

**LOCAL RULES
FIFTEEN-A JUDICIAL DISTRICT
ALAMANCE COUNTY, NORTH CAROLINA
FOR
EQUITABLE DISTRIBUTION ACTIONS**

The following Alamance County Equitable Distribution Local Rules supersede and replace all previously adopted local rules in the Fifteen-A Judicial District with regard to the disposition of claims for equitable distribution. A copy of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases is attached hereto and incorporated herein by reference. When there appears to be a conflict between these local Equitable Distribution rules and the North Carolina Supreme Court rules, the Supreme Court rules shall control. These Rules shall apply to all Equitable Distribution claims pending on *or* filed on or after September 1, 2104.

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RULE 1

Definitions

- 1.01 Alamance form – (ALA-ED-) a form prepared by the Alamance County District Court Judges Office to implement these Rules
- 1.02 Alternative Dispute Resolution (ADR) – Any method or procedure used as an alternative to an in court hearing with the presentation of evidence or legal argument for the resolution of disputes between parties to a civil lawsuit
- 1.03 AOC – Administrative Office of the Courts which is under the direction and control of the Chief Justice of North Carolina
- 1.04 AOC form – (AOC-CV-) a form prepared by the AOC to implement these Rules.
- 1.05 Clerk – the Clerk of Superior Court for Alamance County

- 1.06 Court – A District Court Judge who has administrative responsibility for the action as an assigned judge.
- 1.07 Deliver – to leave documents at the last known address of the opposing party. Delivery shall be deemed to have occurred if the documents were mailed at least three (3) days prior to the required date of delivery.
- 1.08 ED – Equitable Distribution
- 1.09 Equitable Distribution Inventory Affidavit – (EDIA) Affidavit listing assets and debts accumulated as of the date of separation using Alamance form ALA-ED-400.
- 1.010 Equitable Distribution Judicial Assistant – (EDJA) the Judicial Assistant assigned to ED Case Management
- 1.011 Equitable Distribution Scheduling Conference – First ED conference held by the Court within 120 days from the date of filing of the ED complaint.
- 1.012 Family Financial Case – Any civil action in which a claim for equitable distribution is made.
- 1.013 Filed – deposited in the custody of the Clerk of Superior Court as provided by the North Carolina Rule of Civil Procedure or with the EDJA as provided in these Rules
- 1.014 Mediated Settlement Conference – mediation conducted by a mediator with the parties (“mediation”)
- 1.015 Neutral – Any person who is a disinterested third party designated to oversee an ADR proceeding
- 1.016 Party – a litigant in a case and/or his/her attorney of record
- 1.017 Rules – The Alamance County Equitable Distribution Local Rules
- 1.018 Served – delivered to opposing counsel (or party, if unrepresented) as provided by the North Carolina Rules of Civil Procedure

RULE 2
INITATING SETTLEMENT PROCEDURES

- 2.01 **Purpose of Mandatory Settlement Procedures**
Pursuant to N.C.G.S. §7A-38.4A, these Rules are promulgated to implement a system of settlement events which are designed to focus the parties’ attention on settlement rather than on trial preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time before or after those ordered by the Court pursuant to these Rules.
- 2.02 **Duty of Counsel**
Counsel, upon being retained to represent any party to a district court case involving equitable distribution shall advise his or her client regarding the settlement procedures approved in these Rules. Counsel shall prior to the ED scheduling conference attempt to reach agreement with opposing counsel on the appropriate settlement procedure for the action.

RULE 3
ORDERING SETTLEMENT PROCEDURES

- 3.01 **Equitable Distribution Scheduling Conference**
When a claim for Equitable Distribution (hereinafter ED) is filed, the Judicial Assistant assigned to ED Case Management (hereinafter EDJA) shall serve a Notice of Hearing for an Equitable Distribution Scheduling Conference with the assigned judge for the session of court falling closest to one hundred twenty (120) days from the date of filing. That date shall not be extended except by order of the assigned Judge, and only for extraordinary reasons.
- 3.02 **Content of the Court Order**
At the Equitable Distribution Scheduling Conference, the Court shall:
- a. Order the parties and their counsel attend a mediated settlement conference;
 - b. Identify disputed and undisputed issues, explore settlement prospects and discuss matters which may aid, expedite or simplify the trial with the parties;
 - c. Enter an order that prescribes deadline for the exchange of contentions and affidavits, discovery, the completion of any appraisals, and the preparation of a final pretrial order;
 - d. Establish a deadline for the completion of the mediation;
 - e. State that the parties shall be required to pay the mediator's fee at the conclusion of the mediation unless otherwise ordered by the Court;
 - f. Set a date for a final pretrial conference and place the matter on a specific trial calendar.
- 3.03 **Consent Orders**
The parties may avoid the necessity of an Equitable Distribution Scheduling Conference by opting for the entry of CONSENT ORDER (Equitable Distribution) (Form ALA-ED-100) at the call of the assigned judge's motions calendar.
- 3.04 **Authorizing Settlement Procedures other than Mediated Settlement Conference**
The parties and their attorneys are in the best position to know which settlement procedure is appropriate for their case. The motion for an order to use a settlement procedure other than a mediated settlement conference shall be submitted (AOC form AOC-CV-826) at the ED Scheduling Conference and shall state:
- a. the settlement procedure chosen by the parties;
 - b. the name, address, and telephone number of the neutral selected by the parties;
 - c. the rate of compensation of the neutral;
 - d. that all parties consent to the motion.

