

LOCAL RULES AND PROCEDURES FOR
THE CALENDARING OF CIVIL CASES
DISTRICT COURT DIVISION

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RULE 14: MEDIATION OF CUSTODY AND VISITATION DISPUTES

The Judicial District 13 Custody and Visitation Dispute Program is established under North Carolina General Statutes 7A-494, 7A-495, and 50-13.1. The following rules shall apply:

14.1 Referral to Mediation

All actions involving unresolved or temporary issues of custody and visitation of a minor child shall be ordered to mediation on such issues either prior to hearing or after a temporary order has been issued by the Court, unless the Court waives mediation.

- A. Issues that arise in motions for modification as well as in other pleadings shall be set for mediation unless mediation is waived by the Court.
- B. In motions for contempt, the presiding judge may determine whether to hear the motion or to refer the matter to mediation.

14.2 Procedures for Referral to Mediation

A. Attorney Referral

(1) Calendar for Orientation

Unless mediation has been waived by the court, (see 14.3) any party filing a custody action, motion or claim must simultaneously schedule the matter for Mediation Orientation. This request for mediation orientation occurs within 45

days of the original filing. Scheduling a case for orientation requires the case file number, the names of both parties, and the names and phone numbers of all attorneys representing all parties in the case. (**Note:** The calendar for orientation is located in the Office of the Clerk of Court.)

(2) Noticing all Parties to Attend Orientation

The party scheduling the Custody Mediation Orientation date is responsible for noticing all opposing parties using **Form LDF-CV1502 Notice for Custody Mediation Orientation** and **LDF-CV1505 Letter to Parents from the Chief District Court Judge**. (Master copies of these forms are available from the Mediation Office.) All parties should be given at least 10 days notice prior to the scheduled orientation. (Each law office should generate their own stock of forms from the master copies provided.)

B. Request for Expedited Mediation

A written request for expedited mediation (see form **Stipulation for Expedited Mediation, LDF-CV1506**), signed by both parties or their attorneys, will waive the notice period. The attorney must notify the Custody Mediator by telephone and delivering to the Custody Mediator LDF-CV1506 as soon as possible to facilitate setting of a mediation appointment. Form LDF-CV1506 will also be filed with the Clerk's Office. In expedited mediation cases, the parties will be provided an abbreviated orientation session prior to mediation. Mediation will take place immediately or as soon as an appointment can be practically arranged, but in no case longer than 7 days.

C. Time Referral

Should counsel for the parties fail to schedule mediation within 45 days of the filing of the action, an Order for Mediation, (Form LDF-CV1502-1 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. Referral by Judge

A case may be ordered to mediation from the bench.

14.3 Waiver of Mediation

On its own motion or the motion of either party, the Court may waive the mediation of a contested custody or visitation matter (including modification or contempt motions) 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, allegations of alcoholism, drug abuse, spousal abuse, or allegations of severe psychological, psychiatric, or emotional problems.

Waivers of mediation will be made to and approved by the Court. The moving attorney may approach the judge *ex parte* to seek an exemption, then if the opposing counsel thinks that mediation is appropriate, they must set the matter for the motions calendar.

If civil court is not in session or has been cancelled, then the Chief District Court Judge shall rule on the motions for exemption. The motion for exemption may be made at any time prior to the scheduled mediation orientation.

Where the parties reside more than 50 miles from the court, such distance can be considered good cause at the discretion of the court. If the party residing outside the area is amenable, mediation may still take place. Note: The mediator may be able to arrange an orientation session closer to home for parents who reside more than 50 miles from the courthouse, or expedited mediation may be arranged if needed.

A. Case Closure: Exemption, Settlement or Dismissal

The Custody Mediation Office will be notified, by way of a copy of the signed agreement, of any change in status of a pending case including: a signed consent order, voluntary dismissal, or exemption. The Custody Mediation Office will receive a copy at the same time that the order, **Form AOC-CV-632, Order as to Exemption from Mediation**, is filed with the Clerk of Court.

B. Holds on Discovery

No discovery regarding a custody or visitation claim shall be served, noticed or conducted until the mediation process is complete or has been exempted by judicial order. Except for oral deposition of parties discovery may proceed regarding financial information.

14.4 The Mediation Process

All parties are mandated to attend the group orientation and at least one private mediation session before withdrawing from the process. The required private mediation session must occur within two weeks of group orientation, if the mediation program has mediation appointments available.

