

RULES

OF THE

CHESAPEAKE CIRCUIT

COURT

April 7, 2009

Table of Rules

Rule 1.....	Terms of Court
Rule 2.....	Holidays
Rule 3.....	Cover Sheets for Filing Civil Actions
Rule 4.....	Procedure for Calling of the Docket
Rule 5.....	Trials by Jury
Rule 6.....	Divorce, Annulment, Affirmance and Separate Maintenance Causes
Rule 7.....	Civil Motions
Rule 8.....	Additions to Court Docket – 72 Hour Rule
Rule 9.....	Orders
Rule 10.....	Time Sheets of Court Appointed Counsel
Rule 11.....	Discharge of Fines or Costs
Rule 12.....	Motions for Reconsideration
Rule 13.....	Notice of Trial Date to Opposing Party

Order of Adoption

In accordance with Rule 1:15 of the Rules of the Supreme Court of Virginia, a copy of these orders with the dates of entry shall be posted in the Clerk's Office, filed with the Executive Secretary of the Supreme Court of Virginia, and made available to attorneys practicing before this court. All prior rules of this Court not contained herein are revoked. [Entered: July 3, 2006]

Rule 1 — Terms of Court

There shall be twelve (12) terms of this Court, which shall commence on the first Tuesday of each month. The civil docket shall be called at 10:00 A.M. and the criminal docket at 2:00 P.M. on the first day of the term. In the event the first day of the term falls on a holiday or an election day, the docket shall be called on the following Court day. [Entered: July 3, 2006]

Rule 2 — Holidays

In accordance with the provisions of Virginia Code § 2.2-3300, enumerating the legal holidays observed in the Commonwealth of Virginia, the Clerk's Office of the Circuit Court of the City of Chesapeake shall be closed on:

January 1 – New Year's Day;
The Friday preceding the third Monday in January – Lee/Jackson Day;
The third Monday in January – Martin Luther King, Jr. Day;
The third Monday in February – George Washington Day;
The last Monday in May – Memorial Day;
July 4th – Independence Day;
The first Monday in September – Labor Day
The second Monday in October – Columbus Day & Yorktown Victory Day
November 11th – Veterans Day;
The fourth Thursday in November and the Friday next following – Thanksgiving Day;
And
December 25 – Christmas Day;

or, whenever any of such days fall on Saturday, the Friday next preceding such day, or whenever any of such days fall on Sunday, the Monday next following such day; and any day so appointed by the Governor of this Commonwealth or the President of the United States, shall be a legal holiday as to the transaction of all business or until modified by further order of this Court. [Entered: July 3, 2006]

Rule 3 — Cover Sheets for Filing Civil Actions

Effective January 1, 2006, all civil actions, when filed, must be accompanied by a completed Cover Sheet for Filing Civil Actions. Cover Sheets for Filing Civil Actions are available in the Office of the Clerk of Circuit Court. [Entered: July 3, 2006]

Rule 4 — Procedure for Calling of the Docket

The following procedure for the calling of the docket will become effective with the July 2006 docket call:

Only civil actions at issue will be called. Any party who desires to have an action or cause set for trial shall notify the Clerk of Court by praecipe as provided by Rule 1:15(b) of the Rules of the Supreme Court of Virginia. Notice must be received by the Clerk no later than the Thursday preceding the docket call at which the case is to be set. The party requesting action by the Clerk shall serve a copy of the praecipe on each counsel of record in the manner provided by Rule 1:12 of the Rules of Supreme Court of Virginia. Only those cases on which the Clerk has received a praecipe will be called and they will be set for trial. [Entered: July 3, 2006]

Rule 5 — Trials by Jury

To promote the convenient and efficient use of this Courthouse and Office of the Clerk of Circuit Court and the orderly management of the Court docket, and in an effort to attain a more efficient administration of justice by avoiding undue hardships to citizens serving as jurors and to avoid needless expense, the following procedures will become effective beginning April 1, 2009:

- (1) In any case in which the parties are entitled to a jury, unless one of the parties demands that the case be tried by a jury, the whole matter of law and fact may be heard and determined and judgment given by the Court. Failure to make such demand shall constitute a waiver of trial by jury;
- (2) A jury demand shall be in writing and delivered to the Clerk of Court no less than thirty days before the day of trial in civil cases and no less than five days before the day of trial in criminal cases. A copy of such written request shall be sent to the opposing side. No party may rely upon the opposing party's demand;
- (3) Any party, having demanded a trial by jury, may waive a jury by giving notice to said Clerk, the Jury Administrator, and the opposing side. In the event the case is settled or is not to be tried, notice shall be given to said Clerk, the Jury Administrator, and the opposing side. If any such notice is not given, but could have been given prior to the day of trial, the cost of the jury, if incurred, will be assessed against a defendant in a criminal case in accordance with Virginia Code § 19.2-336, or in a civil case may be charged against the party or parties who have failed to notify said Clerk and Jury Administrator. [Entered: April 7, 2009]

Rule 6 — Divorce, Annulment, Affirmance and Separate Maintenance Causes

(A) Uncontested Divorces: Both parties may elect to have the case heard by a divorce commissioner; or a party may request by motion that the matter be referred to a divorce commissioner; otherwise, the case will be heard by a judge. The parties must comply with the requirements of the Court as set out in the Chesapeake Circuit Court Uncontested Divorce Procedures Manual.

