

**RULES FOR
ALTERNATIVE DISPUTE RESOLUTION
IN
THE 22ND JUDICIAL DISTRICT**
(effective July 1, 1996)

RULE 1. THE POLICY OF THE DISTRICT COURT OF THE 22ND JUDICIAL DISTRICT CONCERNING THE USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

The District Court Judges and the Family Law Rules Committee of the 22nd Judicial District recognize the alternatives to litigation often provide better means of resolving disputes, and support a program of appropriate dispute resolution in all cases involving custody, child support, alimony, post-separation support and equitable distribution cases filed in the 22nd Judicial District. Accordingly, these rules implement a menu of ADR techniques available for use in custody, child support, alimony, post-separation support and equitable distribution proceedings, with the goal of expediting resolution and reducing costs to litigants. These rules do not apply to any domestic violence actions.

RULE 2. THE ADR METHODS ADOPTED BY THESE RULES.

The following techniques for resolving disputes short of trial are available in the 22nd Judicial District:

- Mediated Settlement Conference: an independent mediator assists the parties in reaching their own settlement.
- Arbitration: an arbitrator makes a decision following a presentation by each party.
- Some other court-approved ADR procedure upon which the parties may agree.

RULE 3. DUTY OF COUNSEL TO CONSULT WITH CLIENTS AND OPPOSING COUNSEL CONCERNING USE OF AN ADR PROCEDURE.

- A. Upon being retained to represent any party in a custody, child support, alimony, post-separation support or equitable distribution action, counsel shall advise his or her client regarding the ADR procedures approved by these Rules.
- B. At or prior to the Initial Pre-Trial Conference, counsel shall consult with his or her client and other counsel about the use of ADR or, alternatively, an expedited trial, and shall attempt to reach an agreement on the use of an ADR procedure or an expedited trial.

RULE 4. SELECTION OF ADR OR EXPEDITED TRIAL

At the Initial Pre-Trial Conference, or the first setting of a custody, child-support, post-separation or alimony case, the Court shall enter an Order for alternative dispute resolution or an expedited trial and the case shall proceed as follows:

- A. If both parties agree to an expedited trial, the case shall proceed without ADR.
- B. If the parties agree to a Mediated Settlement Conference, Arbitration or other court-approved ADR procedure, the case shall proceed under the selected process in accordance with these Rules for Alternative Dispute Resolution in the District Courts of the 22nd Judicial District, including the rules for the applicable procedure as set forth in Exhibits A and B appended hereto. If some other ADR procedure is requested by the parties, it shall proceed pursuant to rules submitted by the parties and approved by the Court.
- C. In the event the parties cannot reach an agreement as to the form of ADR procedure or if only one of the parties agrees to expedite the trial, the Initial Pre-Trial Conference and Scheduling Order will specify Mediated Settlement Conference as the designated ADR procedure.
- D. At the Initial Pre-Trial Conference or the first setting of a custody, child support, post-separation or alimony case, the mediator or arbitrator shall be designated by the parties. If the parties cannot reach agreement, the mediators/arbitrators shall be appointed by the Court from the list of mediators/arbitrators approved by the Chief District Court Judge.

RULE 5. GENERAL RULES APPLICABLE TO ALL PROCEEDINGS.

