

Rule 13: Equitable Distribution (ED) Cases

13.1 Time Standards for ED Cases: The following time standards shall apply in ED cases:

- (a) Initial Pretrial Discovery Conference (IPTC) and scheduling order to be completed within 120 days of the first filing of a pleading asserting a claim for ED.
- (b) Status Conference (SC) to be completed within 90 days of the IPTC (Court may set one or more additional SC's if warranted by the case).
- (c) Trial session setting for expedited ED cases within 60 days of the IPTC.
- (d) Trial session settings in all other ED cases within 60 days of the final SC (specific trial date will be set at Calendar Call for the session).
- (e) Trial in all ED cases to be completed within one (1) year from the date of the first filing of a claim seeking ED.

13.2 ED Affidavit: Each Party shall file an ED Affidavit with the Court and serve a copy on the opposing Party using [Form CCF-33](#). The Affidavit must be filed and served at least 10 calendar days prior to the date set for the IPTC.

Filing and service of [Form CCF-33](#) in compliance with this rule shall be deemed compliance with the statutory requirement of an inventory as set forth in [N.C.G.S. §50-21](#). In the event compliance with this rule results in the affidavit being filed more than 90 days after service of the ED claim, the Court is deemed to have ordered an extension of time to file the inventory under [N.C.G.S. §50-21](#).

Non-compliance with this rule may result in the responsible Party's proffered testimony (whether written or oral) not being allowed into evidence by the Court, in addition to the sanctions provided for in [Local Rule 22](#). This sanction and others may be imposed or conditionally imposed at the time of the IPTC.

ED Affidavits should refer to the Parties as "Husband" and "Wife" rather than as "Plaintiff" and "Defendant."

13.3 Mandatory Discovery:

- (a) At the same time a Party serves his or her ED Affidavit upon the opposing Party, the Party shall also serve upon the opposing Party copies of the following documents concerning the assets and debts listed in the ED Affidavit:
 - 1. REAL ESTATE:
 - (i) Deeds of Parcels Outside Mecklenburg County
 - (ii) Promissory Notes
 - (iii) Deeds of Trust
 - (iv) Amortization Schedules
 - (v) Statements showing mortgage balance on DOS and current date
 - (vi) Appraisals

2. TRANSPORTATION

- (i) Certificates of Title
- (ii) Notes or other Loan Documents (If money owed on vehicle on DOS)
- (iii) Statements showing loan balance on DOS (If money owed on DOS)

3. ACCOUNTS - Statements for the months closest to DOS (both before and after)

4. LIFE INSURANCE POLICIES - Annual Statement of Cash Surrender Value for statement periods closest to DOS (both before and after)

5. RETIREMENT BENEFITS - Statements for statement periods closest to DOS (both before and after)

6. DEBT - Statements for months closest to DOS (both before and after)

(b) Prior to the mediation or other ADR procedure being utilized by the Parties, each Party shall serve upon the opposing Party copies of the following:

- 1. The documents listed above that have not previously been served upon the opposing Party; and
- 2. The most recent statements and other documents which a Party has concerning the current net fair market value of each item listed in subparagraph (a) above;
- 3. All appraisal reports which the Party intends to offer into evidence at trial, unless previously provided to the opposing Party.

(c) Ten calendar days prior to the date the case is scheduled for trial each Party shall serve upon the opposing Party copies of the following:

- 1. The documents listed above that have not previously been served upon the opposing Party; and
- 2. The most recent statements and other documents which a Party has concerning the current net fair market value of each item listed in subparagraph (a) above.
- 3. All appraisal reports which the Party intends to offer into evidence at trial, unless previously provided to the opposing Party.

(d) The documents required by this rule should not be filed with the court.

13.4 Initial Pretrial Discovery Conference (IPTC) and Scheduling Order: The IPTC shall be deemed to be a “discovery conference” ordered by the Court as authorized in [Rule 26\(f\)](#) of the North Carolina Rules of Civil Procedure and [N.C.G.S. §50-21\(d\)](#). Each Party shall participate in good faith in the framing of a discovery plan and is under a duty to confer in advance of the IPTC in the framing of a discovery plan.

The Parties are excused from attending the IPTC under the following conditions:

- 1. ED affidavits have been filed;**
- 2. A consent order (CCF-37) has been signed by all Parties and Attorney(s) addressing the following:**
 - (i) Agreed upon discovery deadlines;**
 - (ii) Agreed upon ADR method;**
 - (iii) Agreed upon deadline for completion of ADR; and,**
 - (iv) A Status Conference date obtained from the FCA.**

All deadlines must fall prior to the date of the SC. If mediation is selected as the ADR method, the mediator must have been selected and her availability to conduct mediation within the ADR deadline confirmed;

- 3. The established content of Form CCF-37 has not been modified without permission of the Court; and,**
- 4. An attorney representing one of the parties is in attendance at the IPTC and presents the consent order (CCF-37) for the review and approval of the Court. Paralegals are not permitted to appear in lieu of counsel.**

If any of these conditions have not been met, the Attorneys for the Parties and the Parties are required to be present at the IPTC.

