

CIVIL CASE MANAGEMENT ADMINISTRATIVE PLAN
(Revised effective July 1, 2012)

General Statements

Preamble

This plan was developed through the joint efforts of the Office of the Executive Secretary of the Supreme Court of Virginia, the Circuit Court Judges, the Clerk of the Circuit Court, and the Norfolk and Portsmouth Bar Association. Through a grant received from the State Justice Institute the Court was able to retain the services of a consultant, Michael F. Thomas, President, Justice Planning Associates, Inc., of Columbia, South Carolina.

1. Purpose

To provide for the expeditious and just resolution of civil proceedings, to promote uniformity and simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay, and to enhance the efficiency of the system of justice in the Circuit Court of the City of Norfolk, the Circuit Judges have unanimously adopted the following local rules for civil cases.

These rules shall take effect October 8, 1998, shall supersede *all* prior procedures, and shall remain in effect until modified or revoked.

2. Organization

This plan consists of local rules addressing each procedural step in civil cases. Under this plan, the use of *praecipes* and civil docket call will be abolished and a new system is established for the setting of civil cases.

3. Policy

- A. General. Once a case is filed, the Court is responsible for insuring its prompt resolution. The expeditious conclusion of civil cases is in the best interests of the bench, the bar, and most important, the litigants.
- B. Time Goals. The Court encourages the prompt resolution of cases filed here. In furtherance of this policy, the Court has adopted the goal of concluding all civil cases, except by leave of court and in suits for divorce, within twelve months of filing. The goal for concluding suits for divorce is eighteen months from the date of filing. To the extent possible, attorneys should not wait until discovery commences to begin the preparation of cases. The Court encourages attorneys to complete as much pretrial investigation and preparation as possible before filing actions at law or suits in chancery.

- C. Alternative Dispute Resolution. The Court encourages the maximum use of alternative dispute resolution procedures. Attorneys are encouraged to explore the use of mediation promptly after the parties are at issue. The initial mediation session, which is an orientation and educational session for attorneys and parties, is available at no cost to the parties through mediators certified by the Office of the Executive Secretary of the Supreme Court. The list of certified mediators is available in the Clerk's Office, from the Executive Secretary's Office, and on the WEB page of the Supreme Court of Virginia which may be found on the WEB at the following address: <http://www.courts.state.va.us/main.htm>. In some cases the Court may exercise its statutory authority to require attendance at the initial mediation session.
- D. Access to Judges. The long-standing policy of prompt access to judges of the Court in person and by telephone for motions and other matters dealing with cases has been beneficial to the bench, bar, and litigants. This policy remains unchanged.
- E. Ex Parte Communications. Attorneys are reminded that *ex parte* communications with the Court are improper. *Ex parte* communications consist of any contact with the Court without the participation of opposing counsel or the opposing party if not represented. It is also not appropriate for counsel to send the Court or Clerk copies of letters written to opposing counsel or opposing parties.
- F. Assignment of Cases to Specific Judges. The following cases will be assigned to a specific judge upon filing:
1. Actions filed under the Federal Employees Liability Act (FELA) or the Jones Act.
 2. Actions alleging professional malpractice, products liability, or defamation.
 3. Cases expected to require more than two days for trial.

When counsel determines that a case is of a type to be preassigned to a judge, he or she should advise the Clerk in his cover letter at the time of filing. Normally all pretrial matters concerning those cases will be docketed for the assigned judge. However, at the discretion of the assigned judge, other judges may preside over pretrial procedures from time to time. All rulings made by judges are final and will not be reheard except by the judge who made the ruling at issue.

- G. Continuance Policy. A uniform continuance policy is essential to the success of this plan. The Court looks with disfavor upon motions for continuances. The judges have determined that all motions for continuances will be directed to designated judges to establish a uniform, consistent continuance policy. When practicable, motions to continue preassigned cases will be directed to the assigned judge. The attached Civil Continuance Policy contains a list of reasons that are

normally not acceptable for the granting of continuances. This list is offered as guidance to the bench and bar.

