

CHESAPEAKE CIRCUIT COURT

First Judicial Circuit of Virginia



CONTESTED DIVORCE PROCEDURES MANUAL

July 1, 2010

Last Revised: 7/1/2010

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CHESAPEAKE CIRCUIT COURT CONTESTED DIVORCE PROCEDURES

GUIDELINES

Either a Judge or a Commissioner in Chancery may hear contested divorces; in both circumstances the parties must comply with the requirements of the Court as set out in this Contested Divorce Procedures Manual. *See* **Local Rule 6: Divorce, Annulment, Affirmance and Separate Maintenance Causes (Form 9)**.

Judge:

See, “Events and Responsibilities for Scheduling a Contested Divorce Trial Before a Judge,” *infra* pp. 4–8.

Commissioner in Chancery:

To have a contested divorce heard by a Commissioner in Chancery, the parties must submit a **Decree of Reference (Form 6)** 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, pursuant to Virginia Code § 8.01-607(B). If the divorce is to be heard by a Commissioner in Chancery, refer to **Local Rule 6: Divorce, Annulment, Affirmance and Separate Maintenance Causes (Form 9)** for further information.

Settlement of a Contested Divorce:

When a contested divorce to be heard by a judge settles and becomes uncontested, the parties must proceed under the Chesapeake Circuit Court Uncontested Divorce Procedures Guidelines. Pursuant to Virginia Code § 20-121.02, upon expiration of the statutory time period, a party may move to proceed on a no-fault ground without an amended Complaint or Counterclaim.

EVENTS AND RESPONSIBILITIES
Scheduling a Contested Divorce Trial Before a Judge

Preliminary Matters:

- “Counsel” means an attorney or a *pro se* party.
- The required orders and a list of forms and worksheets to be generated by counsel are in the Appendices to this manual.
- **RULE:** If the parties have been separated for the statutory period of time, or if the divorce is to be granted on the grounds provided for by § 20-91(A)(1) or (A)(3), counsel may schedule a trial on all the issues. If, however, the parties have not been separated for the statutory period of time, counsel may schedule a trial on the issues of child support, custody, and visitation. The issue of child custody will be a final order. After the parties have been separated for the statutory period of time, a trial on the issues of final spousal support and equitable distribution may be scheduled. A trial on the issue of fault may be scheduled at such time as provided by statute.

Note: Prior to trial, the court may enter temporary orders providing for the support of the spouse or children. Such *pendente lite* custody, visitation and support hearings are set on the Wednesday civil motions docket. If custody is contested, a custody hearing may, with leave of Court, be scheduled on the first available trial date to the parties after they have complied with the Parent Education Seminar orders.

EVENT: Filing Complaint in Clerk’s Office

COUNSEL: Files and has the Complaint served. Service or Acceptance/Waiver of Process filed. Additionally, the time to answer has passed or the Defendant filed an Answer and/or the Defendant filed a waiver

EVENT: Filing Parent Education Seminar Order (Va. Code § 20-103)

RULE: The parents in a divorce case where a child’s custody, visitation, or support is contested shall attend a parent education seminar on the effects of separation or divorce on children; parenting responsibilities; options for conflict resolution; and financial responsibilities, unless the court grants an exemption from attendance of such program for good cause shown.

A list of “Parent Education Providers” is provided on the Supreme Court’s Web site, at:

<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/parented/home.html>
(Last visited: June 14, 2010).

Each parent must pay the seminar provider a fee, not to exceed \$50. The fee will be based on the parent’s ability to pay.

The parents shall attend the parent education seminar before any dispute resolution orientation session. Failure to attend may result in the case being removed from the docket.

COUNSEL: Submits the **Parent Education Seminar Order (Form 2)**. Provides to opposing counsel and files with the court proof of attendance within 12-month of their court appearance; otherwise, party shall attend within 45-days.

COURT: Reviews and enters order.

CLERK: Transmits copy of order by facsimile to named-provider in order and places fax confirmation in file.

EVENT: Setting a Trial Date

RULE: Counsel shall call the Docket Administrator at: (757) 382-3053 to coordinate and schedule a trial date. Counsel shall make reasonable effort to realistically approximate the amount of time needed for trial. If attorneys are unable to agree on setting a trial date, counsel may schedule a motion to set the trial date on the Wednesday civil motions docket as provided in Local Rule 7 and Rule 4:15 of the Rules of the Supreme Court of Virginia.

