

Halifax County/Judicial District 6A

Family Court Rules

Domestic and Juvenile

**Effective May 1, 2000
Amended September 1, 2001
Amended July 31, 2008**

Halifax County Family Court

Supporting Families in Crisis

**Our mission is to provide services
which are family-focused,
individualized and coordinated,
timely, courteous, professional,
*and respectful.***

Halifax County's Family Court believes that functional families are the cornerstone of a successful community. The mission of our Family Court is to provide a less adversarial forum for the fair, just, and prompt resolution of family disputes. The Family Court will utilize the least intrusive intervention necessary, provide individualized responses by linking families with appropriate community resources, and offer a full complement of alternative dispute resolution options. We pledge to protect and preserve the rights of family members, treating all with courtesy, professionalism, and respect.

STATE OF NORTH CAROLINA
COUNTY OF HALIFAX
6A JUDICIAL DISTRICT

THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FAMILY COURT

**ORDER ADOPTING RULES
FOR FAMILY COURT**

Pursuant to Rule 2 of the General Rules of Practice for Superior and District Courts, and N.C.G.S. 7B-100 and 7B-1500, the attached Local Rules for Family Court are hereby adopted effective May 1, 2000, amended September 1, 2001, and amended July 31, 2008, and shall apply to all cases filed on or after that date and, insofar as practical, to all pending cases.

These Rules supersede all previous Rules for Juvenile and Domestic cases in the District Court Division of 6A Judicial District, Halifax County.

It is so ordered this 31st day of July, 2008.

H. Paul McCoy, Jr.

H. Paul McCoy, Jr.
Chief District Court Judge

**6A JUDICIAL DISTRICT
FAMILY COURT DOMESTIC RULES
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SECTION I

RULES OF DOMESTIC COURT

RULE 1: GENERAL RULES

- 1.1 Purpose.** The purpose of these rules is to provide for the fair, just, and timely resolution of family domestic matters in the District Court Division of the 6A Judicial District, Halifax County, in compliance with Rule 40(a), North Carolina Rules of Civil Procedure, and Rule 2(a), General Rules of Practice for Superior and District Courts.
- 1.2 Application.** It is recognized that these rules are not complete in every detail and will not cover every situation that may arise. In the event that these rules fail to address a specific matter, they should be construed in such a manner as to avoid technical or unnecessary delay and to promote the ends of justice. The Family Court Staff are authorized to act in their discretion subject to consultation with the Chief District Court Judge or Family Court Administrator.
- 1.3 Forms.** Except as specified herein, where forms are specified to be used by these rules, counsel or pro se parties may use either the forms provided or a form of their own which substantially corresponds to the specified court form.
- 1.4 Citation.** These rules and all amendments hereafter shall be filed with the Clerk of Superior Court in the 6A Judicial District and may be cited accordingly as Family Court Domestic Rules 6A Judicial District (6AFCDR).
- 1.5 Availability of Rules.** The Office of the Chief District Court Judge shall distribute a copy of these rules and any subsequent amendments to each member of the Bar of the 6A Judicial District. The Family Court Administrator shall maintain (1) a paper supply of rules and associated forms to be furnished to attorneys and the public upon request or (2) provide the web address for obtaining such rules and forms.
- 1.6 Vacation Policy.** The vacation policy of the 6A Judicial District Family Court for members of the Bar shall be the same policy as established by Rule 26 of the General Rules of Practice for the Superior and District Courts adopted by the N.C. Supreme Court on May 6, 1999. A copy of any correspondence or schedule indicating secured leave should be provided to the Family Court Administrator. This policy was adopted in recognition of the need for time away from the demands of professional responsibilities to improve the overall professional performance of the bar as well as the quality of life of members of the profession and their families and the policy was adopted for that purpose.

1.7 Definitions. “Court” as used in these rules means, depending upon the context in which it is used: the Chief District Court Judge, the presiding District Court Judge or the Family Court Administrator as their delegate.

1.8 Contacts. The Family Court Administrator also serves as Domestic Case Coordinator and is the primary contact for all domestic matters including judicial assignments and assigning of event dates in new or subsequent domestic case filings. When the Family Court Administrator is unavailable, the Juvenile Case Coordinator serves as the secondary contact and the Access and Visitation Coordinator as the third contact for obtaining judicial assignments and event dates.

The Juvenile Case Coordinator serves as the primary contact for juvenile court and Family Drug Treatment Court matters and as secondary contact for all domestic matters.

The Access & Visitation Coordinator is the primary contact for anyone who pays child support and wishes to establish visitation with his/her child. He is a secondary contact for all domestic matters.

1.8 Time Standards for Domestic Cases. The Court has established its case management plan to aid in the just, fair, and timely resolutions of cases filed. The Court sets the following resolution goal:

75% of all cases filed will be disposed of within 90 days of filing

90% of all cases filed will be disposed of within 180 days of filing

100% of all cases filed will be disposed of within 18 months of filing

1.9 Time Standards for Individual Issues or Events. In addition to the case resolution goals set out above, the Court sets the following goals for addressing individual issues or holding specific events:

Family Court Time Standards for Domestic Cases	
Event	Time from Filing of Complaint
Permanent Alimony and Equitable Distribution:	
First status conference	120 days
Completion of ADR (Family Financial Mediation)	210 days
Final Pretrial Conference	240 days
Start of Trial	270 days
Order Entered	Within 270 days in 90% of cases Within 365 days in 100% of cases

