PERSONAL INJURY CASES IN GENERAL DISTRICT COURT

Judges Wanda J. Cooper, Paul D. Merullo and Jonathan L. Stone
Virginia Beach Bar Association CLE
August 26, 2025

A sample medical records affidavit Va. Code 16.1-88.2 Courtesy of Christopher Jacobs:

AFFIDAVIT

COMMONWEALTH OF VIRGINIA AT LARGE
CITY OF ____________________, to-wit:

THIS DAY personally appeared before me the undersigned, a Notary Public in and for the Commonwealth of Virginia, at Large, the undersigned ______________________, who having first been duly sworn according to law deposes and says:

1. That, Jerquana Bryant, the person named in the attached bill, medical record and/or report has been treated and examined by me.

2. That the information contained in the record and/or report is true and accurate and fully descriptive as to the nature and extent of the injury.

3. That any statement of costs contained in the report is true and accurate.

____
HEALTHCARE PROVIDER

Subscribed and sworn to before me this ___________ day of ______________, _____

____
Notary Public

My commission expires: ________________

An illustrative set of accident related medical records:

Patient Name: John Doe
DOB: 06/15/1980
Date of Accident: 01/01/2025
Mechanism of Injury: Head-on collision following another driver's failure to yield left turn; airbag deployment, vehicle towed.

Emergency Room Visit
Facility: Virginia Beach General Hospital
Date: 01/01/2025
Presenting Complaint: Neck pain, upper back pain, left shoulder abrasion
Subjective:
45-year-old male presented via EMS following a motor vehicle collision. Patient was the restrained driver of a sedan, speed estimated at ~25 mph. States airbag deployed. Reports immediate neck and upper back pain, as well as a headache. Denies LOC. Also reports seatbelt abrasion to left shoulder.
Objective:
•Vitals: BP 138/88, HR 84, Temp 98.7, RR 16, SpO_2 98% RA
•Exam:

- Cervical tenderness with limited range of motion (ROM)
- Left shoulder: superficial abrasion noted
- No neuro deficits

Imaging:
•X-ray, cervical spine: No acute fracture or dislocation; degenerative disc changes noted at C5-C6
•CT Head: No acute intracranial process
Diagnosis:
•Cervical strain
•Superficial abrasion, left shoulder
•Post-concussion symptoms without loss of consciousness
Discharge Instructions:
•Ice, ibuprofen 600 mg q6h PRN
•Follow-up with PCP in 2-3 days
•Return for worsening symptoms

Primary Care Visit
Provider: Dr. Emily Harper, DO
Clinic: Seaside Family Medicine
Date: 01/04/2025
Subjective:
Still experiencing moderate neck stiffness and upper back tightness. Headaches improving. Sleep disrupted due to discomfort.
Objective:
•Mild cervical paraspinal tenderness
•Slightly reduced ROM
•No swelling, ecchymosis
Assessment/Plan:
•Cervical sprain/strain, post-MVC
•Continue NSAIDs
•Physical therapy referral
•Referral to orthopedic spine specialist due to persistent pain

4. Radiology Reports

Facility: Tidewater Imaging Center

A. X-ray – Cervical Spine

Date: 01/10/2025

Findings:

•No fracture or malalignment

•Degenerative disc space narrowing and osteophyte formation at C5-C6

Impression:

•No acute bony abnormality. Degenerative changes at C5-C6.

B. MRI – Cervical Spine

Date: 01/12/2025

Findings:

•Disc bulging at C5-C6 with mild right foraminal narrowing

•No evidence of cord compression or acute disc herniation

Impression:

•Multilevel cervical spondylosis, most pronounced at C5-C6

Physical Therapy – Seacoast Rehab Center
Initial Evaluation – 01/15/2025
Therapist: Lisa Cortez, DPT
Subjective:
Neck pain 5/10, worsens with desk work. Reports muscle tightness, headaches, difficulty sleeping.
Objective:
•ROM: Cervical flexion/extension reduced by ~30%
•Palpation: Upper traps and levator scapulae tight and tender
•Posture: Forward head posture noted
Plan:
•3x/week for 4 weeks
•Goals: Improve ROM, reduce pain to 2/10, normalize sleep

Progress Note Visits:

•01/17/2025 – Initiated isometrics, soft tissue mobilization
•01/20/2025 – Tolerating treatment well, ROM improving
•01/22/2025 – Began resistance band exercises
•01/24/2025 – Less muscle tightness, sleep improving
•01/27/2025 – Pain reduced to 3/10
•01/29/2025 – Reassessed posture, incorporated ergonomic education
•02/01/2025 – Full ROM nearly achieved
•02/03/2025 – Continued progress with scapular stabilization
•02/05/2025 – Preparing for discharge

Final Visit – 02/07/2025

Subjective:

Reports pain 1-2/10 with long days but able to sleep through the night.

Objective:

•Cervical ROM within normal limits
•Strength WNL
•Good postural awareness

Assessment:

•Met all therapy goals
•No further therapy indicated unless symptoms recur

Plan:

•Discharged from care
•Home exercise plan provided

Subjective complaints v. Objective findings:

Subjective complaints come from the patient and are not subject to observation or measurement with medical tests. Objective findings can be seen or derived from imaging studies (x-ray, MRI, CT), recognized medical tests or visual examination. Arguably, some medical tests rely on the patient's response, however could still be considered somewhat objective findings.

Examples of subjective complaints: Back pain with a level of 8/10, headache, nausea.

Examples of objective findings: Contusion/bruising, swelling, abrasions, wounds, positive imaging studies (i.e. acute fracture), positive responses to orthopedic exam.

It is not necessary to pre-file medical records with court.

Medical Records and Bills: Suggestions for Plaintiff's counsel:

Offer medical records and bills and medical records affidavit at the beginning of Plaintiff's evidence. These do not require authentication by a witness because they are admissible by statute. Va. Code 16.1-88.2. Judge can peruse records while listening to testimony.

Highlight and tab the records and bills to draw attention to favorable items such as injury diagnoses, visible injuries, positive orthopedic tests, objective injuries, etc. Walk the judge though those items after conclusion of the evidence, at closing argument. Consider bates-stamping the pages if records are voluminous.

Medical Records and Bills: Suggestions for Defense counsel:

Plaintiff can sometimes be impeached about the facts of the accident or extent of pain, suffering, inconvenience. Health care providers sometimes note patient's recitation of the facts of the accident. Some providers have patient complete an accident questionnaire. Medical records sometimes note patient's reporting of vacations, workouts, rigorous physical activity, or new injuries.

Use your closing argument to walk the judge though aspects of the records or bills that are favorable to the defense:

- Lack of objective findings or injury diagnosis.
- Significant delay in seeking treatment/significant gaps in treatment
- New accidents, injuries, or aggravating factors not caused by the accident in question
- Negative findings on imaging (X-ray, MRI, CT)

Vehicle crash photos can be favorable to Plaintiff or Defendant, depending on severity or lack of severity:

In some cases, vehicle photos are not offered by either party.

Even in a GDC bench trial, model jury instructions provide simple, plain language duties of a driver and law of damages:

Instruction No. 10.000 Lookout; Control; Speed
Instruction No. 10.004 Duty of Driver Following Another Vehicle
Instruction No. 10.005 Rear-End Collision: Finding Instruction
Instruction No. 10.010 Right to Assume Other Driver's Ordinary Care
Instruction No. 10.020 Lookout: Scope of Duty to Keep a Proper Lookout
Instruction No. 10.025 Lookout: Duty to Keep Windows Clear
Instruction No. 10.030 Lookout: When Lights to Be Lighted
Instruction No. 10.040 Control: Skidding
Instruction No. 10.050 Control: Continuous Driving Over 13 Hours
Instruction No. 10.060 Control: Falling Asleep
Instruction No. 10.070 Control: Brake Requirements
Instruction No. 10.080 Speed: Exceeding Posted Limit
Instruction No. 10.090 Speed: Posted Minimum Speed
Instruction No. 10.100 Speed: Driving Too Slowly
Instruction No. 10.105 Speed: Table of Speed and Stopping Distances
Instruction No. 10.110 Duty to Drive on the Right
Instruction No. 10.115 Defendant in Plaintiff's Lane of Travel
Instruction No. 10.120 Proper Lane for Slow-Moving Vehicle on Multiple-Lane Road
Instruction No. 10.130 Duty to Drive on Half of the Road
Instruction No. 10.140 Duty to Heed Lane Markings

Instruction No. 10.150 Three-Lane Roads
Instruction No. 10.160 Changing Lanes
Instruction No. 10.170 Overtaking and Passing: Visibility
Instruction No. 10.180 Overtaking and Passing: Clearance
Instruction No. 10.190 Stopping and Turning: Duty to Signal
Instruction No. 10.200 Turn or Stop Signal
Instruction No. 10.210 Changing Course After Signaling
Instruction No. 10.230 Right Turn: Driver's Duty
Instruction No. 10.240 Driver's Duty When Turning Left; Yielding Right-of-Way
Instruction No. 10.250 Driver's Duty on Left Turn From a Two-Way Road
Instruction No. 10.260 Driver's Duty on Left Turn on Other Than Two-Way Roadways
Instruction No. 10.262 Steady Red Light
Instruction No. 10.264 Green Light
Instruction No. 10.266 Steady Amber Light
Instruction No. 10.268 Right Turn on Steady Red Light
Instruction No. 10.270 Stop Sign: Yielding Right-of-Way
Instruction No. 10.280 Yield Sign at Intersection: Yielding Right-of-Way
Instruction No. 10.290 Uncontrolled Intersection: Yielding Right-of-Way
Instruction No. 10.295 Unlawful Speed: Forfeiture of Right-of-Way
Instruction No. 10.300 Right-of-Way: Stopping and Yielding Before Entering Highway or Crossing sidewalk
Instruction No. 10.310 Right-of-Way: Traffic Circles
Instruction No. 10.320 Driver's Duty Not to Stop on Highway
Instruction No. 10.330 Driver's Duty to Use Ordinary Care to Avoid Obstructing the Highway
Instruction No. 10.340 Driver's Duty When Stopping to Sell Merchandise
Instruction No. 10.350 Driver's Duty When Stopping on Highway Because of Accident
Instruction No. 10.360 Certain Stopped Vehicles; Duty to Set Out Warning Devices

Instruction No. 9.000 General Personal Injury and Property Damage

[If you find your verdict for the plaintiff, then, in] [In] determining the damages to which he is entitled, you shall consider any of the following which you believe by the greater weight of the evidence was caused by the negligence of the defendant:

(1)any bodily injuries he sustained and their effect on his health according to their degree and probable duration;
(2)any physical pain [and mental anguish] he suffered in the past [and any that he may be reasonably expected to suffer in the future];
(3)any disfigurement or deformity and any associated humiliation or embarrassment he suffered in the past [and any that he may be reasonably expected to suffer in the future];
(4)any inconvenience caused in the past [and any that probably will be caused in the future];
(5)any medical expenses incurred in the past [and any that may be reasonably expected to occur in the future];
(6)any earnings he lost because he was unable to work at his calling;
(7)any loss of earnings and lessening of earning capacity, or either, that he may reasonably be expected to sustain in the future;
(8)any property damage he sustained.

Your verdict shall be for such sum as will fully and fairly compensate the plaintiff for the damages sustained as a result of the defendant's negligence.

Questions/Discussion:

Should plaintiff's counsel ask for the court to award a specific amount? Should it ever be less than the amount sued for?

Should defense counsel ask for the court to award a specific amount or submit it to the court?

In how much detail should plaintiff's counsel recite the incidents in the medical records?

Should health insurance payments/credits be redacted from medical bills before offering bills as evidence?

BOND HEARINGS IN GENERAL DISTRICT COURT

Judges Wanda J. Cooper, Paul D. Merullo and Jonathan L. Stone
Virginia Beach Bar Association CLE
August 26, 2025

Bond hearings: One of the most consequential proceedings in General District Court, yet a <u>typical</u> bond hearing lasts 5 to 15 minutes.

Photo credit: wtkr.com

An illustrative misdemeanor bond hearing court file:

ORDER FOR CONTINUED CUSTODY
Commonwealth of Virginia

Jurisdiction: VIRGINIA BEACH GEN DIST - CRIMINAL

[ ] Juvenile & Domestic Relations District Court
[X] General District Court [ ] Circuit Court

ACCUSED: [redacted], DONALD
NAME (LAST, FIRST, MIDDLE)
4621 TWAIN LANE
VIRGINIA BEACH, VA 23462
[redacted]
SOCIAL SECURITY NUMBER

8/20/[redacted]
DATE OF BIRTH

Hearing Date and Time: 10/2/2024 11:00 am

CHARGED UNDER: [X] State [ ] Local Ordinance

CHARGE(S): CTRM: F

Offense Tracking Number	Offense Date	Virginia Crime Code (For Administrative Use Only)	Code Section	Case Number
810GM2400032886	8/8/2024	DIS-5311-M1	18.2-415	GC24008136-00
		Description: DISORDERLY CONDUCT		
		Description:		
		Description:		
		Description:		
		Description:		
		Description:		

[ ] Addendum listing additional charges is attached and incorporated.
Public Workforce [ ] Authorized [ ] Not Authorized

BAIL: $ ______ [ ] Secured Bond [ ] Unsecured Bond [ ] Recognizance
[ ] Custody and Supervision of Pretrial Services Agency
[ ] Third-Party Custody and Supervision
[ ] No Change in Existing Amount of Bond [ ] Amend Bond to $ ______
[ ] Held Without Bail [ ] No change in Existing Bail Conditions

Accused [ ] may [ ] may not leave the Commonwealth of Virginia [ ] may [ ] may not leave ______
CITY/COUNTY

Additional Conditions of Bail:
The Accused must
[ ] Submit to Drug/Alcohol Screening [ ] Submit to Drug/Alcohol Testing [ ] Comply with a Curfew of ______
[ ] Avoid All Contact with ______
[ ] Refrain from Possessing Firearm, Destructive Device, Dangerous Weapon
[ ] Refrain from Excessive Use of Alcohol [ ] Refrain from Use of Illegal Drugs/Controlled Substances not Prescribed by a Health Care Provider
[ ] Maintain or Seek Employment [ ] Maintain or Commence Education
[ ] The Accused is assigned to home-electronic incarceration by Judge
[ ] The Accused is to be monitored by a GPS/other tracking device
[ ] The Accused is to be released only to the custody of [ ] authorized facility representative OR [ ] the following person
______ for transportation directly to the following facility: ______
NAME OF PERSON NAME OF FACILITY

[ ] Other:

TO THE SHERIFF, JAIL OFFICER OR CORRECTIONAL OFFICER:
Hold the accused in custody pending the hearing date and convey the accused to the appropriate court so that the accused will be present in court at the hearing date and time, unless otherwise ordered by the appropriate judicial officer.