COUNSEL: Counsel coordinate and call the Docket Administrator to schedule trial date.

EVENT: Scheduling the Pretrial Conference

RULE: At the time the trial is scheduled, the Pretrial Conference is also scheduled for 9:00 AM on the Wednesday Civil Motions Day preceding the trial date that is at least 7-days before the date of trial.

COURT: The Docket Administrator schedules the Pretrial Conference for 9:00 AM on the Wednesday Civil Motions Day preceding the trial date that is at least 7-days before the date of trial.

EVENT: Filing Contested Divorce Scheduling Order

RULE: The Chesapeake **Contested Divorce Scheduling Order (Form 1)** must be filed with the clerk of the court in every contested divorce. Failure to file the Order and comply with its terms may result in the case being removed from the trial docket and any other appropriate sanction(s). The Scheduling Order must be filed within 21 days of scheduling the trial date(s) and pretrial conference date.

COUNSEL: Submits the **Contested Divorce Scheduling Order (Form 1)**, which includes the trial and pretrial conference dates, to the Clerk within 21-days after scheduling the trial date(s) and pretrial conference date.

COURT: Reviews and enters the order.

EVENT: Judicial Settlement Conference

RULE: The parties are ordered to attend no later than 30-days before trial, a Judicial Settlement Conference at no cost to the parties, unless this requirement has been previously waived by the Court. By agreement of the parties, mediation by a certified mediator may be substituted for the judicial settlement conference.

COUNSEL: Counsel contacts a retired judge from the Supreme Court of Virginia's Judicial Settlement Conference Program to schedule a date, time and location of the settlement conference. Counsel then completes and submits the **Order of Designation and Referral to Settlement Conference (Form 3)**. Contact the Office Coordinator at (757) 382-3051 to facilitate the referral of the case to a retired judge for a settlement conference. Counsel and parties attend the settlement conference no later than 30-days before trial. Information about the Supreme Court's Judicial Settlement Conference Program, including the list of retired judges, is available at:
<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/jsc/home.html> last visited: June 14, 2010).

COURT: Reviews and enters **Order of Designation and Referral to Settlement Conference (Form 3)**.

EVENT: Filing Exhibit and Witness List

RULE: Counsel shall exchange 15-days before trial 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.

COUNSEL: Exchanges Exhibit and Witness List.

EVENT: Pretrial Conference

RULE: The purpose of the pretrial conference is to discuss the issues, to reach stipulations, to discuss settlement and any other matters which may aid in the disposition of the case as authorized by Rule 4:13 of the Rules of the Supreme Court of Virginia. **At least 5-days prior** to the Pretrial Conference, counsel shall exchange and file with the court: (1) The **Pretrial Conference Brief (Form 4)**;

(2) Any applicable forms listed in **Appendix II**; (3) The applicable statutory factors (equitable distribution, spousal support, child custody/visitation, and/or child support (rebutting the presumption of statutory child support guidelines)) and what evidence counsel expects to produce at trial to support each factor (**Forms 5(A), 5(B), 5(C) & 5(D)**).

COUNSEL: **Five (5) days prior to the pretrial conference**, exchanges with counsel and files with the court the **Pretrial Conference Brief (Form 4)** and all forms and worksheets that are applicable to the issues in the case (**Appendix II & Forms 5(A), 5(B), 5(C) & 5(D)**). Attends the pretrial conference.

COURT: Enters Final Pretrial Conference Order.

EVENT: Trial

RULE: Failure to complete and file all required forms may result in limitation or exclusion of evidence and/or claims, and/or the case being removed from the trial docket and/or other appropriate sanction.

When trials extend beyond the allotted time, the parties should expect to carry the matter over to the next trial day of the court.

A court reporter is required and counsel must arrange to have one present. This requirement applies to pro se litigants and to litigants represented by counsel.

COURT: The Court will hear contested divorces on Monday, Tuesday, Thursday or Friday on the 10:00 A.M. trial docket.

EVENT: Request for Continuance of Trial Date

RULE: Continuances will only be granted for good cause shown. If a case is continued to a new trial date, a new Pretrial Conference date will also be set.

