

# ADMINISTRATIVE ORDER

## Harnett, Johnston and Lee Counties

### “TEMPORARY” DOMESTIC RULES

(Effective 12-1-2008, Rule 1.1 and Rule 1.2 revised 1/27/11)

#### RULE 1. CALENDARING OF DOMESTIC CASES

**Rule 1.1. NOTICE.** The party, including Pro se litigants, requesting a hearing, must give notice of the hearing date and time to the opposing party in accordance with the “Rules of Civil Procedure.” (Revised 1/27/11)

**Rule 1.2 CALENDAR REQUESTS.** The party, including Pro se litigants, must file a calendar request directly with the domestic court clerk and must use DR Form A, “Calendar Request,” which is available at nccourts.org under “Local Rules and Forms” for Harnett, Johnston and Lee Counties. No case can be placed on the domestic calendar without proper notice to the opposing party. (Revised 1/27/11)

**Rule 1.3 CALENDAR PRIORITIES.** Subject to the discretion of the presiding judge, domestic cases will be heard in the following order:

- (a) Uncontested matters, including absolute divorces;
- (b) Cases requiring a hearing within a specified time pursuant to statute or court order (i.e., Chapter 50-B Orders, Chapter 50-C Orders, return hearings on ex-parte custody orders, restraining orders, etc.);
- (c) Contempt matters, including Child Support arrearages;
- (d) Temporary matters, including but not limited to, custody and post-separation support;
- (e) Cases which are not reached at a prior session because of a crowded docket;
- (f) Cases set at the request of counsel (these cases shall be calendared by number beginning with the oldest cases first and shall be called at the discretion of the judge);
- (g) Pre-trial conferences; and
- (h) Small claim appeal matters.

Nothing herein shall be construed to deprive the presiding judge of his/her discretion to call any matter or case at any time or in any particular order. If a case is continued by the consent of the parties, the party requesting a hearing must file another calendar request with the domestic court clerk unless an order is entered in open court stating the new court date.

**Rule 1.4 ADMINISTRATIVE CALENDAR.** The Chief District Court Judge’s office shall periodically review the statistical reports furnished by The AOC which lists domestic cases

pending more than one (1) year. Such cases shall be placed on a review calendar on a date set by the Chief District Court Judge and calendared at least 30 days in advance of calendar call.

**Rule 1.5 SPECIAL SETTINGS.** If a “Red” or “Blue” Calendar setting is not available, special settings will be set as soon as possible after the date of the motion, taking into consideration the availability of a courtroom, a clerk and a judge. A filed copy of the Special Setting motion (*fillable at nccourts.org*) must be forwarded to the Chief District Court Judge’s office (fax is acceptable). Opposing party(ies) must complete the “Response to Motion for Special Setting” section on the motion within 10 days from the date of service of the motion and file the original of the form with the Clerk of Court’s office and simultaneously forward a copy (*fax is acceptable*) to the Chief District Court Judge’s office.

**ONLY** the Chief District Court judge has the authority to continue or cancel a special setting. A “Motion to Continue/Cancel Special Setting” must be filed and a filed copy provided to the Chief District Court Judge. No special settings will be scheduled during Designated Secured Leave of any attorneys involved in a special setting.

**RULE 1.5-1 RED CALENDAR RULES.** The rules and forms governing Red Calendar cases care located at nccourts.org. All forms can be completed on line.

**Rule 1.5-2 BLUE CALENDAR RULES.** The rules and forms governing Blue Calendar cases care located at nccourts.org. All forms can be completed on line.

## **RULE 2. SETTLEMENTS**

**Rule 2.1 MEMORANDUM OF ORDER.** Counsel for all parties shall promptly notify the domestic court clerk of a settlement of any calendared case and shall file either a proposed judgment or memorandum of order prior to the date the case is calendared for trial or prior to the call of the case for hearing. The terms of the settlement shall be set forth in DR Form B, “Memorandum of Order” (AOC-CV-220).