4. Contents

This civil case management plan contains the following:

- A. General Statements
- B. Civil Continuance Policy
- C. Local Rule 1
- D. Local Rule 2
- E. Appendix of Forms
- F. Clerk's Information Sheet

This Administrative Plan is effective October 8, 1998.

Date

Everett A. Martin, Jr., Chief Judge
Fourth Judicial Circuit of Virginia

CIRCUIT COURT OF NORFOLK – CIVIL CONTINUANCE POLICY

A continuance of a civil case will only be for good cause shown and with the approval of the Court. When practicable, motions to continue pre-assigned cases will be directed to the judge to whom the case is assigned. If the case has not been pre-assigned the motion must be made to one of the two civil continuance judges.

If a continuance is granted, counsel must submit within 14 days an order as provided by Rule 2F(2).

The grant or refusal of a continuance rests in the sound discretion of the Court. However, good cause for a continuance does not normally include the following:

1. Counsel for both parties agree to the continuance.
2. The case has never been continued before.
3. The case has been continued once, but on the motion of the other party.
4. Discovery has not been completed.
5. A party has retained new counsel.
6. A party cannot be found.
7. A witness cannot be found and counsel cannot give satisfactory assurance to the court that the witness can be found if the case is continued.
8. A party wants to file a third party claim, cross-claim, or counter-claim if the existence of the claim was known at the time the trial date was set.
9. The plaintiff has not yet recovered from injuries and there is no evidence when the plaintiff will recover.
10. A party or witness is scheduled to be on vacation, a business trip, or have elective medical care.
11. A witness is otherwise unavailable and there is sufficient time to take his de bene esse deposition.
12. A witness is otherwise unavailable; there is not sufficient time to take his de bebe esse deposition; and his unavailability was reasonably foreseeable.

A continuance should not be granted if the reason for the request was within the control of counsel or reasonably foreseeable. Thus counsel should subpoena witnesses, especially expert witnesses, promptly after the trial date is set. It is reasonably foreseeable, for example, that a witness will be unavailable if he is subpoenaed only two weeks before trial.

The Court may be more receptive to a continuance request made well in advance of trial, as this allows the Clerk's Office to set another case for trial on that date. The Court is likely to be most unreceptive to a continuance request made within a month of trial as there will not then be sufficient time to set another case for trial on that date.

LOCAL RULE 1

PROCEDURES IN DIVORCE, AFFIRMATION, AND ANNULMENT SUITS (Revised effective July 1, 2014)

A. Purpose

This rule is intended to reduce the expense and delay of obtaining uncontested divorces, to allow all custody issues to be resolved in one hearing and to afford them the dignity many parties believe they warrant, and to provide an appropriate forum for those cases in which property interests are in dispute.

B. Suits to Which Applicable

1. Applicability. This rule applies to suits for divorce, affirmation, annulment, and equitable distribution under *Code of Virginia* §20-107.3(J).

2. Definition of Uncontested Suits for Divorce. A suit for divorce is uncontested when (a) the defendant has filed a waiver pursuant to *Code of Virginia* §20-99.1:1 or an answer admitting all allegations of the complaint, (b) the defendant is in default under Rule 3:19, or (c) the parties have entered into a marital agreement complying with *Code of Virginia* §20-155 that resolves all issues.

C. Procedure and Scheduling

1. Trial by the Court. Except as provided in *Code of Virginia* §20-106, the Court will hear all suits to which this rule applies *ore tenus*; provided that the Court may refer equitable distribution issues to a Commissioner in Chancery on its own motion or for good cause shown.

2. Uncontested Suits for Divorce to be heard *ore tenus*. Such suits may be set for trial on the docket on any day acceptable to the Clerk, after proper notice to the defendant, if necessary; provided, that in such suits where the defendant need not be given notice of the hearing, the suit may be tried any time convenient for counsel and the Court without being put on the docket. Counsel will present to the Court before the trial begins a proposed final decree of divorce, form VS-4, and, if there is one, the separation agreement.

3. Other Suits. The trial shall be set by scheduling order under Local Rule 2; provided that a scheduling order is not necessary for an uncontested suit for annulment or affirmation.