8/13/2024
DATE

[ ] CLERK [ ] JUDGE

FORM DC-355 07/23

PAGE ____ of ____

WARRANT OF ARREST—MISDEMEANOR (STATE)

COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Virginia Beach
CITY OR COUNTY

[x] General District Court [x] Criminal [ ] Traffic
[ ] Juvenile and Domestic Relations District Court

TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about 08/08/2024 (DATE) did unlawfully in violation of Section 18.2-415, Code of Virginia:
commit an act of disorderly conduct in a public building with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, by engaging in conduct having a direct tendency to cause acts of violence by the person or persons at whom such conduct was directed.

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

LADD, S R VBPD, Complainant.

Execution by summons [ ] permitted at officer's discretion. [x] not permitted.

08/08/2024 05:08 PM
DATE AND TIME ISSUED

Michael Arlinsky [ ] CLERK [x] MAGISTRATE [ ] JUDGE

CCRE/Fingerprinting Required

FORM DC-314 (MASTER, PAGE ONE OF TWO) 07/21

CASE NO. GC24008136-00 KW

ACCUSED:
[redacted], Donald
LAST NAME, FIRST NAME, MIDDLE NAME
4621 Twain Lane
ADDRESS/LOCATION
Virginia Beach, VA 23462

To be completed upon service as Summons
Mailing address [ ] Same as above
[ ]

RACE	SEX	BORN MO. DAY YR.	HT. FT. IN.	WGT.	EYES	HAIR
W	M	08/20/19[redacted]	5' 05"	150	BLU	BRO

SSN [redacted]

DL# STATE

[ ] Commercial Driver's License
[ ] Commercial Motor Vehicle [ ] Hazardous Materials

CLASS 1 MISDEMEANOR

[x] EXECUTED by arresting the Accused named above on this day:
[ ] EXECUTED by summoning the Accused named above on this day:
[ ] For legal entities other than individuals, service pursuant to Va. Code § 19.2-76.

8/8/24 1710
DATE AND TIME OF SERVICE

Ladd, S.R , ARRESTING OFFICER
4595 VBPD 125
BADGE NO., AGENCY AND JURISDICTION
for Chief of Police
SHERIFF

Attorney for the Accused:

Short Offense Description (not a legal definition):
DISORDERLY CONDUCT IN STREET/PUBLIC PLACE
Offense Tracking Number:
810GM2400032886

FOR ADMINISTRATIVE USE ONLY
Virginia Crime Code:
DIS-5311-M1

M

10-2-24
~~Feb 05, 2025~~
11:00 AM F
Hearing Date/Time

STATE.

COMMITMENT ORDER
Commonwealth of Virginia

ACCUSED: [redacted], Donald
NAME (LAST, FIRST, MIDDLE)

Jurisdiction: Virginia Beach

ADDRESS: 4621 Twain Lane
Virginia Beach, VA 23462

SSN: 22[redacted] DOB: 0[redacted]

[ ] General District Court (Traffic)
[X] General District Court (Criminal)
[ ] General District Court (Civil)
[ ] Juvenile & Domestic Relations District Court
[ ] Circuit Court

SEX: [X] Male [ ] Female
STATUS: [X] Adult [ ] Juvenile
CHARGED UNDER: [X] State [ ] Local Ordinance

CHARGE(S):

Offense Tracking Number	Offense Date	Virginia Crime Code (For Administrative Use Only)	Code Section	Case Number
810GM2400032886	08-08-24	DIS-5311-MI DISORDERLY CONDUCT IN STREET/PUBLIC PLACE	18.2-415	

[ ] Addendum listing additional charges is attached and incorporated.

BAIL: $ ________ [ ] Secured [ ] Unsecured [ ] Recognizance
[X] Held without bail [ ] No additional bail required
[ ] Release by Judicial Officer to custody of responsible person or when accused is no longer intoxicated

Accused [ ] may [ ] may not depart the Commonwealth of Virginia. [ ] Other conditions of bail on page two.

If NOT released on bail,
Court appearance location, date and time:
[x] GENERAL DISTRICT [ ] J&DR [ ] CIRCUIT
Virginia Beach
Aug 09, 2024 02:00 PM

If released on bail,
Hearing date and time:
Aug 09, 2024 02:00 PM

[ ] Since accused is unable or unwilling to participate in a bail hearing, I order accused to be returned to Judicial Officer for bail determination.
[ ] Currently serving sentence
[ ] Charges pending in ________ Court
Place held in custody (if other than facility serving this jurisdiction): ________
NAME OF FACILITY

TO THE SHERIFF, JAIL OFFICER OR CORRECTIONAL OFFICER: You are ordered to take custody of and convey the accused to the Court, unless otherwise released.

08/08/2024 05:36 PM
DATE AND TIME

[X] MAGISTRATE [ ] CLERK [ ] JUDGE Michael Arlasky

Received: 8-8-24 @ 1820
DATE AND TIME

By:

FORM DC-352 (MASTER, PAGE ONE OF TWO) 05/09 PAGE 1 of 2 CBR 810GM2400032888

CHECKLIST FOR BAIL DETERMINATIONS
Commonwealth of Virginia

Name of the Accused [redacted], Donald

Nature and Circumstances of the Offense Disorderly Conduct--Threatened to kill

Weight of the Evidence Possessed small knives

Length of Time in Community 37 years

Place of Employment Unempl How Long

Family Ties Sister, Grandparents

Involvement in Education Some coll

Financial Resources None, Homeless--Getting mail at local address

Pending Charges

Was a firearm allegedly used in the offense: [ ] No [ ] Yes

Currently on probation or parole? [ ] No [ ] Yes

Prior criminal record M Contrib Delinq Minor '06; M Poss MJ '07; F Eluding Police '07; F Poss Sched 1/2 '08; M Dest Prop '08; M Driving Forfeit Lic DNR '08; M Poss MJ 2nd Off '10, '14; F Viol Prob Fel Off '10; M Good Behav Viol '10, '16; M DWI 1st '11; F VoP '11; M Driving Forfeit Lic '12; M Poss MJ '12; Nolle Prossed F Abduction/Kidnapping '13 (Contin other)

[ ] The secured bond provision in Virginia Code § 19.2-123 applies [ ] and is waived with the concurrence of the attorney of the Commonwealth or the attorney for the county, city or town.

Prior charges of failing to appear M FTA '23; M FTA DNR '24

Is this person likely to obstruct or attempt to obstruct justice or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective witness, juror, victim, or family or household member as defined in Virginia Code § 16.1-228?

[ ] No [ ] Yes

[ ] Pursuant to Virginia Code § 19.2-130.1, terms of bail set in accordance with the order of a court that issued a capias.

Other information Nolle Pross: M Dom Assault '13; M DWI 2nd w/i 5 years '13; M DWI Ref '13; M Assault '14; M Poss MJ 1st Off '16; Nolle Pross: Fel Lic Revoked (DWI/Manslaughter '17; M DWI Ref 3rd Off '17; F DWI 3rd off '17; M Driving after Lic Forfeit '23. Present charges of threatening with a knife and past charges of violence-Danger to community.

Bail Set Held without Bail

Special instructions or conditions

[ ] Check if more information is on reverse

08/08/2024
DATE

[X] MAGISTRATE [ ] JUDGE
Michael Arlinsky

FORM DC-337 FRONT 07/21

Sample questions defense attorney could ask client if answers are likely to be favorable:

1. Where will you be living if you are released? Do you own or rent? Is your name on the lease? Who else lives there with you?
2. Family situation (i.e. elderly parents, married/single, children)
3. Level of education?
4. Employed? Where? What kind of work? Length of employment? Job still available to you if you are released?
5. Are you currently on probation? Who supervises your probation? Have you tested positive for illegal drugs while on probation? Have you had other probation violations?
6. Do you have other pending charges?
7. How did you come into contact with police when you were arrested/turned self in?
8. When did you find out you had an outstanding warrant? (If applicable)
9. Do you have any reason to have contact with the alleged victim/complaining witness, location of incident, while this case is pending?
10. If the court puts you on pretrial supervision can you remain drug/alcohol free and comply with random testing and pretrial appointments?

Sample questions to be posed by prosecutor who is opposed to bond (if answers would be favorable to prosecution):

1. Do you have other pending charges?
2. Are you currently on probation?
3. What was the drug in question in your previous drug conviction (or drug for which you are on probation)?
4. Have you previously done inpatient substance abuse treatment?
5. Before you were arrested did you know you had an outstanding warrant?
6. How did you come into contact with police when you were arrested on this warrant?

Issues that may be adverse to the defendant to be pointed out in CWA proffer:

- ✓ Weight of the evidence is strong
- ✓ Prior history of failure to appear/pretrial noncompliance
- ✓ Pending charges similar to charges before the court
- ✓ Prior inpatient substance abuse treatment (where new inpatient program is being proposed)
- ✓ Prior convictions or active probation for conduct similar to charges before the court
- ✓ Lengthy or bad criminal record generally

Statutory Factors:

Nature and circumstances of offense

Whether a firearm was used

Weight of the evidence

Financial resources of defendant

Character of the accused

Length of time in community

Record of convictions

History of court appearances/FTA

Likelihood to obstruct, intimidate

"any other information available" re: appearance

Pregnant/gave birth/nursing a child (enacted in 2025)

Va Code 19.2-120, 19.2-121

Practice pointer: Defense options if court denies motion for bond:

- ✓ Appeal to Circuit Court
- ✓ Ask judge to note "may reconsider if inpatient program is proposed"
- ✓ Ask judge to note "may reconsider if video or other yet unseen evidence is favorable to the defendant."
- ✓ Move to reconsider based on proposed inpatient substance abuse program
- ✓ If possible to enter a plea (for example on a charge of FTA), ask judge if okay to just take a plea (defendant might be held w/o bond only on FTA
- ✓ Advance defendant's case to officer's earlier court date, if any. Check officer traffic AND criminal availability

Commonwealth Attorney May Appeal order granting bond:

"Any bail decision made by a judge of a court may be appealed successively by the person to the next higher court, up to and including the Supreme Court of Virginia, where permitted by law."

"The court granting or denying such bail may, upon appeal thereof, and for good cause shown, stay execution of such order for so long as reasonably practicable for the party to obtain an expedited hearing before the next higher court."

Va. Code Ann. § 19.2-124

Question: How often does CWA appeal GDC bond decision to Circuit Court?

Defense motion to reconsider bond Va. Code 19.2-130

Some illustrative examples of reasons:

- Defendant suffers a continuance (i.e. Commonwealth's witness unavailable/did not appear, awaiting lab analysis, CWA stuck in a jury trial)
- Weight of the evidence is not as strong as was thought at earlier bond hearing (i.e. defense attorney obtained exculpatory video of incident)
- Defense attorney proposes inpatient substance abuse program
- Defense attorney proposes a vendor who can provide GPS location tracking or alcohol monitoring

**There is no explicit limit to the number of times a defendant held in custody can move for reconsideration of bond status.

Being a lawyer is an art and not a science.

How to proceed with a motion for bond will vary, depending on each particular defendant, facts of case, and charges before the court.

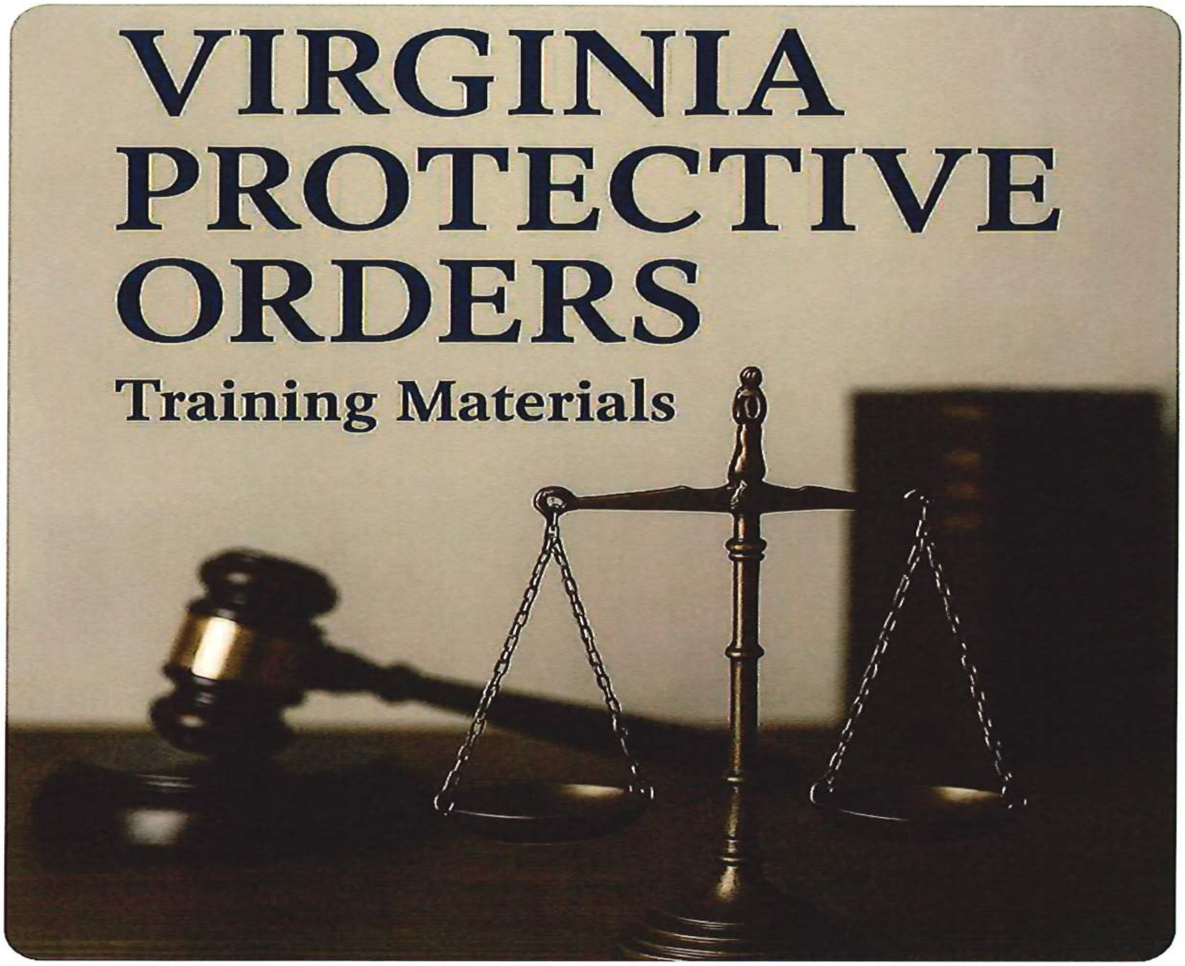
Question: Is it better for the defense attorney to proffer for the defendant or to have the defendant testify? Proffers and evidence that would not be admissible at trial can be admitted in a bond hearing. Va. Sup Ct. Rule 2:1101(c)

Question: Are there certain situations where defense attorney will have defendant testify about facts of the case?

