

## FAIRFAX CIRCUIT COURT CASE MANAGEMENT PROGRAM FOR DIVORCE CASES

**1. Filing Pleadings:** A Cover Sheet must be filed with the Complaint and any Cross-Complaint stating whether the case is contested or uncontested, separately whether custody is contested.

**2. Uncontested cases:** All divorce cases will be placed in the tracking program. In uncontested cases, the parties should proceed without waiting for a Scheduling Conference notice in accordance with the *ore tenus* instructions. These cases may be done by depositions or by an *ore tenus* hearing. If a Final Decree has not been entered by 120 days after filing of the Complaint, then a Notice of Scheduling Conference will be sent for a Conference to be held approximately 180 days after filing of the case. If an *ore tenus* hearing is scheduled or has been held before the conference, or if depositions for an uncontested divorce have been taken, the scheduling clerk must be advised of the status of the case and the Scheduling Conference will be continued to allow for entry of a Final Decree. If a Final Decree has been entered before the Scheduling Conference date, the Court will remove the case from the Scheduling Conference calendar. (Call 703-246-2880)

**3. Prior to Scheduling Conference in contested cases:**

- A. All **preliminary motions** (demurrer, pleas in bar) should be heard prior to the Scheduling Conference.
- B. Counsel must have a **discovery meeting** to discuss the scope and timing of discovery in order to arrive at understandings as to what are the contested issues and thereby avoid future discovery disputes.

**4. At the Scheduling Conference,** the Court will set the trial date for the final hearing on divorce, support and equitable distribution. If custody is contested, a scheduling Order for the custody proceedings will be entered setting a trial date which will be at least 1 month before any equitable distribution hearing and which will be the final custody determination. An order will be entered at the Scheduling Conference requiring the parties to attend mediation unless the court finds that mediation is

inappropriate. The Court will also enter Orders directing the parties to a Parenting Education class (if custody, visitation or child support is contested), and to appear on a Wednesday morning at 8:30 a.m. to view the "Spare the Child" video.

The Scheduling Order entered will specify many important dates in the process of proceeding to the equitable distribution and final support trial. The scheduling of these dates is as follows:

<u>EVENT</u>	<u>DUE ON TRIAL MINUS</u>
Expert Designation Date	60 Days
Discovery Initiation Cutoff::	51 Days <sup>1</sup>
Discovery Completion Date:	30 Days
Expert Counter-Designation Date	30 Days
Discovery Supplementation Due	30 Days
Alternate Valuation Date:	21 Days
Exchange Witness/Exhibit List	15 Days
Deadline to File Commissioner's Report	11 Days <sup>2</sup>
Witness Subpoena Served	10 Days
Objections to Witness/Exhibit List	5 Days
NCE Completed:	Prior to Trial

<sup>1</sup> Technically, only the Discovery Completion Date is specified in the DCTP. However, to meet this specified Discovery Completion Date of 30 days, the discovery must be filed no closer to trial than 51 days.

<sup>2</sup> You must set your Commissioner's Hearing far enough in advance to allow the transcript to be produced and the Report to be written to meet this requirement.

**Below are some brief descriptions of the critical dates and procedures in the case tracking system. A more detailed explanation is contained in the Scheduling Order.**

**5. Trial Date:** The trial date will not be set earlier than 1 year after the parties separation, unless requested by both sides or for upon cause being shown for expediting the hearing. In general, trial will be set approximately 15 months after the filing of the Complaint.

**6. Discovery:** The parties are to complete discovery, including depositions, by 30 days before trial, which means that Interrogatories and Request for Production of Documents must be initiated by 51 days pre-trial. Depositions *de bene ese* and depositions of Counter-Experts are permitted until 15 days before trial. Depositions may be taken after the specified time period by agreement of counsel of record or for good cause shown, but doing that is not to provide a basis for continuance of the trial

date or other schedule milestones. The parties have a duty to supplement and amend all responses to financial discovery pursuant to Rule 4:1 (e) of the Rules of Court by 30 days before trial.

**7. Designation of Experts:** If requested in discovery, each party shall identify experts who may testify at trial, at least 60 days prior to trial. Experts and their opinions responsive to the opposing party's designation shall be designated no later than 30 days after the filing of the opposing party's designation. If requested, all information discoverable under Rule 4:1(b)(4)(A)(1) of the Rules of Court shall be provided or the expert will not ordinarily be permitted to express any non-disclosed opinions at trial.