- A. **Time for Proceeding.** The Order for Alternative Dispute Resolution shall state that the ADR procedure shall be completed within 60 days prior to the Final Pre-Trial Conference, but for good cause shown, the Presiding Judge may allow an extension of time. The Mediator/Arbitrator shall file with the Clerk of Court and provide to the Presiding Judge a notice of the outcome of the proceeding within fifteen (15) business days of the conclusion of the ADR procedure. (Form ADR1)
- B. **Place of Proceeding.** Unless all parties and the Mediator/Arbitrator agree, the ADR proceeding will be held in the courthouse or other public or community building in the District or any other place designated by the mediator/arbitrator. The Mediator/Arbitrator shall be responsible for reserving a place, setting a time and making other arrangements for the proceeding, and for giving timely notice to all attorneys and unrepresented parties, in writing, of the time and location of the proceeding.
- C. **Pre-Proceeding Submission.** Pre-proceeding submission shall be governed by the specific rule for the particular ADR proceeding or as requested by the Mediator/Arbitrator. The Mediator/Arbitrator shall be responsible for mailing or delivering a copy of the rule for Mediators/Arbitrators as seen in Exhibit A and Exhibit B to the attorneys and/or unrepresented parties.
- D. **No Delay of Other Proceedings.** The ADR proceeding called for in this Rule, shall not be cause for the delay of other proceedings in the case, including but not limited to the conduct or completion of discovery, the filing or hearing of motions, or the trial of the case. Nothing in these rules shall prevent the Court from hearing cases for any *emergency relief, including but not limited to, temporary custody and temporary support.*
- E. **Inadmissibility of Negotiations.** All conduct or communications made during an ADR proceeding are presumed to be made in compromise negotiations and shall be governed by Rule 408 of the North Carolina Rules of Evidence and (N.C.G.S. 57A-38.1(L)).
- F. **No Record Made.** There shall be no record made of any ADR proceedings under these Rules, unless the parties have agreed to binding arbitration, in which case any party may request that a record be made.
- G. **Ex Parte Communication Prohibited.** There shall be no ex parte communication outside the ADR proceeding between the Mediator/Arbitrator and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this Rule prevents the Mediator/Arbitrator from engaging in ex parte communications, with consent of the parties, for the purposes of assisting settlement negotiations.

- H. **Attendance.** The following persons shall attend the ADR proceeding:
1. **Non-Binding Procedures.** At all non-binding ADR procedures, counsel may attend. If counsel chooses not to attend, counsel shall advise opposing counsel and the Mediator/Arbitrator in writing that his client will appear pro se. In the event counsel will not attend ADR procedure, counsel will get client's permission and a written waiver.
 2. **Binding Arbitration.** At a binding arbitration, counsel and his or her client are free to determine who shall appear at the hearing.
- I. **Right to Trial.** ADR proceedings under these Rules shall not impair the right of the litigants to demand trial.
- J. **Immunity of the Neutral.** A Mediator/Arbitrator acting pursuant to these Rules shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, and as proved by N.C.G.S. 57A-38.1(J).
- K. **Scope of ADR.** In addition to child custody and visitation issues, the ADR proceeding shall include issues of equitable distribution of the property of the parties, and other financial issues between the parties, such as post-separation support, alimony, and child support.
- L. **Conclusion of ADR Proceeding.** At the end of the last ADR session, if agreement has been reached, the Mediator/Arbitrator shall prepare a written document (the "Summary Document"), which the parties shall sign, summarizing the terms agreed to in the proceeding. Absent an agreement to the contrary, any Summary Document shall be reported only to the parties and their counsel. The parties, and their counsel, shall use the Summary Document as a guide to drafting such agreement or order as may be required to give legal effect to the terms of the Summary Document. If both parties are unrepresented, they are to take their Summary Document to an attorney who will finalize that document into a court order appropriate for a judge's signature. Within thirty (30) days of their receipt of the Summary Document (or prior to the Final Pre-Trial Conference, whichever occurs first), the parties shall submit to the Court dispositive documents to conclude the case. If the parties fail to agree on the terms of a contract or appropriate court order, the Mediator/Arbitrator may schedule another session to determine whether or not further ADR is appropriate and would assist in effecting resolution or may notify the Court, in writing, that the ADR proceeding has failed. (Form ADR1)

RULE 6. QUALIFICATIONS AND SELECTIONS OF MEDIATORS/ ARBITRATORS

- A. **Independent Selection.** By agreement of the parties, any individual may be selected to serve as a Mediator/Arbitrator whether or not such individual meets the certification requirements set forth in these Rules.

- B. **Qualifications of Mediators/Arbitrators on Approved List.** Mediators/Arbitrators shall submit proof of the qualifications set out in this section on a form provided by the Trial Court Administrator's Office. Mediators/Arbitrators who meet the requirements specified below shall serve at the pleasure of the Chief District Court Judge. Mediators/Arbitrators who have applied for service under these Rules shall hear indigent cases in accordance with Rule 7 below. The Chief District Court Judge shall maintain lists of Mediators/Arbitrators, together with a brief biography containing the experience and qualifications of each Mediator/Arbitrator.
 - (1) **Mediators/Arbitrators.** A Mediator/Arbitrator shall be a licensed attorney and have those qualifications required by Rules 8-1 and 9 of the Rules Governing Mediated Settlement Conferences as implemented pursuant to N.C.G.S. 7A-38.