The IPTC shall be used to establish the date of separation (or schedule a hearing to determine the date of separation), to schedule a discovery plan and set a discovery deadline, to review the ED Affidavits and determine what assets need to be appraised and the procedures for determining values, to set a deadline for the disclosure of experts and the delivery or exchange of expert reports, and to determine whether attorneys and the Parties are familiar with Alternative Dispute Resolution procedures and select and order the completion of a selected procedure, to set the date of the SC, and to enter such other and further orders directing action as will expedite the case. The Court will enter a Scheduling Order at the IPTC on [Form CCF-37](#), which shall be provided for the Court by the Parties. The Courtroom Clerk shall give the FCA a copy of the scheduling order.

- 13.5 Status Conference (SC); Calendar Call and Final Pretrial Order: A Status Conference (SC) shall be held in every ED case not resolved through ADR except expedited ED cases. The Parties and their attorneys shall be present at the SC. At the SC, the Court will review the Status Conference Checklist and Order (Form CCF-38A) with the Parties and their attorneys and enter the Order. At the SC, the Court will determine if the case is ready for trial, and if so, will set the trial session for the case. (The Court may order an additional SC if deemed necessary.) At Calendar Call for the session, the Court will confirm the deadline for filing the Final Pretrial Order and set a specific trial date during the session. The attorneys and pro se parties shall be present at the Calendar Call. The Final Pretrial Order (FPTO) shall be entered using [Form CCF-38](#) or Form CCF-38A. If

the Parties/attorneys fail to file the FPTO by the date designated by the Judge, the Parties/attorneys may face sanctions that could include shortened time for presentation of evidence by one or both Parties, monetary sanctions, or other sanction deemed appropriate given the circumstances of the case. The signatures of the Parties on the Final Pretrial Order shall be acknowledged before a Notary Public or taken upon oath before the Courtroom Clerk.

13.6 Continuance of ED Cases: ED trials shall not be continued except by the Assigned Judge. All motions for continuance after the first continuance shall be signed by the moving litigant, indicating his or her awareness of the motion, and by the attorney of record.

13.7 Expedited ED Cases. At the IPTC, the Court shall inquire of the Parties as to whether the case may be appropriate for disposition as an expedited ED case. The following rules shall apply to such cases:

(a) If the Parties agree and the Court approves, an ED case may be processed as an expedited ED case. In general, a case will not be appropriate for expedited ED procedures unless the total net fair market value of the marital estate is less than \$25,000 exclusive of marital real estate and marital vested pensions.

(b) A case designated as an expedited ED case will be given an initial trial setting within 60 days of the IPTC. A discovery schedule for each expedited ED case shall be set at the IPTC, and an order entered thereafter.

(c) At the expedited ED trial, the Court will accept written briefs, affidavits and other written documentation, but will only allow each Party a total of one (1) hour to present that Party's case either through summary argument or testimony of that Party and witnesses. The Court shall retain discretion to extend the time allotted to each Party if it will serve the interest of the Parties and the ends of justice. The Court in its discretion may take evidence by affidavits in lieu of oral testimony. If the Court plans to do so, it shall decide that at the IPTC.

13.8 Preparation and Entry of Judgment:

(a) Within 30 days following an ED trial, the Assigned Judge will provide the attorneys with a status report on his/her progress toward reaching a decision in the case. Within 60 days of trial, the Assigned Judge shall render his/her decision. If the Assigned Judge is unable, within the 60-day period, to render a decision in the case, s/he shall request from the Chief District Court Judge relief for one or more days from regular Court assignment to spend time on the case. The judge shall communicate this information to the attorneys, and within seven (7) calendar days of the relief day(s), render his/her decision. The judge shall also designate the attorney who is to draft the judgment.

(b) Within 14 days of (i) announcing to the Court that an ED case has been settled, or (ii) receiving the judge's decision after an ED trial, the designated attorney shall provide a proposed judgment to the opposing attorney. The attorney receiving the judgment shall, within fourteen (14) calendar days of its receipt, communicate any requested changes to the attorney who prepared the judgment. Within fourteen (14) calendar days of receiving the requested changes, the first attorney shall submit the judgment to the Court using [Form CCF-7](#), with either the

requested changes or a letter advising the judge of changes that were requested, but not made (with copies to opposing attorney). Upon receipt of the judgment, the judge shall, within seven (7) calendar days, either sign the judgment (with handwritten changes as needed) or schedule a meeting with the attorneys to resolve the judgment's language.

- (c) If no judgment is received within six (6) weeks after the judge renders the decision or fourteen days after announcement of a settlement, the FCA shall contact the attorney responsible for preparing the judgment. If after another fourteen (14) calendar days no judgment has been received, the judge shall notify the FCA to place the case on the judge's next contempt calendar, at which both attorneys will appear and either present the judgment or explain to the Court why the judgment is not ready. Sanctions against either or both attorneys will be in the Court's discretion.