3.05

Motion to dispense with Settlement Procedures

A party may move the Court to dispense with the mediated settlement conference or other settlement procedure. Such motion shall be in writing and shall state the reasons the relief is sought. For good cause shown, the Court may grant the motion. The Court may also dispense with the mediated settlement conference for good cause shown upon its own motion or by local rule.

**RULE 4
MEDIATORS**

4.01

Selection of Mediator

- a. **BY CONSENT** The parties may consent and stipulate to a mediator prior to an Equitable Distribution Scheduling Conference by filing a Consent Stipulation on Form ALA-ED-202. Upon filing of Form ALA-ED-202, the assigned Judge shall enter an Order for Mediated Settlement Conference in Family Financial Case (Form AOC-CV-824) and Designation of Mediator in Family Financial Case (Form AOC-CV-825).
- b. **BY COURT ORDER** If the parties cannot agree upon the selection of a mediator, they shall notify the Court and the Court shall appoint a Family Financial Mediator who has been certified pursuant to these Rules by selecting a mediator from the list of approved and certified Family Financial Mediators maintained by the Chief District Court Judge or his designee. (Form AOC-CV-825)

4.02

Disqualification of Mediator

Any party may move the Court to disqualify a Family Financial Mediator for good cause. If the mediator is disqualified, a replacement mediator shall be named pursuant to these Rules. Nothing in this provision shall preclude a mediator from disqualifying or recusing themselves.

4.03

Mediator Information Directory

To assist the parties in selection of a mediator by agreement, the Chief District Court Judge shall prepare and keep current a central directory of information on all mediators certified pursuant to these Rules who wish to mediate in Alamance County. Such information will be in a notebook in the District Court Judges Office. It will also be available at <http://www1.aoc.state.nc.us/mediatorpublic/mediator/search/display.do?actionButton=Search&programSelection=F> online.

4.04

Compensation of Mediator

- a. **Mediator selected by agreement**
When the mediator is selected by agreement of the parties, compensation shall be as agreed upon by the parties and the mediator.
- b. **Mediator appointed by the Court**

When the Court appoints the mediator, the parties shall pay the mediator at the rate of \$150.00 per hour. In addition, the mediator shall be paid a one time, per case administrative fee of \$150.00, which accrues upon appointment and shall be paid even if the case settles prior to the mediated settlement conference or if the court approves a substitution of a mediator selected by the parties following appointment.

c. **Equal Division of Mediator's Fees**

Unless otherwise agreed, the parties shall share the mediator's fees equally.

d. **Postponement of Mediated Settlement Conference**

A fee of \$150.00 shall be paid to the mediator if any mediated settlement conference is postponed without the mediator making a finding that good cause existed to postpone. The aforementioned postponement fee shall be increased to \$300.00 in the event such a request is made within five (5) business days of the scheduled day. The party requesting the postponement shall pay all postponement fees, unless otherwise agreed.

e. **Failure to Pay Mediator's Fees**

Any party who fails to make timely payment of that party's share of the mediator's fees shall be subject to sanctions under these Rules and the contempt powers of the Court.

f. **Inability to Pay Mediator's Fees**

Any party required to pay a mediator fee pursuant to these Rules may move the Court to pay according to the Court's determination of that party's ability to pay. (Use Form AOC-CV-828). No party found to be unable to pay a full share of the mediator's fee shall be required to pay a full share. Any mediator conducting a Mediated Settlement Conference pursuant to these Rules shall accept as payment in full of a party's share that portion of the fee paid by or on behalf of the party according to such an order of the Court. In deciding such motions, the Court may consider the income and assets of the moving party and the outcome of the action. The Court may require one or more shares be paid out of the marital estate.