- C. **Disqualification.** Any party may move the Presiding District Court Judge for an order disqualifying the Mediator/Arbitrator and for good cause such order shall be entered, and a new Mediator/Arbitrator shall be assigned by the Court.

RULE 7. COMPENSATION OF THE MEDIATOR/ARBITRATOR

- A. **By Agreement.** When the parties stipulate to the selection of a particular Mediator/Arbitrator, compensation shall be agreed to among the parties and the Mediator/Arbitrator.

- B. **By the Court.** When the Mediator/Arbitrator is appointed by the Court, the Mediator/Arbitrator shall be compensated by the parties at the same hourly rate as that set for mandatory Mediated Settlement Conferences under the Rules Governing Mediated Settlement Conferences in Superior Court Civil Actions pursuant to N.C.G.S. 78A-38 for all time expended by the Mediator/Arbitrator in connection with the ADR procedure, plus reasonable out-of-pocket expenditures.

- C. **Payment of Compensation by Parties.** Unless otherwise agreed to by the parties, costs of the ADR proceedings shall be paid in equal shares by the parties. Payment shall be made directly to the Mediator/Arbitrator upon completion of the ADR proceeding.

- D. **Indigent Cases.** No party found to be indigent by the Presiding Judge for the purposes of these Rules shall be required to pay a court-appointed Mediator/Arbitrator. If a party has not previously been found to be indigent, that party may apply to the Presiding Judge for a finding of indigence and to be relieved of the obligation to pay his or her share of

the compensation due. Such a motion shall be heard no later than ten (10) days before the hearing or conference. If a party is found to be indigent, the Mediator/Arbitrator's fee shall be reduced by the indigent's proportionate share rather than requiring the other parties to make up the difference.

- E **Report to the Court.** The mediator shall submit a report to the Court concerning non-payment of mediator's fees. The Court may order payment of such fees by the delinquent party. Failure to comply with said order may be punishable as for contempt in the Court's discretion.

RULE 8 SANCTIONS FOR FAILURE TO ATTEND.

If a person fails to attend a duly ordered ADR procedure without good cause, the Presiding Judge may impose upon the party any lawful sanction.

"EXHIBIT A"

RULES FOR MEDIATED SETTLEMENT CONFERENCES

RULE 1. AUTHORITY OF MEDIATOR.

- A. **Control of Conference.** The mediator shall at all times be in control of the conference and the procedures to be followed.
- B. **Private Consultation.** The mediator may meet and consult privately with any party or parties or their counsel during the conference, or thereafter by agreement of the parties.

RULE 2. DUTIES OF MEDIATOR.

- A. **Pre-Proceeding Statements.** The mediator shall define and describe the following to the parties at the beginning of the conference:
 - (1) The process of mediation;
 - (2) The differences between mediation and other forms of conflict resolution;
 - (3) The costs of the mediated settlement conference;
 - (4) The facts that the mediated settlement conference is not a hearing, the mediator is not a judge, and the parties retain their right to a hearing if they do not reach settlement;
 - (5) The circumstances under which the mediator may meet along with either of the parties or with any other person;
 - (6) Whether and under what conditions communications with the mediator will be presumed confidential during the conferences;
 - (7) The inadmissibility of conduct and statements as provided by these Rules;
 - (8) The duties and responsibilities of the mediator and the parties; and
 - (9) The fact that any agreement reached will be reached by mutual consent of the parties.
- B. **Mediator Disclosures.** The mediator has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice or partiality.
- C. **Declaring Impasse.** It is the duty of the mediator to timely determine when mediation is not viable, that an impasse exists, or that mediation should end.

EXHIBIT "B"

RULES FOR ARBITRATION

RULE 1. EXCHANGE OF INFORMATION.

- A. **Pre-hearing Exchange of Information.** At least ten (10) days before the date set for the Arbitration hearing, the parties shall exchange:
- (1) Lists of witnesses they expect to testify;
 - (2) Copies of documents or exhibits they expect to offer in evidence; and
 - (3) A brief statement of the issues and their contentions.

Parties may agree in writing to rely on stipulations and/or statements, sworn or unsworn, rather than a formal presentation of witnesses and documents, for all or part of the hearing.