Family Court Time Standards for Domestic Cases	
Event	Time from Filing of Complaint
Child Support:	
Temporary Order Entered	Within 30 days in 90% of cases Within 45 days in 100% of cases
Permanent Order Entered	Within 90 days in 75% of cases Within 180 days in 90% of cases Within 270 days within 100% of cases
Post-separation Support:	
Order Entered	Within 60 days in 75% of cases Within 90 days in 100% of cases
Child Custody (& Visitation):	
Temporary Order Entered	Within 30 days in 90% of cases Within 45 days in 100% of cases
Mediation Orientation Session Scheduled	Within 45 days
Mediation Session(s) Completed	Within 90 days in 90% of cases Within 120 days in 98% of cases Within 150 days in 100% of cases
Order Entered	Within 150 days in 90% of cases Within 180 days in 100% of cases

- All uncontested domestic relations issues should be disposed of within ninety (90) days of filing;
- All motions to modify existing orders should be resolved within sixty (60) days from the pretrial conference;
- All hearings to enter temporary orders should be held within sixty (60) days of the request;
- The custody mediation process should be concluded within ninety (90) days of the filing; and
- The trial of all equitable distribution, custody, child support, and alimony issues should be completed within sixty (60) days of the final pretrial conference.

RULE 2: DOMESTIC CASE FILINGS & ASSIGNMENT TO DISTRICT COURT JUDGES

2.1 Commencement. All domestic matters and subsequent motions shall be commenced by contacting the Family Court Office to obtain a judicial assignment and any and all event dates pertaining to the filing. This contact may be in person, over the telephone, via e-mail or by FAX prior to mailing the filing to the Clerk of Superior Court of Halifax County (see 2.4, Mailing of Filings). All domestic matters whether an initial filing or a subsequent motion, except for involuntary commitments, IV-D, U.R.E.S.A., U.I.F.S.A., domestic violence, and

the Clerk's automatic child support enforcement cases, shall be accompanied by an AOC cover sheet (Form #1). The Clerk of Superior Court shall provide a case number at the time of an initial filing and place the number upon the summons. All subsequent pleadings and papers filed by the Clerk and all subsequent communications to opposing counsel or parties or court personnel shall contain the proper case number.

Please note, uncontested divorces may be filed directly with the Clerk. If either party is involved in any pending domestic or juvenile action, the Clerk will calendar the divorce to be heard by the Judge already assigned to an action involving one of the parties. However, the Court recognizes that there are times that in the interest of expediency an uncontested divorce must be calendared on the first available session and may be accomplished by first contacting the Family Court Office.

- 2.2 Filings.** All new domestic cases, except for involuntary commitments, IV-D, U.I.F.S.A., domestic violence, and Clerk's automatic child support enforcement cases, shall be accompanied by an Affidavit of Judicial Assignment and Notice of Hearing (Form #2). This form shall indicate whether there is a pending or resolved domestic case, domestic violence, or juvenile case involving the same family and/or issues and the name of the Judge, if any, assigned to the case. Failure to truthfully file the affidavit may result in sanctions allowed by law and deemed appropriate by the Chief District Court Judge or assigned Judge.
- 2.3** All domestic cases identified in Rule 2.2 as requiring an Affidavit of Judicial Assignment and Notice of Hearing (Form #2) shall be taken to the Family Court Office prior to filing. The case shall be assigned to a Family Court Judge and the Judge's name and bar number shall be placed on the Affidavit of Judicial Assignment and Notice of Hearing. The AOC Coversheet, Affidavit of Judicial Assignment and Notice of Hearing, summonses, and Complaint shall be taken immediately to the Clerk's office for filing. All subsequent motions and hearings, including TROs, requests for ex parte orders, and other emergency matters shall be scheduled by the Family Court Staff before the assigned Judge. See Rule 4 for requirements relating to the calendaring of domestic relations matters.
- 2.4 Mailing of Filings.** All domestic matters and subsequent motions may be mailed to the Clerk of Superior Court's Office for filing provided that a Judge assignment, conference and/or hearing date, and/or Custody Mediation Orientation/Parent Education date have been obtained over the telephone or by e-mail or FAX from the Family Court Staff. Once these assignments are made, it is the responsibility of the filing party or counsel to record this information on Form #2 and mail the filing to the Clerk. A copy of Form #2 must be mailed or faxed to the Family Court Office immediately. **If filing does not occur immediately, the assigned Judge and dates will remain in effect for that case.**

- 2.5 Scheduling of Case Events.** Upon assignment of the Judge, the Family Court Staff shall also schedule such status conference and/or pretrial conferences as may be necessary based on the issues raised in the complaint or the motion pursuant to Rule 3.2. **No domestic case shall be filed in the 6A Judicial District, including new actions and motions, without a date for a status conference, pretrial conference, mediation orientation or hearing as required by these rules. No court date shall be set without a pleading filed.**
- 2.6 Court Sessions.** The Chief District Court Judge shall designate Family Court Sessions and assign Judges for such sessions. Emergency matters may be heard by the presiding Judge assigned to the case in any courtroom regardless of the session to which the Judge is assigned for the week. If, due to illness, vacation, or other cause, the Judge assigned to a case is not available to hear ex parte or other emergency matters, the ex parte, or other emergency matters may be heard by the Chief District Court Judge.

Upon consultation with the Judge assigned to the case and the Chief District Court Judge, the Family Court Administrator may arrange any Family Court Special Session required to facilitate the hearing of any case (1) deemed to be complex and lengthy or (2) when the assigned Judge recuses himself/herself and a “special session” other than the regularly scheduled Family Court Session is deemed appropriate. This includes arranging for a Visiting Judge to hear such case.

