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Various
Procedural
Rules

- Need *in personum* jurisdiction over defendant
 - Service of Process and Minimum Contacts
- District court has exclusive subject matter jurisdiction over ED claims
- Claim can be filed and adjudicated “at any time after the husband and wife begin to live separate and apart.”
GS 50-21(a)
- Claim must be asserted before entry of absolute divorce
 - “Reserving” in divorce judgment doesn’t work

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More procedural rules

- No jury trials allowed for any issue within ED
- No right to an attorney
- No attorney fees
(except for contempt)
- ED is not an exclusive remedy
 - No such thing as ‘marital property’ until parties separate and one requests ED
 - All common law remedies remain available for property not addressed through ED

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Procedural Stuff

- Claim can be filed, or can proceed if already filed, after death of one party
- ED must be determined without regard to alimony and child support
Alimony can be tried before or after Equitable Distribution
- ED judgment enforced by contempt
Except distributive award also can be enforced through execution
- ED judgments cannot be modified
Only remedy is Rule 59 or 60

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MUST establish date of separation early in the case

- Stipulation
- Bifurcated trial
- GS 1A, Rule 42(b)

Date of separation in divorce judgment is not binding in the equitable distribution case

- *Stafford v. Stafford*, 351 N.C. 94, 520 S.E.2d 785 (1999)

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Family Financial Mediation

G.S. 7A-38.4A

- “Any chief district court judge in a judicial district **may order** a mediated settlement conference or another settlement procedure, ... for any action pending in that district involving issues of equitable distribution, alimony, child or post separation support, or claims arising out of contracts between the parties under G.S. 52-10, G.S. 52-10.1, or Chapter 52B of the General Statutes.

Rules Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases (FFS Rules)

- Effective Mar. 1, 2006, **in all ED actions** in all districts, a mediated settlement conference or other settlement procedure **is required**

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- Delay in entry of judgment is huge problem
- If party can show prejudice from delay, court of appeals will order new trial
 - 19-month delay required new trial
 - Wall v. Wall*, 140 NC App 303 (2000)
 - 2-year delay admonished
 - Sisk v. Sisk*, 729 SE2d 68 (2012)
- *Nunc pro tunc* not available to 'fix' delay
 - Whitworth v. Whitworth*, 731 SE 2d 707 (2012)
 - Dabbondanza v. Hansley*, 791 S.E.2d 116 (2016)

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Requests
for TRO
GS 50-20(i)

- “Upon filing an action or motion in the cause requesting an equitable distribution or alleging that an equitable distribution will be requested when it is timely to do so, a party may seek injunctive relief pursuant to **G.S. 1A-1, Rule 65** and Chapter 1, Article 37, to prevent the disappearance, waste or conversion of property alleged to be marital property, divisible property, or separate property of the party seeking relief. The court, in lieu of granting an injunction, may require a bond or other assurance of sufficient amount to protect the interest of the other spouse in the property.”

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Bond
required?

Rule 65 says yes

But see Huff v. Huff, 69 N.C. App. 447, 454, 317 S.E.2d 65, 69 (1984) (quoting *Keith v. Day*, 60 N.C. App. 559, 562, 299 S.E.2d 296, 298 (1983)) (court held that no security was required when a preliminary injunction was issued “to preserve the trial court’s jurisdiction over the subject matter involved” or where the record established that the injunction would do the restrained party “no material damage” and the applicant had sufficient assets to respond in damages if the injunction proved to be wrongful).

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Inventory Affidavits

First party to file ED must file affidavit within 90 days

Other party must respond within 30 days

Does your district have a different schedule?

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Inventory Affidavits

- “Deemed in the nature of Interrogatories”
 - See *Helms v. Helms*
191 NC App 19 (2008)
- Subject to Rule 11
- Failure to supply required information subject to:
 - Rule 26: General Discovery Rules
 - Rule 33: Interrogatories
 - Rule 37: Motions to Compel and Sanctions
 - See *Ward v. Ward*, unpublished, 736 NC App 647 (2013)

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Inventory Affidavits


Can be amended at any time by parties

Nonbinding at trial as to completeness and as to values

Unless local rules provide otherwise

- Young v. Young, 133 NC App 332 (1999)

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Interim distribution

- GS 50-20(i1):
 - “Unless good cause is shown that there should not be an interim distribution, the court may, at any time after an action for equitable distribution has been filed and prior to the final judgment of equitable distribution, enter orders declaring what is separate property and may also enter orders dividing part of the marital property, divisible property or debt, or marital debt between the parties. The partial distribution may provide for a distributive award and may also provide for a distribution of marital property, marital debt, divisible property, or divisible debt. **Any such orders entered shall be taken into consideration at trial and proper credit given.**”

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Johnson v. Johnson, 230 N.C. App. 280, 750 S.E.2d 25 (2013) (when wife made post-interim distribution payments on the marital residence, which she received in the interim distribution, the payments were payments on her own personal residence—they were not made for the marital estate, were not payments on marital debt, and were not payments that benefitted husband—and did not have to be accounted for in the final equitable distribution order).]

Lowder v. Lowder, unpublished opinion, 893 SE2d 276 (N.C. App., Nov. 7, 2023)(p.24). Property distributed by means of an interim distribution order becomes the sole, separate property of the party to which it was distributed; the date of distribution for purposes of the valuation of that property is the date of the interim distribution order, even if the issue of valuation is held open for resolution at a later trial date.

Any passive increase in the value of property after it is distributed pursuant to an interim distribution order is not divisible property but is the sole, separate property of the party to which it was distributed.

Daly v. Daly, unpublished opinion, 255 NC App 448 (2017)(same)

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But see

- *Brackney v. Brackney*, 199 NC App 375 (2010)(language in order preserved wife’s claims regarding the classification and distribution of a house).

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Pretrial conferences generally

- Rule 16 of Rules of Civil Procedure

Court may conduct a pretrial conference in any case
- Rule 7 of General Rules of Practice for Superior and District Courts

There shall be a pretrial conference in every case, unless parties waive requirement in writing with signature of judge

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Goals of Pretrial conference

- Rule 16:
 - Simplification and formulation of issues
 - Determining need for amendment of pleadings
 - Obtaining admissions of facts and of documents
 - Limit number of expert witnesses
 - Consider reference
 - Matters of which court can take judicial notice
 - Any other matters to aid in disposition of case

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ED Pretrial Conferences

Three required by GS 50-21:

- Scheduling and discovery conference to be requested by party first filing ED within 120 days of filing
- At scheduling and discovery conference, must set date for initial pretrial conference
- At initial pretrial conference, must set final pretrial conference

In addition, must have Mediated Settlement Conference in every case

GS 7A-348.4A

- Different Local Rules?

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Pretrial
order =
stipulations

Binding on Court and on Parties

Can be set aside in the interest of justice

- On request of a party or on court's own motion
- Only upon proper notice and opportunity for parties to present evidence not presented due to stipulation
- See *Plomaritis v. Plomaritis*, 730 SE2d 784 (NC App 2012)

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Cases to consider.....

White v. Davis,
163 NC App 21
(2004)

- Values “TBD” by specific date

Brackney v. Brackney, 199 NC App 375 (2009)

- Postseparation appreciation of house resulted from market forces alone

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Cases to consider.....

Ubertaccio v. Ubertaccio
359 NC 175, adopting concurring opinion in 161 NC App 352 (2003)

Stock received after DOS earned as result of wife's efforts during marriage

Miller v. Miller
97 NC App 77 (1990)

Equal division is equitable

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