

JUDICIAL DISTRICT 16A CUSTODY-VISITATION MEDIATION PROGRAM PROCEDURAL GUIDELINES

Referral Procedure

The procedure for accessing the Judicial District 16A (Hoke and Scotland Counties) Custody/Visitation Mediation Program is as follows:

1. Action is filed with the Clerk's office.
2. If disputes over custody/visitation are not settled within 45 days, the case is placed on the next available civil calendar by the civil clerk for entry of a mediation order.
3. When the case is calendared, if the judge determines that the case is appropriate for mediation, the judge will assign a mediation orientation date. In open court, the judge will inform the attorney/party of the date, time and place of the orientation session. The judge, with the assistance of the clerk, will complete and sign the AOC form entitled "Order on Child Custody Mediation" (copy attached). In the event an attorney/party is not present, the court shall direct that a copy of the order be served on the defendant, either by the clerk or by the sheriffs department and that the certificate of **service** be completed by the appropriate **person**.

In Hoke County, mediation orientation sessions will take place in the Courthouse **Annex in** the District Court Judges' office; subsequent sessions will take place at a time and place as agreed by the parties and the mediator.

In Scotland County, mediation orientation sessions will be held in the Scotland County Courthouse in the Grand Jury Room; subsequent sessions will take place at a time and place as agreed by the parties and the mediator.

4. By consent, parties may access mediation sooner by contacting the mediation office directly for an orientation date. The mediation office will then notify the civil clerk that the parties by consent are in mediation and that the case should not be calendared until further notice by the mediation office.

Mediation Orientation

At the orientation, the parties will be given information about the mediation process, will view a video about the effect of custody battles **m** court, and will be given information about the effects of separation and divorce on children and what they can do to help their children during this difficult time.

At the end of the orientation session, the mediator will schedule the first session of mediation and will inform the parties of the date, time and location of the session.

When only one party appears at the orientation session, the mediator will proceed with the orientation presentation and will make an effort to notify the missing party and also provide that party with an orientation session. When both parties have been through the orientation presentation, the mediator will then arrange for the first session of mediation.

Mediation Session

The mediation sessions will normally not exceed two (2) hours. The parties **are** required to attend one (1) session. The parties and the mediator will decide together if there is a need for a subsequent session. If the parties are unwilling to proceed with mediation after the first session, the case is then determined by the mediator to be inappropriate for mediation and the case is referred back to court. The mediator will send a letter to the judge stating that the parties were unable to reach an agreement and will also attach to the letter AOC form entitled "Order to Calendar Custody or Visitation Dispute" (see attached). The judge will then sign the order directing that the case thereafter be calendared for hearing pursuant to the local rules of **this** judicial district. The order will then be filed in the case.

If the parties progress in their discussions and develop options for a resolution, they may meet for additional sessions to work out a parenting agreement. If, in fact, the parties do work out a parenting agreement, **the** parenting agreement will be typed up by the mediation office and a copy sent to the parties and their attorneys with a letter requesting that the parties meet again with the mediator not less than ten (10) days from the date the parties reached the parenting agreement for the purpose of signing the parenting agreement. The purpose of the ten (10) day waiting period is to allow the parties time to consider their agreement and review the same with their attorney.

When the agreement is signed, the mediator will forward the signed parenting agreement and also the AOC form entitled "Order Approving Parenting Agreement" (see attached) to the judge. If the judge approves the proposed agreement, the judge will sign the order and return the same to the mediation office. The mediator will then make three (3) additional copies, file the original with the clerk of court and send a copy to each attorney or unrepresented party.

It is important to note that the "Order Approving Parenting Agreement" is enforceable by the contempt powers of the court.

If the custody/visitation issues are resolved and there are other unresolved issues in the case or any other motions pending before the court, it is the attorneys' responsibility to see that these remaining matters are calendared for resolution.

Exemptions

Cases may be exempted from mediation by the court on its own motion or upon motion of any **party**: A case can be exempted from- mediation for "good cause". "good cause" includes

but is not limited to a showing of undue hardship to a party, an agreement between the parties for voluntary mediation, allegations of abuse or neglect of the minor child, allegations of alcoholism, drug abuse, or spouse abuse, or allegations of severe psychological, psychiatric, or emotional problems or where parties reside more than fifty (50) miles from the court. When a case is exempted from mediation, the judge will mark the appropriate block on the attached AOC form "Order on Child Custody Mediation" and file the same with the clerk.

Any party desiring that mediation be waived before the expiration of forty-five (45) days, may petition the court earlier for a waiver. In the event the waiver is granted, the judge shall mark the appropriate block on AOC form "Order on Child Custody Mediation", file the form with the clerk, and provide a copy to the mediation office.

Confidentiality: The mediation proceeding shall be confidential. Neither the mediator nor any party or any other person involved in the mediation sessions shall be competent to testify as to communications made during or in furtherance of such mediation sessions.

Return to Mediation: The parties who have previously signed a parenting agreement developed through the mediation program are encouraged to return to mediation when revisions are necessary or desired in their agreement if the parties cannot between themselves agree to such revisions. This procedure does not require a court order. Either party may simply call the mediation office and set-up an appointment to return