

## ADMINISTRATIVE ORDER

### UNIFORM RULES REGULATING MEDIATION OF CUSTODY AND VISITATION DISPUTES UNDER THE NORTH CAROLINA CUSTODY AND VISITATION MEDIATION PROGRAM FOR JUDICIAL DISTRICT 11

The Judicial District 11 Custody and Visitation Mediation Program is established under the North Carolina General Statutes §7A-494, §7A-495, and §50-13.1.

**1.1 PURPOSE AND GOALS OF THE PROGRAM** - The purpose of the Custody Mediation program is to provide the services of a skilled mediator to the parties involved in a custody and visitation dispute. The goal of the program is to reduce stress and anxiety experienced by children in separation and divorce by furnishing an alternate way for the parties to resolve these disputes. The mediator helps the parties reorganize the family in order to continue parenting their children despite the separation, and assists them in recognizing and meeting the needs of their children. A successful mediation will help the parties put a Parenting Agreement in writing, teach them to resolve future problems without recourse to the courts, and reduce the re-litigation of custody and visitation disputes.

**1.2 REFERRAL TO MEDIATION** - Any action involving custody of or visitation with a minor child or children, or a modification of custody or visitation, shall be ordered to mediation prior to trial, or after a temporary order has been issued by the court, unless the court waives mediation.

#### PROCEDURES FOR REFERRAL TO MEDIATION:

- (A) **Attorney Referral Phase**: The request for mediation orientation will occur within 45 days of an original filing for custody or visitation, or a modification to custody or visitation. The party requesting the custody mediation orientation date is responsible for noticing all parties via DOM-2. Where there is no counsel of record, the parties shall be notified directly by the mediator. Attached to every notice shall be the letter from the Chief District Court Judge (DOM-1). Notice for Mediation Orientation (DOM-2) shall be served 10 days prior to the mediation orientation. If one or more of the parties is not present at the scheduled orientation, **an Order for Custody Mediation Orientation (DOM-4) will be entered**. Parties failing to comply with this order will be subject to the contempt powers of the court.

- (B) A written request for expedited orientation and mediation (DOM-6), signed by both parties or their attorneys, will waive the notice period. Once this form is completed and a copy sent to the mediation office, the attorneys or parties may contact the mediator to schedule an expedited orientation and mediation session.
- (C) **Time-Referral Phase:** Should counsel for the parties fail to schedule mediation within 45 days of the filing of the action, an Order for Custody Mediation Orientation (DOM-4) shall be issued. The Custody Mediator will notice the parties 10 days prior to the mediation orientation date. Parties failing to comply with this order will be subject to the contempt powers of the court.
- (D) At the discretion of the presiding judge, a case may be ordered to mediation from the bench.

**1.3 WAIVER OF MEDIATION** - On its own motion, or that of either party, the court may waive mediation of a contested custody or visitation matter 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 a minor child, of alcohol or drug abuse, of domestic violence, or of severe psychological, psychiatric, or emotional problems. Where one or both of the parties reside more than 50 miles from the court, such distance may be considered good cause in the discretion of the court. If the party residing outside the area agrees, mediation may still proceed. REQUESTS FOR WAIVERS OF MEDIATION WILL BE MADE TO AND APPROVED BY THE COURT.

- (A) Counsel or parties desiring a waiver shall complete, file and serve on the opposing party a Motion and **Order to Waive Custody Mediation (AOC-CV-632, 2 pages)**. The attorneys shall notify the mediation office of any change in the status of a pending case, including a signed consent order, voluntary dismissal, or waiver via the Attorney Checklist (DOM-5). A case will not be released from the mediation process until the DOM-5 is received.
- (B) Where the out-of-state party is unrepresented, and the matter has not been waived, the mediator will inform such party of **the** mediation program by letter (DOM-11) and brochure. If such party does not respond or does not wish to proceed with mediation, the matter shall be closed in the mediation office. **The attorney(s) of record or unrepresented parties, when appropriate, and the court, will be notified of the mediation status (DOM-12).**

**1.4 THE MEDIATION PROCESS** - The Mediator shall assist the parties in focusing on the needs of their children, the need to reorganize the family and use their strengths, and the need to maintain continuity of relationships and stability in the child's life. The mediator will help the parties to explore the options available to them that will best accomplish these goals.

