued;
- (e) A statement that all opposing counsel and/or parties have been sent a copy of the request.

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

14.3 Time Limits and Service of Motions. The original of a request for a continuance shall be filed in the Office of the Clerk of Superior Court and a copy shall be delivered to the assigned DCC at least

seven (7) working days preceding the first day of the session on which the case is scheduled to be heard. The motion to continue shall be served upon all parties and/or opposing counsel pursuant to the rules set out in the North Carolina General Statutes in a manner designed to give notice as expeditiously as possible. In addition, the moving party shall contact the opposing party/counsel by telephone or e-mail to inform him/her of the filing of a motion to continue. Any objection must be filed and delivered to the assigned DCC and served upon the movant no later than two (2) working days after the filing of the request for continuance.

14.4 Upon the expiration of the two (2) day objection period, the assigned DCC shall deliver the motion to continue and any objection filed by the opposing party/opposing counsel to the assigned judge who shall rule upon the motion; provided, however, the assigned DCC may grant any motion to continue which is consented to by both parties so long as the new hearing date falls within the established Family Court Time Standards for the matter being heard. In the event that a party and/or counsel fails to comply with the provisions of Rules 14.2 or 14.3, the request for a continuance is deemed denied without a hearing. For all motions to continue ruled upon by the assigned judge, the assigned DCC shall communicate the judge's decision on the motion to continue to the parties and/or counsel.

14.5 Absent exigent or unforeseeable circumstances or good cause, continuances shall not be granted. Factors to be considered by the Court when deciding whether to grant or deny a motion for continuance may include, but not be limited to:

- The effect on children and spouses if the issue is continued;
- Whether a temporary order is in effect that deals with the issue that is the subject of a motion to continue;
- The impact of a continuance on the safety of the parties or any other persons;
- The time standards established for various Family Court matters;
- The age of the case or motion;
- The status of the trial calendar;
- The number of previous continuances;
- The extent to which the movant had input into the scheduling of the trial date;
- The due diligence of the moving party on promptly making a motion for continuance as soon as practicable;
- Whether the reason for continuance is a short-lived event which would resolve prior to the scheduled court date;
- The existence of a legitimate conflict with another court setting;
- Whether counsel has secured leave at the time of the court setting;
- The period of delay caused if the motion is allowed;
- The position of the opposing party or counsel;
- Present or future inconvenience or unavailability of witnesses/parties, or attorneys if the case is continued;
- The status of discovery;
- Any other factor that promotes the fair administration of justice.

14.6 New Date. Upon the granting of a motion to continue, the matter shall be rescheduled to a date certain by the assigned DCC with input from counsel and/or parties whenever possible.

RULE 15: REQUESTS FOR PEREMPTORY SETTINGS

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

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

RULE 16: SETTLEMENTS

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

Cases will not be removed from the trial calendar or custody mediation requirements until a copy of a file-stamped consent order, Memorandum of Judgment/Order (**AOC-CV-220**), or dismissal is provided to the assigned DCC. A file-stamped copy of the Motion and Order to Waive Custody Mediation (**AOC-CV-632**) or a dismissal must also be provided to the CMO as required by Rule 8.15. Parties are encouraged to engage in settlement discussions at every opportunity. Family Court recognizes the importance to the family of bringing closure to these disputes, of minimizing misunderstandings that frequently occur when resolutions are not yet committed to writing, and the Court's responsibility to assist the parties in resolving these disputes. Unless agreements have been reduced to writing, signed by the parties, their attorneys, and the assigned judge prior to the time of the court date, parties and counsel are required to appear as scheduled. If a resolution has been reached but not drawn up by the time of the court date, the parties and attorneys are required to appear as scheduled and execute a Memorandum of Judgment/Order (**AOC-CV-220**).

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

RULE 17: CLOSING CASES

All claims, counterclaims, and motions must be disposed of by written order or stipulation of dismissal. In Family Court matters, when a judgment or order is entered which renders moot issues not addressed in the order, the Clerk of Court shall close the moot issues administratively upon being

informed of the judgment or order resolving the main issue. The Clerk of Court shall administratively enter as closed and remove from the pending docket the following issues as moot:

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

RULE 18: SUBMISSION OF ORDERS OR JUDGMENTS

18.1 Preparation and Time Limits. In general, orders/judgments shall be entered within 45 days of the date of the completion of the hearing or trial. Unless otherwise agreed by counsel for the parties or otherwise ordered by the Court, orders and judgments shall be prepared by the prevailing party. The prevailing party shall submit a draft of the proposed order/judgment to the opposing counsel (or the opposing party if *pro se*) no later than fifteen (15) days after a ruling is announced in open court or otherwise communicated to the parties. The opposing party shall make written response to the drafting party of any objections, modifications or additions to the proposed order/judgments within ten (10) days from the date the proposed order/judgment is delivered. All orders and judgments shall be captioned in such a way as to clearly designate all issues being adjudicated.

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

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

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

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

RULE 19: DOMESTIC VIOLENCE ACTIONS (CHAPTER 50B)

19.1 Filing and Hearing. To avoid confusion among clerks, the Court, and law enforcement, all Complaints, Motions, and Orders filed under Chapter 50B shall use the standard AOC forms authorized under that statute and available in the Office of the Clerk of Superior Court. Except as hereafter provided, N.C.G.S. Chapter 50B Domestic Violence actions shall be scheduled at sessions specially established for the hearing of those matters.