Question: If you believe your defendant has zero chance of getting released, do you proceed with a bond hearing as a way to obtain extra early discovery, such as CWA proffer of facts?

Question: Is it effective for prosecutor to question the defendant about his criminal history or best to just proffer that information to the court?

Question: Is it effective for defense attorney to call family members, employer, character witnesses or preferrable that defense attorney proffer?



Virginia Beach Juvenile and Domestic Relations Court **Bench Bar '25**

The Hon. Timothy Quick

The Hon. Philip Hollowell

The Hon. Adrienne Bennett

The Hon. Cheshire I'Anson Eveleigh

The Hon. Jennifer Shupert

The Hon. James Normile

The Hon. Regis Rice

Contents

I. Introduction

Protective orders are a critical tool in Virginia's legal framework to shield individuals from acts of family abuse, threats, stalking, or violence. Included in the materials is a comprehensive and comparative analysis of protective orders originating in the Juvenile and Domestic Relations District Court (JDR Court) and the General District Court (GDC). The training objectives are to obtain an in-depth understanding of the statutory frameworks, jurisdictional differences, evidentiary requirements, types of relief available, firearm restrictions, procedural differences in addressing violations, and the evolving statutory authority including the increased duration for final protective orders effective July 1, 2025.

II. Types of Protective Orders and Jurisdiction

Virginia law provides for several types of protective orders depending on the relationship between the petitioner and the respondent:
1. Emergency Protective Orders (EPOs) under Code §§ 16.1-253.4 or 19.2-152.8
2. Preliminary Protective Orders (PPOs) under Code §§ 16.1-253.1 or 19.2-152.9
3. Final Protective Orders (FPOs) under Code §§ 16.1-279.1 or 19.2-152.10

• JDR Courts have jurisdiction where the parties are family or household members.
• GDC Courts handle protective orders in non-family cases (e.g., stalking or violence

between unrelated individuals).
• If either party is a juvenile, jurisdiction remains in JDR Court per § 16.1-241(M).

• A family or household members include spouses and ex-spouses, relatives, including relatives through marriage, parents of children, legal guardians, individuals who cohabit or who have cohabited within the previous 12 months and their children.

• Virginia Code §16.1-228 defines "Family Abuse" to mean any act of violence, force or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. The definition of family abuse is broad and inclusive. Statutory examples include forceful detention, stalking and sexual assault.

Aspect	JDR Court	GDC Court
Governing Statutes	§§ 16.1-253.4, 253.1, 279.1; violation: § 16.1-253.2; SCRA: § 16.1-266(F)	§§ 19.2-152.8, 152.9, 152.10; violation: § 18.2-60.4; SCRA: § 19.2-152.12
Relationship Required	Yes – Family or household member (§ 16.1-228)	No – General public (e.g., roommates, coworkers)
Types of Orders	EPO, PPO, FPO	EPO, PPO, FPO
Duration of Final Order	Up to 2 years, or up to 4 years if prior PO in 10 years	Same – § 19.2-152.10(C)
Extension of Orders	Renewable indefinitely	Renewable indefinitely
Firearm Prohibition	Yes, per § 18.2-308.1:4	Yes, per § 18.2-308.1:4
Relief Permitted	Custody, support, phones, housing, firearms, etc.	Injunctions, no contact, firearms, etc.
Minor-Specific Provisions	Social services for juvenile respondents	Not applicable
Procedure for Violations	§ 16.1-253.2 – Misdemeanor to felony (mandatory time)	§ 18.2-60.4 – Similar penalties
Venue	Based on residence or where abuse occurred	Same (§ 19.2-152.11)
SCRA Compensation	§ 16.1-266(F)	§ 19.2-152.12

Summary of Virginia Code § 16.1-253.4: Emergency Protective Orders in Cases of Family Abuse

Virginia Code § 16.1-253.4 authorizes any judge or magistrate to issue an **ex parte emergency protective order (EPO)** in cases involving **family abuse** to protect the health or safety of the petitioner. An EPO is required when a warrant is issued for a violation of § 18.2-57.2 (assault and battery against a family or household member) and there is a probable danger of further abuse. Relief may include prohibiting acts of violence or contact, granting temporary possession of the shared residence or companion animals, and barring the respondent from the physical presence of the petitioner. The EPO lasts until 11:59 p.m. on the third day or the next day court is in session. Law enforcement officers may request and serve EPOs, including oral ones via electronic means, which must be promptly entered into the **Virginia Criminal Information Network**. The statute presumes future danger when a warrant is issued and provides for extensions in limited circumstances. Juvenile respondents may be referred to social services. While the order does not imply guilt, its violation constitutes **contempt of court**, and all identifying information is protected from disclosure except in limited cases.

Summary of Virginia Code § 19.2-152.8: Emergency Protective Orders in Non-Family Abuse Cases

Virginia Code § 19.2-152.8 authorizes judges and magistrates to issue emergency protective orders (EPOs) on an ex parte basis when a law enforcement officer or an alleged victim asserts under oath that the respondent committed an act of violence, force, or threat, and there is probable danger of further such acts, or a petition or warrant has been issued. The EPO may prohibit acts of violence, ban contact or physical presence near the petitioner or their family, prevent communication, and award possession of companion animals. If the respondent is a juvenile, services may be ordered for the child and family. EPOs expire at 11:59 p.m. on the third day after issuance unless extended to the next court day and may be extended for up to three additional days in certain cases. Orders may be issued and transmitted orally or electronically, but must be reduced to writing and promptly entered into the Virginia Criminal Information Network. Service must be effected swiftly, and modifications must be updated in the system. The issuance of an EPO is not evidence of wrongdoing, and protected information (e.g., addresses, employment) is confidential. "Physical presence" includes intentional visual contact or being within 100 feet of the petitioner. Filing and service are free of charge, and orders cannot be issued against law enforcement officers for lawful acts. Upon issuance, the petitioner must be given resources developed by the Department of Criminal Justice Services.

Summary of Virginia Code § 16.1-253.1: Preliminary Protective Orders in Family Abuse Cases

Virginia Code § 16.1-253.1 empowers the juvenile and domestic relations district court to issue a **preliminary protective order (PPO)** in family abuse cases to protect the health and safety of the petitioner and their family or household members. The court may act **ex parte** based on good cause shown through affidavits, sworn testimony, or a valid Military Protective Order. The petition must establish that the petitioner was subjected to family abuse within a reasonable period. The PPO may impose a broad range of relief on the allegedly abusing person, including: (1) prohibiting acts of family abuse or other criminal offenses that cause injury to persons or property; (2) barring any contact with the petitioner or the petitioner's family or household members, including physical proximity; (3) awarding temporary exclusive possession of the residence to the petitioner, without affecting ownership rights; (4) preventing the respondent from terminating, or requiring the restoration of, necessary utility services at the protected premises; (5) granting exclusive use and possession of a cellular telephone or other electronic device, including any associated password, and enjoining the respondent from using such devices to track or surveil the petitioner; (6) awarding temporary possession or use of a motor vehicle owned solely or jointly by the parties, without affecting title; (7) requiring the respondent to provide suitable alternative housing and pay any necessary deposits for utilities; (8) granting possession of any companion animal to the petitioner if they are its legal owner under § 3.2-6500; and (9) issuing any other relief the court deems necessary for the petitioner's protection. If the respondent is a juvenile, the court may also order the local board of social services to provide services to the child and family. These orders take effect upon personal service and remain enforceable until the scheduled full hearing, which must be held within 15 days, unless continued or extended under specific statutory conditions.

Summary of § 19.2-152.9: Preliminary Protective Orders (General District Court)

Under Virginia Code § 19.2-152.9, a judge may issue a preliminary protective order in cases involving acts of violence, force, or threat to safeguard the petitioner or their family or household members. The order may be granted ex parte upon good cause, including evidence of recent threats, violence, or a valid military protective order. Relief may include prohibiting further acts of violence or contact, granting possession of a companion animal, and other conditions necessary to ensure safety. Once issued, the order must be entered into the Virginia Criminal Information Network and served personally on the respondent. The order remains in effect until a full hearing is held, typically within 15 days. Violations of the order may be punished as contempt. The court may also dissolve or modify the order upon motion. Respondents must notify the court of any change in residence, and failure to do so may also be considered contempt. No fees are charged for seeking or serving the protective order.

Summary of Va. Code § 16.1-279.1: Final Protective Orders in Family Abuse Cases

In cases of family abuse, Virginia Code § 16.1-279.1 authorizes courts to issue protective orders to ensure the safety and well-being of petitioners and their family or household members. These orders may impose various conditions on the respondent, including prohibitions on further abuse or contact, exclusive possession of the shared residence, temporary custody of children, use of personal property such as cell phones, vehicles, and companion animals, as well as mandates to provide alternative housing or continue utility services. Courts may also require respondents to participate in treatment or counseling. The court may issue temporary child support orders as part of the protective order, and if the respondent is a juvenile, the court may order social services involvement. The order may last up to two years, and in some repeat-offense situations, up to four years, with provisions allowing for multiple extensions.

Procedurally, the court must promptly enter the order into the Virginia Criminal Information Network and ensure its service on the respondent. Protective orders are enforceable statewide and given full faith and credit if issued in another jurisdiction with proper due process. Violations of the order can result in contempt of court. Either party may file a motion to modify or dissolve the order at any time, and such hearings are prioritized by the court. The law protects the privacy of petitioners by limiting disclosure of their personal information and prohibits any filing or service fees. Information and resources for victims must be made available, and respondents must notify the court of any change in residence. Appeals of final protective orders from circuit court receive expedited review by the Court of Appeals.

Summary of § 19.2-152.10: Final Protective Orders (General District Court)

Virginia Code § 19.2-152.10 authorizes courts to issue protective orders to safeguard the health and safety of victims and their family or household members following a petition, warrant, or conviction involving an act of violence, force, or threat, or after a preliminary hearing. The court may prohibit the respondent from committing further acts of violence, making contact with the petitioner, or otherwise communicating in any way. It can also award temporary possession of companion animals and mandate services through social services for juvenile respondents. Orders may last up to two years and can be extended repeatedly for additional two-year periods. In cases of conviction for acts of violence, the order may last for any reasonable time, including a lifetime if necessary for the victim's protection.

The protective order must be promptly entered into the Virginia Criminal Information Network and served on the respondent. Violations are punishable as contempt of court. The statute allows for ex parte preliminary protective orders pending an extension hearing and recognizes and enforces out-of-state protective orders under full faith and credit provisions. Either party may move to dissolve or modify the order at any time, and the court is required to prioritize such motions. The law includes privacy protections for petitioners and prohibits any filing or service fees. Appeals of circuit court protective orders are expedited in the Court of Appeals, and respondents must notify the court of any change of residence within seven days while the order is in effect.

III. Evidentiary Requirements

To obtain a final protective order, the petitioner must prove by a preponderance of the evidence:

• That an act of family abuse, stalking, or other qualifying violence occurred.

• That the petitioner experienced a reasonable fear of death, sexual assault, or bodily injury.

Courts evaluate the totality of the circumstances, including past conduct and credibility assessments.

Type of Protective Order	Code Section	When Issued	Standard of Proof	Supporting Evidence Required
Emergency Protective Order (EPO)	§§ 16.1-253.4 (Family),19.2-152.8 (Criminal)	Ex parte; typically by a judge or magistrate upon report from law enforcement or victim	**Probable cause / probable danger**	Sworn statement (oral or written) from victim or law enforcement; evidence of a recent act or threat of violence; a pending criminal charge or warrant may suffice
Preliminary Protective Order (PPO)	§§ 16.1-253.1 (Family),19.2-152.9 (Criminal)	Ex parte; issued after petition filed and reviewed by a judge	**Good cause shown**(which includes a finding of immediate and present danger or probable cause of a recent act)	Affidavit or sworn testimony; or presentation of a Military Protective Order; written motion to extend protective order (criminal cases)
Final Protective Order (Family Abuse)	§ 16.1-279.1	After a full hearing following issuance of a PPO	**Preponderance of the evidence**	Testimony, exhibits, and any admissible evidence showing that family abuse occurred and petitioner needs protection
Final Protective Order (Criminal Act)	§ 19.2-152.10	After a full hearing (or upon conviction or issuance of a criminal warrant for qualifying act)	**Preponderance of the evidence** or based on issuance of criminal warrant / conviction	Court may rely on conviction or pending criminal matter involving violence, force, or threat; otherwise, evidence presented must meet preponderance threshold
Extension of Protective Order	§§ 16.1-279.1(B),19.2-152.10(B)	Upon motion by petitioner before expiration of final protective order	**No new abuse required** – Must show need for continued protection (evidence standard not expressly stated,	Continuation based on current safety concerns; prior order and respondent's conduct may be considered

Type of Protective Order	Code Section	When Issued	Standard of Proof	Supporting Evidence Required
			but treated as **preponderance**)	
Lifetime Protective Order	§ 19.2-152.10(C)	Upon conviction for an "act of violence" as defined in § 19.2-297.1	**Discretion of the court**– "Any reasonable period of time... necessary to protect the victim"	Victim request or Commonwealth's motion; conviction is prerequisite; no further proof of danger required

IV. Statutory Updates Effective July 1, 2025

• Final Family Abuse protective orders may now extend up to four years (amended § 16.1-279.1).
• EPOs must be entered into VCIN immediately upon issuance.
• Courts are authorized to extend orders beyond expiration if delay was caused by respondent's absence.
• Military protective orders are recognized but are not enforceable in Virginia courts unless also issued through a civil court.

