

ADDENDUM TO LOCAL RULES IMPLEMENTING MANDATORY CHILD CUSTODY/VISITATION MEDIATION FOR THE 30TH JUDICIAL DISTRICT

The 30th Judicial District Custody and Visitation Mediation Program is established pursuant to North Carolina General Statutes 7A-494, 7A-495, and 50-13.1.

1. PURPOSE AND GOALS OF THE PROGRAM

The goals of custody and visitation mediation are to reduce the stress and anxiety experienced by children in separation and divorce. The program furnishes an alternative way for the parties to settle custody and visitation disputes. A trained mediator helps the parties reorganize the family, continue parenting their children despite separation, and begins an educational process which will allow parties to recognize and meet the needs of their children.

Mediation provides a structured, confidential, non-adversarial setting which will help the parties make informed choices about matters involving their children, with the hope that such cooperative resolution will alleviate the acrimony between the parties, reducing attendant stress on both the parties and the child. A successful mediation will help the parties put a parenting plan in writing and teach them to solve future problems without recourse to the courts thereby reducing the stress of re-litigation of custody and visitation disputes.

2. REFERRAL TO MEDIATION

All actions filed after **July 1, 2007** involving unresolved issues as to the custody or visitation of a minor child shall be referred to mediation on such issues prior to the trial of the matter, unless the Court waives mediation. Such actions include an action for custody or visitation in which no order has been previously entered, motions to modify order previously entered and actions to enforce custody and visitation orders. This mandatory referral procedure does not limit the right of the Court to enter temporary and ex parte orders under the applicable statutory provisions, or to immediately enforce existing orders. Any actions filed prior to October 1, 2006 may be referred to mediation upon consent of the parties or by order of the Court. Parties failing to comply with the mediation process will be subject to appropriate legal sanctions and the contempt powers of the Court.

3. PROCEDURES FOR REFERRAL TO MEDIATION

A. Attorney or Filing Party Phase: Unless Custody Mediation has been waived by the Court (see Rule 4), any party filing a custody or visitation action or motions to modify or other claim including enforcement actions (i.e. contempt motions) must schedule the matter for mediation orientation prior to docketing the case for a final hearing on the merits at such times and places in each county to be designated by the child custody mediator for the 30th Judicial District. In any event, the filing party shall schedule the mediation orientation to occur within forty-five (45) days of the original service. The party requesting and scheduling the custody mediation orientation date is responsible for noticing all opposing parties. Unless waived by all parties, opposing parties shall be given ten (10) days notice in the manner provided by North Carolina General Statutes 1A-1, Rules 5(B) and 6. If one or more of the parties fails to attend the scheduled custody mediation orientation, the Judge will be asked by the mediator to sign an Order to Mediation. Parties failing to comply with this order will be subject to appropriate legal sanctions and the contempt powers of the Court.

B. The parties may, in writing, jointly request an expedited mediation which will be deemed a waiver of the normal waiting period.

C. Court Ordered Referral: Should counsel for the initiating party or the party acting pro se fail to schedule the mediation within forty-five (45) days of the original service, an Order for Mediation shall be issued. It shall be the responsibility of the Custody Mediator to track all custody/visitation cases subject to these rules and to prepare and present to a District Court Judge the order to mediate within fifteen (15) days of the expiration of the initial 45-day period. Parties failing to comply with this order will be subject to appropriate legal sanctions and to the contempt powers of the Court.

D. It shall be the duty of the initiating party to list the case in the Custody Mediation Notebook maintained in each of the county offices of the Clerks of Superior Court for the 30th Judicial District. If a desired date is “full”, that is all spaces provided are filled in with other cases, that session is no longer available and a later session must be used. The Custody Mediator will use this list in each county to establish their case files, and determine attendance at the Custody Mediation Orientation. The limitation imposed by the available spaces is designed to allow the Mediator to schedule all cases present at one orientation before the next orientation session. Each Clerk of Superior Court in each county of the 30th Judicial District shall assist the Child Custody Mediator in maintaining this list.

E. At the call of the domestic court calendar for each domestic term, the presiding judge shall confirm that the mediation procedure has been completed. In the event the mediation process has not been followed or completed the court will either order the matter to mediation or, where appropriate, waive the mediation and set the case for trial.

4. WAIVER OF MEDIATION

A. On its own motion, or that of either party, the Court may for good cause shown waive the setting of a contested custody or visitation matter for mediation. Good cause includes, but is not limited to, a showing of undue hardship to a party, an agreement between the parties for private mediation, allegations of abuse or neglect of the minor child, allegations of alcoholism, drug abuse, or spouse abuse, or allegations of severe psychological, psychiatric, or emotional problems. Where a party resides more than fifty (50) miles from court, such distance shall be considered good cause. (Form # AOC-CV-632, Motion and Order to Waive Custody Mediation).

B. Requests for waiver of mediation shall be made by written motion, (See AOC form AOC-CV-632). The motion shall be served on the opposing counsel or party. Opposing counsel or the party shall respond in writing within five (5) days. The Court will rule on the motion for waiver and any responses thereto or may conduct a hearing on the motion.

5. CHANGES IN STATUS

Counsel for the party or the party who filed the original action, claim or motion for custody or visitation shall immediately advise the Mediator of any changes in status of the pending case including a signed consent order, voluntary dismissal or waiver. Notice shall be given twenty-four (24) hours in advance of the pending orientation or scheduled mediation session when possible.