RULE 3: GENERAL CALENDARING RULES

- 3.1 Case Tracking.** The Family Court Administrator shall establish and maintain a case tracking system pursuant to Rule 2(c), General Rules of Practice for Superior and District Courts and in accordance with these rules.
- 3.2 Status or Pretrial Conferences Required.** Except for those matters specifically exempted by Rule 2.1 and Show Cause Hearings, motions for temporary relief, attorney fees, and uncontested Absolute Divorces, all other domestic matters shall be set for a status and/or pretrial conference. The Family Court Staff shall schedule the conference in accordance with Rule 4.
- 3.3 Moving Party’s Responsibility.** It is the responsibility of the party filing the complaint, answer or motion to contact the Family Court Staff prior to filing to obtain a date for the appropriate hearing and notify the opposing party or counsel immediately of the court-set schedule. The notification must be in accordance with Rule 4 of the Rules of Family Court Procedure. Initial filings and counterclaims shall require Form #2, Affidavit of Judicial Assignment and Notice of Hearing. Subsequent filings in the same case shall require Form #2 also. The moving party shall file all notices with the Clerk’s Office for inclusion in the case file and provide a copy of the AOC Coversheet and Form #2 to the Family Court Staff.

- 3.4 Upcoming Court Events.** All pending actions shall always be set for an upcoming status conference, pretrial hearing, trial or orientation date. The Family Court Staff will review pending actions and notice cases without upcoming court dates for a status conference, pretrial hearing or appropriate appearance to ensure that the Court addresses matters in a timely manner.
- 3.5 Consolidated Cases.** When cases have been consolidated for trial, they will be regarded as one case for calendaring purposes and will appear under the oldest case number. A copy of the order consolidating the cases for trial shall be filed in all pertinent court files and all pleadings or documents filed thereafter shall be captioned with the oldest file number only.
- 3.6 Dismissal for Missed Court Appearances.** Any case noticed for a pretrial conference or hearing is subject to dismissal for failure to prosecute if at the time the matter is called for hearing the attorneys and parties are not present and ready to proceed or have failed to notify the Court of any emergency which would preclude the attorney or party from being present.
- 3.7 Settlement of Contested Issues.** Parties are encouraged to engage in settlement discussions at every opportunity. The Family Court recognizes the importance to the family of bringing closure to these disputes, of minimizing misunderstandings that frequently occur when resolutions are not yet committed to writing, and of the Court's responsibility to assist the parties in resolving these disputes. **Unless agreements have been reduced to writing, signed by the parties, their attorneys, and the assigned Judge prior to the time of the court date, parties and counsel are required to appear as scheduled. If a resolution has been reached but not drawn up by the time of the court date, the parties and their counsel are required to appear as scheduled and either execute a Memorandum of Judgment Order or read the terms of the agreement into record.** The Court will then set another court date with the expectation that the order will be prepared, signed and filed with the Court prior to or at the proceeding.
- 3.8 Trial Settings.** The assigned Judge will set cases for trial at a pretrial conference.

RULE 4: CALENDARING OF DOMESTIC CASES

- 4.1 New Actions or Modification.** When a party files a complaint or a motion for modification of an existing order in a domestic case, the party shall meet with or call the Family Court Staff, and the Family Court Staff shall set conference and hearing dates in accordance with the following schedule:
- A. Temporary and Permanent Child Support.** The party filing a complaint or motion seeking the establishment of child support or the modification of an

existing order **must attach a completed Financial Affidavit (Form #4) to the complaint or motion at filing.** The Family Court Staff shall set all child support cases for a temporary hearing within thirty (30) days after filing to ensure compliance with North Carolina regulations which dictate that a temporary child support order shall be entered in each new child support case within sixty (60) days of service of the request. The hearing for permanent child support will be set within 240 days of filing.

The moving party shall serve upon the opposing party or counsel the pleading and their completed Financial Affidavit, the Notice of Hearing setting the temporary hearing date (Form #2), a blank Financial Affidavit (Form #4), and a blank Employer Wage Affidavit (Form #7). At the temporary hearing, both parties must file with the Court and serve on the opposing party or counsel the completed Employer Wage Affidavit. The responding party or counsel must also file and serve the completed Financial Affidavit. If at the temporary hearing both parties and the presiding Judge agree, the parties may proceed with a hearing for the establishment of a permanent order of child support. **It is the policy of Family Court to establish temporary child support even when the custody mediation is ongoing and custody has yet to be resolved.**

All social security numbers shall be redacted from all documents filed with the Court unless otherwise required.

- B. Custody/Visitation.** The Family Court Staff shall set all custody and visitation issues both initial establishment and modification for Custody Mediation Orientation/Parent Education within (45) days of the filing of the request for custody and/or visitation. The parties shall proceed with mediation in accordance with Rule 5 of these rules. Upon request of the party filing the complaint, the Family Court Staff will set a temporary hearing date within thirty (30) days of the filing. The moving party shall serve upon the opposing party or counsel the pleading and the Notice of Hearing (Form #2) setting the orientation date and the temporary hearing date, if applicable. As used herein, "Custody" includes custody, visitation, and parenting issues. A date for Custody Mediation Orientation/Parent Education will be assigned in all cases unless a consent agreement signed by all parties is presented to the Family Court Staff simultaneously with the filing.
- C. Post-separation Support & Alimony.** All pleadings for post-separation support and alimony must have attached a completed Financial Affidavit (Form #6). The Family Court Staff shall set all post-separation support issues for a hearing within 30 days of the filing of the pleading. Alimony will be set for a pretrial conference if and when it remains an open issue after any equitable distribution claim is resolved. If equitable distribution is not an issue in the case, then a pretrial conference will be set greater than 90 days and no less than 120 days from the filing of the pleading for alimony. In both

instances, the moving party shall serve upon the opposing party or counsel the pleading and his/her completed Financial Affidavit, the Notice of Hearing (Form #2) setting the hearing date, a blank Financial Affidavit (Form #6), and a blank Employer Wage Affidavit (Form #7).