**8. Commissioner:** The parties may submit a fully endorsed Order referring the case to a Commissioner for proceedings in accordance with this Court's general Decree Relating to Divorce Causes and Decrees of Reference executed on or after March 11, 1996. Additionally, either party may move for appointment of a Commissioner by placing a Motion on a Motion's docket in accordance with Rule 4:15 of the Rules of the Supreme Court of Virginia. The Court may also schedule such a hearing on its own motions after review of the file in this case. The Court will appoint a Commissioner only upon a finding of good cause shown in this particular case.

**9. Neutral Case Evaluation:** All cases involving issues of equitable distribution may be referred to a Neutral Case Evaluator. The Court may appoint an NCE who will serve at no charge to the parties. The parties may agree on the person to serve as the NCE, but counsel must represent to the court that the NCE has agreed to so serve. An NCE Præcipe naming the NCE and containing certain certifications must be filed with the Court. The parties are required to file a statement of the case with the NCE 5 days in advance of the NCE conference. All such statements, as well as any communications made in course of the NCE, shall be confidential pursuant to Va. Code §8.01-576.9. The NCE will file a completion certificate with the Court indicating whether an agreement was reached or not. If an NCE order is entered, ***a trial may not be allowed to proceed without the NCE having been done.*** The NCE rules explain the use of the NCE and have the forms necessary to complete this process. If the Court selects the NCE, there shall be no charge to the parties for the NCE process. If the parties select the NCE, then the NCE may charge up to \$150 per hour for his or her services.

All NCE's are to provide 3 NCE sessions per year free of charge, but may charge after the 3 pro-bono NCE sessions have been provided.

**10. Exhibit and Witness List:** 15 days before trial, counsel must exchange a list specifically identifying each exhibit to be introduced at trial, copies of any exhibits not previously supplied in discovery, and a list of witnesses proposed to be called at trial. The list of exhibits and witnesses is also filed with the Clerk of the Court, but the exhibits are not filed with the Clerk. Any exhibit or witness not so identified and filed will not be received in evidence, except in rebuttal or for impeachment or unless the admission of such exhibit or testimony of the witness would cause no surprise or prejudice to the opposing party and the failure to list the exhibit or witness was through inadvertence. Any objections to exhibits or witnesses shall state the legal reasons for objection, except on relevancy grounds, and shall be filed with the Clerk of the Court and a copy delivered to opposing counsel at least 5 days before trial or the objections will be deemed waived absent leave of court for good cause shown.

**11. Pretrial Conferences:** Pursuant to Rule 4:13, when requested by any party or upon its own motion, the court may order a pretrial conference wherein motions *in limine*, settlement discussions or other pretrial motions which may aid in the disposition of this action can be heard.

**12. Pre-Trial Issues:**

- A. Exceptions:** Exceptions to the Commissions Report will be heard at trial. The parties should file a Notice of Hearing on Exceptions so that the Court will be alerted and is able to review the Exceptions prior to the hearing.
- B. Alternate Evaluation Date:** If a party requests use of a date other than the date of trial for valuation of any assets, a motion with that request must be filed no later than 21 days in advance of trial (See §20-107.3.A). Such motion may also be heard prior to trial on a Friday two-week motions docket, or having a briefing schedule set through calendar control.
- C. Motions in Limine:** Absent leave of court, any motion *in limine* that requires argument exceeding 5 minutes shall be duly noticed and heard before the day of trial.

**13. Scheduling Problems:** Counsel should confer with each other prior to the Scheduling conference. Within reason, the court will allow counsel to schedule cutoff dates and due dates to accommodate the complexity of the case, and their own and the parties' schedules, and to account for other processes taking place in the case. For example, it might be wise to have a "no-discovery" period while extensive mediation is in progress.

During the progress of the case, if there are special reasons to delay any of these scheduled dates, counsel may file a Consent Order and if the dates selected are within reason, the Order will be entered. If the parties disagree as to rescheduling, then either party may file a Motion for rescheduling which will be heard as part of the regular Friday Motions docket.