(B) Contested Divorces: Contested cases may be heard by a judge or by a divorce commissioner.

1. To have a contested case heard by a judge, the parties must comply with the requirement of the Court as set out in the Chesapeake Circuit Court Contested Divorce Procedures Manual.
2. To have a contested case heard by a divorce commissioner, the parties must submit a Decree of Reference to the clerk's office endorsed by both parties indicating their agreement

that the case be heard by a divorce commissioner or a divorce commissioner may be appointed upon motion of either party or the court for good cause shown.

(C) Commissioners in Chancery: Hearings in such causes held before a Commissioner in Chancery of this court which are commenced on or after July 1, 2005 shall be conducted in accordance with this Order and the Commissioner shall inquire and report, as follows:

1. On what date(s) was the hearing held?
 - (a) What method of service (subpoena in chancery, waiver or acceptance) was made upon the defendant?
 - (b) Was notice given of the hearing before the Commissioner, and by what method?
2. Who appeared at the hearing before the Commissioner as a party or as a witness?
 - (a) If the parties were represented by counsel, who represented each party?
 - (b) Did all persons who testified appear personally before the Commissioner?
 - (c) If any person appeared by deposition, was that appearance authorized by an order of the Court?
3. Does this Court have personal jurisdiction over the defendant?
4. Does this Court have jurisdiction of the subject matter?
5. Are the parties sui juris?
 - (a) Is either party incarcerated?
 - (b) If so, has a committee or guardian ad litem been appointed, or has the defendant waived his/her right to one?
6. Is the defendant in the armed forces of the United States?
 - (a) If so, has he/she either appeared in person or by counsel, executed a waiver of rights under the Soldiers' and Sailors' Civil Relief Act?
 - (b) Had an attorney been appointed to represent him/her?
7. When and where were the parties lawfully married?
8. Pleading the grounds for divorce
 - (a) Do the pleadings state a ground for relief?
 - (b) In lieu of the pleaded cause, has a motion been made as permitted by § 20-121.02?
9. Does independent, corroborating evidence support the ground upon which relief is sought?
10. Should relief be granted by way of divorce, etc.?
11. Stipulation agreement
 - (a) Is there a valid stipulation and agreement between the parties?
 - (b) Does the Commissioner recommend that it be ratified and affirmed?
 - (c) Should it be incorporated in the decree?
12. Spousal support
 - (a) Should either party be required to pay spousal support, or should there be a reservation of spousal support?
 - (b) To whom should support be paid and in what amount? Should it be paid in installments, by lump sum, or by a combination, and for what duration?
 - (c) Should an income deduction order be entered?
 - (d) Has any provision been made for health care for the dependent spouse?
 - (e) What written findings and conclusions are made by the Commissioner as required by § 20-107.1(F)?

13. Were there any children born of the parties during the marriage, adopted during the marriage, or born of the parties before the marriage whose paternity has been acknowledged?
14. Is child custody contested?
15. If custody is contested:
 - (a) Has an affidavit been filed or the general information been provided under oath in the initial pleadings as required by § 20-132?
 - (b) Have the parties attended the educational seminar required by §20-103?
 - (c) Have the parties attended a dispute resolution evaluation session pursuant to § 20-124.4?
16. Custody
 - (a) Who should be awarded custody? Why?
 - (b) Has the commissioner considered all the factors in § 20-124.3?
 - (c) If custody is to be awarded to a person other than the parents, has that person been made a party to this action?
17. Is visitation contested?
18. Who is to be awarded visitation, and on what terms? If visitation is to be awarded to a person other than the parents, has that person been made a party to this action?
19. Is child support contested?
20. Child support
 - (a) Who should be required to pay child support?
 - (b) What is the proper amount of support? Why?
 - (c) What payment method should be used?
 - (d) Has the commissioner considered all of the factors in § 20-108.1(B) and § 20-108.2?
 - (e) Is this the amount set out in the statutory guidelines? If not, why not?
 - (f) Should payment through the Department of Social Services be required?
 - (g) Should the payment through the Department of Social Services be made by income deduction order?
21. Health care for child(ren)
 - (a) What provision is made for health care for the child(ren)?
 - (b) Are any extraordinary medical expenses to be paid by or reimbursed to a party pursuant to § 20-108.2(D) and § 20-108.2(G)(3)? How is such payment or reimbursement to be made?
22. Arrearages in court-ordered support
 - (a) Is there a child or spousal support arrearage as a result of any prior order of this court?
 - (b) What is the amount of the arrearage and what is the period of time calculated for the arrearage?
 - (c) Has the obligee filed a written waiver of the right to collect interest on the arrearage? If not, from what date should interest accrue?
 - (d) Should additional periodic support be required to curtail the arrearage, and if so, in what amount?
23. Is there an arrearage of any type other than that specified in Question 22 above arising from a court order or from an agreement between the parties?
 - (a) What is the nature of the arrearage, the amount, and what measures are recommended to curtail it?