4.05 **Duties and Responsibilities of Mediators**

The Mediator shall have the following duties and responsibilities:

- a. At all times be in control of the conference, the processes and procedures to be followed;
- b. At all times be subject to the standards of conduct for mediators promulgated by the North Carolina Supreme Court;
- c. At all times be completely impartial and disclose to all participants any circumstance bearing on possible bias, prejudice or partiality;
- d. Initially explain the following:
 - (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 parties retain the right to proceed to trial if they do not reach an agreement;
 - (5) The conference is not a trial and the mediator is not a judge;
 - (6) Conduct and statements occurring during mediation are inadmissible in trial as provided by N.C.G.S. §7A-38.4A(j);
 - (7) The rules relating to *ex parte* communications;
 - (8) Whether and under what circumstances communications with the mediator will be held in confidence during the conference;
 - (9) The duties and responsibilities of the parties and the mediator;
 - (10) The fact that any agreement reached will be reached by mutual consent and reduced to writing;
- e. Distribute to all parties the brochure prepared by the Dispute Resolution Commission explaining the process, the Commission and its operations;
 - f. Upon completion of the conference, distribute to all parties the Dispute Resolution Commission evaluation form to be completed by the parties.
 - g. Upon completion of the conference, complete a “Report of Mediator in Family Financial Case” (AOC-CV-827) and deliver it to the EDJA, who will file it with the Clerk of Superior Court and send copies to the attorneys or unrepresented parties.

4.06 ***Ex parte* Communication**

Notwithstanding any other Rule contained herein, the mediator may communicate privately with any party during the mediated settlement conference and may hold in confidence any communication for any period of time deemed appropriate to assist the parties in reaching agreement.

4.07 **Scheduling and holding the Conference**

The mediator shall schedule the conference and conduct it prior to the conference completion deadline set out in the Court’s order. The mediator shall make an effort to schedule the conference at a time that is convenient with all parties. In the absence of an agreement, the mediator shall select a date and time for the conference. Deadlines for the completion of the conference shall be strictly observed by the mediator unless changed by a written order of the Court.

4.08 **Impasse**

The mediator shall determine in a timely manner that an impasse exists and that the conference should end. The mediator shall inquire of and consider the desires and opinions of the participants as to whether to continue at a future time or report the failure to the Court (using AOC-CV-827).

4.09

Reporting Results of Mediation

The mediator shall report to the Court within ten (10) days of the completion of the conference, whether or not an agreement was reached by the parties. The report shall be made by filing AOC form AOC-CV-827 with the EDJA. If the case is settled or otherwise disposed of prior to the conference, the mediator shall file the report indicating the disposition of the case, the person who informed the mediator that settlement had been reached, and the date and person who will present the final documents to the Court. If an agreement is reached at the conference, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the date and persons designated to file such consent judgment or dismissals. If a partial agreement is reached at the conference, the report shall state what issues remain for trial. The original report shall be filed by the EDJA with the Clerk of Superior Court and a copy will stay with the EDJA.

RULE 5

MEDIATED SETTLEMENT CONFERENCE

5.01

Location

The mediated settlement conference shall be held in any location agreeable to the parties and the mediator. If the parties cannot agree upon a location, the mediator shall be responsible for reserving a neutral place in the county where the action is pending and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and pro se parties.

5.02

When Conference is to be held

The mediated settlement conference shall be completed within 120 days after the Initial Equitable Distribution Pretrial Conference, Discovery and Scheduling Order or Consent Order is entered unless said date is extended by the mediator for good cause or by Court order. The mediator shall inform the EDJA of any extension. If the parties and mediator are unable to agree on a date and time for the conference, the mediator shall set a date and time for the conference.

5.03

Request to extend Mediation deadline

A party or the mediator may move the Court to extend the deadline for completion of the mediated settlement conference by filing a motion (form ALA-ED-300). Any such motion must be served upon the opposing party and delivered to the EDJA who will deliver it to the assigned judge. If there is an objection to the motion, it must be written and served upon the opposing party and the Court within five (5) days of the original motion. If there is an objection, the EDJA will schedule a hearing before the assigned judge and notify the parties of that hearing. If the motion is not objected to, the assigned judge will make a determination within ten (10) days of the filing of the original motion. Any Order entered therein will be delivered to the EDJA, who will file and serve the Order to the parties.

- 5.04 **Recesses**
The mediator may recess the mediation at any time and may set times for reconvening. If the time for reconvening is set during the mediation, no further notification is required for persons present at the mediation.
- 5.05 **Mediation is not to delay other proceedings**
The mediated settlement conference (mediation) shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.

RULE 6
PRE-TRIAL ORDER AND FINAL PRE-TRIAL CONFERENCE

- 6.01 **Pre-trial order**
Equitable Distribution cases must be tried pursuant to a pre-trial order. The preparation of such and the final pre-trial conference shall be directed by the Orders of the Court. Unless the Pre-trial Order has been signed by all parties (and their attorneys), both parties and their respective attorneys must be present in the courtroom at the time of the Final Pre-trial conference so that any additions, deletions and stipulations and any new time lines may be approved immediately.
- 6.02 **Final pre-trial conference**
At the Final pre-trial conference, the case will be assigned a trial date, if not already calendared for trial.

