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SUGGESTED PRACTICES AND PROCEDURES IN CIVIL CASES IN THE CIRCUIT COURTS OF RICHMOND, CHESTERFIELD, COLONIAL HEIGHTS, AND HENRICO

The following information and suggested practices and procedures are provided by the judges and clerks of the Circuit Courts of Richmond, Chesterfield, Colonial Heights, and Henrico in an effort to permit the litigants, lawyers, and the courts to handle cases more expeditiously. As lawyers in the metropolitan area regularly appear before the four courts, there has been an attempt to standardize the practices so as to eliminate confusion and inefficiency.

Each case is unique and must be respected as such; however, there are many facets of a case that are common to other cases. To the extent uniformity can be built into the system, the more likely it will be that all cases are handled promptly and fairly.

The courts have no interest in complicating the system. Each feels, however, that the public demands that justice be administered promptly, fairly and at the least expense possible. The suggested practices and procedures are designed to promote early preparation, to encourage early settlement if possible, and to permit the most productive use of the court's resources, including judges, courtrooms, the clerks' offices, jurors, witnesses, and lawyers. Much that is included is simple common sense or common courtesy.

The suggested practices and procedures are not local rules of court, but rather are minimum practices expected of competent, thoughtful, and efficient professionals. Should a party wish to have these principles applied as rules, they should be incorporated into a pretrial order. *See* Supreme Court Rule 1:18.

The courts expect that counsel and the parties will cooperate with the court, clerks' offices and other parties in adhering to these policies and procedures. Cooperation should enable us to provide to the public those services that only we can provide and in a manner that is fair, expeditious, and prompt. The public should expect no less.

This outline is prepared to facilitate the efficiency and fairness with which matters are pursued in these courts. The Code of Virginia and Rules of the Supreme Court of Virginia references are effective as of January 1, 2006. Parties are required to determine if changes or amendments have been made and to determine whether these courts' practices or procedures have been changed since the inception of this outline.

The judges of the circuit courts of Richmond, Chesterfield, Colonial Heights, and Henrico would like to thank the Bar Association of the City of Richmond, the Chesterfield-Colonial Heights Bar Association, and the Henrico County Bar Association for their assistance in promulgating and revising the suggested practices and procedures that follow.

**DOMESTIC RELATION CASES ARE GOVERNED BY SUGGESTED
GUIDELINES AND PRACTICES IN DOMESTIC RELATIONS CASES**

**PRACTICES AND PROCEDURES IN CIVIL CASES
IN THE CIRCUIT COURTS OF RICHMOND, CHESTERFIELD,
COLONIAL HEIGHTS, AND HENRICO**

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The following are the most commonly encountered fees for filings and service of process. As these fees are determined by statute and ordinance, they are subject to change. It would be most helpful for each user to update this list annually to avoid the necessity of calling the clerks' offices or having filings returned because the proper fee is not enclosed.

A. Fees and Filing Requirements

1. Complaints Clerk's fees (Va. Code Ann. § 17.1-275(13)):

\$50.00 in cases ranging from \$0 - \$50,000.00
\$100.00 in cases ranging from \$50,000.01 - \$100,000.00
\$150.00 in cases over \$100,000.00

NOTE: Increased ad damnum requires additional clerk's fee and writ tax, and must be paid before increase becomes effective.

2. Writ tax in addition to the above is due (Va. Code Ann. § 58.1-1727):

\$5.00 in cases up to \$50,000.00
\$15.00 in cases \$50,000.01 to \$100,000.00
\$25.00 in cases over \$100,000.00

3. Library fees (Va. Code Ann. § 42.1-70)"

\$4.00 in Chesterfield
\$4.00 in Henrico
\$2.00 in Richmond
\$2.00 in Colonial Heights

4. Legal aid fee (Va. Code Ann. § 17.1-278):

\$4.00 in each court

5. Courthouse maintenance funds fees (Va. Code Ann. § 17.1-281):

\$2.00 in Richmond
None in Chesterfield
None in Henrico
\$2.00 in Colonial Heights

6. Technology Trust Fund Fee (Va. Code Ann. § 17.1-279):

\$5.00 in each court
Indigent Fee \$1.00

7. Declaratory judgments

8. Same as 1, thru 6, and 11
Counterclaim fees:
Same as 1 thru 6 minus writ
9. Cross-claim fees:
No fees due; part of original suit
10. Third-party complaint fees:
Same fees as an original complaint
11. Service of process (*See* 13 below for information on how checks are payable):
- a. Sheriff (Va. Code Ann. § 17.1-272(1):
\$12.00 for each process (document/pleading) and for each person or entity to be served. For example, the fee for serving two persons with two pleadings each is \$48.
- b. Secretary of the Commonwealth (Va. Code Ann. § 8.01-310, § 2.2-409):
\$28.00 to Secretary of Commonwealth for each party to be served, plus Sheriff's fee of \$12.00