## **RULE 3. FINANCIAL AFFIDAVITS**

**Rule 3.1 FORM.** In all domestic actions involving child support, post-separation support, or alimony, both parties shall file DR Form E, "Financial Affidavit" attached hereto.

### **Rule 3.2 PARTY SEEKING SUPPORT, COMPLAINT OR MOTION.**

**CHILD SUPPORT.** 10 days thereafter and served upon the opposing party. IV-D cases are exempt from this requirement except in the case of motions to deviate from the guidelines.

**POST-SEPARATION SUPPORT OR ALIMONY.** The party seeking post-separation support or alimony in a complaint, answer or motion in the cause shall file form DR Form E "Financial Affidavit" with the pleading requesting the relief or within 10 days thereafter, and shall serve the same on the opposing party.

**Rule 3.3 REQUIREMENTS ARE MANDATORY.** The party seeking child support, post-separation support, or alimony cannot calendar a support matter for hearing, except in the case of emergency orders entered under N.C.G.S. 50B, unless he or she has complied with the requirements concerning the filing of financial affidavits.

**Rule 3.4 RESPONDING PARTY.** The Responding party shall file and serve the opposing party DR Form E, "Financial Affidavit" with the responsive pleading and within 10 days of filing their responsive pleading, but in no event later than five days prior to the hearing.

**Rule 3.5 BOTH PARTIES SEEKING SUPPORT.** In the event both parties are seeking child support or alimony, each party shall file DR Form E, "Financial Affidavit" in accordance with these rules. The party seeking child support in a complaint or motion in the cause, shall file DR Form E, "Financial Affidavit" setting forth the information required by the current Child Support Guidelines. The Financial Affidavit shall be filed with the complaint or motion or

**Rule 3.6 PURPOSE OF RULE.** It is the intent of these rules that each party file a financial affidavit in order to provide information for frank discussion of settlement, to allow preparation for trial and to reduce the time necessary for trial.

**Rule 3.7 DUTY TO SUPPLEMENT.** All financial information contained in DR Form E, "Financial Affidavit" shall be treated as continuing discovery pursuant to Rule 26 of the North Carolina Rules of Civil Procedure. All parties are required, pursuant to Rule 26, to promptly supplement their affidavits if circumstances change affecting the information provided in the original affidavit. All amended affidavits must be filed within 10 days prior to a hearing on the issues of child support, post-separation support, and/or alimony.

**Rule 3.8 POST-SEPARATION SUPPORT AND/OR ALIMONY.** DR Form E, "Financial Affidavit" is to be completed in all post separation support and alimony claims. The financial affidavit is a tool to be used by the presiding judge in determining the need for, amount of post-separation support and or alimony.

**Rule 3.9 COMPLIANCE.** In the event that any party fails to comply with these requirements, the complying party shall be entitled to a continuance of the hearing, and such other relief as the court deems proper, including costs and attorney fees.

## **RULE 4. PREPARATION OF ORDER**

**Rule 4.1 ORDER SUBMITTED TO OPPOSING COUNSEL BEFORE JUDICIAL REVIEW.** Whether a case is resolved by consent or hearing, counsel for one of the parties may be designated to prepare any necessary orders. Proposed orders shall be submitted to opposing counsel for review within 10 days of settlement or judgment prior to presenting the order to the judge. Such order shall be submitted for judicial review within thirty (30) days from the date of decision. Attorneys for the party not preparing the Order shall respond to the counsel who prepared the order within 10 days from the date they received the proposed Order. Failure to reply in the time allotted shall allow the party who prepared the Order to submit the same to the Judge in order that it may be entered.

**Rule 4.2 JUDICIAL REVIEW WHEN PARTIES CANNOT AGREE.** If the parties disagree about the contents of the order, counsel for all parties shall meet with the presiding judge to determine the final content of the order before the order is actually entered. Thereafter, the order shall be made to conform with the ruling and any instructions from the judge at the settlement conference and presented to the judge for entry within five days of the settlement conference.