- B. **Exchanged Documents Considered Authenticated.** Any document exchanged in accordance with Rule 1(a) above may be received in the hearing as evidence without further authentication; however, the party against whom it is offered may subpoena and examine as an adverse witness anyone who is the author, custodian or witness through whom the document might otherwise have been introduced. Documents not so exchanged may not be received if to do so would, in the Arbitrator's opinion, constitute unfair, prejudicial surprise.
- C. **Copies of Exhibits Admissible.** Copies of exchanged documents or exhibits are admissible in arbitration hearings.

RULE 2. ARBITRATION HEARINGS.

- A. **Arbitrator Disclosures.** The arbitrator has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice or partiality.
- B. **Witnesses.** Witnesses may be compelled to testify under oath or affirmation and produce evidence by the same authority and to the same extent as if the hearing were a trial. The Arbitrator is empowered and authorized to administer oaths and affirmations in arbitration hearings.
- C. **Subpoenas.** Rule 45 of the North Carolina Rules of Civil Procedure shall apply to subpoenas for attendance of witnesses and production of documentary evidence at an arbitration hearing under these Rules.

- D. **Authority of Arbitrator to Govern Hearings.** Arbitrators shall have the authority of a trial judge to govern the conduct of hearings, except for the powers to punish for contempt.
- E. **Conduct of Hearing.** At the opening of the hearing, the Arbitrator shall make a written record of the place, time and date of the hearing, and the presence of the parties and counsel. The Arbitrator and the parties shall review the list of witnesses, exhibits and written statements concerning issues previously exchanged by the parties pursuant to Rule 1 above. Plaintiff may then present exhibits and witnesses, who may be cross-examined. Defendant may then present exhibits and witnesses, who may be cross-examined. The Arbitrator may, in the Arbitrator's discretion, vary the order of presentation of evidence.
- F. **Evidence.** The North Carolina Rules of Evidence shall not apply in an arbitration hearing, except as to privilege or protection, but shall be considered as a guide toward full and fair development of the facts. The Arbitrator shall consider all evidence presented and give it the weight and effect the Arbitrator determines appropriate.
- G. **Conclusion of Hearing.** When the parties state they have no further exhibits or witnesses to offer, the Arbitrator shall declare the hearing closed. Counsel may make oral argument, but the filing of post-hearing briefs will ordinarily not be permitted. If the Arbitrator decides to accept post-hearing briefs, such briefs must be submitted within three (3) business days after the hearing has been concluded or otherwise agreed among the parties and the Arbitrator.

RULE 3. THE AWARD.

- A. **Issuance of Award.** The Arbitrator shall issue and mail to the parties an award within seven (7) days of the date of the closing of the hearing or the receipt of post-hearing briefs, whichever is later.
- B. **Findings; Conclusions; Opinions.** No findings of fact, conclusions of law or opinions supporting an award are required.
- C. The Arbitrator may include in an award court costs accruing through the arbitration proceedings in favor of the prevailing party.
- D. **Scope of Award.** The award must resolve all equitable distribution issues raised by the record.

RULE 4. AGREEMENT FOR BINDING ARBITRATION.

- A. **Agreement for Binding Arbitration.** The parties may agree in writing, at any time prior to the Arbitrator's award, to elect that the Arbitrator's award be binding on the parties. The written agreement shall be executed by the parties and their counsel, and shall be filed with Clerk of Court prior to the issuance of the Arbitrator's award.
- B. **Issuance of Award.** At the conclusion of a binding Arbitration hearing, the Arbitrator shall issue an award in accordance with the provisions of Rule 3.
- C. **Termination of Binding Arbitration Action by Agreement before Judgment.** The parties may file a stipulation of dismissal or consent judgment at any time before entry of judgment on the Arbitrator's award.
- D. **Entry of Judgment on the Arbitrator's Award.** If the case is not terminated by agreement of the parties pursuant to Rule 4(c), within ten (10) business days of the issuance of the Arbitrator's award, the Arbitrator shall file the award with the Clerk, and it shall be incorporated within a judgment of the court. The judgment shall be entered in accordance with and be subject to all applicable provisions of law and shall have the same force and effect as judgment of the court in any civil action.

RULE 5. MODIFICATION OF PROCEDURE.

Subject to approval of the Arbitrator, the parties may agree to modify the procedures required by these Rules for Arbitration.

APPENDIX: FORMS

ADR1 Report on Mediated Settlement Conference

ADR2 Order Appointing Mediator and Setting Trial Date

Mediation Action Chart