

**DOCKET CONTROL PROCEDURES
FOR THE
FIFTH JUDICIAL CIRCUIT**

CIVIL CASES

The following docket control procedures are intended to permit litigants, lawyers, and the courts to handle civil cases in the courts of the Fifth Judicial Circuit more expeditiously. They will apply to all cases filed on or after January 3, 2001, in the Circuit Courts for the City of Suffolk, the County of Isle of Wight, and the County of Southampton and will replace all prior rules of court or suggested practices and procedures promulgated in the Fifth Judicial Circuit before the effective date stated above.

These docket control procedures are intended to address the need that justice be administered consistently within the Fifth Judicial Circuit, and that cases may be tried and concluded promptly, fairly, and at the least expense possible. The procedures herein are designed to promote early preparation; to encourage early settlement, if possible; and to permit the most productive use of court resources, including judges, courtrooms, clerks' offices, jurors, witnesses, and lawyers. The overriding goal is to promote the efficient and orderly use of court resources and the resolution of civil disputes in a fair manner. Much that is included herein reflects simple common sense, courtesy and professionalism.

It is expected that counsel and the parties will cooperate with the courts, clerks' offices and other parties in adhering to

these procedures. Cooperation should enable the courts to serve the public in a manner that is fair, expeditious and prompt.

References to "Rules of Court" shall mean the Rules of the Supreme Court of Virginia. References to "Uniform Pretrial Scheduling Order" shall mean the Uniform Pretrial Scheduling Order set forth in Rule 1:18(B)(Form 3) of the Rules of Court.

It is the responsibility of the parties to determine if these procedures contain changes or amendments from the Suggested Practices and Procedures For Civil Cases in effect prior to January 3, 2001.

SCHEDULING MOTIONS AND TRIALS

A. Motions and Other Pretrial Hearings.

1. Motion Days. Motions and other pretrial hearings will be heard in the Fifth Circuit on the following days:

SUFFOLK: Every Tuesday at 9:30 A.M.
ISLE OF WIGHT: No regularly scheduled day. See Suffolk.
SOUTHAMPTON: First Tuesday of each month at 9:30 A.M.

2. Scheduling. Pursuant to Rule 4:15(a)(2), all hearings will be scheduled through the court offices in Suffolk. In addition, Southampton hearings may be scheduled through the court offices in Southampton County. The addresses and telephone numbers of the court offices are as follows:

SUFFOLK

Attention: Nancy Walliser
P.O. Box 1814
Suffolk, VA 23439-1814
~~Telephone (757) 923-2271~~ 757-514-4800

SOUTHAMPTON

Attention: Patricia Phelps
P.O. Box 190
Courtland, VA 23837-0190
Telephone (757) 653-9176

It will be assumed that an attorney scheduling a hearing will have obtained available dates from all other attorneys known to be representing parties in the matter.

3. Notices. Where notices are required, all notices shall be returnable to the appropriate Clerk of Court at the following addresses, which are also the addresses of the respective courts:

SUFFOLK

~~Henry C. Murden, Clerk~~ W. Randolph Carter, Jr., Clerk
Circuit Court for the City of Suffolk
150 North Main Street
P.O. Box 1604
Suffolk, VA 23439-1604

ISLE OF WIGHT

~~William E. Laine, Jr., Clerk~~ Sharon N. Jones, Clerk
Circuit Court for Isle of Wight County
17122 Monument Circle
P.O. Box 110
Isle of Wight, VA 23397

SOUTHAMPTON
~~Wayne M. Cosby, Clerk~~ Richard L. Francis, Clerk
Circuit Court for Southampton County
22350 Main Street
P.O. Box 190
Courtland, VA 23837

All notices shall specify the address of the location of the proceeding.

4. Family Matters. Family matters, including custody, support and property division, may be scheduled on motion days. Hearings expected to take more than one hour are usually scheduled for afternoons, and where more than two hours are expected to be required (i.e., lengthy custody or property division hearings), such matters must be specifically scheduled through the Suffolk office.

