

FAIRFAX CIRCUIT COURT

DOMESTIC CASE MANAGEMENT INSTRUCTIONS

I. General Divorce Track

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

2. Uncontested cases:

- A. Proceed without waiting for a Notice of Scheduling Conference and in accordance with the ore tenus instruction sheet.
- B. If a Final Decree has not been entered within 120 days of the filing of the Bill of Complaint, then the parties will receive a Notice of Scheduling Conference.
- C. The Scheduling Conference may be continued one time by representing to the clerk, (Call 703-246-2880), that all matters in the case are uncontested;
- D. The Scheduling Conference will be removed from the calendar if you advise the scheduling clerk that a Final Decree has been entered before the Scheduling Conference date.

3. Contested cases:

- A. All **preliminary motions** (Demurrers, Pleas in Bar) should be heard prior to the Scheduling Conference.
- B. Counsel should have a **discovery meeting** prior to the Scheduling Conference to discuss the scope and timing of discovery in order to attempt to reach a consensus as to which issues are contested, thereby avoiding future discovery disputes.

4. At the Scheduling Conference, you should be prepared to address:

- A. Whether there are any issues of custody/visitation which are in dispute.
- B. Whether there are any properties or other financial issues which are in dispute.
- C. Whether the parties want the court to appoint a Neutral Case Evaluator (NCE) and, if so, an estimate of the incomes of the parties and the value of the marital estate.

5. At the Scheduling Conference - Contested cases with custody and visitation issues:

- A. The case will be referred to mediation unless there is good cause shown that mediation is inappropriate;
- B. A trial date will be set for custody and visitation issues;
- C. Discovery cutoff date will be established;
- D. Expert designation dates will be delineated;
- E. The date for the filing of a Mediation Report will be scheduled; and
- F. A deadline for a Stipulation Conference will be set.
- G. An Order referring the parties to a Parent Education class will also be entered, unless such an Order has already been entered.

- H. A Custody/Mediation Conference will also be scheduled at which the parties will watch a video in the courtroom concerning the effects of divorce on children. A judge will also address the parties. The parties must appear at this Custody Mediation Conference – counsel need only appear if there is a dispute about the parties participating in a mediation program.

6. Mediation: Mediation in contested custody or visitation cases will be done through a private mediator picked by both parties from a list provided by the Circuit Court. Mediation discussions, offers, recommendations or admissions will not be admissible in court pursuant to §8.01-576.10. The mediator may report if a party did or did not participate and report if the case settled.

7. Stipulation Conference: Counsel of record must exchange Custody Information Sheets, Custody Stipulations and Custody Trial Positions at the Stipulation Conference.

8. Pendente Lite Custody: Motions for temporary custody will only be heard if extraordinary or emergency circumstances exist. It is in the best interests of children and litigants to avoid multiple custody hearings unless absolutely necessary.

9. Commissioner: All proceedings before any Commissioner in Chancery appointed shall be in accordance with the Decree Relating to Divorce Causes and Decrees of Reference executed on or after March 11, 1996, unless the Court enters an Order to the contrary. Parties may have a Commissioner appointed by submitting proposed agreed Decree of Reference or upon motion for good cause shown.

10. Judge Pro Tempore: If counsels have agreed upon a judge *Pro Tempore* to hear the case, then the Scheduling Clerk must be so notified. Counsel must arrange with the JPT for the scheduling of the critical trial dates.

11. Trial Date: Trial dates for all contested custody cases and equitable distribution/support cases will generally be set at the Scheduling Conference. Custody trials will be scheduled on an expedited basis consistent with the Court's available trial dates. Equitable distribution and support trials will be set within fifteen months of the filing of the Bill of Complaint, absent good cause shown.

12. Neutral Case Evaluation: An experienced attorney may be appointed as a Neutral Case Evaluator (NCE) to facilitate settlement discussions. The NCE conference must be accomplished prior to trial. 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. The parties are required to file a statement of the case with the NCE five (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 only the terms of any agreement(s) or the fact that no agreement has been reached. 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 will set an hourly rate with the parties for his or her services.

13. Pre-Trial Issues:

- A. Exceptions:** Exceptions to Commissioner's Report will generally be heard at trial. The parties should file a Notice of Hearing on Exceptions sufficiently advance of trial so that the Court may be alerted and therefore able to review the Exceptions prior to the hearing.

- B. Alternate Evaluation Date:** The issue of use of a date other than the date of trial for valuation of the assets may be heard at trial, provided a motion is filed at least 21 days in advance of trial. Any such motion may also be heard prior to trial by setting the motion on a Friday 2-week motions docket or having a briefing schedule set through calendar control, provided that any pretrial hearing must be scheduled at least 2 weeks in advance of trial.

14. Scheduling:

Scheduling Conferences will be scheduled on Tuesday or Thursday at 8:30 a.m. in one of three designated courtrooms on the fourth or fifth floor of the Judicial Center and will be conducted by a law clerk or other Circuit Court staff person. Courtroom assignments will be posted on the bulletin board on the fourth and fifth floors. Counsel and all unrepresented parties are to appear promptly at 8:30 a.m. or the conference may occur in their absence. **Attorneys who reside more than 50 miles from the Fairfax Courthouse may call the case management staff at (703) 246-2880 several days before the Scheduling Conference to see if their appearance in person can be excused.**

At the Scheduling Conference an Order will be entered establishing, among other things, a trial date within fifteen months of the filing of the Complaint, expert witness designation deadlines and discovery cut-off dates. Counsel should confer with each other prior to the Scheduling Conference, as within reason, the court will allow counsel to schedule dates to accommodate the complexity of the case, their own and the parties' schedules, and to account for other processes taking place in the case. For example, it may be advisable to have a "no-discovery" period while custody 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 generally 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.

II. MODEL DISCOVERY FOR ALL DOMESTIC CASES

In order to facilitate discovery and reduce the number of discovery motions filed for Motion's Day, the Fairfax Bar Association's domestic relations sub-committee has drafted suggested model domestic relations discovery forms, both for Interrogatories and Production of Documents. The use of the model discovery does not at all guarantee that each question is appropriate in every case. Counsel must choose discovery questions and "look-back" dates that are reasonable in the circumstances of each case. The use of answering blocks and multiple blank lines for answers, as is done in the model discovery, is not to be construed as separate questions when considering the thirty (30) question limit. It is hoped that the required Discovery Conference between counsel prior to the Scheduling Conference and the use of the model discovery will reduce the need for motions requesting the Court to review the details of discovery questions.