

CIRCUIT COURT MOTIONS DOCKET PROCEDURES

INTRODUCTION:

Information about motions procedures in the Fairfax County Circuit Court is presented below in a question-and-answer format that addresses the most frequently asked questions. A flow chart depicting the motions procedures can be found by clicking on www.fairfaxcounty.gov/courts/circuit/ then Friday Motions Day Information and forms. The Circuit Court has two forms for this procedure:

1. a yellow-colored Friday Motions Day - Praecipe/Notice form
2. a green-colored Friday Motions Day – Response/Opposition to Motion form

Both forms have instructions on the reverse side.

1. WHAT MOTIONS CAN BE HEARD ON A FRIDAY MOTIONS DAY?

The only motions that will be heard on a Friday Motions Day are those that can be argued by both sides in a total of 30 minutes or less.

2. WHAT IF A MOTION WILL TAKE MORE THAN THIRTY MINUTES TO ARGUE?

EVIDENTIARY MOTIONS: Any evidentiary motion requiring more than thirty minutes must be scheduled for a date certain other than a Friday. If any counsels of record believe that a hearing on a motion will take more than 30 minutes, then all counsel should appear before the Calendar Control Judge in Judges' Chambers on the 5th floor of the Courthouse between 8:30 and 9:30 a.m. to request a hearing date for a day other than a Friday.

NON-EVIDENTIARY MOTIONS: All non-evidentiary motions scheduled for oral argument must be set for a Friday Motions Docket. If counsel involved in a non-evidentiary motion agree due to the complexity of the issues or the number of parties that the hearing of the non-evidentiary motion will take more than 30 minutes, they should go to the Calendar Control Judge or write a single letter to the assigned Judge that explains why extended time is needed and provides a combined time estimate. Another option is for counsel to request a date certain for argument exceeding 30 minutes from the Judge assigned to the case. Counsel may also use the Court's Briefing Procedures outlined in Paragraph 15 below.

3. AT WHAT TIMES ARE FRIDAY MOTIONS HEARD?

Depending on the motion, Friday motions can be scheduled for 9:00 a.m., 10:00 a.m., or 11:30 a.m.

- 9:00 a.m. Docket

9:00 a.m. Without a Judge	uncontested non-evidentiary motions and consent orders
9:00 a.m. With a Judge	uncontested evidentiary motions and matters that require immediate attention
- 10:00 a.m. Law Docket

all contested evidentiary and non-evidentiary motions in Law cases and Fiduciary matters that can be heard in 30 minutes or less
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- 11:30 a.m. Domestic Docket

all contested Domestic cases that can be heard in 30 minutes or less
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4. WHAT HAPPENS IF A CASE FROM THE 9:00 UNCONTESTED DOCKET TURNS OUT TO BE CONTESTED?

If all counsel are available, then the motion will be heard the same day on the 10:00 a.m. Law Docket or the 11:30 a.m. Domestic Docket, whichever is applicable. If all counsel are not available, the motion will be continued to another Friday on the 10:00 a.m. Law Docket or 11:30 a.m. Domestic Docket.

5. WHAT MUST A PARTY DO BEFORE FILING ANY MOTION?

Counsel filing any motion is required to certify that a good faith attempt has been made to resolve the motion with all affected parties. *Pro se* parties (those parties who are representing themselves before the Court) are treated as "counsel" for themselves. In addition to making a good faith effort to resolve the motion, counsel is required to contact opposing counsel to select a mutually agreeable date for the hearing on the motion. The yellow Friday Motions Day - Praecipe/Notice form and the green Friday Motions Day - Response/Opposition to Motion form both require certifications that such good faith efforts have been made by any counsel signing such forms.

6. TWO-WEEK MOTIONS

A. WHAT MOTIONS REQUIRE TWO-WEEKS NOTICE?

All motions for:

- summary judgment;
- demurrers;
- pleas in bar;
- discovery disputes; and
- any other motions for which counsel for either party wishes to file a memorandum in support of or in opposition to the motion.

