

## **RULE 7. EQUITABLE DISTRIBUTION RULES FOR THE 11<sup>TH</sup> JUDICIAL DISTRICT**

### **RULE 7.1 APPLICATION.**

These rules apply to all claims for equitable distribution pending in the Eleventh Judicial District on May 1, 2002 and filed thereafter.

### **RULE 7.2 DEFINITIONS.**

- (a) “**Assigned judge**” means the District Court Judge who has been assigned by the Chief District Court Judge of the Eleventh Judicial District to preside over an equitable distribution claim.
- (b) “**Clerk**” means the Clerk of Superior Court or his or her designee.
- (c) “**Initiating Party**” means the spouse who first files a claim for equitable distribution.
- (d) “**Responding Party**” means the spouse against whom the first claim for equitable distribution is filed.
- (e) “**Supreme Court Rule**” means “Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases,” adopted December 30, 1998 *(to include subsequent amendments.)*

### **RULE 7.3 ACTIONS REQUIRES AT THE TIME OF FILING.**

At the time a claim for equitable distribution is filed, the initiating party shall take the following actions:

- (a) Obtain from the clerk a date for the scheduling and discovering conference. The conference shall be set by the Clerk on the first date for scheduling and discovery conferences following 120 days after the claim is filed.
- (b) Obtain from the clerk the name of the assigned judge.

## **RULE 7.4 ACTIONS REQUIRED AT THE TIME OF FILING.**

Within five (5) days of filing a claim for equitable distribution, the initiating party shall take the following actions:

- (a) Complete and file a notice of equitable distribution in the form attached hereto as *ED Form A* with the clerk.
- (b) Serve a copy of the notice of equitable distribution hearing on the responding party.
- (c) Mail a copy of the notice of equitable distribution hearing to the trial court administrator.

## **RULE 7.5 INVENTORY AFFIDAVITS.**

- a. Within 60 days after filing a claim for equitable distribution, the initiating party shall complete an inventory affidavit in the form attached hereto as *ED Form B.1*, file same with the clerk and serve a copy of same on the responding party. Upon request by the responding party, the initiating party shall furnish an electronic copy of *ED Form "B.1"* on a floppy disk, if available..
- b. Within 30 days after he or she has been served with a copy of the initiating party's inventory affidavit, the responding party shall complete an inventory affidavit in the form attached hereto as *ED Form B.1*, file same with the clerk and serve a copy of same on initiating party. If the initiating party's inventory affidavit is served with the complaint or answer, then the responding party affidavit will be due within 60 days thereafter.:
- (c) The inventory affidavits required by this rule are subject to amendment during the 120 day period following the filing of the initial equitable distribution claim, or within two weeks after any discovery deadline set by the court, whichever occurs last. All such amendments shall be filed with the clerk and a copy of same shall be served on the opposing party
- (d) The inventory affidavits required by this rule, and all amendments thereto, are subject to the requirements of NCGS §1A-1, Rule 11 and are deemed to be in the nature of answers to interrogatories propounded by the parties pursuant to NCGS §1A-1, Rule 33.

## **RULE 7.6 PRODUCTION OF DOCUMENTS.**

At the time each party serves his or her inventory affidavit, he or she shall also serve a copy of each of the following documents unless the opposing party has previously furnished him or her with a copy of such document..

- (a) Deeds for all real property listed in his or her inventory affidavit.

- (b) Certificates of title for all motor vehicles listed in his or her inventory affidavit.
- (c) Brokerage and/or mutual fund statements for each account or fund listed in his or her inventory affidavit for the date closest to the date of separation and the most recent date.
- (d) Checking account statements, savings account statements, money market account statements and certificates of deposit statements for each account listed in his or her inventory affidavit for the date closest to the date of separation and the most recent date.
- (e) Retirement account statements for each account listed in his or her inventory affidavit for the date closest to the date of separation and the most recent date.
- (f) Life insurance policies listed in his or her inventory affidavit.
- (g) Deeds of trust or mortgages listed in his or her inventory affidavit.
- (h) Account statements for all debts listed in his or her inventory affidavit for the date closest to the date of separation and the most recent date.
- (i) Federal income tax returns for the year the parties separated and all subsequent years.

It is incumbent upon the parties to use diligence to obtain the required documents. If any of the documents required by this rule are not furnished with the equitable distribution inventory affidavit, the party shall submit an affidavit setting forth efforts made to obtain the unfurnished documents. Any written inquiry made to obtain the unfurnished documents shall be attached to this affidavit. Production of documents pursuant to this rule is deemed to be in the nature of the production of documents pursuant to NCGS § 1A-1. Rule 33 and is subject to the requirements of NCGS § 1A-1, Rule 11.

## **RULE 7.7 SCHEDULING AND DISCOVERY CONFERENCE.**

- (a) After 120 days from the filing of the initial claim for equitable distribution, the assigned judge shall conduct a scheduling conference unless a consent order in the form attached hereto as *ED Form C* has previously been entered by the assigned judge..
- (b) All parties and their attorneys are required to attend the scheduling and discovery conference.
- (c) At the scheduling and discovery conference, the assigned judge shall determine the date of separation and the date by which discovery is to be completed as well as consider and rule upon such other issues and he or she deems appropriate.