At the hearing, both parties must file with the Court and serve on the opposing party or counsel the completed Employer Wage Affidavit (Form #7). Five (5) days before the hearing, the responding party or counsel must also file and serve the completed Financial Affidavit. If at the post-separation support hearing, both parties and the presiding Judge agree, the parties may proceed with a hearing for the establishment of an order for alimony.

- D. Equitable Distribution.** Prior to filing a pleading asserting a claim for equitable distribution, the moving party must meet with or call the Family Court Staff who will set a date for an initial status conference. The initial status conference will be scheduled to occur between 90 and 120 days from the date the pleading was filed.

It is the responsibility of the moving party to serve the opposing party or counsel for the opposing party with the following:

- (1) the pleading asserting equitable distribution; and
- (2) the notice of hearing setting the initial status conference date (Form #2); and
- (3) a blank Equitable Distribution Inventory Affidavit (Form #10).

In the event a pleading is filed seeking an interim distribution pursuant to N.C.G.S. 50.20(i1), the party shall specifically identify the property they wish to have distributed. The Family Court Staff will schedule an interim distribution hearing before the assigned judge within 30 days of the date of filing or date of the request. It is the responsibility of the party seeking the interim distribution to serve the opposing party or counsel with a notice of hearing for the interim distribution (Form #2) and a copy of the pleading seeking an interim distribution, including the specific property sought to be distributed.

Initial Status Conference. The purpose of the initial status conference is to ensure that the case is proceeding toward resolution in a timely and orderly fashion. At the initial status conference, the Family Court Administrator will confirm that each party has completed and filed his or her Equitable Distribution Inventory Affidavit (EDIA). These rules require that both parties will file the EDIA prior to or at the initial status conference. There is no requirement that the plaintiff's EDIA be filed prior to the defendant's filing of his or her EDIA or vice versa. Nothing in the rules prevents a party from amending the EDIA prior to the final pretrial conference with the assigned judge. Failure to comply with the filing requirement for the EDIAs may

subject the non-complying party to a motion for sanctions to be imposed (Sanctions examples include requiring the non-complying party to pay the other party's attorney fees for preparation and attending the conference.). Failing to comply with the EDIA filing requirements delays the movement of the case through court and wastes the time of the complying party and his/her attorney. At the initial status conference the Family Court Administrator will issue an Order of Reference designating the method of ADR to be employed, the Neutral who will conduct the ADR, and the deadline for the completion of the ADR process. The ADR process (mediation) is to be scheduled for completion within 70 days of the initial status conference.

- (a) The Family Court Administrator will set the date for a final pretrial conference upon receipt of the Report of Mediator indicating an impasse or partial agreement in Family Financial Mediation. This conference shall be set to occur within less than 240 days from filing of the complaint. At the final pretrial conference, the Judge will assign the final pretrial order and a due date and set the trial date.
- (b) If the Report of Mediator indicates an agreement on all issues, then the equitable distribution issue will be placed on the assigned Judge's next calendar as an order due.

Attendance at the initial status conference is mandatory for all counsel and pro se parties. It will be up to the discretion of counsel whether or not their clients are required to attend the initial status conference. However, if the parties or counsel wish to avoid the initial status conference they may do so, without penalty, only if they have completed and submitted the following to the Family Court Administrator in advance of the date of the status conference:

1. Each party or counsel must have completed, filed with the Clerk of Superior Court, and served the opposing party with the Equitable Distribution Inventory Affidavit;
2. The parties or counsel must have agreed on a mediator to conduct the ADR and informed the Family Court Administrator in writing (if agreement is not reached, the Family Court Administrator will choose the mediator) ; and
3. A Consent Order setting forth a discovery schedule, if needed.

The deadline set out in items 2 and 3 above must comport with the Time Standards for Domestic Cases as stated in Rule 6 of these rules. Following his or her review of items 1-3 above, and if the same meets with his or her approval, the Family Court Administrator will issue an Order of Reference setting forth the method of ADR to be employed, the Neutral who will conduct the ADR, and the deadline for completion of the ADR.

Failure to attend the initial status conference or mediation session or failure to complete, file, and exchange ED Inventory Affidavits may result in the Family Court Administrator setting the matter on for an immediate show cause hearing before the assigned Judge. At the hearing the Judge, in his or her discretion, may impose sanctions as permitted by law, including dismissal, against the non-complying party or parties including attorneys of record.

Except for the initial status conference and the final pretrial conference, all other pretrial conferences, hearings, and/or trial dates will be set by the assigned Judge.

