

VIRGINIA BEACH CIRCUIT COURT



Contested Divorce Procedures Manual

Revised: July 1, 2018

Guidelines:

1. If you are representing yourself you must research the requirements for the content of the complaint, divorce decree, and any other orders or pleadings that may be required, and draft and prepare them yourself. The court does not provide any form pleadings or orders, and court staff cannot give you advice on these issues. This manual only sets forth the procedural steps for having a contested divorce heard by the court. It does not set forth the legal requirements for a divorce under Virginia law, nor is it intended to. You must determine these requirements for yourself. Each party involved in a divorce matter is strongly encouraged to consult with an attorney so that the legal effects of the proceedings may be fully explained. While it is your right to proceed without an attorney, if you do so, you may forever, unknowingly waive your rights to custody or visitation, child or spousal support, equitable distribution of property, and other legal claims arising out of your marriage. The law clerks and the clerk's office and judicial staff are not permitted to give legal advice. Should you need further assistance, the following resources are available: Wahab Law Library located in the Judicial Center Building (Phone No. 757-385-4419); Virginia Legal Aid, <http://www.valegalaid.org>; Virginia Judicial System Court Self-Help at <https://selfhelp.vacourts.gov>; and Virginia Lawyer Referral (Phone No. 800-552-7977).
2. The grounds are separation for the statutory period (no-fault), or a motion for a no-fault divorce will be made pursuant to Virginia Code § 20-121.02. There are two "no-fault" grounds recognized in Virginia: (1) separation for one year after intending that it be permanent; and (2) separation for six months after intending that it be permanent where the parties have no minor children and both have signed a written settlement agreement. For parties seeking a divorce based on only six (6) months of separation, a written settlement agreement signed by both parties is required before you file for divorce, even if the parties are not seeking support payments and have no property together. Therefore, if you are approaching a separation period of one year, you may find it easier to wait until you qualify based on a one year ground, rather than attempting to file immediately for a divorce based on six-months of separation. All of the elements for the grounds of divorce must be in place before the case is filed. If not, the case will be dismissed and you will have to pay another filing fee, and start over if you want to continue with no-fault grounds.
3. Contested divorces can be heard by a judge or by a divorce commissioner.
4. To have a contested divorce heard by a judge, the parties must comply with the requirements of this manual.
5. To have a contested divorce heard by a divorce commissioner, the following shall apply:

In the discretion of the court pursuant to Code § 8.01-607, the case may be heard by a commissioner. The party must file a motion requesting that the case be heard by a commissioner, and schedule a properly noticed hearing before the court on the Friday Motions Docket to show good cause for the referral. If the court grants the motion, the court will enter a Decree of Reference naming the commissioner who will hear the case. The parties are responsible for contacting the commissioner to schedule the divorce hearing. The commissioner's fees shall be paid pursuant to § 8.01-609.1.

Once a matter is referred to a commissioner for hearing it must stay there. The court will not vacate the referral and require the commissioner to return the file once the decree of reference is entered. This rule applies regardless of whether the case becomes uncontested, or the case stays contested but counsel now wants a judge to hear it.

6. The parties can bifurcate the issues and the forum (whether commissioner or the court) in which the issues are heard. The order in which the issues are heard must conform to the requirements of the Code and case law. If bifurcated, counsel must submit a separate praecipe and pretrial order to set subsequent hearing before a judge. Order submitted by counsel should state whether all issues have been disposed of or the case is continued on the docket.
7. If the parties have been separated for the statutory period of time, or if the divorce is to be granted on the grounds provided for by § 20-91 (1) or (3), counsel may schedule a trial on all the issues.
8. If the parties have not been separated for the statutory period of time, counsel may schedule a trial on the issues of child support, custody, and visitation. The issue of child custody will be a final order. After the parties have been separated for the statutory period of time, a trial on the issues of final spousal support and equitable distribution may be scheduled. A trial on the issue of fault may be scheduled at such time as provided by statute.
9. Cases are rarely pre-assigned to a judge because of our docketing system. To seek assignment of the case, the following requirements must apply: (i) the case must be complex and require many pretrial rulings, (ii) all counsel must agree and join in the request and (iii) the request must be directed to the chief judge. Cases will not be assigned simply because counsel will be briefing a particular issue and want their briefs reviewed prior to the hearing. Those types of matters should be placed on the Duty Judge docket.
10. In contested divorces, the Court requires testimony to be given orally in court pursuant to § 20-106(A). A party may proceed to take evidence in support of divorce by deposition or affidavit only with leave of court.
11. Effective for cases filed on and after March 1, 2013, divorces that proceed by affidavit must satisfy the venue requirements of § 8.01-261. If they do not, the court will proceed under § 8.01-264(D) to *sua sponte* transfer the matter to the proper jurisdiction.
12. **Orders.** On any order submitted by counsel in which the court ruled on such matter the name of the trial/hearing judge shall be typed below the signature line. This will ensure the Judge who hear or tried the case gets the order for entry.