COUNSEL: Requests a continuance of the trial date by telephone or written motion with the duty judge or by placing the motion on the Wednesday motion docket. If the case is continued, all other provisions of the **Chesapeake Contested Divorce Scheduling Order (Form 1)** previously entered remain in effect.

COURT: Hears the motion for continuance. Enters **Continuance Order (Form 8)**. Judicial Assistant mails/faxes order to counsel.

CLERK: Updates Case Management System with new trial date(s).

EVENT: Post-Trial Briefs

RULE: When ordered by the Court, counsel will be required to submit post-trial briefs in accordance with the Court's instructions.

COUNSEL: Prepare and submit post-trial briefs in accordance with the Court's instructions.

SUMMARY FLOW CHART OF EVENTS FOR TRIAL BY JUDGE

File and serve Complaint.



Service or Acceptance of Process filed. Additionally, the time to answer has passed or the Defendant filed an Answer and/or the Defendant filed a waiver. If custody and/or visitation are at issue, Counsel must prepare and submit the **Parent Education Seminar Order (Form 2)**.



Any *pendente lite* motions or defensive motions (e.g. Demurrers) are disposed of, if necessary. Counsel engages in discovery process.



Attorneys contact the Docket Administrator at: (757) 382-3053 to coordinate and schedule a trial date. Counsel shall make reasonable effort to realistically approximate the amount of time needed for trial. If attorneys are unable to agree on setting a trial date, counsel may schedule a motion to set the trial date on the Wednesday civil motions docket as provided in Local Rule 7 and Rule 4:15 of the Rules of the Supreme Court of Virginia.



The Pretrial Conference is scheduled for 9:00 AM on the Wednesday Civil Motions Day preceding the trial date that is at least 7 days before the date of trial.



Within 21 days after scheduling the trial date(s) and pretrial conference date, Counsel prepares and submits the required **Contested Divorce Scheduling Order (Form 1)**.



If custody and/or visitation are at issue, parties attend the educational seminar unless previously ordered or waived. The parties must show proof of attendance within 12-months of their court appearance, or otherwise shall attend within 45-days.



Counsel schedules Judicial Settlement Conference. Counsel prepares and submits the **Order of Designation and Referral to Settlement Conference (Form 3)** to the Court for entry.



No later than 30-days before trial, the parties attend a Judicial Settlement Conference, unless waived by the Court. By agreement of the parties, mediation by a certified mediator may be substituted for the Judicial Settlement Conference.



Counsel shall exchange 15-days before trial 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 introduced at trial.



At least 5-days prior to the Pretrial Conference, counsel shall exchange and file with the court: (1) The **Pretrial Conference Brief (Form 4)**; (2) Any applicable worksheets or forms listed in **Appendix II**; (3) The applicable statutory factors (equitable distribution, spousal support, child custody/visitation, and/or child support,) and what evidence counsel expects to produce at trial to support each factor (**Forms 5(A), 5(B), 5(C) & 5(D)**)



Pretrial Conference held to discuss the issues, to reach stipulations, to discuss settlement, and any other matters that may aid in the disposition of the case.



Trial held



Post-trial briefs filed by counsel if requested by the Court.

SUPREME COURT OF VIRGINIA
WEB SITE INFORMATION

I. WEB SITE INFORMATION FOR LISTING OF PARENT EDUCATION PROVIDERS

To access the Virginia Supreme Court's main Web site for the **Parent Education Providers**, please visit:

<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/parented/home.html>
(Last visited June 14, 2010).

II. WEB SITE INFORMATION FOR JUDICIAL SETTLEMENT CONFERENCE PROGRAM

To access the Supreme Court of Virginia's Web site for the **Judicial Settlement Conference Program**, including a list of retired judges who participate in the program, please visit:

<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/jsc/home.html>
(Last visited June 14, 2010).