B. Trials.

1. Term Days. All trials will be scheduled directly through the Suffolk office, without the necessity of appearance at a Term Day, unless specifically ordered otherwise. In the event appearance at a Term Day is required, Term Days are held as follows:

ISLE OF WIGHT: **Second** Monday of January, March, May, July, September and November.

SOUTHAMPTON: **Third** Monday of January, March, May, July, September and November.

SUFFOLK: **Fourth** Monday of January, March, May, July, September and November.

If the date of any Term Day falls on a legal holiday or Judicial Conference, the Term Day and docket call will be held

on the next day immediately following the holiday or Judicial Conference.

2. Praecipis:

a) Trials will only be scheduled upon the filing of a praecipe in the Clerk's Office of the appropriate court, with notice to all opposing counsel. For form of the praecipe, see Rule 1:15(b) of the Rules of the Supreme Court of Virginia. **Praecipis shall include the complete name, mailing address and telephone number of all counsel of record and pro se parties.**

b) Praecipis are not to be filed unless the action or cause is in fact mature for trial.

3. Scheduling Trial Dates.

a) Pursuant to Rule 1:20(a) of the Rules of Court, trial dates are set by agreement of counsel through the Suffolk office. Counsel, or parties appearing *pro se*, desiring to schedule a trial date shall do so by filing a praecipe in the Clerk's Office of the appropriate court, with notice to all opposing counsel and opposing parties appearing *pro se*. The Suffolk office will thereupon contact the attorney or party filing the praecipe and request available trial dates from all parties.

b) The requesting party, unless otherwise directed, will be responsible for obtaining available dates from all opposing counsel and parties appearing *pro se* and advising the Suffolk office of such available dates not less than ten (10) days after being requested to do so. Available dates should cover the period of time from not less than two (2) months to not more than six (6) months from the time such dates are requested. It is expected and assumed of counsel and parties appearing *pro se* that offerings of available dates are made in good faith with a goal of setting a trial date which is

not more than six (6) months after a praecipe is filed. It is the policy of this Circuit that trial dates will be not more than six (6) months after a praecipe is filed, absent good cause to do otherwise.

c) In the event the Suffolk office is not advised of available trial dates within ten (10) days after requesting the same, all parties will be convened at a pre-trial hearing called by the court in order to set a trial date.

d) Upon the scheduling of a trial date, the court will prepare, enter and circulate copies of a Pretrial Scheduling Order fixing the trial date, establishing discovery cut-off dates, and conforming to the Uniform Pretrial Scheduling Order.

e) Counsel and parties appearing *pro se* should notify all of their known witnesses of the trial date as promptly as possible after the trial date has been set. It is not the policy of the court to grant continuances for unavailable witnesses where witnesses were not timely notified of the trial date.

f) Trials of Juvenile and Domestic Relations District Court appeals will be scheduled in the same manner as all other civil trials.

4. Continuances. Cases will be tried on the date set for trial, beginning at 9:30 A.M. unless otherwise scheduled. Requests for continuances are discouraged and will not be granted except for good cause shown. Lack of preparation or causes that are not unforeseen or beyond the control of the parties or counsel will not constitute good cause for a continuance. Continuances will be granted only by the court, upon request made to the trial judge assigned to preside at the trial.

5. Second and Subsequent Place Cases.

Second and subsequent place cases will remain on the trial docket until the priority case or cases are either tried, settled, or continued. If the prior case or cases are tried, second and subsequent place cases will be rescheduled by the Suffolk office without the need for a praecipe. In the event the priority trial is settled or continued within seven days prior to the trial date, and counsel for the second or subsequent place case are unable to try that case, then the second or subsequent place case will be rescheduled by the Suffolk office without a need for a praecipe. Counsel should be prepared to try second or subsequent place cases where the priority cases are settled or continued more than seven days prior to the trial date.