**Rule 4.3 DATA SHEET.** DR Form C, “Cover Sheet for Child Support Cases,” AOC-CV-260 (2 pages) shall be filed with every order or memorandum of order requiring the payment of child support.

**Rule 4.4 CHILD SUPPORT GUIDELINE WORKSHEET.** The appropriate Child Support Guideline Worksheet shall be attached to every order or consent order in all child support cases.

**Rule 4.5 ENTRY OF ORDERS.** All orders shall be entered within 30 days of the oral order being issued in court by the judge or from the entry of the Memorandum of Order unless the judge orders differently.

## RULE 5. GENERAL SANCTIONS

**Rule 5.1 ATTORNEY FEES, COSTS AND OTHER SANCTIONS.** Failure to comply with these rules may entitle the complying party to request payment of reasonable attorney fees and costs and other sanctions

**Rule 5.2 CONTINUANCES.** In addition to any other remedies, the complying party may ask for a continuance of the hearing previously scheduled. The motion for continuance shall be granted by the court based upon the failure to comply with these rules.

**Rule 5.3 CONTEMPT AND OTHER REMEDIES.** Any party not in compliance with these rules shall be subject to any sanctions or remedies available under the laws of the State of North Carolina, including contempt.

## RULE 6. DISCOVERY

**Rule 6.1 STIPULATIONS.** Prior to the call of the calendar, or in any event before the case is called for trial, both parties shall conduct a pretrial conference. The parties shall narrow and define all issues to be heard and make a good faith attempt to resolve as many issues as possible prior to the hearing and report the same to the presiding judge at the call of the case.

**Rule 6.2 DISCOVERY.** The parties shall comply with the North Carolina Rules of Civil Procedure regarding Discovery in each case. All discovery, including any motions to compel discovery, shall be completed within 120 days of the filing of the answer unless the court, in its discretion, shortens or lengthens the deadlines or unless another local rule specifically sets additional time limits. If discovery deadline is changed, an order shall be entered designating a

deadline for discovery. A pretrial order shall be filed in all Equitable Distribution cases no later than 30 days prior to trial.

Any party obtaining documents pursuant to Rule 45 shall, within 10 days of receipt, furnish to opposing counsel/party a complete copy of any and all documents which that party has received.

## **RULE 7. EQUITABLE DISTRIBUTION**

**Rule 7.1 RULES AND PROCEDURES.** The rules and forms governing Equitable Distribution cases are located at nccourts.org. All forms can be completed on line. ED Form D, "Pretrial Order," has been revised and is also effective for all cases filed on or after 11/1/07.

## **RULE 8. CUSTODY MEDIATION.**

**Rule 8.1 RULES AND PROCEDURES.** The rules and forms governing Custody Mediation cases are located at nccourts.org. All forms can be completed on line.

## **RULE 9. PARENT COORDINATION PROGRAM**

1. **Rule 9.1 RULES AND PROCEDURES.** The rules and forms governing the Parent Coordination Program are located at nccourts.org. All forms can be completed on line.

## **RULE 10. MANDATORY EQUITABLE DISTRIBUTION SETTLEMENT PROCEDURES**

**Rule 10.1** Pursuant to N.C.G.S. §7A-38.4A, these rules are promulgated to implement a system of settlement events which are designed to focus on the parties' attention to 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 settlement procedures voluntarily at any time before or after those ordered by the court pursuant to these rules.

**Rule 10.2** The Rules of North Carolina Supreme Court implementing settlement procedures in equitable distribution and family financial cases are adopted and incorporated herein by reference.

**Rule 10.3 Mediator Information Directory.** The Chief District Court Judge will prepare and forward a copy to the Clerk of Superior Court, quarterly, the most recent list of certified mediators from the Dispute Resolution Commission.