APPENDIX I

FORMS AND ORDERS

FORMS AND ORDERS FILED BY COUNSEL:

Contested Divorce Scheduling Order	Form 1
Parent Education Seminar Order & Certification	Form 2
Order of Designation and Referral to Settlement Conference	Form 3
Pretrial Conference Brief	Form 4
Evidence Relating to Equitable Distribution Factors.....	Form 5(A)
Evidence Relating to Spousal Support Factors.....	Form 5(B)
Evidence Relating to Child Custody/Visitation Factors	Form 5(C)
Evidence Relating to Child Support Factors.....	Form 5(D)
Decree of Reference (Referral to Commissioner in Chancery)	Form 6
Other Required Worksheets and Forms to be Generated by Counsel	See Appendix II

FORMS AND ORDERS ISSUED BY COURT:

Final Pretrial Conference Order	Form 7
Contested Divorce Continuance Order	Form 8
Local Rule 6.....	Form 9

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

_____,
Plaintiff,

v.

Civil No.: _____

_____,
Defendant.

CONTESTED DIVORCE SCHEDULING ORDER

I. Trial Date

The trial date of this case is _____, at _____ A.M. The estimated length of trial is _____.

Continuances of the trial date will only be granted by the Court for good cause shown.

A court reporter is required for the trial and must be secured by the parties.

II. Issues [check all that apply]

- Grounds of Divorce
- Equitable Distribution
- Child Custody
- Child Visitation
- Spousal Support
- Child Support

III. Judicial Settlement Conference

The parties are ordered to attend, no later than 30 days before trial, a Judicial Settlement Conference at no cost to the parties, unless waived by the Court. By agreement of the parties, mediation by a certified mediator may be substituted for the Judicial Settlement Conference.

IV. Discovery

The parties shall complete discovery, including depositions, at least 30 days before trial; however, depositions taken in lieu of live testimony at trial will be permitted until 15 days before trial. Discovery and depositions may be taken after the specified time period by agreement of counsel of record or for good cause shown. The foregoing deadlines shall not relieve a party of the obligation to respond to discovery requests within the time periods set forth in the Rules of

the Supreme Court of Virginia, including, in particular, the duty to supplement or amend prior responses pursuant to Rule 4:1(e) of the Rules of the Supreme Court of Virginia.

V. Designation of Experts

If requested in discovery, experts shall be identified on or before 90 days before trial. If requested, all information discoverable under Rule 4:1(b)(4)(A)(I) of the Rules of Supreme Court of Virginia shall be provided or the expert will not ordinarily be permitted to express any non-disclosed opinions at trial. The foregoing deadline shall not relieve a party of the obligation to respond to discovery requests within the time periods set forth in the Rules of Supreme Court of Virginia, including, in particular, the duty to supplement or amend prior responses pursuant to Rule 4:1(e) of the Rules of the Supreme Court of Virginia.

VI. Dispositive Motions

All dispositive motions shall be presented to the court for hearing as far in advance of the pretrial conference as practical, and in no case later than the pretrial conference.

VII. Parent Education Seminar

If a child's custody, visitation or support, is contested, the parents must show proof that they have attended within 12 months of their court appearance, or otherwise shall attend within 45 days, an educational seminar conducted by a qualified person or organization on the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution and financial responsibilities pursuant to Virginia Code § 20-103, unless the Court grants an exemption from attendance of such program for good cause shown.

VIII. Exhibit and Witness List

Counsel shall exchange 15 days before trial 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 introduced at trial. Any exhibit or witness not so identified 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 exhibits was through inadvertence.

IX. Pretrial Conference

A pretrial conference will be held on _____ at _____. The purpose of the pretrial conference is to discuss the issues, to reach stipulations, to discuss settlement and any other matters that may aid in the disposition of the case. The parties and counsel must attend the pretrial conference in person. Five (5) days prior to the pretrial conference the Pretrial Conference Brief and all worksheets and forms that are applicable to the case must be completed and exchanged by counsel and filed with the court. The worksheets and forms required by the Court applicable to the issues in this case (*see* Appendix II of the Chesapeake Circuit Court Contested Divorce Procedures Manual):

- Monthly Income and Expense Statement of each party
- Child Support Guideline Worksheets
- Equitable Distribution Forms
- The statutory factors that are applicable to the case and what evidence counsel expects to produce at trial to support each factor (Forms: 5(A), 5(B), 5(C) & 5(D))
- Such other forms as directed by the Court

A Final Pretrial Conference Order will be entered by the judge at the conclusion of the conference.