SCHEDULING DIVORCE CASE FOR TRIAL

After (i) the time to answer has passed or the defendant has answered and/or filed a waiver and (ii) the Virginia Beach Divorce Pretrial Order has been entered, counsel may:

- (i) Submit the **Praecipe in a Contested Divorce** (provided in a fillable format on this Court's web site at www.vbgov.com/courts) to the court. Either party may file the praecipe. Docket call is held on the first Monday of each month unless a Holiday then on Tuesday.
- (ii) All counsel may agree to a trial date and secure approval of the court by a telephone call to the judges' office at 757-385-4502. Once the court has approved the trial date by telephone, counsel must complete the Certificate of Setting Agreed Trial Date Outside of Docket Call. This Form is provided in a fillable format on the Court's website. Counsel must immediately submit such Certificate by facsimile to the court. Do not send by mail.

SETTING THE TRIAL DATE AT DOCKET CALL

Counsel, or counsel's authorized representative, is required to appear at docket call to set the trial date. If no one appears at docket call, a trial date will not be set. After docket call, counsel who filed the praecipe shall provide notice of the trial date to all other counsel of record and any *pro se* party.

The Clerk enters the trial date in Case Management System and if the party filing the praecipe is *pro se*, the clerk of court shall issue a Notice of Trial Date after docket call.

FILING PRETRIAL ORDER

The Virginia Beach Pretrial Order (provided in a fillable format on this Court's web site at www.vbgov.com/courts) must be entered in every contested divorce. Failure to file the Order and comply with its terms may result in the case being removed from the trial docket and any other appropriate sanction. The Virginia Beach Divorce Pretrial Order must be entered prior to setting a trial date. Counsel may notice entry of such order if other party will not endorse order.

PARENT EDUCATION SEMINAR (§ 20-103)

The parents in a divorce case where a child's custody, visitation, or support is contested shall attend a parent education seminar on the effects of separation or divorce on children; parenting responsibilities; options for conflict resolution; and, financial responsibilities, unless the court grants an exemption from attendance of such program for good cause shown. Requirements set forth in Pretrial Order. A list of "Parent Education Providers" is provided on the Virginia Judicial System's website under the "Directories" section on the main page at www.courts.state.va.us.

JUDICIAL SETTLEMENT CONFERENCE

A settlement conference with a qualified Judicial Settlement Conference Judge is required when the trial of all issues will require more than 1 hour. Note: The judges' services are free to the parties.

Counsel shall be responsible for:

- (1) Selecting a settlement judge from the List of Judicial Settlement Conference Judges under "Directories" on the Supreme Court's Internet site at: <http://www.courts.state.va.us>. After selecting a judge, contact the Duty Judge's Judicial Assistant at 385-4501 option 2 for the judge's contact information.
- (2) Confirming with the settlement judge that he or she is available to take the conference and making arrangements for the hearing date, time and location with the settlement judge.
- (3) Prepare and submit to the Court the Virginia Beach Order of Designation and Referral to Settlement Judicial Settlement Conference (provided in a fillable format on this Court's web site at www.vbgov.com/courts).
- (4) Provide any court documents and other correspondence required by the settlement judge.

PRETRIAL CONFERENCE

A pretrial conference is required when either or both of the following apply: (1) equitable distribution is contested; or (2) counsel has determined in good faith that the trial of all issues will require more than two hours. In all other cases a pretrial conference will only be held if requested by counsel or by a judge. The

purpose of the pretrial conference is to discuss the issues, to reach stipulations, to discuss settlement and any other matters, which may aid in the disposition of the case. The parties and counsel must attend the pretrial conference in person.