D. Special Provisions

1. Suits in which Custody is contested. No trial or hearing (except interim *pendente lite*) shall be held until a qualified guardian *ad litem* has been appointed and the parties have attended a program on the effect of divorce on children as required by *Code of Virginia* §20-103(A) and one dispute resolution evaluation session as provided by *Code of Virginia* §20-124.4.

2. Pendente Lite Custody Hearings. The Court finds that the best interests of the child, the parents, and the Commonwealth are served when the child's custody is determined at one hearing. A *pendente lite* custody hearing should not be scheduled unless there are circumstances posing a serious threat to the child's physical, mental, emotional, or moral well-being. At any such hearing, counsel for the moving party should be prepared to proffer to the Court evidence of the serious threat posed by the existing custody arrangement. If the Court finds the proffer insufficient the hearing will be over.

3. Suits in which Child Support is sought. Counsel for each party present at the trial shall present a completed child support guidelines worksheet.

4. Suits involving Equitable Distribution. Fifteen days before trial or hearing, each counsel (as defined in Rule 2(G)(1)(b)) shall deliver to opposing counsel and file with the Clerk, on a form approved by the Court, an inventory of the assets and debts of which his client seeks equitable distribution. The Court ordinarily will not receive evidence about any asset or debt not so identified unless it would cause no surprise or prejudice to the opposing party and the failure to identify the asset or debt was through inadvertence.

E. Final Decrees

Except as the Court may otherwise direct in a particular suit, final decrees shall conform to this section.

1. Parties making an Appearance. No award or reservation of spousal support or equitable distribution may be made to the plaintiff or to a defendant who makes an appearance unless requested in the appropriate pleading or an amendment thereto.

2. Defendant makes no Appearance. Spousal support and equitable distribution shall be reserved to a defendant served by order of publication who makes no appearance. Spousal support and equitable distribution shall be denied to a defendant served personally or by substituted service who makes no appearance.

3. Transfer pursuant to Code of Virginia §20-79(c). Except as hereinafter provided, final decrees of divorce that provide for child custody, visitation, or support, or spousal support, or any reservation of any of these matters, shall contain a transfer clause pursuant to *Code of Virginia* §20-79(c). The Juvenile and Domestic Relations District Court to which the transfer is made shall be that of the city or county of residence of the children or the recipient of support. No such provision shall be included in a final decree of divorce if either (a) at the time the decree is presented to the Court both parties are non-residents of Virginia, or (b) child or spousal support is reserved only because the defendant has been served by order of publication.

4. Transfer pursuant to Code of Virginia §20-107.3(L). If neither party lives in the City of Norfolk when the final decree is submitted, and the final decree contains an award of equitable distribution or affirms, ratifies, and incorporates a marital agreement that has

provisions concerning the parties' assets or debts, the final decree shall transfer to the Circuit Court where one of the parties then lives, the authority to make additional orders pursuant to *Code of Virginia* §20-107.3(K) or to carry out or enforce the marital agreement.

5. Submission of Final Decree. The final decree shall be submitted within thirty days of the Court's ruling on the issues.

6. Submission by Depositions or Affidavits. The party or corroborating witness shall appear and give testimony *ore tenus* if the Court has twice rejected the party's or corroborating witness's deposition or affidavit. Counsel shall appear in person to present the final decree if the Court has twice rejected the proposed final decree.

F. Waiver or Modification

The Court may waive or modify the terms of this rule in a particular case to prevent undue hardship, to preserve the substantive rights of the parties, or to attain the ends of justice.

G. Effective Date

This rule as amended is effective July 1, 2001; additional amendments to this rule have been adopted effective September 1, 2003, January 1, 2004, July 1, 2005, January 1, 2006, July 1, 2012, and July 1, 2014.

LOCAL RULE 2

PROCEDURES IN CIVIL ACTIONS AND CAUSES (Revised effective July 1, 2012)

A. Scheduling Order and Notice of Settlement

1. Praeipce System. The praecipe system is abolished effective October 8, 1998.
2. Cases to Which Applicable¹. This section applies to all civil actions the trial dates of which were heretofore set by the praecipe system and to suits for divorce.
3. Filing of Scheduling Order.