- 4.2 Motions in the Cause for Contempt.** All motions except for orders to show cause for contempt shall be filed with the Clerk of Superior Court. If the order to show cause is signed, the Family Court staff shall set the case for hearing in front of the assigned Judge without a pretrial conference. The notice of hearing shall be contained in the order to appear and show cause.
- 4.3 All Other Motions.** Any motion not referenced above, including all discovery and non-evidentiary motions, shall be set for hearing by the Family Court Staff.
- 4.4 Ex Parte Orders.** Ex parte orders shall not be sought except from the assigned Judge and then only for such emergency circumstances as are allowed by the Rules of Civil Procedure, statute or other law. If the assigned Judge is unavailable due to illness, vacation, or other cause, or no Judge assignment has been made, the ex parte or other emergency matters may be heard by any available District Court Judge. The Family Court Staff will contact the appropriate Judge for an appointment to review and/or sign the initial order. Ex parte orders then shall be scheduled by the Family Court Staff for hearing on the assigned Judge's next court session greater than ten (10) days following the signing of the order before the assigned Judge. A lawyer or a party participating in an adversary proceeding is prohibited from communicating as to the merits of the case with a Judge before whom the proceeding is pending if the communications will occur outside of official proceedings. If the ex parte communication is authorized by statute, rule, or other law, then the attorney or party must promptly deliver a copy of the written communication to the opposing party or counsel by the same means used to deliver the communication to the Judge, i.e., hand delivery, facsimile, express mail or otherwise.

Ex parte communications shall not be abused, and it is the preferred practice to contact counsel for the opposing party, if that party is represented, before an ex parte request is made. When seeking an ex parte ruling, parties shall inform the court of the identity of opposing counsel of record; and the Judge shall make inquiry, before issuing an ex parte ruling, about the existence of opposing counsel.

4.5 Temporary Hearings. Temporary hearings shall include hearings on temporary child custody, temporary child support, post-separation support, ex parte returns on non-domestic violence cases, and interim partial distributions under N.C.G.S. 50-20(i1). Temporary hearings shall be limited to one-hour and each party shall be allocated one-half of that time to be used for direct examination of the party's witnesses, cross-examination of the opposing party's witnesses, examination of affidavits, and opening and closing statements. **It is anticipated that at the majority of these hearings, evidence will be presented based upon affidavits.** All affidavits shall be filed by the propounding party and served upon the opposing party at least three (3) business days prior to the scheduled hearing. Rebuttal affidavits, that is affidavits which are filed in response to previous affidavits, shall be served upon the opposing party no later than twenty-four (24) hours before the scheduled temporary matter hearing.

The Court may, in its discretion, postpone or waive these filing requirements. Pretrial conferences are not required prior to temporary matter hearings unless ordered by the Judge. Granted Extensions of Time to File will not automatically delay a temporary hearing.

4.6 Peremptory Hearings. Requests for a peremptory setting for matters involving persons who must travel long distances or have numerous expert witnesses or other extraordinary reasons must be made to the Family Court Administrator. The request shall be made in writing using the Peremptory Request Form (Form #3) which shall be delivered to the Family Court Administrator with a simultaneous copy sent or delivered to the opposing party or counsel. The opposing party or counsel shall file a response within five (5) days if they oppose the request for peremptory setting. The Family Court Administrator shall hold the request for peremptory setting for the aforementioned five (5) days or until receiving a response from the opposing party or counsel in writing. The Family Court Administrator shall then place the request before the assigned Judge who shall render his or her decision. The Judge's decision shall be transmitted to the moving party who shall then notify the opposing party or counsel. A peremptory setting shall be granted only for good and compelling reason.

4.7 Jury. All issues to be determined by a jury in any domestic case shall be scheduled by the assigned District Court Judge.

4.8 Calendars. The calendars for domestic relations sessions shall be available in the Family Court Administrator's Office and shall be mailed to attorneys and pro se litigants or placed in attorneys' courthouse boxes by the Clerk of Superior Court no less than ten days prior to the session.

RULE 5: MANDATORY CUSTODY MEDIATION

5.1 The parties to any custody and/or visitation case, including initial filings, modifications or enforcement, shall participate in mandatory mediation prior to

any pretrial conference or other hearing of these issues, other than temporary issues, unless waived by the Court.

- 5.2 Scheduling.** The initial mediation orientation is scheduled in accordance with 4.1B. The Custody Mediator will schedule individual sessions at the time of the orientation.
- 5.3 Attendance.** The parties to any custody and/or visitation case must attend and participate in the orientation session, a one-hour parent education session, and at least one mediation session to fulfill the Court's order to participate in mediation. Any party who fails to attend and participate in mediation as ordered shall be subject to the contempt powers of the Court and the Family Court Administrator or Custody Mediator may immediately file the proper motion.
- 5.4 Parenting Agreements.** If the parties are able to reach a full Parenting Agreement, the Custody Mediator will prepare a draft and distribute copies to all parties and their attorneys advising the parties to review the agreement with their attorneys. A time will be scheduled with the parties to return to sign the final draft (usually within ten days). Final signed agreements shall be presented to the Court. The Court shall review each agreement signed by the parties and, if appropriate, make the Parenting Agreement an order of the Court by signing the Order Approving Parenting Agreement. The Custody Mediator will file the final Order and Parenting Agreement with the Clerk of Superior Court, and distribute copies to the parties and/or counsel.
- 5.5 Partial Parenting Agreements.** If a partial agreement is reached, the Custody Mediator will prepare a final draft of the partial agreement and follow the process set out in Rule 5.4. The Custody Mediator will notify the Family Court Administrator if there are unresolved issues and the Family Court Administrator will then prepare an Order to Attend Advanced Parenting Education to be signed by the Judge and mail said order to all parties and their counsel.
- 5.6 No Agreement Reached at Mediation.** If the parties fail to agree, the Custody Mediator will notify the Family Court Administrator, who will then prepare an Order to Attend Advanced Parenting Education to be signed by the Judge and mail said order to all parties and their counsel.
- 5.7 Advanced Parenting Education.** Parties who do not reach a Parenting Agreement or who reach only a partial Parenting Agreement shall be ordered to attend a four-hour parent education session entitled Advanced Parenting Education. Advanced Parenting Education is conducted by master's level or above professionals and held outside the Court. This course is an extension of the one-hour parent education session and examines parenting issues in greater depth. There is a \$50.00 per person fee for this course with a reduced, sliding scale-determined fee for parties who qualify. After completion of this course, the parties have seven (7) days to elect to return to mediation to try again to reach a

Parenting Agreement. Both parties must so elect in order to return to mediation. To return to mediation, both parties must contact the Custody Mediator. If both or either party elects not to return to mediation, the Custody Mediator will notify the Family Court Administrator who will notice all parties for trial within 30 days.

