

## Practice Pointer



# Know your local rules governing motions practice

For those attorneys who practice primarily in one jurisdiction, the local rules of the general district or circuit court often are little more than an afterthought. Whether it is in a city or county where an official set of rules is published or a locality governed by less formal customary practices, it takes very little time for the repeat practitioner to know the standard procedure for motions practice like the back of her hand.

But for the Virginia lawyer who practices in jurisdictions across the state, familiarity with the ins and outs of motions practice in any one city or county can prove more of a challenge. All attorneys should be armed with Virginia Supreme Court Rule 4:15, which governs motions practice, including how to properly notice presentation of a motion and applicable page limits and filing deadlines for briefs, in circuit courts across the state. While adherence to this Rule is essential, depending on the locality, it often does not tell the whole story of how and when motions should be filed, noticed and briefed.

Va. Code §8.01-4 authorizes general district and circuit courts to prescribe rules for their respective districts and circuits that are “necessary to promote proper order and decorum and the efficient and safe use of courthouse facilities and clerk’s offices.” Far from providing the courts carte blanche in rulemaking, however, the statute prohibits any rules that are inconsistent with any statute, Supreme Court rule, or decided case. It further prohibits any rule that would abridge the substantive rights of any person before the court, and provides that local docket control procedures may not “deprive any party the opportunity to present its position as to the merits of a case solely due to the unfamiliarity of counsel of record with any such docket control procedures.” *See also* Va. S. Ct. R. 4:15(d) (same).

So, while the consequences of unfamiliarity with a court’s local rules may seldom be dire, the careful practitioner should make the extra effort to familiarize herself with standard procedure in order to advance or oppose a motion in the most efficient and persuasive manner possible. A call to the clerk’s office or quick Internet search often is the most efficient way to identify and obtain the local rules for an unfamiliar court. In those jurisdictions without published rules, the clerk’s office generally is available to field the attorney’s specific procedural questions regarding motions practice. Where a formal set of rules has been published, the task becomes identifying and obtaining a copy of that publication.

To that end, the following list, while by no means comprehensive, identifies and discusses some of the more prominent local

rules from jurisdictions around the Commonwealth that build on the procedures for motions practice set forth in Rule 4:15, and that may prove beneficial to the out-of-town attorneys who find themselves practicing in the local courts.

### Fairfax County

The Fairfax Bar Association publishes the “Fairfax Circuit Court Practice Manual,” a comprehensive procedural guide that currently is in its 7th Edition and was last updated in 2010. It is available for purchase from [www.fairfaxbar.org](http://www.fairfaxbar.org).

The term “local rules” is somewhat of a misnomer for the Manual, as its Forward provides, consistent with Va. Code §8.01-4, that “the procedures set out herein are not rules and cannot provide a basis for the imposition of sanctions; nor, are they intended to create additional pitfalls for unwary practitioners, especially those who do not often practice before our Court.” As a practical matter, however, compliance with the Manual generally is expected.

Guidelines for criminal motions practice are found in Section C and those for civil motions practice are found in Section E. The procedure established for civil motions is quite detailed, but most motions are noticed using a specific form praecipe, heard on Friday Motions Day (with three separate docket times depending whether the motion is contested, uncontested, or domestic/fiduciary) for those motions requiring 30 minutes or less, and adhere to a two-week briefing schedule.

### Alexandria, Arlington, Prince William, and Loudoun

Section N of the Fairfax Circuit Court Practice Manual, titled “Northern Virginia Practice,” includes motions practice guidelines for the Alexandria (N-1.00), Arlington (N-2.00), Prince William (N-3.00), and Loudoun (N-4.00) Circuit Courts.

In Alexandria, Civil Motions Day is ordinarily held the second and fourth Wednesday of each month at 10 a.m. A hearing must be requested by praecipe by 5 p.m. on the preceding Wednesday, and the opposing party must be given at least seven days notice.

Arlington schedules civil motions which can be heard in 30 minutes or less on its Friday Motions Docket, which begins at 10 a.m. Motions which will take longer than 30 minutes to be heard must be scheduled for a date certain through the Court Administrator.

Civil motions in Prince William also are heard every Friday at 10 a.m. for those matters that require 30 minutes or less. A Notice of Motion must be filed with the Civil Division at least two

weeks prior to the Motions Day sought by counsel.