(a) Cases in Which One or All Parties are Represented by Counsel. In an unassigned case (except suits for divorce and suits in which the Division of Child Support Enforcement is a party), within thirty days of the filing of (i) a responsive pleading to a complaint or (ii) the proper papers in a case appealed from a District Court, counsel for all parties shall select a trial date approved by the Clerk and they shall complete, endorse, and file the scheduling order with the Clerk. In suits for divorce, counsel for all parties shall select a trial date approved by the Clerk, and they shall complete, endorse, and file the scheduling order with the Clerk within six months of the filing of a responsive pleading. If a continuance is granted in any such case or suit, a scheduling order reflecting the new trial date shall be submitted within fourteen days of the granting of the continuance. Plaintiff's counsel shall have the responsibility for preparing and circulating the scheduling order; however, if the plaintiff is *pro se*, the defendant's counsel shall do so. In an assigned case the scheduling order shall be completed by the docket administrator after a pre-trial conference.

(b) Cases in Which all Parties are Proceeding Pro Se. When all parties in a case are proceeding *pro se*, no scheduling order will be required. When the parties are at issue, when a party is in default, or when the case is appealed from a District Court and the papers are received by the Clerk, the Clerk shall advise the parties of the trial date; however in an appeal from a District Court in which a

¹ There are two classes of cases that are not proper for scheduling orders: first, those that are ordinarily handled summarily, e.g., adoptions, asset forfeitures, name changes, garnishments, approvals of infant and wrongful death settlements, appointments of guardians, and expungements; and second, those that by their very nature are attendant with delays over which the Court has little control, e.g., receiverships and suits in equity, the object of which is the sale of land.

All actions at law that were not disposed of summarily were previously set for trial under the praecipe system. The following kinds of suits in equity were usually set for trial under the praecipe system: appeals from the Juvenile and Domestic Relations District Court, administrative agency appeals, arbitration and award, cancellation or reformation of writings, declaratory judgments, fraud, fraudulent conveyances, injunctions, interpleader, mechanic's liens, nuisances, specific performance, trusts, and waste. Other kinds of suits in equity were usually referred to a commissioner in chancery, although, on occasion, the Court would hear one *ore tenus*.

guardian *ad litem* was appointed, the guardian *ad litem* may prepare a scheduling order.

(c) Default. When a defendant has been in default for three months, the Clerk shall notify counsel for the plaintiff of the default and set a pre-trial conference.

(d) Failure to File. If a scheduling order is not timely filed the Clerk will send a notice of a scheduling conference, in a form approved by the Court, to counsel for all parties.

4. Contents of Scheduling Order. The scheduling order will be in a form approved by the Court and available in the Clerk's Office. The scheduling order will fix the dates for trial or the Commissioner's hearing, and such other matters as the Court may deem proper. The form scheduling order for suits to be heard by a Commissioner is found in the Appendix of Forms as Form 2. Acceptable forms for other cases may be found in the Appendix of Forms as Form 3 or in Section 3 of the Appendix of Forms at the end of Part I of the Rules of Supreme Court of Virginia. Except by leave of court, the date for trial shall be within one year of the filing of the complaint, or in civil actions appealed from a District Court one year from the filing of the appeal papers; provided that in suits for divorce the trial shall be within eighteen months of the filing of the complaint.

5. Responsive Pleading.² As used in subsection A(3)(a), "responsive pleading" means the initial pleading filed by the defendant in response to the complaint. The term "responsive pleading" includes, but is not limited to, answers, demurrers, pleas in bar, and motions to dismiss or for a bill of particulars. If there is more than one defendant the times stated in this section shall begin to run with the filing of the first responsive pleading.

6. Notice of Settlement. Within thirty days of the taking of a non-suit or a final settlement of any civil action to which this rule applies, counsel for the parties shall deliver the appropriate final order to the Clerk; provided that if a non-suit is taken or a case settled thirty or fewer days before trial, counsel shall deliver such order or a letter confirming the settlement to the Clerk no later than 4:00 p.m. the day before the trial date. The failure to deliver an appropriate order or letter timely to the Clerk may result in the Court entering an appropriate order *sua sponte* or the imposition of sanctions, including juror costs, on counsel.