V. Relief Permitted by Protective Orders - Highlights

- **Exclusive possession of residence**
- **No contact provisions**
- **Temporary custody/visitation of children** (JDR only)
- **Temporary child/spousal support** (JDR only)
- **Prohibition on firearm possession**
- **Exclusive control over phones and vehicles**
- **Restoration of utility services**
- **Possession of companion animals**

VI. Understanding the 2-Year vs. 4-Year Duration Rule

As of July 1, 2025, courts may issue **family abuse final protective orders up to four years** if the respondent was subject to a prior final protective order within the last ten years.

- **2 Years**: Default maximum duration.
- **4 Years**: Applies when a prior family abuse protective final order existed; thereafter, any extensions are limited to two-years.
- **Statutes:** § 16.1-279.1(C) (JDR) Only (for GDC protective orders, upon a conviction of an act of violence, the protective order may continue through the defendant's lifetime; otherwise, the protective order can be issued up to two years.)

VII. Firearm Prohibitions and Violations

- Under § 18.2-308.1:4, individuals subject to protective orders may not possess, transport, or purchase firearms.
- Surrender of firearms is required within 24 hours of service.
- Violation is a **Class 1 misdemeanor** unless there exists a final protective order, the violation increases to a **Class 6 Felony.**

VIII. Registration and Enforcement of Out-of-State Protective Orders

Under **Va. Code § 16.1-279.1(F)** and **§ 19.2-152.10(D)**, Virginia courts recognize and enforce protective orders issued by courts in other states or tribal jurisdictions. These orders are enforceable whether or not they are registered in Virginia.

- Encouraged to register with court clerk.
- Entered into VCIN and NCIC upon registration.
- Protected parties should present a certified copy to law enforcement.
- Enforcement governed by federal Full Faith and Credit provision under **18 U.S.C. § 2265**.

IX. Violations of Protective Orders

- **JDR Court:** § 16.1-253.2
- **GDC Court**: § 18.2-60.4
- Penalties include **Class 1 misdemeanor** for first offense, **60-day minimum term of confinement** for second offenses within five years of prior conviction. **Class 6 felony** for third+ offense in 20 years of prior conviction with threat or act of violence with a **six-month minimum term of confinement**.
- The jail sentences must be run consecutively with other offenses.

X. Dissolving a protective Order

- Under Va. Code § 16.1-279.1(G) and § 19.2-152.10(H), either party may at any time file a motion requesting a hearing to dissolve or modify the protective order. If filed by the petition, it may be heard ex parte. The statute requires the court to have the motion heard as soon as practicable.

XI. Protective Order Extensions

- **§ 16.1-279.1 (B)(2)** & **§ 19.2-152.10 (B)(2)** – there are extensive rules on extensions. Key point, the motion for an extension must be filed before the protective order expires.

XII. CASE SUMMARIES

Court	Case Name	Citation	Key Issue	Holding / Summary
Court of Appeals	Jacobs v. Wilcoxson	71 Va. App. 521 (2020)	Appealability of denied protective order	Denial of protective order is appealable under § 16.1-296(A); statute intended to expand appeal rights.
Court of Appeals	Wyant v. Commonwealth	2015 Va. App. LEXIS 104	Violation of protective order via contact	Intentional yelling near petitioner's home constitutes prohibited contact; upheld conviction.
Court of Appeals	Thomason v. Thomason	2025 Va. App. LEXIS 75	Stalking-based protective order	Protective order upheld; conduct met stalking definition even without criminal charge.
Court of Appeals	Moumen v. Khoury	2025 Va. App. LEXIS 253	Contempt and issuance of new protective order	Contempt upheld; new protective order vacated due to procedural error under § 16.1-253.2(D).
Court of Appeals	Claramunt v. Commonwealth (Panel)	84 Va. App. 391 (2025)	Validity of emergency protective order after issuance of preliminary order	Emergency order deemed invalid once preliminary order issued; conviction reversed.
Court of Appeals	Claramunt v. Commonwealth (En Banc)	84 Va. App. 606 (2025)	Rehearing en banc on protective order timing	Panel decision set aside; rehearing en banc granted to determine whether issuance of a preliminary protective order automatically terminates an emergency protective order and how actual notice impacts enforceability; appeal reinstated.
Fairfax Circuit Court	R.T. v. Commonwealth	114 Va. Cir. 16 (2024)	Expungement of emergency protective order	Expungement denied; EPO issued independently and not causally related to dismissed criminal charge.
Court of Appeals	Ward v. Baig-Ward	2017 Va. App. LEXIS 328	Family abuse protective order including children	Protective order upheld; court relied on live testimony of abusive conduct and fear.

Court of Appeals	Martin v. Martin	2002 Va. App. LEXIS 350	Family abuse via emotional manipulation	Petitioner failed to show fear of immediate serious bodily injury; order denied.
Virginia Supreme Court	Elliott v. Commonwealth	277 Va. 457 (2009)	Definition of 'contact' under protective order statute	Phone call constituted unlawful contact; standing a block away without intent to communicate was not a violation under Code § 16.1-279.1. Conviction partially reversed due to lack of evidence of intent to visually communicate.
Virginia Supreme Court	Stephens v. Rose	288 Va. 150 (2014)	Stalking-based protective order under Code § 19.2-152.10	Protective order upheld; persistent, fear-inducing contact without physical harm can support protective order based on stalking. Reasonable fear standard met by pattern of conduct.

Jacobs v. Wilcoxson

In Jacobs v. Wilcoxson (71 Va. App. 521 (2020)), the Court of Appeals addressed the issue of Appealability of denied protective order. The court held that Denial of protective order is appealable under § 16.1-296(A); statute intended to expand appeal rights.

Wyant v. Commonwealth

In Wyant v. Commonwealth (2015 Va. App. LEXIS 104), the Court of Appeals addressed the issue of Violation of protective order via contact. The court held that Intentional yelling near petitioner's home constitutes prohibited contact; upheld conviction.

Thomason v. Thomason

In Thomason v. Thomason (2025 Va. App. LEXIS 75), the Court of Appeals addressed the issue of Stalking-based protective order. The court held that Protective order upheld; conduct met stalking definition even without criminal charge.

Moumen v. Khoury

In Moumen v. Khoury (2025 Va. App. LEXIS 253), the Court of Appeals addressed the issue of Contempt and issuance of new protective order. The court held that Contempt upheld; new protective order vacated due to procedural error under § 16.1-253.2(D).

Claramunt v. Commonwealth (Panel)

In Claramunt v. Commonwealth (Panel) (84 Va. App. 391 (2025)), the Court of Appeals addressed the issue of Validity of emergency protective order after issuance of preliminary order. The court held that Emergency order deemed invalid once preliminary order issued; conviction reversed.

Claramunt v. Commonwealth (En Banc)

In Claramunt v. Commonwealth (En Banc) (84 Va. App. 606 (2025)), the Court of Appeals addressed the issue of Rehearing en banc on protective order timing. The court held that Panel decision set aside; rehearing en banc granted to determine whether issuance of a preliminary protective order automatically terminates an emergency protective order and how actual notice impacts enforceability; appeal reinstated.

R.T. v. Commonwealth

In R.T. v. Commonwealth (114 Va. Cir. 16 (2024)), the Fairfax Circuit Court addressed the issue of Expungement of emergency protective order. The court held that Expungement denied; EPO issued independently and not causally related to dismissed criminal charge.

Ward v. Baig-Ward

In Ward v. Baig-Ward (2017 Va. App. LEXIS 328), the Court of Appeals addressed the issue of Family abuse protective order including children. The court held that Protective order upheld; court relied on live testimony of abusive conduct and fear.

Martin v. Martin

In Martin v. Martin (2002 Va. App. LEXIS 350), the Court of Appeals addressed the issue of Family abuse via emotional manipulation. The court held that Petitioner failed to show fear of immediate serious bodily injury; order denied.

Elliott v. Commonwealth

In Elliott v. Commonwealth (277 Va. 457 (2009)), the Virginia Supreme Court addressed the issue of Definition of 'contact' under protective order statute. The court held that Phone call constituted unlawful contact; standing a block away without intent to communicate was not a violation under Code § 16.1-279.1. Conviction partially reversed due to lack of evidence of intent to visually communicate.

Stephens v. Rose

In Stephens v. Rose (288 Va. 150 (2014)), the Virginia Supreme Court addressed the issue of Stalking-based protective order under Code § 19.2-152.10. The court held that Protective order upheld; persistent, fear-inducing contact without physical harm can support protective order based on stalking. Reasonable fear standard met by pattern of conduct.

XIII. CONCLUSION AND KEY TAKEAWAYS

Protective orders in Virginia serve as vital legal tools to prevent ongoing or future harm arising from domestic violence, stalking, or threats. The statutory framework governing both JDR and general district courts provides a comprehensive but distinct structure for different protective order types, each with its own procedural requirements, duration, and relief mechanisms.

The cases discussed highlight several critical takeaways:
- Jurisdiction depends on the relationship between the parties and their ages. JDR handles family or juvenile-involved matters, while general district courts handle adult non-family matters.
- The evidentiary standard for issuing protective orders remains a preponderance of the evidence, but what constitutes a qualifying threat varies based on context and immediacy.
- Courts carefully distinguish between emotional discomfort and a reasonable fear of imminent serious bodily harm when evaluating petitions.
- Intentional contact—even indirect or through third parties—can violate protective orders, especially where prior warnings or patterns of behavior are involved.
- Statutory authority must be strictly followed when issuing new or extended protective orders. A motion for extension must be filed before the final protective order expires.

Practitioners must remain vigilant in understanding not only the legal text but also the nuances of evolving case law. Whether seeking, defending, or challenging a protective order, attorneys must be prepared to assess the legal thresholds, marshal credible evidence, and navigate the specific jurisdictional rules applicable to their case.

JDR Hot Topics: Recent Legislative and Form Updates

Protective Orders

1. Military Protective Orders
   a. If there is a Military Protective Order (MPO) in place, that order can be considered by the Court in determining whether to grant a Preliminary Protective Order under 16.1-253.1 or 19.2-152.9.
   b. The MPO shall "only be admissible or considered as evidence in accordance with the Code of Virginia, the Rules of Evidence of the Supreme Court of Virginia, or relevant Virginia case law."
   c. Only applies to preliminary protective orders.
   d. Per §16.1-253.2 or §18.2-60.4, if a respondent is found guilty of violating a protective order, and an MPO was issued on the same respondent, the law-enforcement officer or agency must inform the military law-enforcement officer/agency/commanding officer that issued the MPO.

2. Juvenile Respondents
   a. If the respondent of an EPO, PPO or PO is a juvenile, the court, attorney or gal may ask that the local board of social services provide services to the family.

3. Address update requirement
   a. The respondent may be required to notify the court in writing within seven days of any change of residence while the preliminary protective order [and protective order] is in effect, provided that the respondent has been served a copy of such order in accordance with the provisions of this section.
   b. Any failure of a respondent to make such required notification shall be punishable by contempt.
   c. There is a box on the order that will be checked by the judge.
   d. Applies to preliminary protective orders and protective orders under 16.1-253.1, 16.1-279.1, and 19.2-152.9.

4. Period of time extended in certain cases
   a. For permanent protective orders, the order may be issued for up to four (4) years IF the court finds, based upon evidence presented, that respondent has been subject to a previous *permanent, family abuse* protective order within the past ten (10) years.

5. Lines to list present parties
   a. The revised PPO and PO forms have additional lines at the end for noting the presence of an attorney or other parties.

Related attachments:

- §16.1-253.4, Form DC-626 Emergency Protective Order – Family Abuse
- §19.2-152.8, Form DC-382 Emergency Protective Order
- §16.1-253.1, Form DC-627 Preliminary Protective Order – Family Abuse
- §19.2-152.9, Form DC-384 Preliminary Protective Order
- §16.1-279.1, Form DC-650 Protective Order – Family Abuse
- §19.2-152.10, Form DC-385 Protective Order
- §16.1-253.2, §18.2-60.4

Immigration Advisement

- §19.2-271.7: "Upon the defendant's first physical appearance for any misdemeanor or felony, the court shall advise the defendant of the following: The outcome of criminal proceedings may have federal immigration and naturalization consequences."

1. For Juveniles - see attached new Trial Rights form
2. For Adults Form DC-335 (Waiver of Right to Representation by Lawyer) and Form DC-349 (Notice of Opportunity to Hire Counsel) already include language regarding the potential consequences of criminal proceedings. When the litigant requests appointment of an attorney (Form DC-334) or in cases where the litigant hires counsel and does not appear at the arraignment, the Court has prepared forms for the litigant to sign at their next appearance. See attached 2 possible forms that defendants will need to sign.

Recording Proceedings

- §16.1-69.35:2:

  A. An audio recording of proceedings in a district court may be made by a party or his counsel. However, the judge of a juvenile and domestic relations district court may impose any restriction as necessary to comply with the confidentiality requirements applicable to such district court.

  B. No judge of a district court shall (i) order or require a party or his counsel to submit a copy of an audio recording made pursuant to this section or a transcript of such recording to the clerk of a district court to be maintained in such party's individual case file or (ii) prohibit a party or his counsel from providing such copy or transcript of such recording to the opposing party or his counsel.