- 5.8 Modifications.** These rules also apply to modifications or enforcement of existing custody orders, visitation orders, or Parenting Agreements. If the parties previously attended an orientation session within less than two years from the date of filing of the motion, the Family Court Staff shall schedule the parties for a mediation session as soon as possible; otherwise, the parties shall be scheduled for Custody Mediation Orientation and then a mediation session. In accordance with Rule 4.1B, the moving party is responsible for contacting the Family Court Staff for an orientation or mediation date and for notifying the opposing party or counsel of these dates.
- 5.9 Waiving the Custody Mediation Process.** In some instances, mediation may not be appropriate or in the best interest of the parties or their children. In these instances, a party may move to waive mediation for “good cause” and good cause is defined as including but not limited to the showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or spouse abuse; or allegations of psychological, psychiatric or emotional problems. Parties desiring an exemption shall complete and submit a Motion and Order to Waive Custody Mediation (Form AOC-CV-632) to the Family Court Administrator prior to the date of the orientation or first session. **The Court will make a decision based on the submission without a hearing.**
- 5.10 Inadmissibility.** All verbal or written communications from either or both the parties to the Custody Mediator or between the parties in the presence of the Custody Mediator made in a proceeding pursuant to these rules are absolutely privileged and inadmissible in Court. Neither the Custody Mediator nor any party or other person involved in mediation under these rules shall be called to testify as to communications made during or in furtherance of such mediation sessions, provided there is no privilege as to communications made in furtherance of a crime or fraud.

RULE 7: REMANDED CASES

- 7.1 Remands.** When cases are remanded for trial by the Appellate Division, appellant’s counsel shall promptly notify the Family Court Administrator’s Office that the case can be scheduled for a pretrial conference.

RULE 8: CONTINUANCE REQUESTS

- 8.1 General Rule.** Domestic cases should be addressed at the earliest opportunity, including the first pretrial conference setting. However, when compelling reasons for continuance are presented which would affect the fundamental fairness of the trial process, a continuance may be granted for good cause. Requests for continuances that will delay the resolution of the contested issues beyond the established time standards shall only be granted for extraordinary cause. Because the time standard for hearing temporary issues and entering orders is brief, it is expected that hearings on temporary issues shall proceed as scheduled at the first setting as these orders are temporary and therefore non-prejudicial. Extensions of time will not prevent a temporary issue from being heard and a temporary order entered.
- 8.2 Conflicts.** The various levels of Court should work together to move cases as expeditiously as possible. Age of case, subject matter, and priority of setting should be given as much primacy as the level of court when resolving conflicts. Attorneys shall notify the Court and opposing counsel of any other Court conflict(s) as they become known and shall communicate with other Judges to resolve such conflicts. In resolving Court conflicts, juvenile cases shall take precedence over all other matters.
- 8.3 Motions.** All applications for continuance shall be by written motion (Form #5) and shall be delivered to the Family Court Administrator. However, oral motions may be allowed when the reason for the continuance did not become known until immediately preceding the start of Court.
- 8.4 Notification of the Request.** All parties must be notified of a motion to continue. A copy of the motion to continue must be distributed to all counsel of record and/or unrepresented parties at the same time the motion is delivered to the Family Court Administrator. In addition to the service requirements set out in the statute, distribution of the motion must be made by the quickest means feasible, including facsimile transmission, electronic mail or hand delivery.
- 8.5 Input from All Parties.** All parties should have an opportunity to be heard on a motion to continue. If the request is received within five (5) business days of the hearing date, and there is no input regarding the opposing party's or counsel's position, the Court may be unable to address the request prior to the hearing and will address the request at that time.
- 8.6 Responsibility of the Party Requesting the Continuance.** The burden is on the party requesting the continuance to contact the opposing counsel or party prior to submitting the motion to the Family Court Administrator, and include the opposing party's/counsel's position on the request as:
- Joining in the request;
 - Consenting to or not objecting to the request; or

- Opposing the request.

If the opposing party cannot be reached or fails to respond, that should be noted on the request as well as a statement on the efforts made and why contact was not possible.

8.7 Responsibility of Party Opposing the Request for Continuance. A party or counsel opposing the request has the burden of submitting a written response to the Family Court Administrator immediately upon receipt of the continuance.