NOTE: When service is to be made on the Secretary of the Commonwealth, for each defendant, you must file with the Circuit Court Clerk the original and two copies of the required affidavit plus one copy of the pleading (Va. Code Ann. § 8.01-329).
- c. Department of Motor Vehicles (Va. Code Ann. § 8.01-310, § 2.2-409):
\$28.00 to DMV for each party to be served, plus \$12.00 Sheriff's fee for each process (pleading/document) to be served.

NOTE: For each defendant, you must file with the Circuit Court Clerk the original and two copies of the required affidavit plus two copies of the pleading/document to be served (Va. Code Ann. § 8.01-310).
- d. Clerk, State Corporation Commission (Va. Code Ann. § 12.1-19.1):

\$30.00 for each defendant to State Corporation Commission, plus \$12.00 Sheriff's fee for each process (pleading/document) to be served.

NOTE: For each defendant, you must file with the Circuit Court Clerk the original and one copy of the required affidavit plus two copies of the pleading/document to be served (Va. Code Ann. § 12.1-19.1)

12. Copies required when filing a complaint:

The Circuit Court Clerk must be furnished with one original for the court file plus a copy for each defendant if service through the clerk's office is requested. *See* Supreme Court Rule 3:3(b).

13. Payments – to whom and how made:

Please make one check payable to the Clerk for clerk's fees, writ tax, legal aid fee, courthouse maintenance fund fee, library fees, technology trust fund fee, indigent fee and sheriff service fees. Please check the service addresses to be reasonably certain that the defendant lives at the address to avoid the necessity of having to reissue at another address. **INDICATE THE COUNTY OR CITY TO WHICH THE PROCESS IS TO BE DIRECTED.**

For example:

John Doe
10788 Midlothian Turnpike
Midlothian, VA (Chesterfield)

14. Witness subpoena:

Sheriff's fee \$12.00 (Va. Code § 17.1-272(1)) (No Clerk's fee necessary). Check must be payable to the Clerk of the jurisdiction in which the suit is filed.

Opposing counsel must be furnished with a copy of the request to summons witnesses. Requests must be made in sufficient time for issuance of the subpoena and its service. Requests for issuance of summonses should be made *not later than two week prior* to trial. After subpoena issuance, if a witness is no longer needed due to changed circumstances, it is the responsibility of the requesting attorney to notify the witness of same.

15. Subpoena *duces tecum* (refer to § 32.1-127.1:03 if medical records are being requested):

The Clerk's fee for a subpoena *duces tecum* is \$5.00 (§17.1-275A(23)) and the Sheriff's fee is \$12.00 (§17.1-272(1)).

Check for both fees must be payable to the Clerk of the jurisdiction in which the suit is filed. Notice must be given to opposing counsel and a certificate of compliance must be filed, together with the request for the summons. A recent change in Rule 4:9(c) allows subpoenaed records to be returnable to the requesting attorney's office or to the Clerk's office.

In Richmond, please include exhibit page outlining documents requested.

16. Deposition subpoena pursuant to Rule 4:5:

No Clerk's fee.

Sheriff's fee \$12.00 (Va. Code Ann. § 17.1-272(1)).

Check must be payable to the Clerk of the jurisdiction in which the suit is filed. There is no need to file the return with the court, unless enforcement of the summons is necessary.

B. Court Reports and Narrative Statements

Counsel are encouraged to arrange for a court reporter at any hearings or trial. Transcripts instead of narrative statements should be utilized. Narrative statements are complicated, time-consuming, and tend to be grossly inaccurate.

C. Scheduling Trials and Motions

1. Setting trial dates:

Pursuant to Supreme Court Rule 1:20(a)-(d), these courts adopt the following procedures for setting cases for trial:

Any case in which the parties are at issue may be set at docket calling if available dates of counsel have *not* been obtained, or by telephone call to the numbers below by any party who *has* obtained the available dates of the other party(ies).

If counsel are *not* able to agree on a trial date less than 6 months away, counsel shall schedule a conference with the court to set a trial date and consider other matters set forth in Supreme Court Rules 1:19 and 4:13.

THE PARTIES ARE ENCOURAGED TO SET CASES BY TELEPHONE.

