

**PRETRIAL ORDERS AND
STIPULATIONS IN EQUITABLE
DISTRIBUTION CASES**
MAY 2013

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?

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 - See *Ward v. Ward*, unpublished, 736 NC App 647 (2013)

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)

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

GOALS OF PRETRIAL CONFERENCE

Rule 16 of Rules of Civil Procedure :

- 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

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?

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)

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

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
