

AMENDMENT TO LOCAL RULES

(11). EQUITABLE DISTRIBUTION **EQUITABLE DISTRIBUTION AFFIDAVITS and E. D. MEDIATION**

- 11.1 Unless a consent judgment is otherwise filed, the parties shall comply with the mandatory discovery provision of North Carolina General Statutes 50-21. All such affidavits shall be filed on Form 30E (copy of which is attached hereto).
- 11.2 Non-compliance with Rule 11.1 may result in the imposition of sanctions as set forth in Rule 37 of the Rules of Civil Procedure, North Carolina General Statutes 50-20 et seq. or as otherwise provided by law.
- 11.3 The parties in an equitable distribution case may exchange affidavits and file a certificate of readiness showing that both sides are ready for trial and showing what matters are left for the Courts' consideration. The certificate of readiness should be filed with the designated clerk and then calendared according to regular calendaring rules.
- 11.4 In any equitable distribution claim, the court may, in its' discretion, and pursuant to Rules 53 and 16(5) of the Rules of Civil Procedure, order a reference before proceeding further, or before entering final judgments. The court may provide for an apportionment of the costs of said reference, a filing deadline, and its scope as it deems to be in furtherance of the disposition of the claim.
- 11.5 Equitable Distribution affidavits executed pursuant to this rule shall be admissible in evidence without further authentication, if the party that executed the affidavit is present in court.

MEDIATED SETTLEMENT PROCEDURES IN **EQUITABLE DISTRIBUTION AND** **OTHER FAMILY FINANCIAL CASES**

- 11.6 Except as modified herein the rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial cases as set forth in the Annotated Rules of North Carolina in the General Statutes shall be followed including the Administrative Office of the Courts Forms AOC-CV-824, AOC-CV-825, AOC-CV-826, AOC-CV-827 and AOC-CV-828.
- 11.7 Judicial Settlement Conference as described in Rule 12 of the Supreme Court rules involving Settlement Procedures will not be utilized in the 30th Judicial District.

11.8 Cases involving alimony, post separation support and child support where no claim for equitable distribution has been filed may be sent to mediation pursuant to these rules by motion and order after notice and hearing to all parties, or by consent order signed by the parties, or in the discretion of the presiding District Court Judge at a regularly scheduled session of Domestic Relations Court.

11.9 After the initial orders are signed requiring a mediated settlement conference, all communications with the court concerning Mediated Settlement Procedures as set forth above in the 30th Judicial District should be addressed to:

**Judicial Assistant
Haywood County Justice Center
285 N. Main Street, Suite 2300
Waynesville, North Carolina 28786
Phone: 828/454-6511 FAX 828/452-2510**

11.10 It shall be the duty of each civil clerk in the respective counties to forward to the above stated office copies of the Scheduling and Discovery Conference Order or any other order requiring mediated settlement within five (5) calendar days of entry. Likewise it shall be the duty of said civil clerk(s) to forward immediately upon receipt and filing, a copy of the Report of the Mediator to the Judicial Assistant.

11.11 All mediations are to be concluded within 90 days of the scheduling and discovery conference unless extended by order of the court.

11.12 When the parties do not timely select a mediator, the general procedure for judicial appointment shall be to appoint the next certified mediator on the appropriate list who currently resides or maintains an office in this judicial district or a contiguous judicial district or who certifies in writing annually to the (Chief District Court Judge) that he or she wishes to mediate in this judicial district, is familiar with these Local Mediation Rules, and will comply with them and the Supreme Court Rules. The Chief District Court Judge or Presiding District Court Judge shall retain discretion to depart from the general procedure in particular circumstances such as but not limited to the appointment of a newly certified mediator, or to withhold a mediator who has not followed Local or Supreme Court Rules from appointment.

SCHEDULING AND PRE-TRIAL CONFERENCES

11.13 At the first civil court date after 120 days from the filing of the initial pleading or motion in the cause for equitable distribution, the designated civil clerk shall

schedule a court date for the Equitable Distribution Scheduling and Discovery Conference. At this conference the court shall determine a schedule of discovery as well as consider and rule upon any motions for appointing of a reference or expert witness, or other applications, including applications to determine date of separation, and shall set a date for disclosure of expert witnesses and a date on or before which an Initial Pre-trial Conference shall be held. At this conference the court may, for good cause shown, move the case to the Final Pre-trial Conference and schedule a date for the same or may move the case directly to a trial calendar. Unless specifically ordered by the court, cases will not be calendared more than one time for the Scheduling and Discovery Conference.

- 11.14 At the Initial Pre-trial Conference the court shall make inquiry as to the status of the case and shall enter a date for the completion of discovery, the completion of a mediated settlement conference, if applicable, and the filing and service of motions and shall set a date on or after which a final pre-trial conference shall be held and a date on or after which the case shall proceed to trial. At this initial pre-trial conference the court may, for good cause shown, move the case to a date certain on the trial calendar. Unless specifically ordered by the court, cases will not be calendared more than one time for the Initial Pre-Trial Conference.
- 11.15 The Final Pre-trial Conference will be scheduled on the first court date after one hundred and eighty (180) days from the filing of the last required pleading in a case in which equitable distribution is requested.
- 11.16 At the Final Pre-Trial Conference counsel and their clients or unrepresented parties shall be present. The court will review the affidavits, attempt to settle the case, enter into any stipulations possible between the parties, and set a trial date or take other appropriate action. This Final Pre-Trial Conference will be conducted pursuant to the Rules of Civil Procedure and the General Rules of Practice, adopted pursuant to General Statute 7A-34. The court will, at the conference, rule on any matters reasonably necessary to effect a fair and prompt disposition of the case in the interest of justice.
- 11.17 After one calendaring for Final Pre-Trial Conference all equitable distribution cases shall be moved to the Trial Calendar regardless of whether or not the Final Pre-Trial Conference was held unless otherwise ordered by the court.
- 11.18 Upon the motion of either party or upon the courts own initiative, the court shall impose an appropriate sanction as provided in General Statute 50-21(e) if any party willfully delays or obstructs discovery or attempts to obstruct or unreasonably delay any pending equitable distribution proceeding.

Pursuant to General Statutes 7A-146(2) and Rule 2 of the General Rules of Practice for the District and Superior Courts, **IT IS HEREBY ORDERED** that the foregoing

amendments to the 30th Local Rules for the District Court of the Thirtieth Judicial District shall be effective on or after March 20th, 2007.

Amended and adopted this the 20th day of March, 2007.

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

Steven J. Bryant
District Court Judge
30th Judicial District

Richlyn D. Holt
District Court Judge
30th Judicial District

Bradley B. Letts
District Court Judge
30th Judicial District

Monica H. Leslie
District Court Judge
30th Judicial District

Richard K. Walker
District Court Judge
30th Judicial District