

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

**DOCKET CONTROL PROCEDURES IN DIVORCE CASES**

Pursuant to Virginia Code Section 8.01-4, the following docket control procedures are adopted for all divorce cases.

**I. GENERAL APPLICATION**

These docket control procedures will apply to all divorce cases pending on the civil docket of this Court unless otherwise indicated herein.

The Court expects counsel and *pro se* litigants to comply with these procedures so that matters may be set for trial in a timely fashion and the Court may function in an efficient and fair manner.

These procedures shall not abridge the substantive rights of the parties nor deprive any party the opportunity to present their position as to the merits of a case solely due to the unfamiliarity of counsel or any party with these procedures.

These procedures are intended to promote the efficiency of the Court and any presiding Judge may exercise discretion to allow a deviation from these procedures to guarantee the basic fairness of the proceedings.

**II. UNCONTESTED DIVORCES**

1. An uncontested divorce is one where there is no controversy involving the relief being sought. In an uncontested divorce, the adverse party has:
  - (a) signed a comprehensive Stipulation and Property Settlement Agreement, or
  - (b) failed to file responsive pleadings or otherwise respond or appear after having received proper notice of the pending divorce, or
  - (c) signed a Waiver.
2. Equitable distribution awards cannot be made through the uncontested divorce procedure unless there is a written Agreement as to the disposition of property to be ordered by the Court.
3. Setting the Case – Uncontested divorces are heard *ore tenus* each Friday before one of the Judges of the Court upon a Waiver signed by the adverse party or upon proper notice to the adverse party. An uncontested hearing can be scheduled by contacting the docket control clerk, at 393-5373. Prior to the presentation of evidence, the moving party and the witness should complete the questionnaire available from the courtroom clerk, a copy of which is attached to these procedures.

4. Divorce by Deposition/Affidavit – this Court also allows uncontested divorces to proceed by deposition/affidavit pursuant to Va. Code § 20-106, where: (i) the parties have resolved all issues by a written settlement agreement, (ii) there are no issues other than the grounds of the divorce itself to be adjudicated, or (iii) the adverse party has been personally served with the complaint and has failed to file a responsive pleading or to make an appearance as required by law.
5. Required Documents – The attorney or a party proceeding without an attorney must provide the Court with the following documents prior to the case proceeding:
  - Court Question/Answer form
  - Settlement Agreement, if any
  - Final Decree
  - Addendum with Social Security Numbers
  - Statistical Report (VS4)
  - If desired, Name Change Order and a check payable to the Clerk of the Court in the amount of \$21.00.

### **III. CONTESTED DIVORCE**

1. A contested divorce is one where there is an unresolved issue not settled by agreement nor waived by the defendant's failure to respond. Any request for equitable distribution not agreed to in writing renders a divorce contested even where the defendant is in default.
2. A contested case will be assigned to one of the Judges by the docket clerk on the first occasion when a party seeks to schedule any motion or hearing.
3. Parental Education – Where child custody, visitation or support is contested, the parties must show compliance with Section 20-103(A) regarding completion of a seminar or other program addressing the effects of separation or divorce on children, etc.
4. Mediation Procedures and Pendente Lite Motions – Since April 1, 2003, all requests for pendente lite relief in the Circuit Court have been referred for mediation. The mediation program was set up by the Supreme Court of Virginia through Dispute Resolution Services and additional information may be derived by visiting their website [www.courts.state.va.us/drs](http://www.courts.state.va.us/drs). Below is a brief summary of the mediation procedures for pendente lite requests. The mediation program has proven to be extraordinarily successful and the Court encourages all litigants to take advantage of this cost-free opportunity to meet informally and discuss settling issues in dispute with the help of an impartial, trained third party and avoid the intervention of the judicial process into a party's private and personal affairs.

- (a) Upon receipt of a pendente lite motion request, the docket clerk will provide an available date for the mediation session as well as a date for the actual pendente lite motion (to be heard before a Judge)
- (b) An Order referring the matter to mediation will be entered by the Duty Judge and his secretary will provide a copy of the Order and an outline of the Mediation Procedures to both parties by mail.
- (c) Either party may decline mediation by filing with this Court at least 24 hours prior to the scheduled orientation session a written objection signed by the party and confirming that he or she has read and reviewed the Mediation Procedures and, nevertheless, objects to the Court's Order of Referral.
- (d) A Pendente Lite hearing is not a full trial and, unless additional time is prearranged with the assigned Judge, will be limited to one hour with each side being allotted 30 minutes for both the presentation of direct evidence and cross examination of opposing witnesses. In matters involving child custody, visitation and/or support the assigned Judge shall have the option of scheduling a separate hearing in which all evidence will be heard and the Court's judgment will be final.
- (e) At the discretion of the assigned Judge, subsequent or additional pendente lite hearings can be scheduled upon a finding of good cause.

#### **IV. FINALIZING THE DIVORCE**

In order to schedule a trial on a divorce matter, the Court will require a pre-trial conference before the assigned Judge which can be arranged by agreement of the parties through the docket clerk or, where there is no agreement, by motion set for any Friday and served on the opposing party setting forth the intention to schedule a pre-trial conference. At the pre-trial conference, attorneys and clients are required to attend so that all issues may be identified and any settlement prospects may be discussed. In addition, the pre-trial conference will be used to establish a trial date and a preceding judicial settlement conference date. Unlike mediation, the judicial settlement conference is not optional and attendance is mandatory. At the request of either party, the Court will consider entering a Scheduling Order providing cutoffs for discovery, identification of experts, etc. The judicial settlement conference will be scheduled for the week preceding trial to insure that all discovery has been completed.

#### **V. GUARDIAN AD LITEMS**

The Court will determine, on a case by case basis, whether to appoint a guardian ad litem in a divorce case where custody and/or visitation is at issue.

## **VI. COMMISSIONERS IN CHANCERY**

A Commissioner in Chancery may be appointed in either a contested or uncontested case pursuant to Rule 3:23 of the Rules of the Virginia Supreme Court.

## **VII. COURT REPORTER**

A court reporter at all contested trials is required. The Court will determine at the pretrial conference which party is to provide the court reporter, and may allocate the costs thereof.