- (b) Should a judgment be awarded for the arrearage? If so, should it bear interest, and from what date?
24. Should any party be required to sign the appropriate tax forms necessary to grant to the other party the right to take the federal and/or state income tax dependency exemption for any child or children of the parties? For which tax year(s)?
25. If a party requests that her former name be restored, what is the Commissioner's recommendation?
26. What is the proper compensation for the Commissioner?
27. Should either party be required to contribute toward the counsel fees of the other party? What is the amount to be paid and by what date should it be paid?
28. How should the costs of the action be assessed and by what date should they be paid?
29. What are the social security numbers (or other control numbers issued by the Department of Motor Vehicles) of each party?
30. Any other matter deemed proper by the Commissioner or requested to be reported by any party, including information required by § 20-60.3.

(D) Equitable Distribution: In order to provide for the orderly handling and disposition of those issues enumerated in § 20-107.3, as amended, the request permitted to be made by either party (i) shall be in writing, and (ii) shall set forth the specific relief sought, as provided for in § 20-107.3 and (iii) shall be filed in the action prior to the entry of any Order of Reference to a Commissioner in Chancery. In all such causes wherein a written request for relief under § 20-107.3 has been made by a party, the Commissioner shall inquire and report as required by the following, or as required by any future amendments to this Order:

1. (a) On what date(s) was the hearing held?
(b) Was notice given of the hearing before the Commissioner, and by what method?
2. (a) Who appeared at the hearing before the Commissioner as a party or as a witness?
(b) If the parties were represented by counsel, who represented each party?
(c) Did all persons who testified appear personally before the Commissioner?
(d) If any person appeared by deposition, was that appearance authorized by an order of the court?
3. What property is the separate property of each party and what is the value of the separate property?
4. What property is marital property? Who holds legal title to the marital property? What is the value of the marital property?
5. What property is part marital and part separate property? Who holds legal title to this property? What is the value of this property?
6. What valuation date was utilized by the Commissioner in the valuation of all property? Why?
7. Does the Commissioner recommend the division or transfer of jointly owned marital property? Which property and under what terms?
8. Does the Commissioner recommend the granting of a monetary award? To whom and under what terms and conditions?
9. Does the Commissioner recommend the apportionment and payment of the debts of the parties or either of them? Which debts and under what terms and conditions?
10. Does the commissioner recommend the payment of any marital share of any pension, profit sharing or deferred compensation plan or retirement benefit, whether vested or non-vested? How should such payment be made?

11. Is there a personal injury or workman's compensation recovery which is marital property? Does the Commissioner recommend payment of a percentage of the marital share?
12. Has the Commissioner considered all of the factors in § 20-107.3(E)?
13. Any other matter deemed proper by the Commissioner.

This Order shall become effective for all hearings commenced on or after July 1, 2005 and shall remain in effect until amended by further order of this Court.

In causes for divorce, annulment, affirmance and separate maintenance heard by a Commissioner in Chancery:

It shall be the responsibility of the party arranging the hearing date for an uncontested case before the Commissioner to pay to the Commissioner his fee in advance of the hearing. The fee of the Commissioner in uncontested cases shall be \$100.00, which shall include the stenographic fee.

The fee of the Commissioner in cases in which equitable distribution is contested shall be a flat fee of \$100.00 per hearing hour and a \$150.00 report fee. The fee in contested cases in which equitable distribution is not contested shall be a flat fee of \$100.00 per hearing hour for the entire hearing.

In all contested cases, the commissioner's fee shall be determined at the applicable hourly rate from the scheduled start of the hearing to the conclusion thereof, less any time for recesses (lunch, dinner, overnight, etc.). Any time less than a full hour shall be prorated in quarter-hour segments with any time less than a quarter hour deemed to be a full quarter-hour segment.