X. Waiver of Modification of Terms of Order

Upon motion, the time limits and prohibitions contained in this order may be waived or modified by leave of court for good cause shown.

XII. Failure To Comply

Failure to comply with any provision of this Order by any party may result in limitation or exclusion of evidence, and/or claims, and/or the case being removed from the trial docket and/or any other appropriate sanctions.

IT IS SO ORDERED.

ENTER: _____

Judge

Counsel for Plaintiff

Counsel for Defendant

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

Plaintiff,

v.

Civil No.: _____

Defendant.

**PARENT EDUCATION SEMINAR ORDER
Custody, Visitation, and/or Support of Child is Contested
Virginia Code § 20-103**

The above-named parties, parents of a child whose custody, visitation or support is contested are ordered to attend and complete a parent education seminar on the effects of separation or divorce on minor children, parenting responsibilities, options for conflict resolution, and financial responsibilities; unless the Court grants an exemption from attendance of such program for good cause shown.

The parties have agreed on the following provider from a List of Parent Education providers on the Supreme Court's Web site at www.courts.state.va.us:

Name of Provider:

Phone No.:

Fax No.:

The parents shall attend the educational seminar within 14 days from the date of this Order. The education seminar shall be attended before any dispute resolution orientation session. Counsel shall provide proof of attendance to opposing counsel within 21 days from the date of this Order. Proof of attendance must be received by the Court at least 5-days prior to the pretrial conference.

Based on a parent's ability to pay, each parent shall be responsible for paying a fee of no more than \$50.00 (fifty dollars) for the seminar. The fee is payable to the seminar provider.

The provider will return the below certificate to the court.

THE CLERK'S OFFICE OF THIS COURT SHALL TRANSMIT A COPY OF THIS ORDER TO THE PROVIDER BY FACSIMILE.

IT IS SO ORDERED.

ENTER: _____

JUDGE

Counsel for Plaintiff

Counsel for Defendant

CERTIFICATE TO BE COMPLETED BY PROVIDER AND RETURNED TO THE COURT

(The parties must show proof of attendance within 12-months of their court appearance, or otherwise shall attend within 45-days)

____ Parties appeared on _____.

____ The following named party did not appear for the scheduled session:

_____.

____ I was not contacted within 14 days of this Order to schedule a session.

Signature of Provider: _____

Date: _____

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

_____,
Plaintiff,

v.

Case No.: _____

_____,
Defendant.

ORDER OF DESIGNATION AND REFERRAL TO SETTLEMENT CONFERENCE

The Court has determined that this matter, which is currently before the Court as a contested civil matter, is appropriate for referral to a Judicial Settlement Conference. It is hereby ORDERED that:

1. The matter is referred to a Judicial Settlement Conference, for which there will be no cost to the parties.
2. Pursuant to Virginia Code Section 17.1-105(A), the Honorable _____, Retired Judge of the _____ Judicial Circuit, and a qualified Judicial Settlement Conference judge, is designated to conduct a Settlement Conference only, to assist the judges of the First Judicial Circuit in the performance of their duties.
3. Counsel will schedule a pre-Settlement phone conference with the Settlement Judge, in order to verify the date, time, and location of the Settlement Conference, no later than one week prior to the Settlement Conference.
4. Counsel must submit a confidential pre-conference brief, of no longer than five pages, to the Settlement Judge no later than 5 days before the Settlement Conference.
5. Each party must provide a representative in person or by telephone who shall have final authority to settle the case.
6. Irrespective of this referral, this case has been set for return to the court in accordance with the Court's normal docketing procedures on _____ at 10:00 A.M.

7. The Court must be informed in writing if the dispute is resolved prior to the return date. Otherwise, the parties shall appear in court at that time.
8. The Clerk shall distribute a copy of this order to the Supreme Court of Virginia and to all counsel of record.

ENTER: _____

Judge

Attorney for the Plaintiff

Attorney for the Defendant

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

_____,
Plaintiff,

v.

