

RULES OF COURT  
of the  
TWENTY-SIXTH JUDICIAL CIRCUIT

Revised Effective April 1, 2015

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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 all courts of this Circuit, except where in pending cases their application in the opinion of the court would not be feasible or would work injustice.

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

(a) All proceedings shall commence at 9:00a.m. unless the presiding judge shall designate some other time.

(b) Excepting holidays as mentioned in this Rule, the regular business days of the courts for the conduct of their proceedings shall be Monday through Friday of each week.

(c) The regular holidays of the courts shall be set forth in Code §2.2-3300. In addition there may be special holidays for any court by entry of order pursuant to Code §17.1-207.

(d) Notwithstanding the other provisions of this Rule, in case of emergency or other necessity as determined by a 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 Days. By virtue of order heretofore entered pursuant to Code §17.1-517, Term Days shall be as follows:

- (1) Clarke County: Third Monday in January, April, July and October.
- (2) Frederick County: Thursday after the first Monday in January, April, July and October.
- (3) Page County: Fourth Monday in January, April, July and October.
- (4) Rockingham County: Third Monday in January, April, July and October.
- (5) Shenandoah County: Wednesday after the second Monday in January, April, July and October.
- (6) Warren County: First Monday in January, April, July and October.
- (7) City of Winchester: Third Tuesday in January, April, July and October.

(b) Misdemeanor Appeals Days. Misdemeanor Appeals Days shall be as follows:

- (1) Clarke County: Third Monday of each month.
- (2) Frederick County: Wednesday after the third Monday in each month.
- (3) Page County: Tuesday after the fourth Monday in each month from January through November and on the Tuesday after the third Monday in December.
- (4) Rockingham County: Second Monday in each month.
- (5) Shenandoah County: Wednesday after the first Monday in February, April, June, August, October and December.
- (6) Warren County: Second Friday of each month.
- (7) City of Winchester: Third Friday in each month.

If a Misdemeanor Appeals Day is on a legal holiday as defined in Rule 1:2(c), then said Misdemeanor Appeals Day shall be upon the day immediately preceding, except in Rockingham and Frederick counties it shall be on the day immediately following.

(c) Motions Days.

- (1) Clarke County: Third Wednesday in each month.
- (2) Frederick County: Wednesday after the first Monday in each month.
- (3) Page County: Tuesday after the second Monday in each month.
- (4) Rockingham County: First Monday and the Wednesday following the third Monday in each month.
- (5) Shenandoah County: Second Thursday of each month.
- (6) Warren County: Third Thursday of each month.
- (7) City of Winchester: Third Thursday of each month.

If Motions Day is a legal holiday as defined in Rule 1:2(c), then said Motions Day shall be upon the day immediately preceding in the County of Clarke and the City of Winchester and on the day immediately following in the Counties of Frederick, Page, Rockingham, Shenandoah and Warren.

(d) 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 the purpose.

**Rule 1:4. Calendar of Holidays and Regular Days.**

Annually, before the first day of January, the clerk of each 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 and, each day pertaining to that Court mentioned in Rule 1:3(a), (b) and (c).

The Clerk of each court shall furnish a copy of such list to each Circuit Judge and District Court from which appeals lie to that Court and to attorneys regularly practicing before that court, and upon request shall furnish a copy to any other attorney or other person having need therefor.

**Rule 1:5. 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 docket number.

**Rule 1:6. Counsel and Guardian *Ad Litem* Fees.**

In criminal and civil cases, request or claim for fees 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 expenses incurred in such case, 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 fees or guardian *ad litem* fees are allowable, the presiding judge may require submission of such information. Except for telephone and intra-circuit travel, prior court approval of expenses is necessary.

PROVISIONS IN CRIMINAL CASES

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

In all criminal cases, the prosecuting attorney or the Clerk of Court, as the resident judge directs, shall be primarily responsible for drafting and presenting for entry the Orders in such cases, a copy of which upon entry the Clerk shall forthwith send counsel of record for the defendant.

**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, the matter shall be set on that Misdemeanor Appeals Day of the Circuit Court to which the appeal lies next succeeding the expiration of twenty-one days after

the date of conviction. District courts shall promptly transmit the papers of the case to the Clerk of the Circuit Court after the expiration of ten days from the date of conviction. Cases set for trial on a Misdemeanor Appeals Day which for any reason are not tried on that day shall be continued by order to a day certain.

## PROVISIONS IN CIVIL CASES

### **Rule 3:1. Motions Day Praecept and Docket.**

(a) In order to place matters on a Motions Day docket, counsel or a party not in default and not represented by counsel shall file in the Clerk's Office of the appropriate Court a praecipe duly signed and in the form of that form praecipe attached as an Appendix hereto or form praecipe included in the Rules of the Supreme Court of Virginia as Appendix to Rule 1:15(b), not less than seven nor more than thirty days prior to the Motions Day to which it is returnable. The certificate of service shall contain the names and addresses of all persons entitled to receive the praecipe. Except by leave of court, no matter shall be placed on a Motions Day docket without timely filing a praecipe.