² This is a definitional section only.

B. Matters Pertaining to Trial

1. Jury Instructions. Counsel for the parties shall, at the beginning of a civil jury trial, deliver to the Judge the originals of all agreed instructions, and copies of all contested instructions noting thereon the authority relied upon for such instructions. Counsel shall exchange copies of proposed instructions at least two days before trial. Rather than exchanging actual copies of proposed instructions, counsel may notify opposing counsel in writing of the numbers of the instructions he expects to use from the Virginia Model Jury Instructions; provided, however, that if any change is made to the model instruction a copy of the instruction to be offered will be given to opposing counsel as well as any other instructions to be offered not contained in the Virginia Model Jury Instructions. This rule shall not preclude the offering of additional instructions at trial, nor will counsel be precluded from withdrawing instructions at trial.

2. Pre-Trial Matters. Counsel shall arrive at Court by 9:00 a.m. the day of a jury trial to discuss pre-trial matters with the trial judge. Trials begin at 9:30 a.m.

3. Verdict Forms. It shall be the duty of counsel for the plaintiff to prepare a verdict form substantially similar to Form 1 in the Appendix of Forms. Either counsel proposing a different verdict form shall have the duty of preparing it.

C. Discovery and *De Bene Esse* Depositions

1. Filing with Court. No discovery shall be filed with the Court unless it is subject to a motion to compel, an exhibit to some other motion, or ordered by the Court.

2. Objections to *de bene esse* depositions. Any objections to the testimony in a *de bene esse* deposition that counsel cannot resolve shall be brought before the Court by motion. The party making the objection shall file the motion. Before filing any such motion counsel shall confer to attempt to resolve such objections. Under no circumstances will the Court rule on objections to a *de bene esse* deposition on the morning of trial.

D. Motions and Briefs

1. To Continue. A continuance shall be granted only for good cause and not merely by the agreement of counsel. Good cause does not normally include the reasons listed in the Court's written civil continuance policy.

2. In Limine. Hearings on such motions may be conducted by telephone conference call if leave of Court is first obtained. Under no circumstances will the Court hear motions *in limine* requiring more than five minutes of argument on the morning of trial.

3. Friday Motions. Except as provided in Rule 4:15 of the Rules of Supreme Court of Virginia, any motion to be heard on a Friday shall be filed in the Clerk's Office no later than the preceding Friday at noon unless a Judge authorizes a later filing, and, except in emergencies, counsel requesting the hearing shall give opposing counsel at least seven days notice of the

motion. There is a time limit of thirty minutes for motions to be heard on Fridays. Counsel shall confer before setting hearings on motions to attempt to resolve the subject of the motion and to determine a mutually agreeable hearing date and time.

4. Briefs. Briefs shall not be longer than twenty pages (8 ½" x 11") double spaced unless leave of court is obtained for a longer brief. If a brief is filed in support of or in opposition to any demurrer, plea, or motion in any unassigned case, counsel shall request that the docket administrator assign the hearing of such matter to a Judge.

5. To Reconsider. A copy of the motion shall be sent to the Judge who made the original ruling. No such motion shall be placed on the docket without the consent of that Judge.

E. Assignment of Cases to Judges

1. Assignment at Filing. Any civil action for injury under the Federal Employer's Liability Act or the Jones Act, or for professional malpractice, products liability, or defamation, shall be assigned to a Judge upon filing by the docket administrator.

2. Assignment After Trial Date Set. An appeal pursuant to Part 2A of the Rules of Supreme Court of Virginia or of a judgment in a proceeding brought under *Code of Virginia* §16.1-283 shall be assigned to a Judge by the docket administrator after the trial date is set.

3. Assignment by Request. At the time a case is filed, or at any time thereafter, any counsel may, by letter to the Chief Judge giving good cause, request that a case be assigned. If the Chief Judge grants the request the docket administrator shall assign the case to a Judge.