- The Court must be notified before any audio recording of a proceeding, and the Cell Phone Policy of the Court must be followed.
- See attached Local Order regarding this statute.

Use of Restraints with Juveniles

- § 16.1-276.4:

  A. As used in this section, "instruments of restraint" includes handcuffs, chains, irons, straightjackets, and electronic restraint devices. "Instruments of restraint" does not include an electronic device used for home electronic monitoring.
  B. Instruments of restraint shall not be used on a juvenile during a delinquency proceeding in a juvenile and domestic relations district court unless, upon motion of the attorney for the Commonwealth or on the court's own motion *sua sponte*, such court orders the use of such restraints prior to such juvenile's appearance in the courtroom pursuant to subsection C.
  C. The court may order the use of instruments of restraint on a juvenile upon making a finding that (i) the use of such restraints is necessary (a) to prevent physical harm to such juvenile or another person, (b) because such juvenile has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or presents a clear and substantial threat of serious harm to himself or others as evidenced by recent behavior, or (c) because such juvenile presents a substantial risk of flight from the courtroom and (ii) there are no less restrictive alternatives to such restraints that will prevent flight of or harm to such juvenile or another person, including court personnel or law-enforcement officers.
  D. The juvenile shall be entitled to an attorney prior to a hearing on the use of instruments of restraint pursuant to the provisions of this section. The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of instruments of restraint pursuant to subsection C, and the juvenile's attorney may waive the juvenile's appearance at such hearing. If such restraints are ordered, the court shall communicate to the parties the basis of the decision either orally or in writing.

- Detention Hearings will now be by video, at 11am on the Duty docket. The Court will address the issue of restraints at the detention hearings. The Court has been advised that the Commonwealth Attorney's office will ask for detained juveniles to be restrained at hearings.

Virginia Beach Circuit Court

Judge Tanya Felton, Chief Judge

Judge James C. Lewis

Bench Bar '25 ~ Recovery Court and Remote Requests

The Drug Court In Virginia Beach: A Status Report

Hon. James C. Lewis, Hon. Steven C. Frucci

Since the 1980s, an overwhelming emphasis by law enforcement on strategies to combat illegal drug possession and sales has resulted in dramatic increases in the nation's drug related arrests and incarceration rates. Drug offenses have been among the largest categories of arrests for the past 20 years. Prison sentences for drug offenses have contributed significantly to the burgeoning of the incarcerated population in the United States.

By the late 1980s, drug addicted offenders, in unprecedented numbers, were clogging the criminal justice system at every stage — from arrest to prisoner reentry. Rigorous prosecutions and sentencing policies have been very expensive and largely ineffective in reversing the cycle of drug use and crime; especially costly and ill-advised is the use of prison to solve America's chronic drug problem.

One of the more popular tools used to confront this problem has been the proliferation of the drug treatment court. This article will discuss the inception of such a court in Virginia Beach, how it developed, how it works, and how it has performed.

The first drug court is reported to have been established in 1989 in Dade County, Florida, in response to an epidemic of drug addiction and drug related crime. These specialized court dockets are part of an innovative judicial model in which offenders are held accountable for their actions while gaining the tools they need to break the patterns of drug abuse so damaging to their lives as well as the lives of others.

Simply put, the goals of most drug courts are:

1. To enhance public safety;
2. To reduce the amount of time from the violation of probation to entry into treatment;
3. To reduce recidivism among drug court participants; and
4. To reduce the use of drugs and alcohol by drug court participants.

Additional benefits that flow from the drug court model include improved public health and increased employment. To date, the results have been seemingly quite positive.

In 2004, the Virginia General Assembly enacted the Drug Treatment Court Act set forth in § 18.2-254.1 of the Code of Virginia, in recognition of the growing number of drug treatment courts in Virginia. Pursuant to that Code section, the Supreme Court of Virginia is the administrative body with specific responsibility for implementation of the Drug Treatment Court Act.

The drug court judge serves as a team leader and presides over all court proceedings involving drug court participants. The drug court judge participates in weekly case staffings and evaluations and imposes sanctions and incentives, including expulsion, to all drug court participants.

B. Drug Court Administrator

This individual oversees the day-to-day operations of the drug court, participates in weekly case staffings, and attends all drug court hearings. This individual also monitors and maintains program statistics and data as well as developing and monitoring a budget, where appropriate.

C. Drug Court Circuit Court Clerk

This individual maintains drug court files to include, without limitation, opening drug court files, pulling files for court, and scanning appropriate documents into the files. This individual also assists attorneys in having cases docketed, oversees graduation ceremonies, and ensures that all orders and other papers are properly handled during drug court proceedings.

D. Adult Probation and Parole

These individuals identify and conduct initial screening of potential participants in the drug treatment court, assist in providing the court with weekly status updates regarding the treatment progress of the participants, supervise all participants and provide status reports to the court, conduct all random drug screens, and communicate with the day treatment staff concerning progress, attendance, and the results of drug testing.

E. Police and Sheriff Personnel

These individuals, working together, participate in the drug treatment court process, assist community service with sanctions via various workforce programs, and provide courtroom security during all drug court dockets.

F. Substance Abuse Treatment Team

This group participates in weekly meetings, hearings, and assessments. This team likewise provides clinical services for each participant and assists in developing a treatment plan together with arranging psychiatric evaluations to be completed, as needed.

G. Commonwealth's Attorney, City Attorney and Public Defender

These individuals assist in evaluating the eligibility of drug court participants and ensuring the orderly administration of the program as the program participants progress through the plan.

• Phase III – Once Phase II is complete, the 12-week Phase III process begins and focuses on relapse prevention and personal planning. The participant must appear before the drug court judge once every three weeks, continue to provide periodic urine screens, attend treatment and community support meetings as required, and maintain weekly contact. In addition, he or she must maintain stable housing and sustain an additional 90 consecutive days of abstinence. During Phase III, a focus is placed upon relapse prevention planning, coping and self-responsibility, and family and societal reintegration.

• Phase IV – Phase IV is the culmination of all the time, work and effort that has gone into successfully completing Phases I through III. And likewise takes approximately 12 weeks to complete. During this phase the participant must appear before the drug court judge approximately one time per month and submit to two monthly urine screens, randomly administered. The Phase IV focus is on interdependent living, relapse prevention and relationship building.

The culmination of all this effort is a graduation ceremony which occurs after completion of all treatment phases of the program and probation requirements as well as all community service and other program assignments. In order to graduate, the participant must have enjoyed nine consecutive months of clean and sober living including clean urine tests and clean breathalyzer exams.

He or she must also be employed, in school, or providing community service and have at least two approved community support individuals, only one of which can be a family member.

Finally, the graduation candidate must prepare an aftercare plan with his or her case management team which must be approved by the drug court team and finally the presiding drug court judge.

OUR LOCAL EXPERIENCE

Since the Virginia Beach program began operations in 2016, a total of 35 participants have been enrolled into the program. Of the 35 total enrollees, 14 of our participants have been terminated for failure to comply with the requirements of participating in our drug court.

In addition, of the 35 participants which we have welcomed into the program, nine are still enrolled in the program and working their way through the four stages.

Finally, nine of our 35 enrollees have actually graduated from the program and assumed life in our community without the restrictions of probation or other judicial supervision. Of the nine graduates that our program has produced, none of them have incurred any drug related charges or convictions since completing the program. This speaks volumes for the effectiveness of the benefits that our drug court program has to offer those individuals who are eligible and motivated to take advantage of it.

serves as a member of the Virginia Criminal Sentencing Commission and the Virginia Criminal Justice Conference.

General Eligibility Criteria

Specific criteria are determined by the local Recovery Court Advisory Committee.

Minimum Considerations:

- Adult Recovery Courts primarily target non-violent offenders with substance use disorder.
- Participation in a recovery court is voluntary and requires a written agreement among the defendant, the Commonwealth, and concurrence of the Court.
- Candidates are assessed for high risk/high needs using a validated risk-needs assessment and clinical assessment tools.
- Beginning July 2024, individuals are **not eligible** for participation in a recovery court **if any of the following conditions apply**:

1. The offender is **presently charged with a felony offense** or is **convicted** of a felony offense **while participating** in any recovery court where:

- The offender carried, possessed, or used a **firearm** or any **dangerous weapon** specified in VA Code § 18.2-308 during such offense;
- The **death** or **serious bodily injury** of any person occurred during such offense; or
- The **use of force against any other person** besides the offender occurred during such offense; or

2. The offender was **previously convicted as an adult of any felony offense** that involved the **use of force** or **attempted** use of force against any person with the intent to cause death or serious bodily injury.

National Best Practice Standards

Standard 1: *Administration*
Recovery courts depend upon a comprehensive and inclusive planning process.

Standard 2: *Recovery Court Team*

Standard 3: *Target Population, Eligibility Criteria, and Equity and Inclusion*

Standard 4: *Substance Use Disorder Treatment*
Consequences for participants' behavior are predictable, fair, consistent, and administered with evidence-based principles of effective behavior modification.

Standard 5: *Complementary Services and Recovery Capital*
Participants receive desired evidence-based services from qualified treatment, public health, social service, or rehabilitation professionals that safeguard their health and welfare, help them to achieve their chosen life goals, sustain indefinite recovery, and enhance their quality of life.

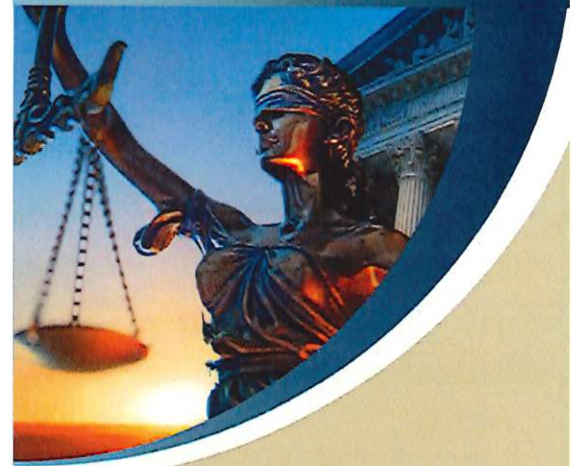
Standard 6: *Participant Compliance*

Standard 7: *Testing*
Drug and alcohol testing provides an accurate, timely, and comprehensive assessment of unauthorized1 substance use throughout participants' enrollment in the Specialty Docket .

Standard 8: *Role of the Judge*

Standard 9: *Evaluation and Monitoring*
The recovery court has results that are measured, evaluated, and communicated to the public.

Standard 10: *Education and Training*
The recovery court team requires continued interdisciplinary education, training, and program assessment.



Virginia Adult Recovery Courts

According to Code of Virginia § 18.2-254.1 - Recovery Court Act :
Recovery courts are specialized court dockets within the existing structure of Virginia's court system offering judicial monitoring of intensive treatment and strict supervision of addicts in drug and drug-related cases. Local officials must complete a recognized planning process before establishing a recovery court program.

Adult Recovery Courts WORK

Adult recovery courts save Virginia taxpayers **$19,234** *per adult participant compared to traditional case processing.*

In 2019, Adult Recovery Courts saved the Commonwealth of Virginia nearly $11 million.

Since 2009, Virginia's Adult Recovery Courts have seen increases in the number of active participants.

53

Adult Recovery Courts are approved to operate in Virginia.

Graduates of Adult Recovery Courts are **less likely to be rearrested or reconvicted** when compared to those who are terminated.

How does it work and what are the benefits?

Through voluntary admission, eligible defendants are invited to participate in the Adult Recovery Court following a specialized screening and assessment. For those who submit to the terms and conditions of community-based supervision, a team of program and treatment professionals work together to develop service plans and supervise participants.

Preliminary research demonstrates that Adult Recovery Court participants tend to have lower rates of criminal activity and increased linkages to treatment services when compared to defendants who go through the traditional court system.
https://rga.lis.virginia.gov/Published/2019/RD527/PDF

Recovery Courts divert offenders from incarceration thereby offering several potential benefits:

- ⇒ Recovery Courts *reduce prison costs* by reducing the inmate population and freeing up expensive jail and prison space for more serious offenders.
- ⇒ *Recidivism* rates of Recovery Court participants as a whole far out perform the comparison group -"the business as usual alternative "(jail, and/or prison, probation)
- ⇒ Recovery Courts *provide needed services* such as substance use disorder and mental health treatment that may not be available in jail or prison.