PRETRIAL PROCEDURES

A. Case Assignments. Cases which have novel points of law or which, in the opinion of counsel, are complicated and complex, should be brought to the attention of the court by counsel as soon as possible. These cases, once identified, will be assigned to a specific trial judge, who will follow the case until its conclusion, and will hear all motions and make all rulings pertaining to the case.

B. Pretrial Conferences. Pretrial conferences are encouraged in all cases where appropriate, and particularly in the event of complex cases. See Rule 1:19 and Rule 4:13 of the Rules of Court.

C. Discovery.

1. All discovery should be completed not less than 30 days before trial. Discovery should be handled between the attorneys and should not involve the court or the

clerks' offices. It is not necessary to file with the court interrogatories or answers thereto, requests for admission or answers thereto, depositions or certificates of the filing of depositions.

2. If there is a discovery dispute that cannot be resolved, a hearing may be scheduled before the judge assigned to the case. Telephone conference calls are encouraged to be scheduled by the Suffolk office. At such hearing, counsel will provide the court with a copy of the discovery material which is the subject of the dispute. See Rule 4:12(a)(4) of the Rules of Court regarding mandatory awards of expenses and attorney's fees in discovery disputes.

D. Pretrial Orders. If a case is set for trial, counsel are encouraged, and in some instances may be required by the court, to present orders which may deal with any other matters which will assist the court and counsel in the fair and efficient trial of the case, and which have not been provided for in the Pretrial Scheduling Order prepared by the court.

E. Hearings on Motions and Other Pretrial Matters. Hearings on motions or other pretrial matters are generally governed by Rule 4:15 of the Rules of Court and the Pretrial Scheduling Order.

1. **Scheduling Arguments.** The party filing a motion, demurrer, etc., is responsible for scheduling a hearing with the judge assigned to try the case, after obtaining dates from opposing counsel. Counsel will provide an estimate of the time required for the hearing. To avoid last-minute arguments which may interfere with trial preparation, demurrers, special pleas and objections to venue, motions for summary judgment and any motions which could dispose of all or a part of the case

should be made and argued not later than two weeks before trial.

2. Case File. Counsel for the moving party will be responsible for bringing the case file to the hearing and returning the file to the appropriate clerk's office.

3. Briefs and Memoranda. Briefs and memoranda in support of a party's position regarding matters to be heard are helpful only if received by the court from all parties in sufficient time to be reviewed prior to the presentation of evidence and/or argument of counsel. A late filing may not be considered. Absent leave of court, a brief in support of a motion shall be delivered to the court and opposing counsel not later than fourteen (14) days before any hearing. Any response should be delivered to the court and to opposing counsel not later than seven (7) days before the hearing. See Rule 4:15(c) of the Rules of Court.

TRIAL PROCEDURES

A. Motions *in Limine*. Absent leave of court, motions *in limine* requiring argument exceeding five (5) minutes shall be heard prior to the day of the trial, in order to avoid imposition on jurors and witnesses. Generally, motions *in limine* based on relevance cannot be ruled upon prior to trial and are discouraged. See Rule 1:18(B), Form 3(vii) of the Rules of Court and the Pretrial Scheduling Order.

B. Witnesses.

1. In order to best assure the availability of witnesses for trial, all witnesses, especially expert witnesses, should wherever possible be notified of the trial date as soon as

it has been set or as soon thereafter as the witness has been identified.

2. Early issuance of witness subpoenas is encouraged. In every case, witness subpoenas should be requested by counsel in sufficient time to assure that subpoenas will be served not less than ten (10) days prior to trial. Expert witness subpoenas should be served not less than thirty (30) days prior to trial.

3. Witness lists shall be exchanged pursuant to the Pretrial Scheduling Order.

C. Jury Instructions. Counsel for all parties, unless compliance is waived by the court, shall not less than two (2) business days before trial, exchange proposed jury instructions, noting thereon the authority or authorities relied upon. This will not preclude the offering of additional instructions at trial. See the Pretrial Scheduling Order.