Civil No.: _____

_____,
Defendant.

PRETRIAL CONFERENCE BRIEF

Counsel for Plaintiff: _____ Fax No.: _____

Counsel for Defendant: _____ Fax No.: _____

Pretrial Conference set for: _____

Submitted by: _____

1. The contested issues in the case are:

2. The documentary evidence is:

3. The specific relief requested is:

4. All forms and worksheets that are applicable to the issues in the case **MUST BE FILED** with this brief at least **5-DAYS** before the Pretrial Conference. (*See also* Appendix II and Forms: 5(A), 5(B), 5(C) & 5(D)).

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

_____,
Plaintiff,

v.

Civil No.: _____

_____,
Defendant.

EVIDENCE RELATING TO EQUITABLE DISTRIBUTION STATUTORY FACTORS
Virginia Code § 20-107.3(E)

- (1) **The contributions, monetary and nonmonetary, of each party to the well being of the family;**

- (2) **The contributions, monetary and nonmonetary, of each party in the acquisition and care and maintenance of such marital property of the parties;**

- (3) **The duration of the marriage;**

- (4) **The ages and physical and mental condition of the parties;**

- (5) **The circumstances and factors which contributed to the dissolution of the marriage, specifically including any ground for divorce under the provisions of subdivisions (1), (3) or (6) of § 20-91 or § 20-95;**

- (6) **How and when specific items of such marital property were acquired;**

- (7) **The debts and liabilities of each spouse, the basis for such debts and liabilities, and the property which may serve as security for such debts and liabilities;**

- (8) **The liquid or nonliquid character of all marital property;**

- (9) **The tax consequences to each party;**

- (10) **The use or expenditure of marital property by either of the parties for a nonmarital separate purpose or the dissipation of such funds, when such was done in anticipation of divorce or separation or after the last separation of the parties;**

- (11) **Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award.**

Submitted by:

By: _____

Of Counsel

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

_____,
Plaintiff,

v.

Civil No.: _____

_____,
Defendant.

EVIDENCE RELATING TO SPOUSAL SUPPORT STATUTORY FACTORS

Virginia Code § 20-107.1(E)

- (1) **The obligations, needs and financial resources of the parties, including but not limited to income from all pension, profit sharing or retirement plans, of whatever nature;**

- (2) **The standard of living established during the marriage;**

- (3) **The duration of the marriage;**

- (4) **The age and physical and mental condition of the parties and any special circumstances of the family;**

- (5) **The extent to which the age, physical or mental condition or special circumstances of any child of the parties would make it appropriate that a party not seek employment outside of the home;**

- (6) **The contributions, monetary and nonmonetary, of each party to the well-being of the family;**
- (7) **The property interests of the parties, both real and personal, tangible and intangible;**
- (8) **The provisions made with regard to the marital property under § 20-107.3 (equitable distribution);**
- (9) **The earning capacity, including the skills, education and training of the parties and the present employment opportunities for persons possessing such earning capacity;**
- (10) **The opportunity for, ability of, and the time and costs involved for a party to acquire the appropriate education, training and employment to obtain the skills needed to enhance his or her earning ability;**
- (11) **The decisions regarding employment, career, economics, education and parenting arrangements made by the parties during the marriage and their effect on present and future earning potential, including the length of time one or both of the parties have been absent from the job market;**
- (12) **The extent to which either party has contributed to the attainment of education, training, career position or profession of the other party;**

- (13) **Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.**

Submitted by:

By: _____
Of Counsel

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

_____,
Plaintiff,

v.

Civil No.: _____

_____,
Defendant.

**EVIDENCE RELATING TO CHILD CUSTODY/VISITATION STATUTORY
FACTORS**

(BEST INTERESTS OF THE CHILD FACTORS)
Virginia Code § 20-124.3

- (1) **The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;**

- (2) **The age and physical and mental condition of each parent;**

- (3) **The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child;**

- (4) **The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members;**

- (5) **The role that each parent has played and will play in the future, in the upbringing and care of the child;**

- (6) **The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child;**

- (7) **The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child;**

- (8) **The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference;**

- (9) **Any history of family abuse as that term is defined in § 16.1-228. If the court finds such a history, the court may disregard the factors in subdivision 6;**

- (10) **Such other factors as the court deems necessary and proper to the determination.**

Submitted by:

By: _____

Of Counsel

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

_____,
Plaintiff,

v.