- (d) At the conclusion of the settlement and discovery conference, the assigned judge shall complete and enter an order in the form attached hereto as *ED Form C*.
- (e) Discovery should begin as soon as practicable after the filing of the initial claim for equitable distribution and nothing in these rules should be construed to mean that discovery should not begin until after the scheduling and discovery conference.

### **RULE 7.8 PRETRIAL ORDER.**

At least 14 days prior to the pretrial conference, the initiating party shall prepare a proposed pretrial order in the form attached hereto as *ED Form D* and serve a copy of same on the responding party..

### **RULE 7.9 PRE-TRIAL CONFERENCE.**

- (a) On the date set by the court in the scheduling and discovery conference order, the assigned judge shall conduct a pretrial conference unless a pretrial order in the form attached hereto as *ED Form D* has previously been entered by the assigned judge.
- (b) All parties and their attorneys are required to attend the pretrial conference.
- (c) The pretrial conference shall be conducted pursuant to NCGS §1A-1, Rule 16 and Rule 7 of the General Rules of Practice for the Superior and District Courts.
- (d) At the conclusion of the pretrial conference, the assigned judge shall complete and enter a pretrial order in the form attached hereto as *ED Form D*.

### **RULE 7.10 SETTLEMENT PROCEDURES.**

- (a) Settlement procedures are governed by the Supreme Court Rules. These rules and attached forms are incorporated herein by reference. The scope of the settlement procedures include all financial issues between the parties when the equitable distribution settlement proceeding is ordered. [See Supreme Court Rules 1C(2)].
- (b) The parties to all actions involving a claim for equitable distribution shall be required to attend a mediated settlement conference or other settlement procedure unless mediation is excused in accordance with Rule 1C(6), Supreme Court Rules..
- (c) The option of a judicial settlement conference is not available in the Eleventh Judicial District.
- (d) As provided for in Rule 3B, Supreme Court Rules, mediation shall not begin until after the parties have had a reasonable time to conduct discovery. Mediation shall not begin until after a pretrial order defining the issues has been entered.

- (e) The date initially set for completion of mediation shall be 90 days after entry of the scheduling and discovery order entered or 90 days after the time for discovery has expired, whichever last occurs. In the discretion of the assigned judge, this deadline may be extended. Any party is entitled as a matter of right to have the deadline extended if such date is less than 30 days after entry of the pretrial order.

## **RULE 7.11 CALENDARING FOR TRIAL**

If the issue of equitable distribution is not fully and completely resolved within 30 days after the parties have attended the mediated settlement conference or other settlement procedure authorized by these rules, or within 30 days after the pretrial conference, if settlement procedures are dispensed with, the case may be set for trial by the assigned judge at a regular session of domestic court or by the chief district court judge at a special setting.

## **RULE 7.12 EVIDENCE**

- (a) As to those matters covered by the inventory affidavits, the testimony of each party must be presented in the form of the inventory affidavit unless a particular item in the inventory affidavit is challenged by the opposing inventory affidavit, cross-examination or otherwise. As to such challenged matters and matters not covered by the inventory affidavits, the parties may testify orally.
- (b) Whether challenged or not, the information set forth in the inventory affidavits shall be received as evidence from the party offering it. The Court may receive evidence as to date of distribution values at trial.
- (c) Non-party witnesses, including experts, are not required to testify by affidavit.
- (d) The parties shall pre-number all exhibits which they intend to offer into evidence and the number assigned to each such exhibit shall correspond to the number assigned in the pretrial order to the item of property or debt to which the exhibit pertains.

## **RULE 7.13 TIME.**

Upon motion of either party, and for good cause shown, the times set forth in these rules may be enlarged or reduced by the assigned judge.

## **RULE 7.14 SANCTIONS.**

Failure to comply with these rules may result in sanctions including, but not limited to, dismissal of a claim for equitable distribution with or without prejudice, refusal to receive into evidence the offending party's inventory affidavit or oral testimony as to matters which should have been set forth in the offending party's inventory affidavit, costs and attorney's fees incurred

in compelling compliance with these rules or in procuring information which should have been disclosed under these rules and any other sanction allowed by law. *ED Form E* and *ED Form F* attached hereto are for use by the court.

### **RULE 7.15 FORM.**

The official forms for use in this district are attached.

### **RULE 7.16 EXPEDITED PROCEEDINGS.**

By consent, prior to the time set for the Scheduling and Discovery Conference, the parties may initiate an expedited proceeding by filing a Pretrial Order, in standard form, ED Form D, together with one of the following:

- (a) An order allowing a Motion to Dispense with Settlement Procedures pursuant to Rule 1C(6), Supreme Court Rules
- (b) An order for mediated settlement conference, Form AOC-CV-824 and Designation of Mediator, Form AOC-CV-825.
- (c) An order allowing a motion to use a settlement procedure other than a mediated settlement conference, Form AOC-CV-825.

This may be done without the necessity of either or both parties filing affidavits required by Rule 7.5 or documents required by Rule 7.6, provided the time for filing these affidavits and documents by a party is not due. This procedure assumes that the parties do not need further discovery and are ready for either mediation or trial.

Date: April 30, 2000

\_\_\_\_\_  
Honorable Edward H. McCormick  
Chief District Court Judge