

# Tazewell Circuit Court: Rules of Court

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## General Provisions

### Rule 1:1. Application of Rules

These rules and any amendments hereto shall apply as of their effective date to all civil cases, as indicated, and to all criminal cases, as indicated, pending or hereafter instituted in this court of this Circuit, except where in pending cases their application in the opinion of the court would not be feasible or would work injustice, and shall rescind and supersede all prior local rules.

### Rule 1:2 Business Hours, Days and Holidays

- a. All proceedings shall commence at 9:00 a.m. unless the presiding judge shall designate some other time.
- b. Excepting holidays as mentioned in this Rule, the regular business days of this court for the conduct of its proceedings shall be Monday through Friday of each week.
- c. The regular holidays of this court shall be as set forth in Code Section 2.1-21. In addition, there may be special holidays for this court by entry of order pursuant to Code Section 17-41(8).
- d. Notwithstanding the other provisions of this Rule, in case of emergency or other necessity as determined by the court, it may in its discretion set for hearing or hear any matter on any day other than a regular business day.

### Rule 1:3 Schedule of Regular Days

- a. Term Day. By virtue of Code Section 17-127.21, Term Day for this court shall be as follows:
  1. Excepting holidays and Judicial Conferences, the second Tuesday in the months of January, March, May, July, September and November.
  2. If the first day, known as Term Day, of any Term as scheduled above shall fall on a legal holiday as defined in Section 2.1-21 or during a Judicial Conference, then such Term shall commence and its Term day be on the preceding or following Tuesday, as determined by the Court.
- b. Misdemeanor Appeal Day. Misdemeanor Appeal Day for this court shall be as follows:
  1. The day following Term Day, at which time counsel for the Defendant and the Commonwealth, as well as any unrepresented defendant, shall be present in order to set the misdemeanor appeal for trial.
- c. The foregoing schedule of regular days notwithstanding, on an ad hoc basis, the date of any one may in case of necessity be omitted, or changed or continued to some other convenient date by timely entry of an order for that purpose.

### Rule 1:4 Calendar of Holidays and Regular Days

Annually, before the first day of January, the Clerk of this Court shall prepare a list in chronological order showing so far as foreseeable the date in the succeeding calendar year of each holiday mentioned in Rule 1:2 as well as any other date for which it is known that court will not be held, and each day pertaining to that court mentioned in Rule 1:3 a), b) and c).

The Clerk of the Court shall furnish a copy of such list to the circuit judge and the district courts from which appeals lie to that court and to attorneys regularly practicing before the court, and, upon request, shall furnish a copy to any other attorney or other person having need therefor.

### **Rule 1:5 Docket Call**

The calling of cases for setting trials, for a criminal case shall be when the case is called on the criminal docket; for a civil case, the trial date shall be scheduled with the Court's Administrative Assistant.

ALL scheduling of civil cases SHALL be completed via email ONLY.

ALL criminal cases must have a continuance order entered on the day the case is on the docket if a continuance is requested and granted. Attorneys are NOT to leave the courthouse until the case has been continued by the entry of a continuance order.

### **Rule 1:6 Use of Docket Numbers**

The clerk shall assign a docket number to each case instituted, and thereafter all pleadings, other papers, and orders and decrees shall bear said docket number. Pleadings not containing docket numbers shall be deemed filed but the clerk shall notify counsel of the omission and/or provided to the Judge's Office for review.

### **Rule 1:7 Counsel and Guardian ad Litem Fees**

In criminal and civil cases, including habeas corpus ad subjiciendum cases, requests or claims for fee of court appointed counsel and for necessary expenses incurred therein shall be submitted promptly and include or have attached thereto a brief itemization of the hours expended, the nature of the work done by counsel and of the expenses incurred in such case, a statement of the offenses or matters involved, and if not a Commonwealth criminal case, the name of the prosecuting entity liable for counsel fee and such expenses. In all other cases where counsel fee or guardian ad litem is allowable, the presiding judge may require submission of such information.