Civil No.: _____

_____,
Defendant.

EVIDENCE RELATING TO CHILD SUPPORT STATUTORY FACTORS
(REBUTTING THE PRESUMPTION OF STATUTORY GUIDELINES)
Virginia Code § 20-108.1(B)

- (1) **Actual monetary support for other family members or former family members;**

- (2) **Arrangements regarding custody of the children, including the cost of visitation travel;**

- (3) **Imputed income to a party who is voluntarily unemployed or voluntarily under-employed; provided that income may not be imputed to the custodial parent when a child is not in school, child care services are not available and the cost of such child care services are not included in the computation and provided further, that any consideration of imputed income based on a change in a party's employment shall be evaluated with consideration of the good faith and reasonableness of employment decisions made by the party;**

- (4) **Debts of either party arising during the marriage for the benefit of the child;**

- (5) **Direct payments ordered by the court for maintaining life insurance coverage pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of the child;**
- (6) **Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;**
- (7) **Any special needs of a child resulting from any physical, emotional, or medical condition;**
- (8) **Independent financial resources of the child or children;**
- (9) **Standard of living for the child or children established during the marriage;**
- (10) **Earning capacity, obligations, financial resources, and special needs of each parent;**
- (11) **Provisions made with regard to the marital property under § 20-107.3, where said property earns income or has an income-earning potential;**
- (12) **Tax consequences to the parties including claims for exemptions, child tax credit, and child care credit for dependent children;**

(13) A written agreement, stipulation, consent order, or decree between the parties which includes the amount of child support;

(14) Such other factors as are necessary to consider the equities for the parents and children.

Submitted by:

By: _____

Of Counsel

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

Plaintiff,

v.

Civil No. _____

Defendant.

DECREE OF REFERENCE

THIS CAUSE came this day to be heard upon the Complaint, with process properly served upon the defendant. In accordance with Section 8.01-607, Code of Virginia, 1950, as amended, it is

ADJUDGED, ORDERED and DECREED that this cause is referred to _____, a Commissioner in Chancery of this Court, who is directed to take testimony and report his findings to the Court pursuant to the General Chancery Order for such causes.

ENTER: _____

Judge

Endorsements:

Counsel for Plaintiff

Counsel for Defendant

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

_____,
Plaintiff,

Vs.

Civil No. _____

_____,
Defendant.

FINAL PRETRIAL CONFERENCE ORDER

THIS DAY CAME the plaintiff in person and counsel for plaintiff and also came the defendant in person and counsel for defendant who appeared for a conference to consider all matters within the scope of Rule 4:13 of the Rules of the Supreme Court of Virginia, for purposes of trial and/or disposition of the above-captioned civil matter.

As a result of this conference the following is **ORDERED** and shall control the subsequent course of this action unless modified at trial to prevent a manifest injustice:

A. ISSUES: The following are issued to be litigated in this cause:

1. Grounds for Divorce: _____

2. Equitable Distribution:

a. _____

b. _____

c. _____

d. _____

e. _____

Equitable Distribution Forms filed/updated on: _____

Equitable Distribution Factors (**Form 5(A)**) filed/updated on: _____

3. Spousal Support: _____

Monthly Income and Expense Statement of each party filed/updated on: _____

Spousal Support Factors (**Form 5(B)**) filed/updated on: _____

3. Child Support, Custody & Visitation: _____

Child Support Guideline Worksheets filed/updated on: _____

Child Custody/Visitation Factors (**Form 5(C)**) filed/updated on: _____

Child Support Factors (**Form 5(D)**) filed/updated on (if applicable): _____

B. DISCOVERY:

[] The parties certify that discovery is complete, but [has been] / [will be] updated to reflect current situations not later than fifteen (15) days before the trial.

[] Discovery is not yet complete. The parties agree to the following limitations on the scope and methods of discovery: _____

LIMITATIONS: The Court imposes the following limitations on counsel:

1. Expert Witnesses are limited as follows:

2. Other limitations:

C. ATTORNEY'S FEES AND COSTS:

1. If a claim is made for the payment of attorney's fees and Court costs, counsel agrees to submit itemized statements at trial with a copy to opposing counsel.