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

19.3 Consent Orders. It shall be in the discretion of the presiding judge as to whether to require either specific or general findings of acts of domestic violence prior to entry of a Domestic Violence Protective Order by consent. In no event, however, shall such Consent Order be entered without a stipulation that the plaintiff is entitled to the relief provided.

Consent orders pursuant to Chapter 50B involving the sale or transfer of property are discouraged but may, if no Chapter 50 action is pending, be entered in the discretion of the judge presiding over the Chapter 50B hearing if necessary to bring about a cessation of violence.

19.4 Previously Pending Chapter 50 Actions. In any case in which an action is filed under Chapter 50 and a subsequent action is filed under Chapter 50B, the presiding judge hearing the 50B matter shall contact the Family Court Office to determine the name of the assigned judge, if any. If a judge has been assigned to a pending domestic action involving the same parties, in the event an *ex parte* 50B order is entered, the 10-day hearing shall be scheduled before the assigned judge in domestic court, provided that it can be so scheduled within the time allowed by statute. In the event that it cannot be set before the assigned judge in the time allowed by statute, it shall be set as any other domestic violence 10 day hearing. The only issues to be heard shall be those raised in the Chapter 50B action.

19.5 Consolidation. Actions pursuant to Chapter 50B shall not be consolidated with actions pursuant to Chapter 50.

19.6 Requests for Custody Pursuant to Chapter 50B.

- (a) **Consent Orders.** No orders for custody will be entered, *even by consent*, unless a Domestic Violence Protective Order is entered. If there is no pending Chapter 50 action, and the parties, upon entry of a Domestic Violence Protective Order, consent to entry of a Temporary Order for Custody, said Order may be entered by the judge presiding in the Chapter 50B action. If there is an existing Chapter 50 action, the 50B consent order shall only be entered by the assigned judge.
- (b) **Order of Issues for Trial.** Where custody is being sought pursuant to Chapter 50B, the judge shall first determine whether cause exists for entry of a Domestic Violence Protective Order prior to hearing issues relating to the matter of custody and the best interest of the minor children.
- (c) **Use of Affidavits and Competent Evidence.** Requests for custody shall be heard on affidavits and the testimony of the parties. The only other evidence permitted shall be the testimony of a mental health professional or a social worker presently assigned to

investigate allegations regarding abuse, neglect, or dependency of the minor child(ren) or provide services to one or both of the parties.

Each party shall complete Factors for Consideration (**WAKE-DOM-28**) and submit the form prior to the commencement of the hearing.

In the event that an investigation is currently pending with the Department of Social or Human Services regarding a child for whom a 50B order is sought, the social worker instructing the litigant to file the action shall be present at the 10 day hearing. Upon entering an *ex parte* order, the Court shall issue a subpoena duces tecum ordering the appearance of the social worker with his or her records.

- (d) **Subsequent Motions.** In the event that a subsequent motion alleging violation of the custody portion of the order is filed, other than a criminal charge of violation of a 50B, the litigant shall complete an Affidavit of Judicial Assignment (**WAKE-DOM-2**) and take it to the DCJA for assignment of a judge. The motion shall then be calendared pursuant to Rule 3 of these Rules.

19.7 Child Support Provisions.

- (a) **Determination of a Child Support Obligation Pursuant to Chapter 50B.** No order for child support shall be entered pursuant to Chapter 50B if there is a pre-existing claim pursuant to Chapter 50. If there is no Chapter 50 action pending, the judge, in his or her discretion, may provide for the payment of child support pursuant to Chapter 50B. If said relief is granted, the judge presiding over the 50B hearing may determine a specific child support amount or refer the parties to the Child Support Enforcement Office for entry of a Voluntary Support Agreement.
- (b) **Subsequent Motions.** In the event that either party wishes to file a subsequent motion alleging violation of or modification of the child support provisions of the 50B order, the litigant shall be referred to the Deputy Clerk of Court designated for such filings. Said motions shall be submitted on the forms designated by the AOC for modification or violation of a child support order and shall be calendared in the same manner and in the same courtroom as other child support cases.

RULE 20: SANCTIONS

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

RULE 21: ESTABLISHMENT OF FAMILY COURT ADVISORY COMMITTEE

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

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

- The Chief District Court Judge
- The Clerk of Superior Court or the Clerk's designee
- The Wake County Director of Social Services or the Director's designee
- An Assistant County Attorney responsible for abuse, neglect, and dependency cases
- A representative from the Custody Mediation program
- The Guardian ad Litem attorney
- The Family Court Administrator
- Such Family Court judges as the Chief District Court Judge designates
- The Chief Juvenile Court Counselor or the Counselor's designee
- Two family law attorneys whose concentration is domestic relations law selected by the Chief District Court Judge
- A representative of the mental health community
- A representative of Interact
- A criminal defense attorney who appears in both juvenile delinquency and domestic violence court
- The District Attorney or the District Attorney's designee
- A Parents' Attorney
- A representative of law enforcement
- A representative from a supervised visitation center
- A representative from the Wake County Public School System
- A representative from the Wake County Health Department
- A Parenting Coordinator

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

RULE 22: AMENDMENTS AND MODIFICATIONS

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

This the 27th day of August, 2007.

Joyce A. Hamilton
Chief District Court Judge
Tenth Judicial District