In contested cases the Commissioner's fee and the court reporter's fee shall be paid in advance of the hearing. It shall be the responsibility of the party arranging the hearing date to contract for a court reporter to be present at the hearing. In all contested cases, the Commissioner shall require the parties to appear at a pre-hearing conference at least ten (10) days prior to the hearing date, for which the commissioner may charge the applicable hourly hearing fee rate. The Commissioner may require the parties in contested cases to submit pre-hearing briefs. The Commissioner's fee and the stenographic or court reporter fee shall be taxed as a part of the costs of the proceeding in all cases.

When a hearing has been scheduled with a Commissioner and it is continued upon request of a party, then the Commissioner shall be entitled, in his/her discretion, to charge a \$100 cancellation fee unless notice of cancellation is given to the Commissioner not less than two (2) full business days (at least 48 hours) prior to the hearing. When a hearing designated as "contested" has been scheduled with a Commissioner, its designation may thereafter be changed to "uncontested" without cost to the parties, provided ten days' advance notice of the change in designation is provided to the Commissioner. If less than ten days' notice of such change is provided to the Commissioner, the Commissioner may, in his/her discretion, charge a \$100 re-designation fee.

When an Order of Reference to a Commissioner in Chancery has been entered and ninety (90) days have elapsed without a party scheduling a hearing time and date with the Commissioner, the Commissioner may return the file, along with a certification that no hearing has been scheduled, to the Clerk's Office. Thereafter, the Order of Reference shall be deemed vacated.

The Commissioners shall observe the following time standards:

1. In uncontested cases, the commissioner's report shall be filed within 10 days from the date of the hearing.
2. In contested cases, the commissioner's report shall be filed within 30 days from the date the transcript is filed, or if there are post-trial briefs, 30 days from the date that the last post-trial brief is filed, whichever occurs last.

The provisions of this Order shall become effective for all hearings commenced on or after July 1, 2005. For hearings held prior to July 1, 2005, the General Chancery Order and Supplemental General Chancery Order Concerning Equitable Distribution shall remain in effect. [Entered: July 3, 2006]

Rule 7 — Civil Motions

Civil motions shall be heard on Wednesdays, by appointment only. Appointments for civil motions may be scheduled through the Docket Administrator a minimum of two (2) weeks in advance, unless otherwise authorized by the Court. [Entered: July 3, 2006]

Rule 8 — Additions to Court Docket – 72 Hour Rule

Excluding Saturdays, Sundays, and holidays, no matter will be added to the docket less than seventy-two (72) hours prior to the time the docket will be called, unless authorized by the Court. [Entered: July 3, 2006]

Rule 9 — Orders

(1) In all civil cases, any order drafted by an attorney memorializing a ruling of the Court must include, beneath the judge's signature line, the name of the judge who made the ruling.

(2) Except as dispensed with in the Court's discretion pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia, all orders must be endorsed by all counsel of record or by the parties if not represented by counsel, and include the name of each attorney or party typed or printed below their respective endorsement. [Entered: July 3, 2006]

Rule 10 — Time Sheets of Court Appointed Counsel

Court appointed attorneys shall submit their time sheets for services rendered at the conclusion of the hearing, thus allowing the defendant to know immediately the total costs due. [Entered: July 3, 2006]

Rule 11 — Discharge of Fines or Costs

Pursuant to Section 19.2-354 of the Code of Virginia, 1950, as amended, the Court hereby authorizes the Sheriff's Department to implement a program to provide an option to any person upon whom a fine and costs have been imposed, to discharge all or part of the fine or costs by earning credits for the performance of community service work before or after imprisonment. The

program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fines or costs.

Upon such program being implemented by the Sheriff's Department, the Clerk is hereby ordered to credit any participant's fines or court costs by the total number of hours worked multiplied by the State minimum wage as provided by further Order of this Court. [Entered: July 3, 2006]

Rule 12 — Motions for Reconsideration

The following procedure shall govern all motions for reconsideration of a ruling by the Court:

The petitioner must send a motion or letter to the Office of the Clerk of Circuit Court, addressed to the Court, stating the reasons for his or her request for a hearing. The clerk will forward the file to the respective judge for consideration. The Court will contact the petitioner advising him or her of the judge's decision; if a hearing is granted, the matter will be placed on the Court's docket. [Entered: July 3, 2006]

Rule 13 — Notice of Trial Date to Opposing Party

Any party or attorney who receives a trial date at docket call must, within 10 days of docket call, notify the other party or their attorney in writing of that trial date by certified mail or as provided by Rule 1:12 of the Rules of the Supreme Court of Virginia, including the certificate of counsel, if the other party or their attorney does not appear at docket call. [Entered: September 5, 2006]