Application Process

Authorization Process - A circuit or district court which intends to establish a Recovery Court must petition the Supreme Court of Virginia for authorization before beginning operation of a Recovery Court or in the instance of an existing Recovery Court, continuing its operation.

http://www.courts.state.va.us/courtadmin/aoc/djs/programs/dtc/procedures/dtc_applic_to_establish.pdf

The link above is to the **Application to Establish an Adult Recovery Court**, which will include:

- Jurisdiction Name
- Name of Judge
- Name of Coordinator
- Proposed Start Date

http://www.courts.state.va.us/courtadmin/aoc/djs/programs/dtc/home.html

The link above provides information about **Recovery Courts**, including:

- Virginia Best Practice Standards
- Directory of Virginia Recovery Courts
- Evaluation Reports
- Informational Videos
- Resources and Reference Materials
- Training Request Form

Directory of Recovery Courts in Virginia

Updated July 22, 2025

53 Operational Adult Recovery Courts			
Locality	Presiding Judge	Court Schedule	Contact
5th Judicial Circuit Recovery Court (Suffolk, Isle of Wright, Southampton) **Suffolk Circuit Court** P. O. Box 1604 Mills E. Godwin, Jr. Courts Bldg. 150 North Main Street Suffolk, VA 23439-1604 **Isle of Wight Circuit Court** 1700 Josiah Parker Circle Isle of Wright, VA 23397 **Southampton Circuit Court** 23190 Sedley Road Franklin, VA 23851	Judge L. Wayne Farmer	Thursdays at 8:30 a.m. (Suffolk) Wednesdays at 8:30 a.m. (Isle of Wright) Tuesdays at 8:30 a.m. (Southampton)	TBD TBD Phone: TBD
23rd Judicial Circuit Drug Recovery Court (Roanoke City, Salem City & Roanoke County) **Roanoke County Circuit Court** 305 Electric Road Salem, VA 24153	Judge Charles N. Dorsey	Every Other Friday at 2:00 p.m.	Krystal B. Hullette khullette@roanokecccp.org Phone: (540) 562-3651 Ext. 323

30th Circuit Adult Recovery Court (Lee, Wise, & Scott Counties) **Wise Circuit Court** P.O. Box 1248 Wise, VA 24293 **Lee County Circuit Court** P.O. Box 326, Main Street Jonesville, VA 24263 **Scott County Circuit Court** 202 West Jackson St., Ste 102 Gate City, VA 24251	Judge Ronald K. Elkins Judge Tammy S. McElyea Judge John C. Kilgore	Tuesdays at 12:00 p.m. (Wise County) Wednesdays at 12:00 p.m. (Lee County) TBD (Scott County)	Ranessa Jessee recoverycourt@wisecounty.org Phone: (276) 328-2361
Albemarle County, Charlottesville Adult Recovery Court **Charlottesville Circuit Court** 750 Harris Street, Suite 207 Charlottesville, VA 22903	Judge Claude V. Worrell	Thursdays at 8:30 a.m.	Christie Cash ccash@oar-jacc.org Phone: (434) 296-2441 EXT: 104
Alexandria Adult Recovery Court **Alexandria Circuit Court** 520 King Street Alexandria, VA 22314	Judge Lisa B. Kemler	Thursdays at 2:00 p.m.	Aishah Dukes aishah.dukes@alexandriava.gov Phone:
Alleghany/Covington County Adult Recovery Court **Alleghany Circuit Court** P. O. Box 670 Courthouse 266 West Main Street Covington, VA 24426-0670	Judge Edward K. Stein	Tuesdays at 1:00 p.m.	Lindsay Sizemore lsizemore@ahcsb.org (540) 679-6171
Arlington County Adult Recovery Court **Arlington Circuit Court** 1425 North Courthouse Road Arlington, VA 22201	Judge Louise M. DiMatteo	Thursdays at 9:30 a.m.	Kelly Nieman knieman@arlingtonva.us Phone: (703) 228-4849

Botetourt-Craig Adult Recovery Court Botetourt Circuit Court 205 N Roanoke St. Fincastle, VA 24090	Judge Joel R. Branscom	Every other Thursday at 3:00 p.m.	Leigh Lively llively@brbh.org Phone: (540) 266-9200 Ext. 3163
Bristol Adult Recovery Court (VERITAS) Bristol Circuit Court Bristol Circuit Court 497 Cumberland Street Bristol, VA 24201	Judge Sage B. Johnson	Tuesdays at 10:00 a.m.	Bill Crawford bill.crawford@bristolva.org Phone: (276) 696-1516
Buchanan County Adult Recovery Court Buchanan Circuit Court P.O. Box 1995 2nd Floor 1012 Walnut Street Grundy, VA 24614	Judge Reece H. Robertson	Wednesdays at 8:30 a.m.	Ashley Shreve anshreve@vacourts.gov Phone: (276) 582-0160
Central Virginia Adult Recovery Court (Buckingham, Cumberland, and Prince Edward Counties) Prince Edward Circuit Court 10th Judicial Circuit 124 N. Main Street Farmville, VA 23901	Judge Donald C. Blessing	Every other Wednesday at 9:00 a.m.	Tatiana Jones-Chambers tjones-chambers@co.prince-edward.va.us Phone: (434) 392-8837 Ext. 337
Chesterfield/Colonial Heights Adult Recovery Court Chesterfield Circuit Court P.O. Box 57 Chesterfield, VA 23832	Judge Jayne A. Pemberton	Wednesdays at 8:30 a.m.	Geoff Easton eastonga@chesterfield.gov Phone: (804) 717-6801
Chesapeake Adult Recovery Court Chesapeake Circuit Court 224 Great Bridge Blvd. Chesapeake, VA 23233	Judge Marjorie T. Arrington	Thursdays at 9:00 a.m.	Vikki Smith vsmith@chesapeakeibh.net Phone: (757) 819-6422

Culpeper County Circuit Recovery Court Culpeper Circuit Court Courthouse Building 135 W. Cameron Street Culpeper, VA 22701	Judge Richard E. Moore	Tuesdays at 2:30 p.m.	Donna Frazier dmfrazier@culpepercounty.gov Phone: (540) 727-3450
Danville/Pittsylvania Recovery Court Danville Circuit Court James F. Ingram Justice Center 401 Patton Street Danville, VA 24543	Judge Stacey W. Moreau Judge James J. Reynolds	Thursdays at 4:00 p.m.	Candace Valdez cvaldez@vacourts.gov Phone: (434) 799-5171
Dickenson County Adult Recovery Court Dickenson Circuit Court P.O Box 190 119 Courthouse Lane Clintwood, VA 24228	Judge Brian K. Patton	Mondays at 9:00 a.m.	Derek Kendrick derekkendrick@dickensoncwa.net Phone: (276) 220-5527
Fairfax Adult Recovery Court Fairfax Circuit Court 4110 Chain Bridge Road Fairfax, VA 22030	Judge Dontae L. Bugg	Thursdays at 9:00 a.m.	Jennifer Fuller Jennifer.Fuller@fairfaxcounty.gov Phone: (571) 567-1794
Floyd County Adult Recovery Court Floyd County Circuit Court 100 East Main St. Floyd, VA 24091	Judge Kenneth M. Fleenor, Jr.	2nd and 4th Tuesdays at 9:00 a.m.	Lori Trail LTrail@nrvcs.org Phone: (540) 320-9286
Fluvanna County Adult Recovery Court Fluvanna Circuit Court 72 Main Street P. O. Box 550 Palmyra, VA 22963	Judge David Barredo	Thursdays at 1:30 p.m.	Paul Rice price@oar-jacc.org Phone: (434) 296-2441 Ext. 135
Giles County Recovery Court Giles Circuit Court 501 Wenonah Ave. Pearisburg, VA 24134	Judge Hugh L. Harrell	1st & 3rd Mondays at 2:00 p.m.	Lori Trail ltrail@nrvcs.org Phone: (540) 320-9286

Halifax County Adult Recovery Court **Halifax County Circuit Court** 8 S. Main Street Halifax, VA 24558	Judge Joel Cunningham	Tuesdays at 9:00 a.m.	Freda Holliday fhh@co.halifax.va.us Phone: (434) 476-1183
Hanover County Adult Recovery Court **Hanover Circuit Court** P.O. Box 39 7530 County Complex Rd Hanover, VA 23069-0039	Judge J. Overton Harris	1st & 3rd Mondays at 10:00 a.m.	Cynthia Kirschner cmkirschner@hanovercounty.gov Phone: (804) 365-6301
Harrisonburg/Rockingham Adult Recovery Court **Harrisonburg/Rockingham Circuit Court** 80 Court Square Courthouse Harrisonburg, VA 22802	Judge Bruce D. Albertson	Thursdays at 1:00 p.m.	Ann Marie Ritchie amritchie@rockinghamcountyva.gov Phone: (540) 564-3143
Henrico County Adult Recovery Court **Henrico Circuit Court** 4309 East Parham Road Henrico, VA 23228	Judge John Marshall Judge Randall G. Johnson, Jr.	Fridays at 1:00 p.m.	Sarah Perkins-Smith Per068@henrico.gov Phone: (804) 501-7596
Loudoun County Adult Recovery Court **Circuit Court | Loudoun County,** 18 E. Market Street, 3rd Floor Leesburg, VA 20176	Judge Stephen E. Sincavage Judge Douglas L. Flemming, Jr.	Wednesdays at 9:00 a.m.	Charles Mulligan Charles.Mulligan@loudoun.gov Phone: (703) 777-0207

Lynchburg Adult Recovery Court **Lynchburg Circuit Court** P. O. Box 4 900 Court Street Lynchburg, VA 24505-0004	Judge James F. Watson	2nd and 4th Wednesdays at 2:00 p.m.	Taylor Jones tmjones@vacourts.gov Phone: (434) 455-2741
Maury River Regional Adult Recovery Court **Rockbridge County Courthouse** 20 S. Randolph Street Lexington, VA 24450	Judge Christopher B. Russell	TBD	Megan Roane roanems@ci.staunton.va.us (540) 886-1008
Montgomery County Adult Recovery Court **Montgomery Circuit Court** 55 East Main Street, Suite 1 Christiansburg, VA 24073	Judge Robert M. D. Turk	2nd and 4th Wednesdays at 3:00 p.m.	Lori Trail ltrail@nrvcs.org Phone: (540) 320-9286
Nelson County Recovery Court **Nelson Circuit Court** P.O Box 10 84 Courthouse Square 1st Floor Lovingston, VA 22949	Judge Michael R. Doucette	Tuesdays at 1:00 p.m.	Chris Weidl cweidl@oar-jacc.org Phone: (540) 672-2881 Ext. 213
Newport News Adult Recovery Court **Newport News Circuit Court** 230 25th Street, Second Floor Newport News, VA 23607	Judge Matthew W. Hoffman	Wednesdays at 9:00 a.m.	Sherry Glasgow sglasgow@hnncsb.org Phone: (757) 223-4401
Norfolk Adult Recovery Court **Norfolk Circuit Court** 150 St. Paul's Blvd. Norfolk, VA 23510	Judge Tasha D. Scott	Thursdays at 2:00 p.m.	Alexandria Roberson aroberson@vacourts.gov Phone: (757) 823-1276

Northern Neck & Essex Adult Recovery Court **Westmoreland Circuit Court** 175 Polk Street Courthouse Montross, VA 22520-0307	Judge John S. Martin	Thursdays at 2:00 p.m.	Brooke Oliver eoliver@nnrj.state.va.us Phone: (804) 333-6013
Northwest Regional Adult Recovery Court **Winchester Circuit Court** The Judicial Center 5 North Kent Street Winchester, VA 22601	Judge Alexander R. Iden Judge William W. Eldridge, IV.	Tuesdays at 2:00 p.m.	Jane Ewing jewing@valleyhealthlink.com Phone: (540) 532-4932
Orange - Madison Adult Recovery Court **Orange Circuit Court** 110 North Madison Road P. O. Box 230 Orange, VA 22960-0133	Judge David B. Franzen	Tuesdays at 9:00 a.m.	David Nagel dnagel@oar-jacc.org Phone: (540) 672-2881 Ext. 205
Page County Adult Recovery Court **Page County Circuit Court** 116 South Court Street Luray, VA 22835	Judge Clark A. Ritchie	Tuesdays at 2:00 p.m.	Holly Williams hwilliams@pagecounty.virginia.gov Phone: (540) 843-3413
Piedmont Adult Recovery Court **Henry Circuit Court** 3160 Kings Mt. Rd. Martinsville, VA 24112	Judge Giles C. Greer	Every other Friday 2:00 p.m.	Quincy Gravely qgravely@piedmontcsb.org Phone: (540) 483-5044
Portsmouth Adult Recovery Court **Portsmouth Circuit Court** 1811 King Street Portsmouth, VA 23704	Judge Johnny E. Morrison	Wednesdays at 11:00 a.m.	Yvette Watkins-Cherry watkinscherryy@portsmouthva.gov Phone: (757) 391-3232 EXT. 2

Prince George, Hopewell & Surry Adult Recovery Court **Prince George Circuit Court** 6404 Courthouse Rd. Prince George, VA 23875	Judge W. Edward Tomko, III.	Mondays at 4:00 p.m.	Kathleen Danihel kdanihel@princegeorgecountyva.gov Phone: (804) 863-5908
Prince William County Adult Recovery Court **Prince William Circuit Court** 9311 Lee Avenue Third Floor Manassas, VA 20110	Judge Kimberly A. Irving and Judge Robert P. Coleman	Thursdays at 2:00 p.m.	Christopher Mayers cmayers@pwcgov.org Phone: (703) 792-6923
Pulaski County Adult Recovery Court **Pulaski Circuit Court** 45 Third Street NW Suite 101 Pulaski, VA 24301	Judge Kenneth M. Fleenor, Jr.	1st and 3rd Thursdays at 3:00 p.m.	Lori Trail ltrail@nrvcs.org Phone: (540) 320-9286
Radford Adult Recovery Court **Radford Circuit Court** 619 Second Street West Radford, VA 24141	Judge Josiah T. Showalter, Jr.	TBD	Lori Trail ltrail@nrvcs.org Phone: (540) 320-9286
Rappahannock Regional Adult Recovery Court **Fredericksburg Circuit Court** 618 Kenmore Ave. Fredericksburg, VA 22401	Judge Gordon F. Willis	Mondays at 2:30 p.m.	Jason Chase chasej@rrj.state.va.us Phone:
Richmond Adult Recovery Court **Richmond Circuit Court** Theatre Row Building 306 N. 8th Street, Third Floor Richmond, VA 23219	Judge C.N. Jenkins, Jr. Judge Richard B. Campbell	Fridays at 10:00 a.m.	Gloria Jones Gloria.Jones@rva.gov Phone: (804) 646-3756

Russell Adult Recovery Court **Russell Circuit Court** P. O. Box 435 53 East Main Street Lebanon, VA 24266	Judge Michael L. Moore	Tuesdays at 2:30 p.m.	Missy Carter Missy.carter@russellcountyva.us Phone: (276) 254-1420
Shenandoah County Adult Recovery Court **Shenandoah Circuit Court** 215 Mill Road Woodstock, VA 22664	Judge Kevin C. Black	Thursdays at 1:30 p.m. Circuit Courtroom	Jennifer Barsotti jbarsott@valleyhealthlink.com Phone: (540) 481-5167
Smyth County Recovery Court **Smyth County Circuit Court** 109 West Main Street Marion, VA 24354	Judge Deanis L. Simmons	Thursdays at 3:00 p.m.	Michelle Ward recoverycourt@smythcounty.org Phone: (276) 706-8656
Staunton, Augusta County, Waynesboro Adult Recovery Court (SAW Recovery Court) **Staunton Circuit Court** 113 East Beverly Street Staunton, VA 24401	Judge Paul A. Dryer	Tuesdays at 8:30 a.m.	Stacey Sullivan sullivanss@ci.staunton.va.us Phone: (540) 886-1008 EXT.4214
Tazewell County Adult Recovery Court **Tazewell Circuit Court** 101 E. Main Street Suite 202 Tazewell, VA 24651	Judge Jack S. Hurley, Jr.	Mondays at 1:00 p.m.	Cheryl Robinette cherylrobinette@outlook.com Phone: (276) 312-7562
Twin Counties & Galax Recovery Court (Carroll & Grayson Counties) **Galax Courthouse** 353 North Main Street Suite 204 Galax, VA 24333	Judge Hugh L. Harrell Judge Brett L. Geisler	2nd and 4th Tuesdays at 2:00 p.m.	Vicky Novak vicky.novak@graysoncountyva.gov Phone: 276-235-8526

