

## WAKE COUNTY CUSTODY AND VISITATION MEDIATION RULES AND PROCEDURES

The following local Rules of Court are promulgated pursuant to G.S. 50-13.1. These rules incorporate by reference the “Uniform Rules Regulating Mediation of Child Custody and Visitation Disputes Under the North Carolina Custody and Visitation Mediation Program” as contained in CUSTODY AND VISITATION MEDIATION PROGRAM PROCEDURES MANUAL, North Carolina Administrative Office of the Courts, March 1994.

### **Rule 1: CUSTODY/VISITATION MEDIATION**

1.1 When a party files a Complaint, Answer, Counterclaim, Motion or other pleading in a domestic relations case, the party shall complete a cover sheet (DOM-1) which is to be attached to the pleading at the time of filing. The Cover Sheet will be used by the Trial Court Administrator (TCA) for case tracking purposes.

1.2 Any Complaint, Answer, Counterclaim, Motion or other pleading which is not accompanied by a properly executed cover sheet will be subject to dismissal.

1.3 When a cover sheet indicates that a custody and/or visitation issue exists, the Custody Mediation Office (CMO) shall set the issue(s) for mediation prior to calendaring.

1.4 A matter shall be set for mediation when the TCA has determined that at least one of the following conditions exists:

- (a) A custody and/or visitation issue has been on file for forty-five (45) days or more with no filed order resolving the issue;
- (b) Prior to the court’s intervention at forty-five (45) days, the parties or their counsel have stipulated to an earlier orientation date by filing a *Stipulations For Expedited Mediation* (DOM-6);
- (c) Thirty (30) days have passed since the expiration of the time period in Rule 1.4(a), the CMO has failed to schedule mediation and either party has contacted the CMO to schedule the case for the mediation.

1.5 Motions for contempt involving custody or visitation shall be mediated if referred by the court.

1.6 The CMO shall notify the attorneys of the date, time, and place for the parties’ initial mediation orientation session (DOM-2). Attached to every notice shall be a letter from the Chief District Court Judge (DOM-5) concerning mediation. Counsel shall ensure that their clients receive a copy of the notice and letter. Where there is no counsel of record, the parties shall be notified directly.

1.7 Parties who fail to comply with the *Notice and Order for Custody Mediation Orientation* (DOM-2) shall be subject to the contempt powers of the Court.

1.8 For good cause as defined by G.S. 50-13.1(c), on the motion of either party or of the court, the court may waive the mandatory mediation of a contested custody and/or visitation matter. Counsel or parties desiring an exemption shall complete, file and serve on the opposing party a *Motion and Notice of Hearing for Exemption from Mediation* (DOM-3) and shall calendar the motion in domestic court on a Friday which is at least ten (10) days after service of the motion.

1.8(A) No discovery regarding a custody or visitation claim shall be served, noticed, or conducted until the mediation process is complete or the claim has been exempted from mediation by judicial order pursuant to Rule 1.8 above. Except for oral depositions of parties, discovery may proceed regarding financial information.

1.9 The TCA shall monitor the number of contested custody and/or visitation case filings as they related to mediator staffing levels. In the mediator's discretion and in accordance with the policies of the TCA's office, a contested case or post-decree motion may bypass mediation and shall be scheduled for hearing by the TCA with notice to the attorneys/parties. The action **shall only** be taken the next regularly available mediation would result in undue delay to the parties.

1.10 All oral or written communication and information derived therefrom 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.

1.11 Neither the mediator nor anyone involved in mediation under these Rules shall be called to testify to communications made during or in furtherance of such mediation sessions; provided, communications made in furtherance of a crime or fraud are not privileged.

- 1.12 (a) If the parties are able to reach a full parenting agreement, the mediator will prepare a final draft and mail copies to both parties and their attorneys, advising the parties to review the agreement with their attorneys. A time will be scheduled for the parties to return to the CMO to sign the final draft (usually within 10 days). Final, signed agreements shall be presented to the court by the CMO. The court shall review each document and, if acceptable, sign an *Order Approving Parenting Agreement* (AOC-CV-631) as an order of the court. The final order and parenting agreement shall be filed with the Clerk of Superior Court.
- (b) If a partial agreement is reached, the mediator will prepare a final draft of the partial agreement and mail copies to both parties and their attorneys. A list of the unresolved issues shall be attached. As with the full agreement, the parties will be scheduled to return and sign the final draft once they have reviewed the copy with their attorney(s). The mediator will refer the partial parenting agreement for court approval and the unresolved issues for calendaring by having a judge sign an *Order to Calendar Custody/Visitation Dispute* (DOM-7). Calendaring will be as in all other domestic matters.

- (c) If the parties fail to reach any agreement, the mediator will refer the case for calendaring by having a judge sign an *Order to Calendar Custody/Visitation Dispute* (DOM-7). Calendaring will be as in all other domestic matters.
- (d) Copies of all orders entered under 1.12(a), (b) and (c) shall be mailed to the parties and their counsel.

1.13 When custody and/or visitation issues have been completely settled by consent or dismissal, the issues will not be removed from the mediation process until a file-stamped copy of an *Order as to Exemption from Mediation* (DOM-4) or a dismissal is provided to the TCA and the CMO. When a signed consent order for custody and/or visitation is presented to the court for its approval, it must be accompanied by a DOM-4 for the judge to sign.

### **ATTACHMENTS**

1. Cover Sheet (DOM-1\_
2. Notice of Custody Mediation Orientation (DOM-2)
3. Motion and Notice of Hearing for Exemption from Mediation (DOM-3)
4. Order as to Exemption from Mediation (DOM-4)
5. (Letter from Chief District Court Judge (DOM-5)
6. Stipulation for Expedited Mediation (DOM-6)
7. Order to Calendar Custody/Visitation Dispute (DOM-7)
8. Motion to Show Cause for Failure to Comply with Custody Mediation (DOM-8)
9. Order to Appear and Show Cause for Failure to Comply with Custody Mediation (DOM-9)
10. Notice (DOM-10)
11. Order Approving Parenting Agreement (AOC-CV-631)