B. WHAT MUST THE MOVING PARTY FILE FOR A TWO-WEEK MOTION?

The yellow Friday Motions Day - Praecepte/Notice form, the motion itself, and a memorandum of points and authorities.

C. WHERE AND WHEN MUST THE MOVING PARTY FILE A TWO-WEEK MOTION?

The Clerk's Office on the 3rd floor of the Judicial Center by 4:00 p.m. at least two Fridays prior to the date of the scheduled hearing. Copies must be served on all other affected parties or their counsel of record in a manner sufficient to provide actual notice (receipt of the pleadings) by the same 4:00 p.m. deadline. See Rule 4:15(e) of the Rules of the Supreme Court of Virginia.

D. WHAT ARE THE REQUIREMENTS OF THE MEMORANDUM OF POINTS AND AUTHORITIES FOR A TWO-WEEK MOTION?

A memorandum of points and authorities must accompany the motion. It cannot exceed five pages, double-spaced, in twelve-point type (This is twelve-point type).

E. WHAT MUST THE RESPONDING PARTY FILE WHEN RESPONDING TO A TWO-WEEK MOTION?

The green Friday Motions Day – Response/Opposition to Motion form and a memorandum of points and authorities, which cannot exceed five pages, double-spaced, in twelve-point type.

F. WHERE AND WHEN MUST THE RESPONDING PARTY FILE?

The Clerk's Office by 4:00 p.m. on the Friday prior to the date of the scheduled hearing. Copies must be served on all other affected parties or their counsel of record in a manner sufficient to provide actual notice (receipt of the pleadings) by the same 4:00 p.m. deadline. See Rule 4:15(e) of the Rules of the Supreme Court of Virginia.

G. WHAT IF EITHER PARTY DESIRES TO FILE A MEMORANDUM LONGER THAN FIVE PAGES?

Permission must be obtained from the Calendar Control Judge. The Court's Briefing Procedure for Motions is set forth in Paragraph 15 below.

7. WHAT IF NEITHER PARTY WISHES TO FILE A MEMORANDUM OF POINTS AND AUTHORITIES AND THE MOTION DOES NOT OTHERWISE CONSTITUTE A TWO-WEEK MOTION?

Any such motion that does not qualify as a Two-Week Motion will be considered a One-Week Motion.

8. WHAT IS THE LATEST A TWO-WEEK MOTION MAY BE CONTINUED OR REMOVED FROM A FRIDAY MOTIONS DAY DOCKET?

Prior to 4:00 p.m. on the Friday preceding the hearing date or with leave of the Judge assigned to hear the motion.

9. ONE-WEEK MOTIONS

A. WHAT MUST THE MOVING PARTY FILE FOR A ONE-WEEK MOTION?

The yellow Friday Motions Day - Praecepte/Notice form and the motion itself. In fact, the moving party cannot file anything beyond these documents when filing a One-Week Motion.

B. WHERE AND WHEN MUST THE MOVING PARTY FILE A ONE-WEEK MOTION?

The Clerk's Office on the 3rd floor of the Judicial Center by 4:00 p.m. on or before the Friday prior to the date of the scheduled hearing. Copies must be served on all other affected parties or their counsel of record in a manner sufficient to provide actual notice (receipt of the pleadings) by the same 4:00 p.m. deadline. See Rule 4:15(e) of the Rules of the Supreme Court of Virginia.

C. WHAT MAY THE RESPONDING PARTY FILE WHEN RESPONDING TO A ONE-WEEK MOTION?

The party responding to a One-Week Motion need not file any written response. If the responding party wishes to file a written response, it is recommended that the party follow the steps outlined in section 9D below to convert a One-Week Motion into a Two-Week Motion, since it is unlikely that the judge who hears a One-Week Motion will have had an opportunity to review any written response prior to the hearing.