Virginia Beach Adult Recovery Court **Virginia Beach Circuit Court** 2425 Nimmo Parkway Building 10 Virginia, Beach, VA 23456	Judge Tanya Bullock Judge James C. Lewis	Thursdays at 2:00 p.m.	Maureen Barnard MBarnard@vbgov.com Phone: (757) 385-6338
Warren County Adult Recovery Court **Warren Circuit Court** 1 E. Main Street 2nd Floor Front Royal, VA 22630	Judge Daryl L. Funk	Fridays at 1:30 p.m. Courtroom B	Cynthia Grim cgrim3@valleyhealthlink.com Phone: (540) 536-5000
Washington Adult Recovery Court **Washington Circuit Court** 189 East Main Street Abingdon, VA 24210	Judge Deanis L. Simmons	Tuesdays at 2:30 p.m.	Chris Brown tcbrown@highlandscsb.org Phone: (276) 698-0450
Wythe County Adult Recovery Court **Wythe Circuit Court** 225 S. Fourth Street Room 105 Wytheville, VA 24382	Judge Josiah T. Showalter, Jr.	2nd and 4th Thursdays at 8:30 a.m.	Vicky Novak vicky.novak@graysoncountyva.gov Phone: 276-773-3274

3 Juvenile Recovery Courts

Locality	Presiding Judge	Court Schedule	Contact
30th District Juvenile Recovery Courts (Lee, Scott & Wise Counties Juvenile Recovery Court) **Lee Juvenile and Domestic Relations Court** **Scott Juvenile and Domestic Relations Court** **Wise Juvenile and Domestic Relations Court** P.O. Box 1617 Wise, VA 24293	Judge Marcus F. McClung Judge Kimberly M. Jenkins Judge Elizabeth S. Wills	Lee: 1st Tuesday each month at 8:30 a.m. Scott: 2nd Wednesday each Month at 1:00 p.m. Wise: 4th Monday each month at 1:00 p.m.	Lavonna Price Lavonnaprice.ajc@gmail.com Phone: (276) 708-6367
Hanover Juvenile Recovery Court **Hanover Juvenile & Domestic Relations District Court** 7530 County Complex Road Hanover, VA 23069	Judge Frank G. Uvanni	1st and 3rd Wednesdays at 3:00 p.m.	Cynthia Kirschner cmkirschner@hanovercounty.gov Phone: (804) 365-6301
Rappahannock Regional Juvenile Recovery Court **Fredericksburg Juvenile & Domestic Relations District Court** 618 Kenmore Avenue Fredericksburg, VA 22401	Judge Joseph A. Vance, IV	Thursdays at 3:45 p.m.	Jason Chase chasej@rrj.state.va.us Phone:

4 Family Recovery Courts			
Locality	Presiding Judge	Court Schedule	Contact
Albemarle County, Charlottesville Family Recovery Courts **Charlottesville Juvenile & Domestic Relations District Court** 411 E. High Street Charlottesville, VA 22902	Judge Areshni Pather	2nd and 4th Tuesdays at 2:30 p.m.	Brittney Rekrut brittney.rekrut@regionten.org Phone: (434) 906-4730
Bedford County Family Recovery Courts **Bedford Juvenile &Domestic Relations District Court** 122 East Main Street Suite 101 Bedford, VA, 24523	Judge Stephanie M. Ayers	Wednesdays at 2:00 p.m.	Susan Lynch slynch@bedfordcountyva.gov Phone: (540) 587-0733 Ext. 3304
Franklin County Family Recovery Court **Franklin County Juvenile and Domestic Relations District Court** 275 S. Main Street Courthouse, Suite 3 Rocky Mount, VA 24151	Judge Deanna P. Stone	Thursdays at 4:00 p.m.	Quincy Gravely qgravely@piedmontcsb.org Phone: (540) 483-5044
Giles County Family Recovery Court **Giles Juvenile and Domestic Relations District Court** 120 North Main Street Suite 1 Pearisburg, VA 24134-1625	Judge Judge Ryan Hamrick	1st and 3rd Wednesdays at 3:00 p.m.	Melanie Adkins madkins@nrvcs.org Phone: (540) 961-8438

1 Non-Operational Recovery Court			
Locality	Presiding Judge	Court Schedule	Contact
Southside Treatment and Recovery Recovery Court (STAR) (Counties of Greensville, Brunswick, Sussex & City of Emporia) **Greensville Circuit Court** 337 South Main Street Emporia, VA 23847-0631	Judge Carson E. Saunders, Jr.	Mondays at 2:00 p.m.	Clara J. Faison faisonc@southsideccjb.com Phone: (434) 348-4269

VIRGINIA BEACH CIRCUIT COURT
MOTION FOR WEBEX HEARING

Pursuant to Virginia Supreme Court Rule 1:27 and Virginia Code Section 19.2-3.1, it is *SOLELY WITHIN THE DISCRETION OF THE COURT WHETHER TO CONDUCT ANY HEARING USING AN ELECTRONIC AUDIO AND VIDEO COMMUNICATION SYSTEM TO PROVIDE FOR THE APPEARANCE OF ANY PARTIES AND WITNESSES.*

It is the responsibility of the requesting party to ensure that those appearing remotely have the ability to connect in the manner requested.

Case No. ______________________________ Current Court Date: ______________________________

______________________________ V. ______________________________

Plaintiff/ Petitioner Defendant/Respondent

Persons requested to appear remotely:

☐ **Party** ☐ **Lay Witness** ☐ **Expert Witness** **Name** ____________________ **Email** ____________________ **Phone** ____________________ **Address** ____________________ ____________________	☐ **Party** ☐ **Lay Witness** ☐ **Expert Witness** **Name** ____________________ **Email** ____________________ **Phone** ____________________ **Address** ____________________ ____________________

Reason for remote hearing request:

____

____

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Description of hearing, including type of motion/trial:

____

____

____

Estimated time of hearing: ____________________

Are the parties appearing remotely expected to testify: ☐ **Yes** ☐ **No**

Have all parties consented to this remote hearing request: ☐ **Yes** ☐ **No**

Rev. 7/15/2025

Does any party have an objection to the remote hearing: ☐ **Yes** ☐ **No**

Remote evidence to be presented: ☐ **None** ☐ **Documents** ☐ **Pictures** ☐ **Other**

Interpreter*/ Other Special Needs: ☐ **None** ☐ **Yes** – Explain ____________________

CERTIFICATE OF SERVICE

I certify that on ______________________, 20____, I (check one) ☐ mailed ☐ emailed ☐ faxed a copy of this motion to:

Opposing Party Name: ____________________________

Opposing Attorney Name (if any): ____________________________

Address: ____________________________

Email address: ____________________________

Fax Number: ____________________________

Signature of requesting party: ____________________________ **Date:** ________________

Printed Name of Party or Attorney: ____________________________

Law Firm Name (if applicable): ____________________________

Mailing Address: ____________________________

Phone Number: ____________________________

Email Address: ____________________________

Bar Number (if applicable): ____________________________

Any objection to this request may be deemed waived if not filed in writing within 5 days after service of this motion.

COURT USE ONLY

ORDER

☐ Granted ☐ Denied

☐ Other ____________________________

Entered: ____________________________ Judge: ____________________________

RULES OF SUPREME COURT OF VIRGINIA
PART ONE
RULES APPLICABLE TO ALL PROCEEDINGS

Rule 1:27. Testimony by Audiovisual Means in Circuit Court Civil Cases.

(a) *Implementation of Statutory Authority; Specification of Conditions.* — In accordance with Code § 17.1-513.2, live (real-time) testimony by any party or witness in a civil action or proceeding in circuit court by any means of audiovisual technology that complies with Code § 19.2-3.1(B) is permitted upon order of the court in accord with the provisions of subparts (b) through (f) of this Rule. Use of remote testimony in Sexually Violent Predator Act cases under Chapter 9 of Title 37.2 of the Code – and other express statutory authorizations or mandates for use of such procedures – are not affected by this Rule 1:27.

(b) *Order for Audiovisual Testimony; Contents.* — The court may grant permission for the testimony of any witness to be presented using audiovisual means under subpart (d) of this Rule by entering an order implementing the oath and consent provisions of subpart (e) of this Rule and the responsibility/cost provisions of subpart (f). The court may consider, among other factors,

(1) the age of the witness, and whether the witness has any disabilities or special needs that would affect the taking of testimony;

(2) whether translation of the questions or answers may be required;

(3) procedures available for the handling of exhibits;

(4) mechanisms for making and ruling upon objections – both within and outside the hearing of the remote witness;

(5) procedures for sidebar conferences between counsel and the court;

(6) mechanisms for the witness to view counsel, the parties, the jury, and the judge;

(7) practical issues, such as the size, number and location of video display screens at the remote location and in the courtroom or facility where the trial or hearing will take place;

(8) whether there should be any requirements for camera angle or point of view, any picture-in-picture requirements, and/or camera movement;

(9) how the statutorily required encryption of signal transmission will be attained;

(10) creation of a record of such testimony; and

(11) any necessary limitations or conditions upon persons who may be present in the location where the witness testifies, and whether those persons must be identified prior to the testimony of the witness.

(c) *Leave of Court.* — The court should enter an order permitting live testimony by means of any audiovisual technology under subpart (b) of this Rule as follows:

(1) *Consent of All Parties.* Upon consent of all parties for live testimony of any party, lay witness, or expert witness by means of any audiovisual technology; or,

(2) *Distant and Other Specific Witnesses.* If (i) a lay witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the Commonwealth, unless it appears that the absence of the witness was procured by the party offering the testimony, or if (ii) the witness is a superintendent of a hospital for the insane more than 30 miles from the place of trial, or is a physician, surgeon, dentist, chiropractor, registered nurse, physician's assistant or nurse practitioner who, in the regular course of his or her profession, treated or examined any party to the proceeding, or is in any public office or service the duties of which prevent his attending court; provided, however, that if the witness is subject to the jurisdiction of the court, the court may, upon a showing of good cause or sua sponte, order the witness to attend and to testify ore tenus.

(d) *Motion for Leave of Court to Present Testimony by Audiovisual Means.* — Where neither subparts (c)(1) or (c)(2) of this Rule apply, a party may move for leave to present the live testimony of one or more witnesses by audiovisual means. Unless the court in its discretion allows a motion on shorter notice, such motion must be filed at least 60 days in advance of the trial or hearing. Any party opposing such motion must file any objections in writing 10 days after service of such motion, unless a different schedule is set by the court. In the exercise of its discretion on such motion, the court should consider whether the ability to evaluate the credibility and demeanor of the person who would testify remotely is critical to the outcome of the proceeding and whether the non-moving party has demonstrated that face-to-face cross- examination is necessary because the issue(s) the witness may testify about may be determinative of the outcome. The court may enter an order under subpart (b) of this Rule permitting presentation of live testimony by a witness by audiovisual means as follows:

(1) *Non-Party Lay Witnesses.* Upon a finding that good cause exists for accepting testimony by audiovisual means for each witness who will so testify.

(2) *Party and Expert Witnesses.* Upon a finding that – with due regard for the importance of presenting testimony through witnesses physically present in the courtroom – exceptional circumstances warrant receiving the testimony of a party or expert witness by audiovisual means in the interests of justice.

(e) *Witness Oath; Consent of Nonresidents.* —

(1) *Remote Testimony Given in Virginia.* Any witness testifying from a remote location within Virginia must be placed under oath in the same fashion as any live witness present at the trial or hearing.

(2) *Remote Testimony Given Outside the Commonwealth.* Any witness testifying from a remote location outside the Commonwealth must sign before testifying a written consent:

(A) to provide testimony under an oath administered by court personnel located in the Virginia court or facility;

(B) expressly agreeing to be subject to the penalties of perjury under Virginia law and subject to court orders by the Virginia judge regarding the testimony, such as contempt of court powers, adjournment or rescheduling of testimony, and other orders relating to the testimony entered as though the witness was physically present in the Virginia courtroom;

(C) consenting to personal jurisdiction of the Virginia courts for enforcement of the perjury laws and orders relating to the testimony of the witness entered by the judge presiding over the trial.

The consent of each such witness must be signed before a notary or other person authorized to take oaths or sworn acknowledgments in the jurisdiction where the witness is located, and must be filed – on paper or in court-approved electronic form – among the papers of the Virginia action or proceeding before such testimony may be introduced.

(f) *Provision of Necessary Equipment; Allocation of Costs.* — Unless the courtroom or facility where the testimony will be presented has equipment meeting the standards of Code § 19.2-3.1(B) and complying with the court's order under subpart (b) of this Rule, the party offering testimony of a witness by audiovisual means is responsible for providing the necessary equipment, and all necessary logistical arrangements, at no cost to the court. All costs and arrangements for the location where the witness will give testimony are also the responsibility of the party offering the testimony. Failure to ensure that the courtroom or facility where the trial or hearing is to be held – and the location where the witness would testify – are properly set up for such testimony will preclude the offering of testimony by audiovisual means, and will not constitute grounds for a continuance sought by the party attempting to offer such testimony. Remedies and procedures to address the failure of the arrangements to function properly for some other reason, such as a power outage affecting the Virginia courtroom, are within the sound discretion of the presiding judge.

Adopted and promulgated by Order dated January 9, 2020; effective March 15, 2020.

CONTEMPT

Criminal & Civil Show Causes~ The Law in Virginia

Virginia Beach Bar Association ~ Bench Bar '25

The Hon. Jennifer Shupert

Cynthia Chaing, Esq.