8.8 Factors to be Considered. Factors to be considered by the Court when deciding whether to grant or deny a motion for continuance should include:

- The effect on children and spouses if the issue is continued and not resolved;
- Whether there is in effect a temporary order dealing with the issue that is the subject of a continuance request;
- The impact of a continuance on the safety of the parties or any other persons;
- Whether the issue has been identified statutorily as an issue which should be addressed expeditiously, i.e., child support, post-separation support;
- The age of the case or motion;
- The status of the trial calendar for the sessions;
- The number of previous continuances OR the number, moving party, and grounds for previous continuances;
- The extent to which counsel had input into the scheduling of the trial date;
- The due diligence of counsel in promptly making a motion for continuance as soon as practicable;
- Whether the reason for continuance is a short-lived event which would resolve prior to the scheduled court date;
- Whether the basis of the motion is the existence of a legitimate conflict with another court setting;
- The period of delay caused by the continuance request;
- The position of opposing counsel or unrepresented parties;
- Whether the parties themselves consent to the continuance;
- Present or future inconvenience or unavailability of witnesses/parties, the attorneys or the witnesses if the case is continued; and
- Any other factor that promotes the fair administration of justice.

Citing of any of the above or other reasons for requesting a continuance is not a guarantee that the continuance will be granted. The assigned Judge will take into account the individual circumstances, the number of continuances previously granted for the same issue or case, and where the case is positioned on the Family Court Domestic Time Standards.

- 8.9 New Date.** Prior to granting a motion for continuance, the Family Court Administrator or the assigned Judge should reschedule the conference, hearing or trial to a specific date after receiving scheduling input from all parties.

RULE 9: MANDATORY USE OF FINANCIAL AFFIDAVITS

- 9.1 Application.** This rule shall apply to support cases involving the establishment or modification of child support, post-separation support and/or alimony. As used in this rule, the term “support” means all of the actions referenced in the preceding sentence.
- 9.2 Financial Affidavits.** Each party who seeks support or from whom support is sought shall file and serve upon the other party a completed Financial Affidavit (Form #4 or #6). The moving party shall file and serve his or her Financial Affidavit, along with the pleading seeking support. **The moving party also shall serve a blank Financial Affidavit upon the party from whom support is sought.** The responding party shall file and serve the Financial Affidavit and his or her responsive pleading, if any, no later than ten (10) business days prior to the date and time of any hearing or pretrial conference on the other party’s motion. The Court may, in its discretion, postpone or waive these filing requirements.
- 9.3 Employer Wage Affidavits.** Each party shall submit to his/her employer(s) an Employer Wage Affidavit (Form #7) for completion. Each party shall file a completed Employer Wage Affidavit and serve a copy on the other party no later than five (5) business days prior to the first hearing or conference on the pending request for support or modification thereof. Any original or certified copy of affidavit by the employer which is delivered under the provisions of this rule, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication.

RULE 10: PRETRIAL CONFERENCES

- 10.1 Court-Set Schedule.** The Family Court Administrator and the Judge shall schedule such status conferences and/or pretrial conferences as necessary to comply with Rule 4 of these rules.
- 10.2 Participation in and Purpose of Status Conferences.** Attendance at scheduled status conferences is mandatory for the attorneys of record and all pro se parties. It will be up to the attorneys’ discretion whether or not the individual parties must be present. For good reason, the Family Court Administrator may excuse a represented party from the status conference. The purpose of a status conference is to ensure the exchange and submission of requested documents, to set deadlines for discovery and upcoming events, to apprise participants of the dispute resolution requirements, and to provide information on community resources.

10.3 Participation in and Purpose of Pretrial Conferences. Attendance at pretrial conferences is mandatory for all attorneys of record and pro se parties. It will be up to the attorneys' discretion whether or not the individual parties must be present. The purpose of a pretrial conference is to assist the attorneys, or parties, for trial preparation by narrowing the issues for trial or disposition of the case, to set deadlines for the completion of discovery, to determine the need for reference, to seriously explore the prospects of settlement of the case, to finalize proposed witness lists, to determine what facts can be stipulated and agreed upon by the parties, to develop lists of stipulated exhibits, and to agree upon a final pretrial order. At a pretrial conference, the Court will address any requests for additional discovery and set a date for trial of the matter or such additional pretrial conferences as are necessary. The presiding Judge will order a final pretrial order to be completed and submitted by a certain date or within ten days following the final pretrial conference. Failure of the moving party to complete the order or failure of the opposing party to cooperate with providing the appropriate information/documents to complete the order may result in the imposition of sanctions.

10.4 Sanctions for Failure to Participate in Status or Pretrial Conferences. Failure to timely schedule and attend status or pretrial conferences is a serious breach of the local rules. Such failure may result in a dismissal of the responsible party's claim, the responsible party's proffered testimony (either written or oral) not being allowed into evidence by the Court, or may result in the imposition of other sanctions as provided by Rule 37 of the North Carolina Rules of Civil Procedure. The Family Court Administrator may immediately file the proper motion.

RULE 11: EQUITABLE DISTRIBUTION INVENTORY AFFIDAVITS

11.1 Equitable Distribution Affidavit. Each party shall prepare and serve upon the opposing party an Equitable Distribution Inventory Affidavit (EDIA) not later than 90 days after the service of the request for equitable distribution, and in extreme circumstances, not less than ten (10) days prior to the date of the initial status conference. The first line of this rule clearly indicates that the defendant does not wait for the plaintiff to file the EDIA before the defendant files one. The inventory affidavit shall list all of the property known by the party to have existed at the date of separation and owned by the party or parties. The inventory affidavit is intended to be a beginning point in the discovery of and development of the parties' net marital estate and separate estates. The inventory affidavit shall be subject to amendment and shall not be binding at trial as to completeness or value. Nonetheless, it is expected by the Court that the parties will make a concerted effort to file a complete and accurate affidavit.