RULE 7
EQUITABLE DISTRIBUTION INVENTORY AFFIDAVIT

- 7.01 The parties shall use the Equitable Distribution Inventory Affidavit (EDIA) set forth in form ALA-ED-400.
- 7.02 Within 90 days of service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve on the opposing party an EDIA. Once served with an EDIA, the responding party shall serve their EDIA on the moving party within 30 days of receipt.
- 7.03 Both parties' EDIAs must be filed and served within 7 days of the Equitable Distribution Scheduling Conference.
- 7.04 Non-compliance with this rule may result in the responsible party's proffered testimony (written or oral) not being allowed into evidence by the Court, in addition to other sanctions allowed by law.
- 7.05 EDIA should refer to the parties as "husband" and "wife" rather than "plaintiff" and "defendant".

RULE 8
INITIAL DISCLOSURES/MANDATORY DOCUMENTS

- 8.01 Contemporaneously with the service of the EDIA upon the opposing party, the serving party shall also be required to provide all documentation used to complete the EDIA, including but not limited to, statements from the Date of Separation, Date of Marriage (where applicable) and current statements for all financial accounts and debts, copies of all deeds, deeds of trust, UCC statements, mortgage and equity line statements, any appraisals with regard to real and personal property, the last three (3) years of personal tax returns, last five (5) years of business tax returns, last three (3) years Schedule C or K-1's, operating agreements, buy/sell agreements, offers to purchase or business valuations; copies from the Date of Separation, Date of Marriage (where applicable) and current statements for all retirement accounts, copies of titles of all automobiles; and any documentation supporting your contentions with regard to Separate Property.

RULE 9
CONTINUANCES

- 9.01 ED trials shall not be continued except by the assigned judge. All motions for continuances after the first continuance shall be signed by the moving party, indicating his or her awareness of the motion, as well as by the attorney of record. Please use Form ALA-ED-300 when requesting continuances.

RULE 10
DUTIES OF PARTIES, ATTORNEYS, AND OTHER PARTICIPANTS

- 10.01 **Attendance**
Parties and at least one counsel of record for each party shall attend a mediated settlement conference. Any person required to attend mediation shall physically attend until an agreement has been reached or the mediator declares an impasse. Any person may have the attendance requirement excused or modified, including allowing a person to participate by phone, by agreement of both parties and the mediator or by order of the Court.
- 10.02 **Finalization of the Mediation**
The essential terms of the parties' agreement shall be reduced to writing as a summary memorandum at the conclusion of the conference unless the parties have reduced their agreement to writing, have signed it and in all other respects complied with the requirements of Chapter 50 of the North Carolina General Statutes. Within 30 days of reaching an agreement at mediation, all final agreements and other dispositive documents shall be executed by the parties and notarized and judgments or voluntary

dismissals shall be filed with the Court. In the event the parties fail to agree on the wording or terms of a final agreement or court order, the mediator may schedule another session if the mediator determines that it would assist the parties.

**RULE 11
SANCTIONS FOR FAILURE TO ATTEND MEDIATED SETTLEMENT
CONFERENCES**

11.01 If any person required to attend mediation fails to attend without good cause, the Court shall impose upon that person any appropriate monetary sanction including, but not limited to, the payment of attorney’s fees, mediator fees, expenses and loss of earnings incurred by the persons attending the conference. A party to the action seeking sanctions, or the Court in its own motion, shall do so in a written motion stating the grounds for the motion and the relief sought. Said motion shall be served upon all parties and on any person against whom sanctions are being sought. If the Court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law.

**RULE 12
FORMS**

12.01	List of Forms	
	Cover Sheet.....	AOC-CV-750
	Letter from EDJA.....	ALA-ED-100
	Consent Order.....	ALA-ED-200
	Initial ED pretrial Scheduling Conference order.....	ALA-ED-201
	Consent Stipulation of Mediator.....	ALA-ED-202
	Motion/Order of Continuance.....	ALA-ED-300
	Order for Mediated Settlement Conference.....	AOC-CV-824
	Designation of Mediator.....	AOC-CV-825
	Report of Mediator.....	AOC-CV-827
	Equitable Distribution Inventory Affidavit.....	ALA-ED-400

**RULE 13
RULES OF THE NORTH CAROLINA SUPREME COURT IMPLEMENTING
SETTLEMENT PROCEDURES IN EQUITABLE DISTRIBUTION AND
OTHER FAMILY FINANCIAL CASES - attached**