In Loudoun, civil motions are heard on the first Friday of each month. A 20-minute time limit for hearings is enforced, and the Court uses a praecipe system for noticing motions. Former chancery cases (e.g., divorce) are scheduled at 10 a.m., and former law cases (e.g., personal injury) are scheduled for 2 p.m.

### **Richmond, Chesterfield, Colonial Heights, and Henrico**

The circuit courts for Richmond, Chesterfield, Colonial Heights, and Henrico have published two companion documents titled “Suggested Practices and Procedures in Civil Cases” and “Suggested Guidelines and Practices in Domestic Relations Cases,” each of which addresses motions practice in their respective areas.

In addition to each court’s independent website, these local rules can be found on the individual circuit court homepages for Richmond, Chesterfield, Colonial Heights, and Henrico at the Virginia Judicial System website ([www.courts.state.va.us](http://www.courts.state.va.us)).

Similar to the Fairfax Manual, these Suggested Practices and Procedures emphasize that they “are not local rules of court, but rather are minimum practices expected of competent, thoughtful, and efficient professionals.” The publication does note that, if the parties to a case wish for the Suggested Practices and Procedures to be reduced to enforceable rules, they can be incorporated into a pretrial order pursuant to Va. S. Ct. R. 1:18.

In each of these jurisdictions, attorneys are required to schedule civil motions hearings through the judge’s chambers. In Richmond, Chesterfield, and Colonial Heights, counsel must determine which judge has been assigned to her case, and the date and time of the hearing will be coordinated directly with the judge. In Henrico, all civil motions are heard on Fridays, but the time set for a specific matter is scheduled through chambers. Important telephone numbers for scheduling in each jurisdiction are set forth in the Suggested Practices and Procedures.

### **Petersburg**

The Petersburg Circuit Court has promulgated three sets of “Docket Control Procedures”: civil actions and causes, divorce and equitable distribution, and criminal cases. All three documents can be accessed on the court’s individual homepage at the Virginia Judicial System website ([www.courts.state.va.us](http://www.courts.state.va.us)). Petersburg requests that motions hearings be scheduled through the Court Administrator, and provides for a standard briefing schedule for all memoranda which are five or fewer pages in length.

### **Norfolk**

The Norfolk Circuit Court has published two companion documents titled “Civil Case Management Administrative Plan” and “Criminal Case

Procedures,” both of which address the procedure for motions practice. They are available from the Norfolk Circuit Court independent website (<http://icourt.info>) or the court’s individual homepage at the Virginia Judicial System website ([www.courts.state.va.us](http://www.courts.state.va.us)).

Norfolk uses a Friday Motions Day for all civil motions which can be heard in 30 minutes or less. The motion must be filed no later than the preceding Friday, and the opposing party must be given at least seven days notice. Consistent with Rule 4:15, the Court imposes a limit of 20 pages for all briefs, absent leave of court. If a brief is filed in any case where a judge has not yet been assigned, counsel should request that the docket administrator assign a judge to the hearing.

### **Virginia Beach**

The Virginia Beach Circuit Court’s website contains extensive instructions for navigating its Motions Docket at <http://www.vbgov.com/government/departments/courts/circuit-court-judges/Pages/Motion-Docket.aspx>.

Virginia Beach uses a “Friday Motion Docket” and “Duty Judge Docket.” The Friday Motion Docket begins at 9:30 and is used for motions that can be heard in 30 minutes or less. The Duty Judge Docket, by contrast, is used for motions that can be heard in one hour or less on Monday-Thursday, or after 2 p.m. on Friday. The Court’s website links to an “On-line Motion Docket” which attorneys can use to determine available dates. It also contains a list of those matters which can be set only on the Duty Judge Docket, and those matters which can be set on the Duty Judge Docket or the Friday Motion Docket.

### **Winchester and Frederick**

The Circuit Courts for Winchester and Frederick County have promulgated a joint set of “Local Rules of Court,” which can be accessed on the courts’ independent website at: <http://www.winfred-clerk.com/rules.htm>. The Local Rules also apply to the other courts in the 26th Circuit: Page, Rockingham, Shenandoah, Warren, and Clarke Counties. Rules 3:1 and 3:2 set forth a specific list of matters which must be heard on each court’s Motion Day, and provide a link to the form praecipe which must be used to notice each motion for hearing.

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