Richmond
John Marshall Courts Building 646-6536

Chesterfield	
Judge <u>Rockwell</u>	751-4187
Judge Gill	748-1335
Judge Hauler	751-4961
Judge Allen	748-1335
Judge Powell	717-6369
Colonial Heights	520-9364
Henrico Judges' Secretary	501-4709

Docket call for Richmond's John Marshall Courts Building is scheduled four times a year beginning at 9:15 a.m. on the first Monday in March, June, and December and on the third Monday in September.

Docket call in Chesterfield is scheduled six times a year, beginning at 2:30 p.m., on the Tuesday following the third Monday in January, and on the third Monday in March, May, July, September, and November.

Docket call in Colonial Heights is scheduled five times a year beginning at 11:00 a.m. on the first Tuesday in January, March, July, September, and November.

Docket call in Henrico is scheduled four times a year beginning at 2:00 p.m. on the second Monday in January, April, July, and October.

ANY CASE THAT IS NOT SET BY THE SECOND CALLING OF THE DOCKET AFTER THE PARTIES ARE AT ISSUE WILL BE SET BY THE COURT.

To avoid lost trial dates, last minute surprises, and wasted trial preparation, it is vital that all parties be aware of trial dates and that the court be so advised. Therefore, when the trial date has been obtained, and whether by telephone or at a docket calling, **THE PARTY OBTAINING THE DATE SHALL WITHIN 10 DAYS CONFIRM THE DATE WITH ALL OPPOSING PARTIES IN WRITING WITH A COPY TO THE COURT. FAILURE TO SUBMIT THE COPY MAY RESULT IN FORFEITURE OF THE TRIAL DATE!**

2. Continuances:

CASES WILL BE TRIED ON THE DATE SET BEGINNING AT 10:00 A.M. (In Richmond Circuit Court, counsel should report at 9:30 a.m.) Counsel should not request continuances and they will **not** be granted except for cause, which is unforeseen, is beyond the control of the parties or counsel, is not due to lack of preparation and does not prejudice other litigants. The clerk's offices are not authorized to grant

continuances; therefore, motions for continuances should be addressed to the court and not the clerk.

3. Hearings on motions and other pretrial matters:

Hearings on motions and other pretrial matters are governed by Supreme Court Rule 4:15.

a. Responsibility for scheduling arguments:

The party filing a motion, demurrer, etc., is responsible for scheduling a hearing after obtaining available dates from opposing counsel. **Counsel must be prepared to give an estimate of time needed for the hearing at the time it is set.**

To avoid last-minute argument which may interfere with trial preparation, demurrers, special pleas, motions for summary judgment, and any motions which could dispose of all or part of the case **should be made and argued** within 60 days of filing and in any event not later than 30 days before trial or they may be deemed to be waived.

b. Case Assignments:

Before scheduling a hearing in Richmond, Chesterfield, or Colonial Heights, counsel must know to which judge the case is assigned. In those jurisdictions, a case number and judge will be assigned at the time the case is filed.

In Richmond, judge assignments are determined with reference to the last digit in the case number. The party filing a motion is obliged to schedule hearings directly with the judge assigned to that case. The assigned judge will handle pretrial matters but will not necessarily serve as trial judge.

In Henrico, motions in civil cases are heard on Fridays. To schedule a time for a specific matter, call the judge's secretary at 501-4709.

TO SET ARGUMENT ON A MOTION:

Richmond – John Marshall Courthouse

Call Judges Secretary at 646-6515

Example:	Case No. <u>CL06-000-1</u>	Judge Hughes
	<u>CL06-000-3</u>	Judge Markow
	<u>CL06-000-4</u>	Judge Spencer

Colonial Heights

Call Clerk’s office 520-9364

Henrico

Call Judge’s Secretary 501-4709

Chesterfield

Call Secretary assigned to judge:

Judge Allen	748-1335
Judge Gill	748-1335
Judge Hauler	751-4961
Judge Powell	717-6369
Judge Rockwell	<u>751-4187</u>

c. Orders and motions:

i. Movant to provide sketches:

The moving party must prepare and bring to the court at the hearing a sketch order. Failure to do this imposes a burden on the court and the clerk’s office, as the court may be required to draft the sketch and the clerk may have to pull the same file when the sketch is mailed in after a hearing. With the volume of cases the courts handle, these small considerations can have a great impact on efficiency.

ii. Information required in motions and sketches:

All motions and responses should contain the name, address and telephone number of counsel filing the motion or endorsing an order. Sketches for orders shall contain the names and addresses of all counsel of record and their endorsements, unless waived. Please provide the Clerk’s office with a self-addressed, stamped envelope for the return of a courtesy copy of the entered order. *See* Supreme Court rule 1:13.

d. Briefs and memoranda:

The filing and service of briefs and memoranda in support of or in opposition to motions and pleas are governed by Supreme Court Rule 4:15(c).