- (A) Prior to mediation, an orientation session is held at which the goals and procedures of the mediation process are explained to the parties. Orientation will be held on a regular schedule that is determined by the mediator and will be published in the orientation book in the Clerk's office. If a party does not attend the

orientation, **an Order for Custody Mediation Orientation (DOM-4) will be entered.** If the party still does not attend, he/she will be subject to the contempt powers of the court. A Notice of Custody Mediation Conference (DOM-3) will be given to the designated parties at this scheduled orientation. Parties are required to attend the orientation and at least one mediation session before withdrawing from the process.

- (B) As a result of mediation, the parties may enter into a full Parenting Agreement, a partial Parenting Agreement, or no agreement. The full Parenting Agreement resolves all issues surrounding custody and visitation that have been addressed. The partial Parenting Agreement will state those issues that have been resolved and those that still remain open to litigation. The attorneys shall calendar the unresolved issues for court.
- (C) The mediator will draft the Parenting Agreement (full or partial) and mail a copy to each attorney and to each parent. These agreements are non-binding until 1.4D has been completed.
- (D) Once a Parenting Agreement has been forwarded to the attorneys, there will be 15 working days to prepare a Consent Order incorporating the provisions of the Parenting Agreement and present it to the court. If the Parenting Agreement does not result in a Consent Order, the mediation office shall be notified of this fact, and counsel will calendar the case for court as in all other domestic cases. In either outcome, the process is not complete until an Attorney Checklist (DOM-5) for each case has been returned to the mediation office. If this is not accomplished, the mediator will notify the Clerk that the case needs to be calendared for court, and the case will be closed in the mediation office. The final Order and Parenting Agreement shall be filed with the Clerk of Superior Court.
- (E) When custody mediation does not result in a Parenting Agreement, the mediator will provide notice of that fact to the attorneys of record and to unrepresented parties. The mediator will send notice to the Clerk that this case is unresolved, and consequently closed in the mediation office. The attorneys will then be responsible for calendaring the case for court.
- (F) When both parties are not represented, a time will be scheduled for parties to return to the mediation office to sign their Parenting Agreement. The mediator will submit their signed agreement with the Order Approving Parenting Agreement (AOC-CV-631) to a Judge for approval/signature.
- (G) All oral or written communications and information derived from 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 except as related to child abuse or neglect. Neither the mediator nor anyone else involved in these Rules shall be called to testify to communications made during the mediation process.
- (H) Attorneys generally are not present at the mediation session. A copy of any Parenting Agreement will be sent to each attorney for review.
- (I) The parties will have the opportunity to return to mediation via the form AOC-CV-

634 and modify their existing agreement without re-filing with the court. The attorneys or parties will sign this form and then a Judge will sign. The parties will contact the mediation office to make an appointment. Any changes/modifications agreed upon during this return session will be drafted and sent to parties and their attorneys for review. After review, the parties may sign their agreement through the mediation office and the mediator will submit the signed agreement for a Judge's signature.

- (J) Motions for contempt involving custody or visitation shall not be mediated unless stipulated by the parties.
- (K) Parties permitted to be present at mediation are only those named in the suit. The participation of others will only be with the consent of those involved and at the discretion of the mediator. All participants in mediation are bound by the confidentiality requirement.
- (L) The mediator in her/his discretion may terminate the mediation if the mediator receives information during the course of the mediation that shows that continuing mediation would be inappropriate for reasons of safety, welfare, or psychological dynamics. The mediator will notify the attorneys when this occurs.

These rules and attached forms apply to all custody/visitation actions filed on or after December 1, 2006.

Date: 11-21-2006

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