D. WHAT IF THE RESPONDING PARTY WISHES TO CONVERT A ONE-WEEK MOTION INTO A TWO-WEEK MOTION?

If the responding party wishes to file a pleading or memorandum of law in response to a One-Week Motion and convert that motion into a Two-Week Motion, counsel should contact the moving party and secure agreement to continue the motion to the Two-Week Docket on another motions day by re-designating the motion as a Two-Week Motion on the yellow Friday Motions Day - Praeceptum/Notice form. If such agreement is not possible, the responding party can make a request to the Calendar Control Judge or to the judge assigned to hear the One-Week Motion when appearing in court on Friday. In the event of agreement between the parties or permission from a judge to turn the motion into a Two-Week Motion, both parties should file a memorandum of points and authorities, which cannot exceed five pages, double-spaced, in twelve-point type, in the Clerk's Office by 4:00 p.m. on the Friday prior to the date of the scheduled hearing.

10. WHAT IF EITHER PARTY DESIRES TO FILE A MEMORANDUM LONGER THAN FIVE PAGES?

Permission must be obtained from the Calendar Control Judge. The Court's Briefing Procedure for Motions is set forth in Paragraph 15 below.

11. HOW DO YOU REMOVE A CASE FROM A FRIDAY MOTIONS DAY ONE-WEEK DOCKET?

A case may only be removed from a Friday Motions Day Docket by counsel of record for the moving party. Except for Two-Week Motions and motions filed pursuant to the Court's Briefing Procedure for Motions, and hearings scheduled for presentation of an order reflecting the settlement of a case which was removed from the trial docket, cases can be continued to another Friday or removed from the docket up until 4:00 p.m. on the Thursday preceding the hearing date by contacting the Motions Docket Clerk at 703-246-4355. Opposing counsel must be notified contemporaneously that a matter is being removed from the Docket. All calls requesting a continuance or removal must be followed up with the filing of the yellow Friday Motions Day - Praeceptum/Notice form.

12. HOW DO YOU GET A SPECIFIC JUDGE DESIGNATED TO HEAR A MOTION?

By requesting that a motion be heard by a specific Judge, counsel of record for the moving party or the pro se party is representing that the motion (a) is for entry of an order setting out a specific ruling previously made by that Judge, (b) that the entire case has been assigned to that Judge by the Chief Judge, (c) that the Judge has advised counsel that all future motions in the case or that specific motion shall be placed on that Judge's docket or, (d) that the matter

concerns a demurrer filed in a case where that Judge previously granted a demurrer in favor of the demurrant. The Court will look with disfavor upon attorneys who fail to abide by this procedure. Please be sure that the designated Judge will in fact be hearing civil motions on the scheduled date as each Judge hears criminal motions at 10:00 a.m. one day each month or may otherwise be unavailable on the scheduled date. Counsel should verify the availability of the Judge by calling the Motions Docket Clerk at 703-246-4355.

13. WHAT DOES COUNSEL OF RECORD REPRESENT TO THE COURT WHEN A MOTION IS PLACED ON A FRIDAY MOTIONS DAY DOCKET?

By signing the yellow Friday Motions Day - Praeceptum/Notice form, counsel of record certifies that:

- a. a good faith effort has been made to resolve the matter with all opposing counsel of record for all affected parties and to determine a mutually agreeable date and time prior to placing the Motion on the Court's docket. This "good faith effort" requires at least the placing of one phone call or the forwarding of one correspondence to opposing counsel of record.
- b. effort has been made to resolve the matter with opposing counsel of record prior to placing the Motion on the Court's docket with no response from opposing counsel.
- c. there is no opposing counsel of record on the other side because neither an attorney nor a pro-se party has filed a pleading in this case.
- d. he/she has read and complied with each of the instructions on the back of the yellow Friday Motions Day – Praeceptum/Notice form.