4. Miscellaneous. Subject to the approval of the Chief Judge, a Judge may assign a case to himself if he believes he has had substantial involvement with pre-trial matters and ought to try the case, or for any other reason the Judge believes appropriate. A case that counsel expect will take more than two days to try shall be assigned. If exceptions are filed to the report of a Commissioner in Chancery, the hearing on the exceptions will be assigned to a Judge.

F. Orders and Decrees

1. General. Orders reflecting the Court's rulings should be prepared promptly and shall reflect the name of the Judge who made the ruling and the date the ruling was rendered or the matter was heard. When possible, orders will be submitted to the Court on the date the ruling is made.

2. Continuance. If prepared by counsel, the order shall state the reason for the continuance, the new trial date, be signed by counsel, and be presented for entry to the Judge who granted the continuance within fourteen days. The granting of a continuance does not otherwise affect the scheduling order unless the Court specifically modifies the scheduling order by subsequent order.

3. Failure to Serve. If any civil action is not served within the time provided by Supreme Court Rule 3:5, the Clerk shall prepare a notice of discontinuance and send such notice to counsel for the plaintiff.

4. United States as a Defendant. In any civil action in which the United States is named as a defendant, if federal law allows the United States to file a responsive pleading beyond the time allowed by Supreme Court Rule 3:8, the United States may file its responsive pleading within the time allowed by federal law without obtaining leave of Court.

5. Decrees of Reference. Counsel shall recommend to the Court a Commissioner from among those appointed by the Court.

6. Substitution of Counsel. Any order allowing the substitution of counsel shall state the existing trial or commissioner's hearing date, if there is one, and whether new counsel is available to try the case on that date.

G. Miscellaneous

1. Definitions. As used in this rule:

- (a) Clerk. "Clerk" includes the Clerk of the Court or any of his deputies.
- (b) Counsel. Except in section A(3)(a), "Counsel" includes a *pro se* party.
- (c) Gender. The masculine gender shall include the feminine.
- (d) Order and Decree. "Order" may include "decree" and *vice versa*.
- (e) Suit for Divorce. Includes suits for divorce, affirmation, annulment, or equitable distribution under *Code of Virginia* §20-107.3(J) other than those defined by Local Rule 1(B)(2).

2. Guardian ad litem. In any appeal of a case from a District Court, the guardian *ad litem* appointed in the District Court will continue to serve on the appeal of the case in this Court unless relieved by order of this Court.

3. Civil Cover Sheet. Counsel for the plaintiff shall attach a completed civil cover sheet (on a form to be provided by the Clerk) to the initial pleading filed.

4. Waiver or Modification. The Court may waive or modify the terms of this rule in a particular case to prevent undue hardship, to preserve the substantive rights of the parties, or to attain the ends of justice.

5. Effective Date. This rule shall be effective October 8, 1998. Amendments to this rule have been adopted effective July 6, 1999, January 1, 2000, July 1, 2000, February 8, 2001, July 1, 2001, February 1, 2002, September 1, 2003, January 1, 2006, July 1, 2007, July 1, 2008, and July 1, 2012.

CLERK'S CIVIL CASE MANAGEMENT INFORMATION SHEET

Once a case has been filed with the Clerk and is ready to be set for trial, attorneys or pro se litigants need to contact either:

MS. DEANNA DRAKE
757-664-4395

All cases that are pre-assigned to a certain judge must be set with the Civil Docket Administrator:

MRS. WENDY SPIVEY
757-664-4594

When your case is filed you are expected to let the Clerk know in your cover letter whether the case is going to last more than two days or if the case is one of the types of cases addressed in Local Rule Number 2 E. [Assignment of Cases to Judges].

The Clerk has forms for scheduling orders available upon request. These forms are also included in Local Rule Number 2.

If both parties are proceeding without attorneys, the docket clerk will set their case for trial, and they will be notified by mail within 30 days from the date of filing in the Clerk's Office.

If both parties are represented by counsel, it is the responsibility of the plaintiff's attorney to submit a scheduling order within the time prescribed in Local Rule Number 2. If the plaintiff is proceeding without an attorney and the defendant is represented by an attorney, it is the responsibility of the defendant's attorney to submit a scheduling order within the time prescribed in Local Rule Number 2.