Further, all submissions MUST be electronically filed no later than thirty (30) days after the conclusion of the case.

## **Provisions in Criminal Cases**

### **Rule 2:1 Responsibility for Criminal Orders**

Except for misdemeanor appeals, in all Criminal cases the Administrative Assistant for the Judges of the Circuit Court shall be primarily responsible for drafting and presenting for entry the final conviction and sentencing orders in such cases, a copy of which upon entry the Clerk shall forthwith make available on OCRA.

For misdemeanor appeals, it is the responsibility of the Clerk's Office to prepare a final conviction and sentencing order utilizing Form CC-1392, a copy of which upon entry the Clerk shall forthwith make available on OCRA.

### **Rule 2:2 Misdemeanor Appeals**

In all misdemeanor cases, including criminal contempts in which an appeal has been noted from the final judgment of any district court, trial of such appeal shall be scheduled by the court and counsel or a party defendant, if such party is not represented, on the Misdemeanor Appeal Day of the circuit court next succeeding the expiration of ten days after the date of conviction. District Courts shall forthwith transmit

the papers of the case to the clerk of the circuit court after the expiration of ten days from date of conviction, but not before.

Any appeal of a bond ruling from a District Court shall be set by the Attorney who appealed the District Court's ruling and such appeal shall take precedence on the docket of this Court.

### **Rule 2:3 Plea Agreements**

- a. Plea agreements are requested to be presented in criminal matters and are to be filed with the Circuit Court Clerk a minimum of five (5) business days prior to trial. Plea agreements should be executed by the defendant, the attorney for the defendant and the Attorney for the Commonwealth handling the case.
- b. It is requested that a Plea Questionnaire also be filed along with the Plea Agreement. The Attorney for the Commonwealth or Clerk's Office can provide the appropriate Plea Questionnaire.

### **Rule 2:4 Scheduling Hearings, etc.**

When scheduling hearings on motions, trials or pleas in criminal cases, the attorney desiring to schedule such matter must contact the Clerk's Office and opposing counsel for available Court dates. The attorney desiring to schedule the matter should then schedule the case on a date that is convenient with the Court's criminal docket. Upon the scheduling of such matter, the scheduling attorney shall forthwith confirm, by written Notice of Hearing or Continuance Order, the date of the setting of the hearing. Notice shall be sent to opposing counsel and the Clerk of the Court. If no agreement is reached concerning the setting of the trial or hearing date, the parties may set the date by telephone conference with the Court. If the attorney desiring to schedule a matter is unable to secure contact with opposing counsel of record, he or she may schedule a hearing, etc. within a reasonable period of time and forward notice of the hearing to opposing counsel of record, to the Court, and the Clerk of Court, together with a Certificate of Good Faith that a good faith attempt was made to set the matter in accordance with provisions of this rule.

## **Provisions in Civil Cases**

### **Rule 3:1 Pretrial Conference**

- a. A pretrial conference at which all matters listed under Rule 4:13 of the Supreme Court of Virginia may be held prior to and as a prerequisite to setting any matter for trial or hearing on its merits.
- b. Counsel attending a pretrial conference shall have full authority with respect to stipulations, limitation of issues, and the disposition of all other matters considered. The preparation and submission for entry of pretrial orders shall be the responsibility of the parties, unless otherwise advised by the court.

### **Rule 3:2 Setting Cases for Trial**

- a. Trials on issues of facts raised by plea may be, in the discretion of the court, heard separately or in conjunction with trial on the merits. Trials will not be set until:
  1. The parties are at issue on the matters to be tried and the case is matured.
  2. Pretrial conference, if required, in accord with Rule 3:3 a) has been had.
  3. All discovery procedures relating to the issues to be tried have been completed, or a date by which all discovery procedures shall have been completed has been determined by order.