The pretrial conference shall be set on the Duty Judge Motion Docket as follows: Electronically by going to the “Online Motion Docket” page on the circuit court’s website at www.vbgov.com/courts (Click on “Circuit Court” on the left of the main page; then “Motion Docket”). On the right side of the Motion Docket page you will see the “Online Motion Docket” and the Duty Judge Hearing Request Form under Related Information. This online motion docket calendar will show all the appointments that are currently scheduled. You will use this calendar to determine and coordinate available dates and times with the parties prior to scheduling. After determining available date and time, complete the Duty Judge Hearing Request Form and submit such completed Duty Judge Hearing Request Form via email to (Dutyjudg@vbgov.com).

Counsel shall arrange an agreed date and time to schedule the conference. The conference may be set within 30 days of the trial date or as agreed by counsel to be meaningful. Five (5) days prior to the pretrial conference, exchanges with counsel and files with the court the Pretrial Conference Brief (provided in a fillable format on this Court’s web site at www.vbgov.com/courts) and all forms and worksheets that are applicable to the issues in the case.

At the conclusion of the hearing, the judge completes and files the Pretrial Conference Memorandum.

FILING THE EXHIBIT AND WITNESS LIST

Counsel shall exchange 15 days before trial a list specifically identifying each exhibit to be introduced at trial, copies of any exhibits not previously supplied in discovery, and a list of witnesses proposed to be introduced at trial.

FILING THE REQUIRED WORKSHEETS AND FORMS

Counsel shall file with the Court and opposing counsel not later than 15 days prior to trial all worksheets and forms (Monthly Income and Expense Statement of each party, Child Support Guideline worksheets and Equitable Distribution forms) applicable to the issues in the case. The court does not provide these forms. Child Support Guideline forms can be completed online and printed for submission to the court from the Supreme Court website at www.courts.state.va.us. Equitable distribution forms are available, at a cost, from Virginia Attorneys’ Divorce Electronic Reference.

CONFERENCE BY PARTIES AND COUNSEL PRIOR TO TRIAL

If a judicial settlement conference or a pretrial conference is not required, counsel and their parties shall personally meet and participate in a conference to attempt to resolve all issues in dispute and also exchange all forms that are applicable to the issues in the case. No later than 7 days prior to trial, counsel jointly files a certification with the court that the attorneys and their clients personally met and participated in a good faith effort to resolve all issues in dispute, and what issues, if any, were resolved and those that remain for resolution at trial.

REQUEST FOR CONTINUANCE OF TRIAL DATE

Continuances will only be granted for good cause shown and must be approved by the court.

To request an agreed continuance: Counsel must secure approval of a new trial date, complete the Request for Continuance of Trial Date Order (provided in a fillable format on this Court's web site at www.vbgov.com/courts) and submit such order by electronic transmission to the court for approval.

Prior to submitting such order to the court counsel must contact by telephone the judge's office at 757-385-4502. Once the judicial assistant has approved an agreed trial date, counsel must immediately submit such order by electronic transmission to the court. The duty judge will review the request. After the duty judge has granted or refused the continuance, the duty judge's judicial assistant will promptly send a copy of such order to all counsel.

To request a continuance that is not by agreement: Counsel may call the duty judge's judicial assistant at 385-4501 option 2 to schedule a hearing on the duty judge docket or provide notice to all parties for a hearing on the Friday motion docket. Counsel shall submit to the court, in person or by electronic transmission, the Request for Continuance of Trial Date Order (provided in a fillable format on this Court's web site at www.vbgov.com/courts) on the day of the scheduled hearing and if approved a new trial date will be set.

ISSUES SETTLED PRIOR TO TRIAL

If all issues in a contested case settle so that it will go forward as an uncontested divorce and on no-fault grounds, there are 2 options for having it heard by a judge: (1) Counsel may notify the Clerk's Office that the matter has settled but that it should be kept on the docket on the trial date for an uncontested final divorce hearing, or (2) notify the Clerk's Office that the matter may be removed from the trial docket and reschedule for hearing on the Court's uncontested docket. See Uncontested Divorce Procedure manual.

If the parties agree to have the divorce granted on fault grounds, the matter must either be heard on the original trial date or referred to a commissioner.

TRIAL

Failure to appear on the trial date ready for trial and/or failure to complete and file all required forms may result in limitation or exclusion of evidence and/or claims, and/or the case being removed from the trial docket and/or other appropriate sanction including dismissal of the suit for failure to prosecute.

A court reporter is required and counsel must arrange to have one present.

Testimony must be presented in person; cannot hand up affidavits at the trial.

A party wanting to restore his or her former name or maiden name must motion the court at the trial and submit a separate order contemporaneously with the final divorce decree in accordance with § 20-121.4, along with required clerk's recording fee of such order.