

SOME EXPECTATIONS WHEN PRACTICING IN NORFOLK CIRCUIT COURT

The Honorable David W. Lannetti, Judge, Norfolk Circuit Court
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Jim Harvey mentioned in a prior President's Message that one advantage of NPBA membership is interaction with local judges, in part to "better understand their expectations at the next hearing or trial." This article highlights many important Norfolk Circuit Court procedures-some of which are outlined in the court's local rules (the "Local Rules") and others that are "internal" procedures and policies-to assist practitioners in better understanding courthouse practice. This is the first of what is envisioned to be a series of periodic articles on Norfolk Circuit Court practice, and we invite you to recommend possible future topics to Law Clerk Micaylee A. Noreen, Esquire, at mnoreen@circuittva.us.

Threshold Considerations

All attorneys should be familiar and comply with the Local Rules (available at <https://www.norfolkci.rcuirtcourt.us/legal-professionals/local-rules>). They outline expectations of the court, explain certain local procedures, and are divided into four sections-Civil Plan, Criminal Plan and Continuance Policy, Divorce Plan, and Civil Docketing Procedure. Adherence to the Local Rules contributes to courthouse efficiency, facilitates effective navigation of rule-dependent administrative matters, and hopefully results in a more pleasant experience overall.

Attorneys are expected to act with professionalism, which includes civility, competence, and integrity. Being prepared and punctual is also an essential facet of professionalism. Arriving to court early allows time to address unexpected challenges and provides an opportunity for counsel to explore possible resolution options (including recommendations regarding misdemeanor appeals) *before* court starts. Open communication between attorneys prior to arriving at the courthouse is strongly encouraged, as face-to-face discussions foster conciliation and judicial efficiency. By resolving less contentious matters, the court has greater flexibility to schedule and promptly hear more material issues.

Civil Matters

Civil matters are placed on the "open docket" unless pre-assigned to a specific

judge. Open-docket matters are assigned to a judge the afternoon before they are to be heard, and there is no methodology-save judicial efficiency-controlling assignment. Fridays are reserved for unassigned motions that can be heard within thirty minutes. Each judge hears either civil motions or criminal sentencing/revocations on alternating Fridays.

Certain civil matters are pre-assigned to a judge. These include cases that allege professional malpractice, products liability, or defamation; are filed under the Federal Employee's Liability Act or Jones Act; require more than two days of trial; or are requested by counsel to be assigned based on expected pre-trial matters. For these cases, attorneys will be notified of the assigned judge and corresponding law clerk, and counsel are directed to contact the court's Judicial Docket Administrator, Wendy Spivey, for all post-assignment scheduling. The assignment letter also directs counsel to schedule an initial pre-trial conference with Ms. Spivey, at which time attorneys are normally required to appear in person to complete a scheduling order. For unassigned cases other than divorces and child support enforcement cases, counsel are required to submit a fully endorsed scheduling order within 30 days after a responsive pleading to the Complaint is filed.

Motions in assigned cases are heard Monday through Thursday at 9:00 a.m. ii no more than thirty minutes are required or at 2:00 p.m. for longer motions hearings. Hearings on motions in unassigned cases that have an accompanying brief should be scheduled in advance with Ms. Spivey so they can be assigned to a judge. This provides the assigned judge time to become familiar with the issues and applicable law. Such assignments normally extend only until resolution of the motion, with the case thereafter returning to the open docket.

Filing a civil motion does not automatically result in a scheduled hearing. A separate Notice of Hearing must be filed after conferring with opposing counsel (or a *prose* party) and the Clerk's Office (or, if assigned, with Ms. Spivey). For assigned cases it is good practice to provide-either by mail or email-a courtesy copy of the

pleading associated with the motion to the assigned judge or his/her law clerk, but this does *not* preclude the requirement to also file the pleading with the Clerk's Office. Motions should be filed at least seven days prior to the noticed hearing, and the filing of any briefs must comply with Virginia Supreme Court Rule 4:15(Cl).

One judge is assigned as the "duty judge" Monday through Thursday on a weekly basis. There is no assigned duty judge on Fridays. Among other things, the duty judge may hear certain unnoticed matters, such as guardian *ad litem* appointments, default judgments, and temporary detention orders. Attorneys also may request the duty judge hear other matters requiring immediate attention. The duty judge is normally available to provide rulings during depositions, although this is not encouraged. Attorneys should call either the Clerk's Office or the Judges' Office to identify the duty judge and then contact the judge's assistant.

Civil continuances are granted only if good cause is shown. For unassigned cases, requests for continuances are usually heard via a telephone conference with one of the two civil continuance judges-currently Judges Martin and Lannetti-without the need for a written motion: attorneys can schedule the conference call by contacting the judge's assistant. For assigned cases, requests for continuances must be heard by the assigned judge. Granting a continuance is within the sound discretion of the judge, and continuances normally will not be granted for any reason within the control of counsel or that was reasonably foreseeable. The Local Rules identify twelve reasons that are *not* considered good cause for a civil continuance.

Criminal Matters

Upon retention, counsel should file a Notice of Representation with the Clerk's Office. All criminal cases default to the "open docket" unless trial is expected to take more than two days. Jury trials, bench trials, guilty pleas, probation violations, bond hearings, and motions are docketed Mondays through Thursdays, and pleas and motions can be heard within a few days ii desired (considering logistical issues such as

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service of witness subpoenas). As noted above, each judge hears criminal sentencing/revocations on alternating Fridays. When a jury trial is demanded, attorneys must schedule the trial date with the Clerk's Office or the in-court clerk, as there is a limit regarding how many jury trials can be docketed on a given day. If a criminal trial is expected to take more than two days, the attorneys should also contact Ms. Spivey to verify availability of a judge.

Immediately following arrest and appointment of counsel, the Clerk's Office notifies counsel of the appointment. For probation violations, a copy of the associated Major Violation Report is forwarded to the attorney. A bond hearing may be requested by calling the docket clerk in the Clerk's Office, who usually is able to docket a hearing as soon as 9:30 a.m. the following weekday (except Friday) if the

request is made before 3:00 p.m., subject to the availability of a Commonwealth's Attorney. Motions to suppress must be filed at least seven days and heard at least three days before the scheduled trial date. See Va. Code 19.2-266.2(8).

Criminal continuances are granted only upon good cause shown and should be requested as soon as the attorneys become aware of circumstances that necessitate a continuance. Short-notice requests for continuances normally must be presented to one of the two criminal continuance judges—currently Judges Hall and Miglioizzi—and can be requested by contacting the judge's assistant. If neither criminal continuance judge is available, the duty judge may be available to consider a continuance request. A list of acceptable and unacceptable reasons for criminal continuances is provided in the Local Rules.

It is often difficult to navigate the ins and outs of any courthouse. Communication with court staff and opposing counsel—and familiarity with the Local Rules—will contribute to a positive and successful litigation experience. We hope these tips are helpful and provide clarity regarding some of the more nuanced issues that attorneys may face trying cases in Norfolk Circuit Court.

The views advanced in this Article represent commentary "concerning the law, the legal system, [and] the administration of justice" as authorized by Virginia Canon of Judicial Conduct 4(B) (permitting judges to speak, write, lecture, teach, and otherwise participate in extrajudicial efforts to improve the legal system). These views, therefore, should not be mistaken for the official views of the Norfolk Circuit Court or the opinion of a circuit court judge in the context of any specific case.