CONTEMPT

What It Is, What It Is Not

Contempt in General

Definition

- Contempt is an act in disrespect of the court or its processes, or that obstructs the administration of justice, or tends to bring the court into disrepute.
- *Singleton v. Commonwealth*, 52 Va. App. 665 (2008).

Inherent power

- The power to punish for contempt is inherent in, and as ancient as, courts themselves. It is essential to the proper administration of the law, to enable courts to enforce their orders, judgments and decrees, and to preserve the confidence and respect of the people without which the rights of the people cannot be maintained and enforced.
- *Carter v. Commonwealth*, 2 Va. App. 392 (1986).

Direct v. Indirect

Describes the *location* where the behavior that is alleged to be contemptuous occurred

Direct Contempt

- Contempt that occurs *in* the presence of the Judge.
- The Judge is his/her own best witness of what occurred. (*Scialdone, US. V. Marshall)*

Indirect contempt

- Contempt that takes place *outside* the presence of the Court.
- One or more essential elements of the contempt are not directly observed.

Summary v. Plenary

Describes the *legal process* required before finding the behavior contemptuous

Summary Contempt

- When a judge determines contempt *without* process.
- Is ONLY allowed when the contempt is DIRECT.
- Is *limited* to 18.2-456 grounds

Plenary Contempt

- When a judge determines contempt *after* notice, right to counsel, evidence presented.
- Can be used for any type of contempt

Criminal v. Civil

Describes the *nature of the relief sought*
after finding contemptuous behavior

Criminal Contempt

- Purpose is *punitive*
- The outcome is designed to preserve and vindicate the power and dignity of the court.

Civil Contempt

- Purpose is *curative (or remedial)*
- The outcome is designed to enforce the orders of the court and make the injured party whole.

Criminal Contempt Specifics

- Prosecuted by the Commonwealth Attorney *(generally - see slide 16 for exceptions)*
- Elements:

  (1) <u>Existence of a Court Order, or Allegation of Misconduct towards the Court</u>. The Court order must be in definite terms as to the duties imposed or the command expressed. (*Micheals v. CW, 32 Va. App. 601 (2000)*).

  (2) <u>Act(s) by defendant</u> that violate a court order OR are contemptuous.

  (3) The act(s) were <u>Intentional or Willful.</u>
- Buden Of Proof: Beyond a Reasonable Doubt

Criminal Contempt Specifics, Cont'd

- Sanctions for *Summary* Contempt:
  - Maximum of $250 fine
  - Maximum of 10 days in jail
- Sanctions for Contempt after *Plenary* Proceeding:
  - Some statutes specify limits. Where no limits are specified:
  - Up to $500 fine and/or up to 6 months in jail is considered "petty" contempt and no right to a jury trial attaches.
  - OVER $500 fine and/or OVER 6 months in jail is considered more "serious" contempt and entitles a defendant to a jury trial.

Civil Contempt Specifics

- Prosecuted by the Complainant (or their counsel)
- Elements:

  (1) Existence of Court Order. "The order must be in definite terms as to the duties...imposed...and the command must be expressed rather than implied." *(Winn)*.

  (2) Respondent's Actual Knowledge of Order. (*Kidd v. Virginia Safe Deposit & Trust, 113 Va. 612 (1912)*).

  (3) Respondent's Violation of Order. **Willfulness is not an element.** The absence of specific intent to violate an order does not relieve the respondent of the consequences of civil contempt. (*Leisge*). However, *voluntary* action is required (*Street*).
- Burden Of Proof: Clear and Convincing Evidence

Civil Contempt Specifics, Cont'd

- Sanctions for Civil Contempt of *Affirmative Duties*:
  - Coercive:
    - Jail sentence of any period (up to 12 mo) can be imposed so long as respondent can do something to end the jail sentence.
    - The contemnor must be given an opportunity to purge the contempt: "he carries the keys of his prison in his own pocket." *In re Nevitt*, 117. F. 448, 461 (8th Cir. 1902).
    - NOTE: Suspension of a fine is considered a criminal penalty, so is not permitted in civil contempt cases (*International Union*).
  - Compensatory:
    - Sanctions to compensate a complainant for losses sustained due to respondent's contemptuous behavior (and proven by complainant).
    - The Court may impose sanctions to compensate the aggrieved party (*Rainey*), even if the Court does not specifically find contempt (*Sullivan*).

Civil Contempt Specifics, Cont'd

- Sanctions for Civil Contempt for ***Prohibited Actions***:
  - Coercive:
    - Jail sentence of any period is NOT authorized.
  - Compensatory:
    - Sanctions only allowed to compensate a complainant for losses sustained due to respondent's contemptuous behavior (and proven by complainant).
    - The Court may impose sanctions to compensate the aggrieved party (*Rainey*), even if the Court does not specifically find contempt (*Sullivan*).
    - NOTE: Suspension of a fine is considered a criminal penalty, so is not permitted in civil contempt cases (*International Union*).

- The same act or omission may constitute both civil and criminal contempt. *Powell v. Ward*, 15 Va. App. 553 (1993).

- The court should clarify at the outset of the hearing whether the proceedings are criminal or civil. Failure to do so could be reversable error on appeal.

Relevant OES Forms for Plenary Contempt Proceedings

Criminal Forms

- DC-635 Motion for Show Cause Summons or Capias
- DC-360 Show Cause Summons
- DC-361 Capias: Attachment of the Body

Civil Forms

- DC-635 Motion for Show Cause Summons or Capias
- DC-481X Show Cause Summons

Who "Prosecutes" The Contempt Charge?

Criminal Contempt

- *Direct Criminal Contempt* is prosecuted by the judge, in a summary proceeding.
- *Indirect Criminal Contempt* is prosecuted by:
  - The Commonwealth Attorney

  OR

  - The complainant, or counsel hired by the complainant, if the Commonwealth Attorney is not involved and the Court consents. (*Cantrell*)

Civil Contempt

- Civil Contempt is prosecuted by the complainant.
- Attorneys can be retained by complainants to handle the "prosecution."

Can an attorney represent a client to prosecute a criminal contempt AND a civil matter?

- NO
- *Cantrell v. Commonwealth*
  - It is a conflict of interest for a "private prosecutor" to have a civil interest in the case where they are bound to impartially apply criminal law.
- Rule of Professional Responsibility 3.4:

A lawyer shall not:

(i) Present or threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

Defenses

- Inability to pay. *Street v. Street*, 24 Va.App. 14 (1997).
- Indefinite terms. *Winn v. Winn*, 218 Va. 8 (1977).
  - However: Oral order might suffice. *Aratoon v. Roberts*, 2015 Va App LEXIS 23 (Jan. 27, 2015)(Unpublished).
- Third parties. *Powell v. Ward*, 15 Va. App 553 (1992), *Glanz v. Mendelson*, 34 Va. App 141 (2000).
- Void Order. *Leisge v. Leisge*, 224 Va. 303 (1982).
- Res Judicata. *Lee v. Spooden*, 290 Va. 235 (2015).

Attorney Fees

- Can be ordered in JDR pursuant to statute. *Virginia Code Section 16.1-278.19.*
- Can be ordered even if the underlying order does not expressly address/allow attorney fees to be awarded in the event of a violation. (*Carswell v. Masterson*, 224 Va. 329 (1982).
- Can be ordered even when there is no specific finding of contempt. (Albert v. Albert, 38 Va. App.284 (2002) and *Sullivan v. Sullivan*, 33 Va. App. 743 (2000).
- When a PSA has been incorporated into a divorce decree, the Court's authority to award attorney fees is limited to the terms within the PSA. *Virginia Code Section 20-109(C); see also Rutledge v. Rutledge*, 45 Va. App. 56 (2005).
  - However: Court may decline to award attorney fees when both parties default. *Lyon v. Lyon*, Record No. 0304-21-2 (Dec. 7, 2021).

Appeals

Criminal Contempt

- Any person convicted of criminal contempt by a District Court has the right to appeal the decision to Circuit Court, then to COA.

Civil Contempt

- Any person convicted of civil contempt by a District Court has the right to appeal the decision to Circuit Court, then to COA.
- When a person is found *not* guilty, or the charge is dismissed with prejudice, the parties do NOT have the right to appeal. *Jenkins v. Mehra*, 281 Va. 37, (2011).

Examples:

Cases Involving Contempt

The Case of the Document Debacle

- In the midst of a criminal trial involving a Yahoo internet chat room, Attorney Specter offered an exhibit to the Judge that was purported to be the Yahoo rules for use of the chat room. The copy included a copyright date of 2006, but the crime was alleged to have occurred in 2005. The judge rejected the exhibit on that basis - only the 2005 rules were applicable in this case.
- A short time later, Attorney Specter submitted another exhibit purported to be the Yahoo rules from 2005. The Court noted that this exhibit looked exactly like the prior exhibit except without the copyright date. When the court asked about it's authenticity, Attorney Specter said his client's father had printed it out not long after his son's arrest in 2005.
- The Judge was not convinced. She paused the proceedings, called in Attorney Specter's secretary, Donna, his law partner, Attorney Pearson, and his intern Mike. She asked each of them questions under oath, sent them back to the office to obtain additional evidence for her to review, and then asked more questions. She held Attorney Specter and Attorney Pearson in summary contempt and sentenced them to jail time.

What kind of contempt?

- Direct or Indirect?
- Summary or Plenary?
- Criminal or Civil?

What kind of Contempt?

- Indirect
- Plenary
- Criminal

Direct contempt occurs when the contemptible conduct is committed in the presence of the court, when <u>all of the essential elements</u> of the offense are personally observed by the judge.

NOTE: Circumstances will undoubtedly arise when a trial court observes the essential elements of the contemptible conduct, but nonetheless needs to ask questions to clarify some detail.

~ *Scialdone v. Commonwealth, 279 Va. 422 (2010)*

The Case of the Sore Loser

- The day following the trial of a criminal matter, Attorney Gambini had his client deliver a letter to the Judge during a recess.
- The letter referred to the Judge as "Your Honor" throughout.
- The letter requested that the Judge agree to recuse himself, stating in part:
  - "I had believed that Your Honor was big enough and broad enough to overcome the personal prejudice against the defendant, but I was mistaken."
  - "I do not want to have to take the steps necessary to enforce the foregoing request, the need for which, in my mind, as a lawyer, and an honest man, is apparent."
  - "My hopes in this respect having been rudely shattered, I am now appealing purely to Your Honor's dignity as a Judge and sense of fairness as a man to do as in this letter requested, and please indicate to me at the earliest moment Your Honor's pleasure with respect to the matters herein presented, so that further steps may be avoided."

The Case of the Sore Loser, cont'd

- Eleven days after receiving the letter, the Court issued a show cause summons and both Attorney Gambini and defendant were brought before the Court.
- During the "hearing" the judge repeatedly stated that the defendants needed to state any defense they had at that time, as he was not going to postpone the matter because the facts were within the personal knowledge of the court.
- The judge held them both in summary contempt.

What kind of contempt?

- Direct or Indirect?
- Summary or Plenary?
- Criminal or Civil?

What kind of contempt?

- Indirect
- Plenary
- Criminal

The US Supreme Court said: "Due process of law…in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. We think this includes the assistance of counsel, if requested, and the right to call witnesses to give testimony..."

~ *Cooke v. U.S., 267 U.S. 517 (1925)*

The Case of the Late Lawyer

- Attorney Galloway works for a small firm that maintains some control over her calendar, booking her at multiple courts in one day, which often results in her appearing late for hearings.
- Despite her constant & sincere apologies, a Judge holds her in contempt one day because she did not appear by the time the matter was called.

What kind of contempt?

- Direct or Indirect?
- Summary or Plenary?
- Criminal or Civil?

What contempt could Galloway be found guilty of?

- ✓ Direct OR indirect
- ✓ Summary OR plenary
- ✓ Criminal OR civil

"The fact that appellant contacted a fellow officer to inform the court that he would be late, as well as the fact that he was late by only nine minutes, *mitigate* the gravity of the offense but do not alter the fundamental problem: appellant was late without a valid excuse after repeated warnings to appear on time."

~ Abdo v. Commonwealth, 64 Va. App. 486 (2015)

Failures to Appear - Multiple Options

The Court may have two different remedies when a defendant fails to appear before the Court. Instead of issuing a Show Cause alleging contempt under 18.2-456, the defendant may be charged under Va. Code Section 19.2-128 if the FTA is in relation to a misdemeanor or felony charge.

Per Va. Code Section 19.2-129, the Court can only choose one of these remedies - not both.

- Virginia Code Section 19.2-128:
  - (B) Any person (I) charged with a felony offense or (ii) convicted of a felony offense and execution of sentence is suspended...who willfully fails to appear before any court as required shall be guilty of a Class 6 Felony.
  - (C) Any person (I) charged with a misdemeanor offense or (ii) convicted of a misdemeanor offense and execution of sentence is suspended...who willfully fails to appear before any court as required shall be guilty of a Class 1 misdemeanor.

The Case of the Sneaky Parent

- Lennie is the father of two children who were the subject of a custody dispute. The Courthouse where the custody trial is taking place has a posted order that no cell phones are allowed inside the courthouse unless authorized.
- During the trial, the courtroom deputy notices Lennie has a cell phone on his lap. The deputy confiscates the phone. Lennie says the phone is his father's, who is out in the waiting area. The deputy sees that the phone is recording.
- At the conclusion of the trial, the deputy alerts the judge of the situation.
- Lennie's attorney, Jack McCoy, denies any knowledge of his client having the phone.

The Case of the Sneaky Parent

- What type of contempt by Lennie:
  - Direct or Indirect?
  - Summary or Plenary?
  - Criminal or civil?
- What about Lennie’s father?
  - What if Lennie’s father was authorized to have the phone because he was a government employee?
- What about attorney McCoy?

The Case of the Sneaky Parent

- What type of contempt by Lennie:
    - Indirect (not all of the behavior occurred inside the courtroom)
    - Plenary (evidence needed to be collected to determine facts)
    - Criminal (under 18.2-456)
- What about Lennie's father?
    - Indirect, Plenary, Criminal
- What about attorney McCoy?
    - If had knowledge...Indirect or Direct (if determined in courtroom)