(b) Unless otherwise directed by the resident judge, the Clerk shall maintain a docket sheet for each Motions Day of that court and shall list thereon each case for which a proper praecipe under (a) of this Rule has been timely filed, noting as to each the short style of the case, the names of counsel, the names of parties not represented by counsel, the purpose of the hearing, the hour at which it is scheduled to commence and the estimate of time required for hearing. The order in which matters are listed for hearing on the Motions Day docket shall be in the discretion of the Clerk or Judge.

(c) At least five days before each Motions Day, the Clerk shall mail a copy of the docket for such day to all counsel of record and all unrepresented parties not in default. Failure of the Clerk to mail as required by this paragraph shall not stay any proceeding or be ground for continuance.

### **Rule 3:2. Pretrial Conference.**

(a) A pretrial conference at which all matters listed under Rule 4:13 of the Supreme Court of Virginia may be considered may be held prior to and as a prerequisite to setting any matter for trial of hearing on its merits.

(b) Counsel attending 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 3:3. Setting for Trial.**

(a) Trials on issues of fact 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) 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) Request for trial on the merits shall be made by use of the Motions Day praecipe.

**Rule 3:4. Preparation of Presentation of Orders.**

The presiding judge shall assign responsibility for the preparation and presentation of the order, judgment or decree in each case.

**Rule 3:5. Domestic Relations Matters**

(a) All contested proceedings for divorce, annulment, separate maintenance, child custody, support and similar matters and all such matters *pendente lite*, contested or not, shall be heard *ore tenus* unless otherwise ordered by the Court. Any such proceeding, other than those *pendente lite*, when uncontested, shall be heard on deposition or by affidavit pursuant to Virginia Code §20-106 unless otherwise ordered by the Court.

(b) A statistical report as required by Code §32.1-268 shall be furnished to the Clerk prerequisite to the entry of a final decree of divorce or annulment of marriage.

**Rule 3:6. Determination of Issues of Fact in Cases in Which Only Equitable Relief is Sought.**

Except as provided in Rule 3:5 (a) for domestic relations matters, unless otherwise ordered by the court, proceedings in which solely equitable relief is sought shall be heard *ore tenus* where the issues of fact are contested and by deposition where the issues of fact are uncontested. In any event, the Court may order a reference of any issue to a commissioner in chancery for hearing and report thereon.

**Rule 3:7. 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 by Rule 2:2 shall

apply, unless the Circuit Court which the appeal lies shall by entry of a general order provide some other procedure.

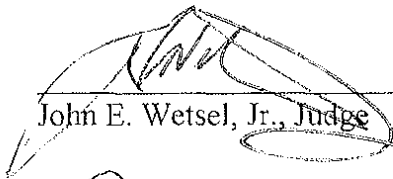
(b) In such cases, the provisions of Rule 1:6 shall apply to the allowance of fees and expenses of court-appointed counsel.


**Rule 3:8. Court Reporters and Courtroom Recording Equipment.**

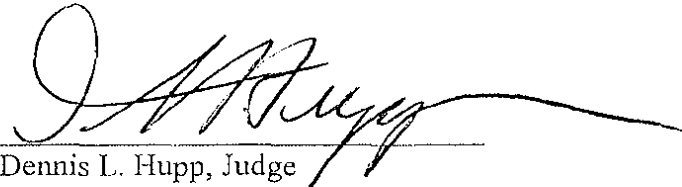
(a) Except in felony cases, the party or parties desiring the services of a court reporter shall be responsible for obtaining and compensating the reporter.

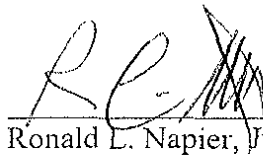
(b) When a party desires to use the courtroom electronic recording equipment such party shall so notify the Clerk, in writing, not less than three days before trial. All costs of recording shall, in the absence of agreement of counsel to the contrary, be the responsibility of the party desiring the use of the equipment.

ADOPTED AND EFFECTIVE AS OF APRIL 1, 2015.

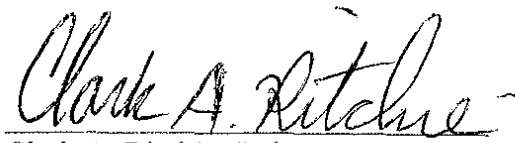
  
John E. Wetsel, Jr., Judge

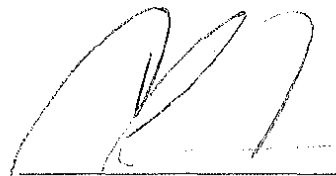
  
Bruce D. Albertson, Judge

  
Dennis L. Hupp, Judge

  
Ronald L. Napier, Judge

  
Thomas J. Wilson, IV, Judge

  
Clark A. Ritchie, Judge

  
Clifford L. Athey, Jr., Judge