- b. When scheduling hearings on motions or trials in civil cases at any time other than Docket Call, the attorney desiring to schedule such matter must contact opposing counsel for available Court dates. The attorney desiring to schedule the matter should then contact the Judge's Administrative Assistant to secure a trial or hearing date on one of the dates on which opposing counsel is available. Upon the scheduling of such matter, the scheduling attorney shall forthwith confirm, by telephone and written notice, the date of the setting of the hearing. Notice shall be sent to opposing counsel, the clerk of the court, and the Judge's Administrative Assistant. If no agreement is reached concerning the setting of the trial or hearing date, the parties may set the date by telephone conference with the Court. If the attorney desiring to schedule a matter is unable to secure contact with opposing counsel of record, he or she may schedule a hearing, etc. within a reasonable period of time and forward notice of the hearing to opposing counsel of record, to the Court, and the Clerk of Court, together with a Certificate of Good Faith that a good faith attempt was made to set the matter in accordance with provisions of this rule.

### **Rule 3:3 Preparation and Presentation of Orders**

The party substantially prevailing on a particular matter in a case shall be primarily responsible for drafting and presenting for entry the order, judgment or decree upon that matter. In other instances the court shall determine the responsibility.

### **Rule 3:4 Domestic Relations Matters**

- a. Unless otherwise ordered by the Court, all contested proceedings, upon request of a party, shall be heard ore tenus.
- b. A statistical report as required by Code Section 32.1-268 shall be furnished to the clerk as a prerequisite to the entry of a decree of divorce a vinculo or of annulment of marriage.
- c. In all hearings on domestic matters involving temporary or permanent child or spousal support, all attorneys are required to prepare a neat, legible, typewritten list of expenses and incomes, documented by receipts, cancelled checks, check stubs, etc.. A copy of the list and documentation shall be submitted to opposing counsel or the party, if there is no counsel of record, at least ten (10) days prior to the hearing.
- d. In equitable distribution matters, a list of all assets, designated as marital or separate property, and with the party's valuation thereof, shall be submitted to the Court with copies to counsel, at least ten (10) days prior to the hearing. If parties cannot agree on value of assets having a value of more than \$2,000.00, and an appraisal by an expert is required, the party whose valuation is farthest from the expert's appraisal will be assessed the cost of appraisal.
- e. Failure to comply with the requirements of paragraphs c) & d) above may, in the discretion of the presiding judge, result in the hearings being delayed and being rescheduled for another date.
- f. On a case-by-case basis, for good cause shown and in furtherance of the interests of justice, the presiding judge shall have the discretion to waive the requirements of this rule.

### **Rule 3:5 Determination of Fact Issues in Equity**

Except as provided in Rule 3:4 a) for domestic relations matters, unless otherwise ordered by the court, proceedings in equity involving contested issues of fact shall be heard ore tenus, and uncontested proceedings or proceedings in which the facts are not contested shall be heard on deposition. In any event, the court may order a reference of any issue to the commissioner in chancery for hearing and report thereon.

### **Rule 3:6 Certain Appeals by Juveniles**

- a. In all juvenile cases in which an appeal has been noted from the final judgment of a juvenile and domestic relations district court finding a juvenile subject to the provisions of the juvenile law for

an offense which if committed by an adult would be a crime, the procedures provided Rule 2:2 shall apply mutatis mutandis.

- b. In such cases, the provisions of Rule 1:6 shall apply mutatis mutandis.

### **Rule 3:7 Court Reporters**

The party or parties desiring the services of a court reporter shall be responsible for obtaining and compensating the reporter.

### **Rule 3:8 Instructions**

Counsel for all parties, unless compliance is waived by the Court, shall, two days before a civil jury trial date, submit to the Court a copy of all instructions such counsel proposes to request, noting thereon the authority or authorities upon which he relies for such instructions. Counsel are not required to exchange copies of proposed instructions. This rule shall not preclude the offering of additional instructions at the trial.

In criminal cases, counsel should have the majority of its proposed instructions prepared prior to trial.

For all civil and criminal trials, the Court requires that counsel provide three (3) copies of all proposed instructions; one for the Court, one for counsel and one for opposing counsel.