

FAIRFAX CIRCUIT COURT CASE MANAGEMENT PROGRAM FOR DIVORCE CASES

I. General Divorce Track (Custody Track is Part II)

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

2. **Uncontested cases:** Uncontested cases will be placed in the tracking program but the parties should proceed without waiting for a Notice of Scheduling Conference and in accordance with the *ore tenus* instruction sheet. 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. If at that time an *ore tenus* or Commissioner's hearing is scheduled or has been held, or if depositions have been taken, the scheduling clerk should be advised of the status of the case and the Scheduling Conference may 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 prior to the Scheduling Conference 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 may establish dates for:

- A. Cut-off for initiation of certain discovery;
- B. Designation and counter-designation of experts;
- C. Supplementation of discovery responses;
- D. Identification of witnesses who may be called at trial;
- E. Exchange of exhibits which may be offered at trial and for filing objections to witnesses and/or exhibits; and
- F. Domestic Term Day at which the final hearing date will be set.

5. **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. A Commissioner may be appointed at the Scheduling Conference if either or both parties so request. The parties may select the Commissioner in Chancery, provided they have checked with the Commissioner for his/her availability and conflicts, and the Commissioner has agreed to so serve. If appointment of a Commissioner has not been requested at the time of the Scheduling Conference, but a party later desires to present evidence of fault, a Commissioner may be appointed later by submission of a separate Decree of Reference. Failure to make a timely request for appointment of a Commissioner shall be deemed a waiver of the right to present evidence regarding fault (as set out in the Decree referred to above) unless good cause for the failure is shown. In this situation the parties may present evidence at trial of one-year separation but neither party will be permitted to introduce evidence at trial of causes of the dissolution or negative non-monetary contributions.

6. **Judge Pro Tempore:** If counsel have agreed upon a judge *Pro Tempore* to hear the case, then the Scheduling Clerk must be notified so that the case will not be scheduled for

Domestic Term Day. Counsel must arrange with the JPT for the scheduling of the critical trial dates.

7. Trial Date: The trial date will not be set at the Scheduling Conference. In contested cases, the case will be set for a Domestic Term Day, which will be approximately 325 days after the filing of the Bill of Complaint. If the parties are ready to set a trial date earlier than the assigned Domestic Term Day, they may contact the Scheduling Clerk to do so. At Domestic Term Day, the Court will set a trial date within 90 days of the assigned Domestic Term Day date, unless good cause exists to set it outside of the 90 day time period.

8. Discovery Initiation Cut-Off: The "Discovery Initiation Cut-Off" date is the last date on which discovery requests may be made. It does not apply to Requests for Admissions, subpoenas *duces tecum* pursuant to Rule 4:9(c) of the Supreme Court, expert depositions or depositions in lieu of live testimony at trial. Leave of Court may be granted to extend discovery for good cause shown. **Subsequent updating of financial responses is required thirty (30) days before trial by the terms of the Scheduling Order.**

9. Neutral Case Evaluation: An experienced attorney will 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. 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 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. Unless the case falls into one of the NCE exceptions, **a trial may not be allowed to proceed without the NCE having been done.** Counsel should review the NCE rules. 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.

10. 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 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. 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.

11. Scheduling Problems: 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 might be wise 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 (other than Domestic Term Day), 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.

II. CUSTODY TRACK

1. **Cover Sheet:** A cover sheet must be submitted with all Bills of Complaint and Cross-Bills stating whether custody and/or visitation is an issue to be tried.

2. **Notice of Scheduling Conference:** Custody/visitation cases will routinely be set for a Scheduling Conference approximately forty-five days from the date of filing. If custody becomes a contested issue after a case is filed, counsel must promptly notify the tracking program office (703-246-2880) of this fact.

3. **Scheduling Conference:** The attendance of counsel *and the parties'* at this conference is mandatory. At the Conference the following will occur:

- A. The parties will watch a video in the courtroom regarding divorce and children;
- B. The case will be referred to mediation unless there is some good cause shown that mediation is inappropriate;
- C. Setting of a trial date;
- D. Setting of discovery cutoff date;
- E. Setting of expert designation dates;
- F. Setting of date for filing of Mediation Report; and
- G. Setting of Stipulation Conference date.
- H. Entry of an Order referring the parties to a Parent Education class, unless such Order has already been entered.

4. **Mediation:** Mediation 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.

5. **Stipulation Conference:** Prior to hearing, counsel of record must exchange Custody Information Sheets, Custody Stipulations and Custody Trial Positions at the Stipulation Conference.

6. **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.

III. MODEL DISCOVERY FOR ALL DOMESTIC CASES

In order to facilitate discovery and reduce the number of discovery motions filed for Motion's Day, the domestic bar 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 the 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.

FAIRFAX CIRCUIT COURT DOMESTIC CASE MANAGEMENT INSTRUCTIONS

1. 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.**

2. A judge of the Court will have reviewed each of the files in advance of the Scheduling Conference and will have noted (a) any failures to effect service on the defendant;(b) whether any preliminary motions are pending. If service is not complete the Scheduling Conference generally will be conducted by a judge in one of the jury rooms.

3. Available Domestic Term Day dates to be used that day will be posted on the two counsel tables. Counsel for the parties in each case should review the available dates and should attempt to agree on a Domestic Term Day date within 325 days of the date of filing.