D. Pretrial Procedures

Experience tells us that last-minute preparation often results in the discovery of matters leading to requests for continuances, special consideration of last-minute discovery disputes, and oftentimes ill-prepared cases.

To avoid these problems, the courts urge the parties to request entry of a pretrial scheduling order substantially in the form of the Uniform Pretrial Scheduling Order set out as Form 3 in the Appendix of Forms in Part One of the Supreme Court Rules (Rule 1:18(B)).

EVEN IN THOSE CASES IN WHICH PRETRIAL SCHEDULING ORDERS ARE NOT ENTERED, THE COURTS WILL BE GUIDED BY THE STANDARDS, PRINCIPLES, AND OBJECTIVES SET OUT IN, AND REASONABLY INFERRED FROM, THE UNIFORM PRETRIAL SCHEDULING ORDER IN RESOLVING DISPUTES CONCERNING DISCOVERY AND OTHER PRETRIAL MATTERS.

It is not necessary to file with the court interrogatories or answers thereto, requests for admission, deposition notices, depositions or certificates of the filing of depositions. If there is a discovery dispute that cannot be resolved, a hearing should be scheduled before the judge assigned to the case. At such hearing, the court should be provided with a copy of the discovery material which is necessary for a decision on the dispute. Please be aware of Supreme Court Rule 4:12(a)(4) which **REQUIRES** an award of expenses against the losing party unless the court finds that the losing party's position was substantially justified or that other circumstances make an award of expenses unjust.

E. Trials

1. *In limine* motions:

It is an imposition on the court, jurors and witnesses to show up at the time scheduled for a trial and ask to be heard on *in limine* matters. Common courtesy demands that such matters be scheduled with the trial judge. In Chesterfield, Colonial Heights, and Henrico, they should be scheduled with the judge's secretary at the numbers given on pages 9 and 10. In Richmond, contact the appropriate Docket Clerk at the numbers given on page 7. Unscheduled *in limine* motions will not be entertained. No *in limine* motions will be scheduled to begin after 9:30 a.m. on the day of the trial. Generally, most *in limine* motions are based on issues of relevance. Such motions cannot usually be ruled upon prior to trial and are discouraged.

2. Stipulations of facts:

In every case, parties should endeavor to enter into stipulations of undisputed facts that will avoid unnecessary proof and to otherwise simplify the trial. Stipulations will generally be placed into evidence at the beginning of the evidence, unless the parties request otherwise.

3. Exchange of lists of witnesses and exhibits:

To avoid last-minute objections and to allow the trial to move more smoothly, and unless otherwise provided for in a pretrial scheduling order (e.g., Paragraph V of the Uniform Pretrial Scheduling Order, Supreme Court Rule 1:18), not later than 5 working days before trial, counsel should exchange a list of witnesses proposed to be called and a list of exhibits intended to be introduced. Copies of exhibits should be supplied to counsel or made available for examination at the same time the list is served. Exhibits or witnesses used solely for impeachment or rebuttal need not be exchanged. **DO NOT SEND COPIES TO THE COURT.**

4. Distribution of exhibits to jurors:

Circulation of exhibits among the jurors is time-consuming and disruptive of the orderly flow of the trial; therefore, exhibits will not be circulated among the jurors unless sufficient copies are available for each juror or the exhibit is of such size or enlarged to such size that the jurors as a body can examine the exhibit or enlargement. The courts discourage the introduction of bulky exhibits into the record as this imposes on the clerk's offices and the taxpayers in finding space to store such exhibits. They may be used for demonstration purposes. A smaller form of the bulky exhibit can usually be made and it should be presented for record purposes.

5. Depositions as evidence:

The playing of videotape depositions and the reading of deposition transcripts as substantive evidence can be unduly cumbersome and lengthy. Counsel of record should confer and attempt to identify and resolve all issues regarding the use of depositions at trial. It is the obligation of the proponent of any depositions of any non-party witness who will not appear at trial to advise opposing counsel of record of counsel's intent to use all or a portion of the deposition at trial at the earliest reasonable opportunity. It becomes the obligation of the opponent of any such deposition to bring any objection or other unresolved issues to the court for hearing before the day of trial.

It is the duty of the party offering a deposition as evidence to edit the deposition so that irrelevant and distracting portions are excluded. For example, long, introductions of the witness and counsel, counsel's objections, the witness' searching for documents, repetitive questions and answers, and other portions of depositions that add nothing to the jury's

consideration of the case should be edited out of the deposition before it is played or read.