A. Orientation

Orientation will be held twice a month in a courtroom to be announced. Orientation is an educational group session during which the goals and procedures of the mediation process are explained to the parties as a group. Orientation is open to the public. Children should not attend orientation or private mediation. If one or more of the parties does not attend, the Judge will sign an Order to Mediation. If the parties fail to comply they may be subject to the contempt powers of the Court. (It is recommended that attorneys practicing domestic law in the 13th Judicial District attend one of the orientation sessions.)

B. Scheduling of First Private Mediation Session

The parties involved generally schedule their private mediation sessions at the group orientation.

- (1) If circumstances require and if consented to by both parties (or their counsel) a request may be made for expedited mediation which will waive the normal waiting period.
- (2) At the discretion of the presiding judge, a case may be ordered to expedited mediation from the bench.

C. Private Mediation Sessions

Each session lasts approximately two hours. It is not uncommon for parenting parties to spend from one to three sessions to fully resolve the issues around parenting the children. Children should not attend mediation sessions.

The mediator facilitates communication and problem-solving, which assists the parties in focusing on the needs of their children, the need to recognize the family and use its strengths, the need to maintain a continuity of relationships, stability in the child's life, and the options available to the parties that would accomplish these goals. The mediator does not decide nor recommend issues but encourages parents to assume responsibility for parenting decisions. Parents are not required to reach an agreement in mediation.

D. Outcomes

As a result of mediation, the parties may enter into a full agreement, a partial agreement, or remain unresolved. The agreement records all issues surrounding custody and visitation that have been addressed and agreed to. The partial agreement will state those issues that have been resolved and those still remaining open to litigation. Both the court and representing attorneys will be notified of the disposition of each mediated case.

The mediator has a responsibility to solicit from the parents the issues that are significant to them and then to facilitate the mediation of those issues, provided they do not go outside the specific limits of child custody mediation. Financial matters will not be mediated in custody mediation.

E. Pending Cases

Any custody mediation case that is open beyond sixty days of orientation will not retain its open status, but shall be referred to the bench as "unresolved". At which time an **Order to Calendar Custody Visitation Dispute, Form LDF-CV1507** is issued unless there is a valid reason to keep it open. This reason must be expressed to the Mediation Office. Any case that remains open after ninety days will require a letter to the judge stating the special circumstances that require consideration.

F. Confidentiality

Mediation proceedings shall be held in private and shall be confidential. Except as provided in G.S. 50-13.1, all verbal or written communications from either or both parties to the mediator or between the parties in the presence of the mediator made in a proceeding pursuant to appropriate sections of G.S. 50-13.1.S. are absolutely privileged and inadmissible.

The mediator shall not at any time disclose to any judge or Court Personnel the reason that the mediation was not successful. The Court will not inquire of the parties or the mediator as to the reasons for success or failure of the mediation.

G. Review of Agreement with Counsel and The Signing of Agreements

Parents or custodians have approximately 10 business days after the receipt of the agreement to consider the agreement before signing. A copy of the parenting

agreement will be sent to each parent and attorney for review. *The mediator recommends that each party review the agreement with legal counsel before signing.*

The mediator will schedule signings through the mediation office. Parents will not be required to sign at the same time, however they may be required to sign on the same day. A copy of any signed agreements will be file-stamped and sent to each parent and attorney.

Minor changes to proposed agreements may be initiated by parents with the mediator by telephone. Major changes that are desired will require both parties to return to mediation.

H. Agreements Become Orders of the Court

The signed agreement is presented to a District Court Judge for review and signature, along with the **Parenting Agreement Order (AOC-CV-631, rev. 7/95)** making the agreement a custody order within the meaning of Chapter 50A of the General Statutes G.S. 14-320.1, G.S. 110-239.1 or other places where those terms appear.

I. Enforcement

Custody orders agreed to in mediation are enforced as any other court order through the legal system in place. They are not enforced by the mediation office. If problems arise, parents may return to mediation; often they agree to this step in their parenting agreement.

J. Who Attends Mediation

Parties present at mediation are those named in the suit. Attorneys and other interested parties may be present at the mediation sessions with the consent of both parties and the mediator.

K. Mediator May Terminate Process

In the event that the mediator ascertains that mediation is inappropriate, or there are safety issues which mediation will not address appropriately, he or she may terminate the mediation process and return the case to court. In the event that mediation is deemed inappropriate, the mediator will still utilize the standard release form for the file, indicating that “the parties met the requirements of the mediation program but did not reach a mediated parenting agreement.”

RULE 15: SANCTIONS

15.1 Failure to comply with any section of these Rules may subject an action to dismissal or other sanctions allowed by law and deemed appropriate at the discretion of the Presiding Judge, and/or as previously established under Rule 9 of these Rules.