**Rule 10.4 Certified Mediators.** The domestic clerk in each county shall maintain a list of all certified mediators, pursuant to the Rules of the North Carolina Supreme Court implementing settlement procedures in equitable distribution and family financial cases, from the list of certified mediators maintained by the North Carolina Dispute Resolution Commission.

**Rule 10.5 Removal of Certified Mediator.** Certified mediators who fail to comply with the local rules and/or Supreme Court Rules will be reported to the Dispute Resolution Commission.

**Rule 10.6 Non-Certified Mediators.** Persons wishing to serve as a non-certified mediator in the 11<sup>th</sup> Judicial District shall complete and forward to the Chief District Court Judge DR Form F, “Request for Addition to List of Approved Non-Certified FFMS Mediators.” The domestic clerk in each county shall maintain a list of approved, non-certified FFMS mediators.

**Rule 10.7 FFMS Attorney’s Certificate of Service.** The initiating attorney in equitable distribution cases is responsible for completing and filing with the clerk of court within five days of selection of a mediator, a DR Form D, “FFMS Attorney’s Certificate of Service” showing service on parties and/or counsel of record and the selected mediator notification of mediation and mediator selection.

**Rule 10.8 Removal of Non-Certified Mediators.** Non-certified mediators are expected to comply with the same rules imposed on certified mediators. Failure to comply with the local and/or Supreme Court rules will mean removal from the list of available non-certified mediators by the Chief District Court Judge.

**Rule 10.9 Mediators.** Only persons who are on the court’s list of approved certified and non-certified mediators will be allowed to serve as mediators in family financial cases

**Rule 10.10 Pre-Trial Order.** NO COURT ORDERED MEDIATION shall begin or occur unless the mediator has in his/her possession a FILED pre-trial order that has been signed by the parties and a judge.

**Rule 10.11 Court Ordered FFMS.** When the parties do not timely select a mediator according to the local rules, the Chief District Court Judge or presiding District Court Judge will appoint a certified mediator from the list of certified mediators for the 11<sup>th</sup> Judicial District provided by the Dispute Resolution Commission. The Chief District Court Judge shall retain discretion to depart from the general procedure in particular circumstances such as the appointment of one mediator to multiple related cases, appointment of a newly certified mediator, or, to withhold a mediator who has not followed Local and/or Supreme Court Rules from appointment.

**Rule 10.12 Pro Se Litigants.** Pro Se litigants are required to comply with these rules and forms.

## RULE 11. APPROVED FORMS

**Rule 11.1 APPROVED FORMS.** Only the forms listed in these rules, or AOC approved forms are to be used.

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| <b>RULE 12. TIME</b> |
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**Rule 12. Computation.** In compliance with Rule 6 of the Rules of Civil Procedures, “In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, including rules, orders or statutes respecting publication of notices, the day of the act, event, default or publication after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, for transactions, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday when the courthouse is closed for transactions. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be considered as another day and not as a holiday.”

**NOTE:** These rules and forms apply to all Domestic cases **pending as of, or filed on December 1, 2008.**

Date: 1/27/2011 (revised)

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Albert A. Corbett, Jr., Chief District Court Judge

**11<sup>th</sup> Judicial District Domestic Forms**

(Eff. 12-1-2008)

- DR Form A Domestic Relations Calendar Request (revised 12-1-2008)
- DR Form B Memorandum of Judgment/Order (AOC-CV-220) 4/97
- DR Form C Cover Sheet for Child Support Cases – Non-IV Only (AOC-CV-640) 3/03
- DR Form D FFMS Attorney’s Certificate of Service
- DR Form E Financial Affidavit for Post Separation and Support/Alimony/Child Support (revised 12-1-2008)
- DR Form F Request for Addition to List of Approved Non-Certified FFMS Mediators
- DR Form G Domestic Order Submission
- DR Form H Plaintiff’s/Defendant’s Production of Documents Pursuant to ED Rule 7.6
- ED Form D Equitable Distribution Pretrial Order