2. Payment for the Court Reporter will initially be provided for as follows, subject to this Court's final Order regarding costs and expenses: _____

ENTER: _____

JUDGE

-ENDORSEMENTS NEXT PAGE-

SEEN AND:

Counsel for Plaintiff

Plaintiff

SEEN AND:

Counsel for Defendant

Defendant

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

_____ **Plaintiff,**
v. _____ **Civil No.** _____
 _____ **Defendant.**

CONTESTED DIVORCE CONTINUANCE ORDER

This matter came on motion of the [] **Plaintiff** [] **Defendant** to continue the current trial date of _____.

Plaintiff: **objects / concurs** Defendant: **objects / concurs**

Number of Prior Continuances: _____

- [] The motion for a continuance is **DENIED.**
- [] For good cause shown, the motion for a continuance is **GRANTED.** The new trial date of this case is _____, at _____ A.M. The estimated length of trial is _____. The new pretrial conference date of this case is _____, at _____ A.M. All other provisions of the previously entered Contested Divorce Scheduling Order remain in effect.

IT IS SO ORDERED.

ENTER: _____

Judge

Endorsements are dispensed with pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia. A copy of this Order was faxed/mailed to the following counsel and all pro se parties on _____ by: _____ Deputy Clerk.

Counsel for Plaintiff: _____ Counsel for Defendant: _____

Fax No: _____ Fax No: _____

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

LOCAL 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 requirements 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.

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 that 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.

It is further ADJUDGED, ORDERED and DECREED that this General Chancery 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.

It is further ADJUDGED, ORDERED and DECREED, 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 10 days from the date of the hearing.
2. In contested cases, the commissioner's report shall be filed 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 1, 2005

/s/ V. Thomas Forehand, Jr.
Chief Judge

/s/ S. Bernard Goodwyn
Judge

/s/ Bruce H. Kushner
Judge

/s/ Frederick H. Creekmore
Judge

/s/ Randall D. Smith
Judge

APPENDIX II

LIST OF REQUIRED WORKSHEETS AND FORMS TO BE GENERATED AND COMPLETED BY COUNSEL WHEN CHILD CUSTODY, CHILD SUPPORT, SPOUSAL SUPPORT AND/OR EQUITABLE DISTRIBUTION ARE AT ISSUE IN THE CASE

1. MONTHLY INCOME AND EXPENSE STATEMENT OF EACH PARTY
2. CHILD SUPPORT
 - Child Support Guideline Worksheet
 - Child Support Guideline Worksheet - Proposed deviations
 - Split Custody Support Guideline Worksheet
 - Combined Support Worksheet
 - Shared Custody Support Guideline Worksheet - Shared Calculation
 - Shared Custody Support Guideline Worksheet - Sole Calculation
 - Shared Custody Support Guideline Worksheet – Summary
 - In a case where either party is requesting deviation from the statutory child support guidelines, the parties must submit **Form 5(D)** setting forth specifically what evidence they intend to prove and how it relates to the factors set forth in Va. Code § 20-108.1.
3. CHILD CUSTODY AND/OR VISITATION
 - **Form 5(C)**, setting forth specifically what evidence the party intends to prove and how it relates to the factors set forth in Va. Code 20-124.3.
3. EQUITABLE DISTRIBUTION
 - **Form 5(A)** Evidence Relating to Statutory Equitable Distribution Factors (Va. Code § 20-107.3(E)): Each party must set forth specifically what evidence they intend to prove and how it relates to the statutory equitable distribution factors.
 - Personal Information Schedule
 - Real and Personal Property Schedule
 - Business Property Schedule
 - Debt Schedule
 - Securities Investment Portfolio
 - Retirement Funds Schedule
 - Pension Schedule
 - Summary Worksheet
 - Proposed Distribution of Property
 - Source of Funds Worksheet (used to show the marital and the separate contributions to a piece of mixed or transmuted property)
 - Marital Fund Worksheet (used to allocate the separate and the marital interests in a 401(k) fund or other similar account into which regular deposits were made during the marriage and after the separation)
 - General Fund Worksheet (used to allocate the separate and the marital interests in a 401(k) fund or other similar account into which regular deposits were made before the marriage, during the marriage and after the separation)
4. SPOUSAL SUPPORT
 - **Form 5(B)** setting forth specifically what evidence the party intends to prove and how it relates to the factors set forth in Va. Code § 20-107.1(E).