Procedural Issues in Equitable Distribution Cheryl Howell May 2025

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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

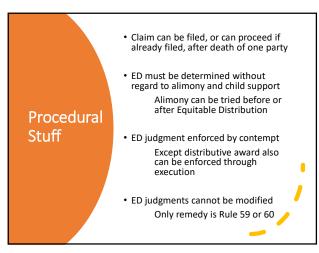
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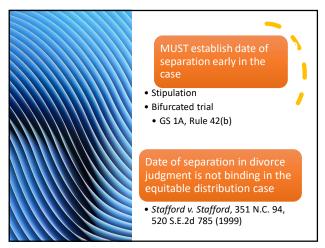
More procedural rules

- 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 $\ensuremath{\mathsf{ED}}$

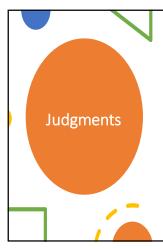
All common law remedies remain available for property not addressed through ED





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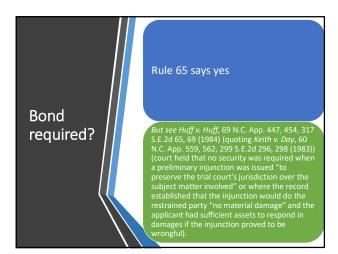
G.S. 7A-38.4A "Any chief district court judge in a judicial district may order a mediated settlement conference or another settlement procedure, ... for any action pending in that district involving issues of equitable **Family** distribution, alimony, child or post **Financial** separation support, or claims arising out of contracts between the parties under Mediation 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



- 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)

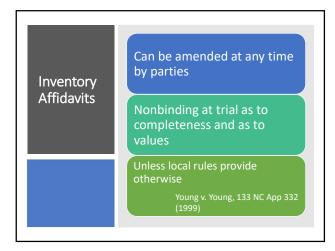
Requests for TRO GS 50-20(i) • "Upon filing an action or motion in the cause requesting an equitable distribution or alleging that an equitable distribution will be requested when it is timely to do so, a party may seek injunctive relief pursuant to G.S. 1A-1, Rule 65 and Chapter 1, Article 37, to prevent 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."

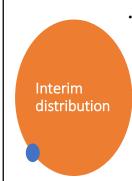
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- GS 50-20(i1):
 - "Unless good cause is shown that there should not be an interim distribution, the court may, at any time after an action for equitable distribution has been filed and prior to the final judgment of equitable distribution, enter orders 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 distribution may 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."

Johnson v. Johnson, 230 N.C. App. 280, 750 S.E.2d 25 (2013) (when wife made postinterim 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).

The final equiration distribution for the property of the party to which it was 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).



 Rule 16 of Rules of Civil Procedure

Court <u>may</u> conduct a pretrial conference in any

• Rule 7 of General Rules of Practice for Superior and District Courts

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

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ED Pretrial Conferences

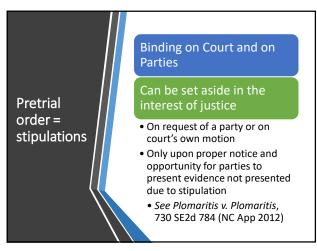
Three required by GS 50-21:

- 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 <u>initial pretrial conference</u>
- At initial pretrial conference, must set <u>final pretrial conference</u>

In addition, must have <u>Mediated</u> <u>Settlement Conference</u> in every case

GS 7A-348.4A

• Different Local Rules?



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