If the defendant in an equitable distribution action obtains from the Court an extension of time to file the answer, the extension of time does not extend the

time for the setting of the status conference. The conference still will be set within the time standard of 120 days from the filing of the claim for equitable distribution. At the status conference, the Family Court Administrator has the discretion to extend the time that the defendant in the equitable distribution action has to file the EDIA for up to ten days.

The parties may waive appearance at the initial status conference with the Family Court Administrator provided each party (1) has filed with the Court and the opposing party the EDIA and (2) has agreed on a mediator to conduct the Family Financial Mediation and has notified the Family Court Administrator of this selection by the date of the initial status conference. **If either party has not filed the EDIA prior to the status conference, attendance at the conference is required by both parties.**

- 11.2 Amended Equitable Distribution Affidavit.** No later than ten (10) days prior to the Equitable Distribution Final Pretrial Conference, each party shall file and serve upon opposing counsel or party any amendment to the Equitable Distribution Affidavits. These must be typewritten. The affidavit is binding on the party at trial unless an amendment is allowed by the Judge.
- 11.3 Sanctions.** Failure to serve the Equitable Distribution Inventory Affidavit or any amendment thereto in the timeframe outlined in 11.1 and 11.2 may result in the responsible party's proffered testimony (either written or oral) not being allowed into evidence by the Court. This failure to observe timeframes may also result in the imposition of sanctions as provided by Rule 37 of the North Carolina Rules of Civil Procedure. The Court may extend the time limits in this subsection for good cause shown.
- 11.4 Reference.** In any equitable distribution claim, the Court may, in its discretion, and pursuant to Rule 53 and Rule 16(a)(5) of the North Carolina Rules of Civil Procedure, order a reference before proceeding further, or before entering final judgment. The Court may provide for the apportionment of the costs of said references, filing deadlines, and scope as it deems to be in the furtherance of the disposition of the claim.

RULE 12: DELINQUENT ORDERS OR JUDGMENTS

- 12.1 Orders and Judgments.** Orders and judgments shall be prepared by the prevailing party and submitted to the Judge or the Family Court Administrator by the date assigned by the Court which generally will be within 15 days following the conclusion of a hearing. The party preparing the proposed judgment or order shall provide a copy of the proposed document to the opposing party ten (10) days prior to submitting the document to the Judge. **(NOTE: In any event, the Court will expect the order to be filed not later than 30 days after hearing.)**

E-mail is an acceptable and preferred format for submitting orders and judgments and may be submitted to either the assigned Judge and/or the Family Court Administrator.

- 12.2 Delinquent Orders and Judgments.** Cases identified as being delinquent pursuant to the rule may be dismissed at the discretion of the Chief District Court Judge or assigned Judge, or sanctions or penalties may be imposed as deemed appropriate and as allowed by law.

RULE 13: TELEPHONE CONFERENCES

- 13.1 Telephone Conferences.** The Court may, in its discretion, order or allow oral argument on any motion by speaker phone conference call or telephone conference call, provided that all participants to the conference can be heard by all other parties at all times during the conference call. Counsel shall schedule such conference calls at a time convenient to all parties and the Judge. The Judge may direct which party or parties shall bear the cost of the conference call.

RULE 14: SANCTIONS

- 14.1 Sanctions.** Failure to comply with any section of these rules shall subject the parties, and/or their counsel to sanctions allowed by law and deemed appropriate at the discretion of the presiding Judge including but not limited to: dismissal of any or part of any claim for relief or pleadings, disallowance of evidence and/or testimony, a fine, payment of costs or the opposing party's reasonable legal fee. Any attorney or pro se party may file a motion for sanctions or a Judge invoke sanctions upon his/her own motion.

RULE 15: AMENDMENT AND MODIFICATIONS

- 15.1** These rules are subject to amendment or modification as experience indicates and requires.

RULE 16: MANAGING ISSUES AND CLOSING CASES

- 16.1** The Family Court Administrator shall monitor the pending docket and manage the cases so that all issues can be expeditiously resolved. Attorneys shall cooperate in assisting the Family Court Staff in identifying the issues to be heard in cases in which they are involved. Therefore, attorneys and parties should be careful in using and accurately preparing the AOC Domestic Cover Sheets (Form #1) required for filings in Family Court cases. Attorneys who prepare proposed orders should include as a final provision in the order or judgments a statement that the order or judgment either resolves all issues or identify those issues, which remain to be heard in the case.

- 16.2** In Family Court matters, when a judgment or order is entered which renders moot issues not addressed in the order, the Clerk shall close the moot issues administratively upon being informed of the judgment or order resolving the main issue. Therefore, the Clerk shall administratively enter as closed and remove from the pending docket the following issues, which are moot:
- (1) The entry of a final Equitable Distribution Order shall close any request for an Interim Distribution;
 - (2) The entry of an Alimony Order shall close any request for Post-separation Support;
 - (3) The entry of a Divorce Judgment shall close a request for Divorce from Bed and Board, whether the Divorce is entered in the main action or in a collateral action between the parties. To complete the record, the Clerk may place a certified copy of the Divorce Judgment in the case in which the Divorce from Bed and Board is pending if the Divorce was granted in separate action;
 - (4) A final Custody Order shall close any request for Temporary Custody or Visitation; Orders or Judgments resolving all other issues shall close any request for such other relief as may be appropriate or similar requests for unspecified additional relief.

SECTION I-A

DOMESTIC FORMS

**SEE INDIVIDUAL FORMS LISTED BY NUMBER
SEPARATELY.**

SECTION II

RULES OF JUVENILE COURT

SEE JUVENILE RULES LISTED SEPARATELY.