D. Exhibit and Witness Lists. Counsel shall exchange lists of exhibits and witnesses fifteen (15) days prior to trial, with copies of the lists to be filed with the clerk. See the Pretrial Scheduling Order.

COMMISSIONERS IN CHANCERY

A. Order of Reference. Except as provided herein for divorce cases, cases requiring a Commissioner in Chancery will be referred to a Commissioner in Chancery only by an order of reference.

B. Compensation. Except as agreed by counsel for the parties and the Commissioner in Chancery, compensation

of a Commissioner in Chancery shall be determined by the court.

C. Divorce Cases.

1. In divorce proceedings, depositions must be taken before a Commissioner in Chancery of this court, unless the court orders otherwise. An order of reference is not required unless the case involves contested issues concerning equitable distribution. The court will, on motion of either party, hear issues of child custody, *ore tenus*, without reference to a Commissioner in Chancery. The parties, *pro se* or by counsel, may select any Commissioner in Chancery in the Fifth Judicial Circuit, except that, in cases involving equitable distribution, the court will appoint the commissioner

2. In all cases involving equitable distribution, counsel shall have pretrial orders entered by the court, limiting the issues where possible and scheduling pretrial matters. In complex cases of equitable distribution, counsel are encouraged to conduct Rule 4:13 pretrial conferences.

3. In cases where there is a request for the court to make an award of equitable distribution, the following language should be included in the decree of reference:

The Commissioner shall determine:

1) What property of the parties is separate and what is marital, what is part is separate and what is part marital, and the values of said property;

2) If such property is titled, in whose name is the property titled or, if not titled, who has possession of said property;

3) How and when such property was acquired;

4) The commissioner is to consider and report on the factors listed in Section 20-107.3(E). In addition thereto, the commissioner shall determine the marital share of any pension, profit-sharing, deferred compensation or retirement benefits, whether vested or non-vested, which constitutes marital property.

D. Duties of Commissioner in Chancery. The duties of the Commissioner in Chancery in every case are:

- 1) To preside at any deposition hearing;
- 2) To swear the witnesses;
- 3) To receive testimony and exhibits;
- 4) To rule on objections (evidence should be proffered for the record);
- 5) Certify that all parties are properly before the court and certify what type of service was obtained;
- 6) Certify Uniform Custody Act compliance, where applicable.
- 7) To file a report within 90 days from the date of the entry of the decree or order of reference, except in cases of equitable distribution, wherein the report shall be filed within 60 days from the final evidentiary hearing.

CONDEMNATION CASES

Commissioners shall be appointed and summoned pursuant to §25-46.20 of the Code of Virginia not less than 21 days prior to trial. Counsel for each party will be responsible for knowledge of any conflicts of interest on the part of commissioners suggested to the court by reason of relationships with parties, in order to avoid the necessity to continue cases due to lack of sufficient commissioners free of conflicts of interest.

MISCELLANEOUS

The courts do not provide court reporters or audio-visual equipment for civil trials. Counsel will arrange for court reporters, videotape equipment (including television sets) and other audio-visual equipment as needed.

Counsel having questions concerning court facilities or equipment should consult with the trial judge assigned to the case.

ORDER

It is ORDERED that a copy of these Docket Control Procedures be forthwith posted in the clerk's office of each court in the Fifth Judicial Circuit and furnished to all attorneys regularly practicing before this court. In every suit filed by an attorney whose office is outside the Fifth Judicial Circuit, a copy of these practices shall be hand-delivered or mailed to said attorney by the Clerk of the respective court.

~~Westbrook J. Parker, Chief Judge~~

~~Rodham T. Delk, Jr., Judge~~

~~D. Arthur Kelsey, Judge~~

Carl E. Eason, Jr., Chief Judge
Lawson Wayne Farmer, Judge
Robert H. Sandwich, Jr., Judge

~~December 29, 2000~~

February 2017