6. Exchange of instructions:

The preparation of instructions can be unnecessarily time-consuming and, without preparation, can lead to reversible error. Unless otherwise provided for in a pretrial order (e.g., Paragraph X of the Uniform Pretrial Scheduling Order, Supreme Court Rule 1:18), instructions should be exchanged among counsel at least 2 working days before trial. All sets should be marked in pencil in the lower right-hand corner numerically for the plaintiff and alphabetically for the defendant. One set of instructions – to be read and given to the jury – should not contain citations of authority. Counsel should confer so that at the conclusion of the evidence, counsel can advise the court which instructions are agreed upon, which are disputed, and the basis for any disputes.

F. Enforcement of Judgments

1. Form of judgment sketch:

A judgment for money shall state that it is a judgment in a specific amount in favor of a named party, against a named party (full name of each party and should match style of case), and it shall further state the time from which the judgment bears interests.

2. Executions (Va. Code Ann. § 8.01-474, § 17.1-275(44)) Fees to Sheriff:

Writs of executions (*fi fa*) may be issued within a 21-day period if the judgment order states “execution forthwith.” Otherwise an execution cannot be issued unless 21 days have passed since the judgment order is entered. For the first writ of execution there is no Clerk’s fee. For each subsequent filing a Clerk’s fee of \$1.50 is charged for issuance of the writ of execution. The Sheriff will charge a fee of \$25.00 for the first debtor and \$12.00 each for additional debtors in the case if a levy is requested. Check must be payable to the Clerk of the jurisdiction in which the suit is filed.

3. Garnishments (Va. Code Ann. § 8.01-511 - 8.01-512.3):

At the request of the judgment creditor, the Clerk will issue a garnishment summons. The person requesting execution must provide all the necessary calculations of interest, credits, etc. The total balance due must be noted. (See Va. Code Ann. § 8.01-511.) The judgment creditor picks the return date, which must be within a 90-180 day period if it a wage garnishment. Bank accounts run for a period of 21-28 days. Personal appearance on the return date is unnecessary.

Filing fees are as follows:

If service is by Sheriff

\$63.00 - With no writ

\$88.50 – With writ

If service is being provided by special process service

\$39.00 – If no writ

\$40.50 – With writ

4. Interrogatory summons (Va. Code Ann. § 8.01-506):

Interrogatory summons can be issued only after 21 days from the date of judgment. Attorneys to provide original and two copies of completed Summons to Answer Interrogatories to the Clerk's office which will be returnable to the Commissioner of Chancery. If a subpoena duces tecum is required, it will be issued through the Commissioner's office.

Filing fees are as follows:

If service is by Sheriff

\$17.00 - With no writ

\$30.50 – With writ

If service is being provided by special process service

\$ 5.00 – If no writ

\$ 6.50 – With writ

Check must be payable to Clerk of the jurisdiction in which the suit is filed.

A hearing must be scheduled directly with a Commissioner in Chancery and that date is included in the request for summons forwarded to the Clerk.

G. Settlements Involving Infants and Others Under Disability (Va. Code Ann. § 8.01-424):

1. Information in petition:

An affidavit should accompany the petition, to be placed under seal, and include the following:

a. Social Security number of infant;

- b. Birth date of infant
 - c. Current address of the infant and custodial parent.
2. Information required by the court:
- The court should be provided with medical records or reports which allow the court to determine the nature and extent of injuries, the nature and course of treatment, the resolution of the injury, the existence of any permanent injury, and the necessity of any future treatment.
3. Payment of bills for health care services:
- Bills for health care services are expected to be paid from available collateral sources, such as “med pay” and health insurance, **NOT** from the settlement proceeds.
4. Payment of all proceeds into court:
- Unless otherwise directed by the court it is the policy of Chesterfield and Colonial Heights Circuit Courts that all proceeds be paid to the Clerk to be held for the benefit of the child. In Richmond, amounts \$1500.00 or less should not be paid into the registry of the Court. Sketches for orders should be prepared to comply. Henrico may allow distribution to parents if the balance is less than \$10,000.00 (VA.Code Ann. § 8.01-606).
5. Proceeds check to be presented with sketch for order:
- Where net proceeds are to be paid to the Clerk’s office, a check for the net proceeds payable to the Clerk for the benefit of the infant shall be tendered into court along with the sketch for order approving the settlement.

H. Condemnation Proceedings

All checks from the Virginia Department of Transportation must be made payable to the Clerk of the Court. Proceeds from draw-downs, settlements, or awards are disbursed only in accordance with an order of the court.