6. THE MEDIATION PROCESS

The Mediator should assist the parties in focusing on the needs of their child, the need to reorganize the family and use its strengths, the need to maintain continuity of relationships and stability in the child's life, and the options available to the parties which would accomplish those goals. The Mediator should help the parties select from the range of options those which are sound and workable, in an effort to reach an agreement, which will reduce the conflict in the family benefiting both the parties and child.

A. Orientation: Prior to mediation, an orientation session shall be held at which the goals and procedures of the mediation process shall be explained to the parties to reduce apprehension and avoidance of the process. An intake form shall be completed. The parties shall be advised that if they fail to appear for the initial mediation session, an order to show cause might be issued and the non-appearing party could be found in contempt of court.

- B. Attendance at Mediation Sessions: The mediation process shall consist of no more than three sessions, each of which shall not exceed two hours in length. A party must attend the orientation and first mediation session before deciding to withdraw from the process. The number of sessions may be extended by agreement of the parties with the permission of the Custody Mediator and/or Chief District Court Judge.
- C. Neutral Stance of Mediator: While a mediator is to be a neutral in promoting an agreement between the parties, the mediator is to be aware of the best interests of the children involved in the case. During the mediation process, the mediator is to help the parties avoid agreements which do not promote the best interests of the child.
- D. Authority of the Mediator: The mediator shall be in control at all times of the mediation process and the procedures to be followed in the mediation. Parties present in mediation sessions are those named in the suit. Other persons may be present in the discretion of the mediator if it will help facilitate the mediation. As a general rule attorneys will not be present during mediation but may be present in adjoining areas to give clients advice in reaching an agreement. With the consent of all parties, the mediator may speak with the child in an effort to assist the parties to assess the needs and interests of the child. No mediation will be cancelled or continued because a party's attorney cannot be available.
- E. Location: The mediation proceeding shall be held in a private and safe location preferably at the county courthouse if possible.
- F. Confidentiality: The mediation proceeding shall be confidential. Neither the mediator nor any party or other person involved in mediation sessions shall be competent 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. An individual shall not, however, obtain thereby immunity from prosecution for criminal conduct or be excused from the reporting requirement of North Carolina General Statutes 7A-543 or 108A-102.

7. PARENTING PLAN

- A. A detailed and clearly written parenting agreement or parenting plan is the desired end-product of the mediation process. The parenting plan may include a designation of the party having legal or physical custody, and what duties and responsibilities such designation includes. The plan should also include a complete schedule of the child's time with each party, including holidays, vacation time and

special events. Arrangements may be made for special day observance, such as birthdays. The need of the child to maintain relationships with persons with whom the child has a substantial relationship may be addressed.

- B. At the conclusion of mediation, the parties may enter into a full agreement, a partial agreement or they may remain unresolved. If some but not all issues are resolved, the parties may enter into a partial agreement detailing the resolved issues and setting forth with specificity those that remain open to litigation.
- C. The mediator should help the parties reduce their agreement whether full or partial to writing and ensure that each party understands the written document. Before the parties sign the proposed agreement, the mediator shall mail a copy of the proposed agreement to the parties and counsel and encourage the parties to have their attorneys review the agreement with them prior to their signing the plan.
- D. At the final mediation session the mediator shall set an appointment for for each party to sign the agreement in the mediator's office which appointment shall be scheduled within approximately two weeks of the final session giving each party at least ten (10) days to review the parenting agreement and consult with counsel regarding that agreement.

If the parties or attorneys prepare and sign a consent judgment in lieu of the parenting agreement they shall present it to the mediator prior to or at the time scheduled for the signing of the parenting agreement; otherwise, the parties will appear at the time and place set by the mediator and sign the parenting agreement.

8. PLAN INCORPORATED IN COURT ORDER

Where an initial signed agreement is submitted to the court, it shall be incorporated in a court order unless the court finds good reason not to do so: (See AOC Form, AOC-CV631, Order approving Parenting Agreement). After both parties have signed the parenting agreement, the mediator shall tender it and the Order Approving Parenting Agreement to a District Court Judge for signing. When each order is signed or incorporated, the agreement is enforceable as any other court order. Even though designated "parenting agreement", or some similar name, the incorporated agreement shall be considered a custody order or child custody determination within the meaning of Chapter 50A of the North Carolina General Statutes, G.S. 14-320.1, G.S. 110-139, or other places where those terms appear.

9. TERMINATION OF MEDIATION

After the parties have attended at least the orientation and first mediation session, either or both of the parties may decide not to participate further in the mediation process, and the mediator shall report to the Court that no agreement was reached.

Either party may move to have the mediation proceedings dismissed and the action heard in court due to the mediator's bias, undue familiarity with a party, or other prejudicial ground. Further, if the mediator determines that the case is not suitable for mediation due to power imbalance between the parties, the presence of child abuse or neglect, or other appropriate reason, the mediator may report to the court that the case was not resolved. (See AOC form AOC-CV-914M, Order to Calendar Custody or Visitation Dispute).

10. RETURN TO MEDIATION

The mediator shall explain to the parties that the needs of their children change over time, and encourage them to return to mediation if they are unable to resolve any problems caused by that factor, or other changes in circumstances. (See Motion and Order to Return to Custody Mediation, Form AOC-CV-634).

This the ____ day of June, 2007.

Danny E. Davis
Chief District Court Judge
30th Judicial District