14. WHAT DOES IT MEAN WHEN COUNSEL SIGNS THE CERTIFICATE OF SERVICE ON A MOTION?

A certificate of service is required by Rule 1:12 of the Rules of the Supreme Court of Virginia. Copies of the yellow Friday Motions Day - Praeceptum/Notice form, the Motion and any memorandum must be either mailed, delivered or faxed to all opposing counsel of record in sufficient time for opposing counsel of record to receive these pleadings by 4:00 p.m. on the Friday that the pleading is due to be filed in the Clerk's office. If these pleadings are mailed (but not faxed) to opposing counsel of record, then they must be postmarked no later than the Tuesday preceding the deadline date for filing to allow three (3) days for delivery by the Post Office. If these pleadings are faxed to opposing counsel of record or the opposing party, they must also be mailed no later than the date that they are filed with the Clerk of the Court so as to fully comply with Rule 1:12 of the Rules of the Supreme Court of Virginia.

15. CIRCUIT COURT BRIEFING PROCEDURES:

WHAT IF THE MOVING PARTY OR THE RESPONDING PARTY WANTS TO FILE A MEMORANDUM LONGER THAN FIVE PAGES?

The Court's briefing procedures for motions state that any attorney who wishes to file, or who has received from opposing counsel of record, a motion which the attorney in good faith believes raises issues which require the filing of a memorandum of more than five (5) double-spaced, typewritten pages; or an attorney who wishes to notice more than one Two-Week Motion in a case for the same Friday, shall proceed as follows:

- A. Contact opposing counsel and by agreement conduct a telephone conference call with the Calendar Control Judge; if such agreement cannot be reached, notice opposing counsel that you will appear before the Calendar Control Judge to: (i) set a hearing date not less than three (3) weeks later; and (ii) be advised of the Judge pre-assigned to hear the motion.
- B. Within seven (7) days after a Judge has been assigned to hear the motion, the moving party shall file a copy of a memorandum of points and authorities with that Judge in Judges' Chambers on the 5th Floor, the original thereof with the Clerk, and shall serve a copy of the same on opposing counsel.
- C. Within fourteen (14) days after a Judge has been assigned to hear the motion, the responding party shall file a copy of a memorandum of points and authorities in opposition with that Judge in Judges' Chambers on the 5th Floor, the original thereof with the Clerk, and shall serve a copy of the same on opposing counsel.
- D. If leave of court is granted, then, not later than three (3) days before the scheduled hearing, the moving party may submit a reply memorandum in the same manner as for the original memorandum of points and authorities.
- E. At the hearing, should either party cite authority not contained in the memorandum filed by the party, the Court may, at the request of the other party, allow that other party five (5) days to submit additional authorities or argument based upon the authorities cited for the first time at the hearing. No other argument on the motion shall be submitted by either party.
- F. A motion set pursuant to this procedure shall not be continued or withdrawn from the docket except by the Judge assigned to hear the motion for good cause shown.

16. WHAT IF A PARTY WISHES TO SCHEDULE MORE THAN ONE TWO-WEEK MOTION IN THE SAME CASE FOR THE SAME FRIDAY MOTIONS DAY?

Counsel for the parties in a given case may not place more than one Two Week Motion on the Docket on any Friday other than overlapping motions (e.g. motion to compel – motion for protective order) without the permission of the Calendar Control Judge. When more than one Two Week Motion needs to be heard at the same time in the same case, counsel should utilize the Court's Briefing Schedule procedures. (See Briefing Schedule procedures in paragraph 15)

17. MOTIONS FOR RECONSIDERATION

A. WHAT SHOULD BE FILED IN ORDER TO REQUEST RECONSIDERATION OF THE COURT'S RULING ON A MATTER?

Motions for Reconsideration should be filed in the Clerk's Office and a courtesy copy should be delivered to the Judge who made the initial ruling. Do not file the yellow Friday Motions Day - Praecepte/Notice form or otherwise schedule any motion for reconsideration for a hearing.

B. DOES A PARTY REQUESTING RECONSIDERATION HAVE A RIGHT TO A HEARING ON SUCH A MOTION?

No. The Judge reviewing the motion will determine whether a hearing is necessary.

C. WHAT SHOULD THE PREVAILING PARTY FILE IN RESPONSE TO SUCH A MOTION?

Nothing, unless the Court requests a written response.

D. HOW WILL THE COURT DEAL WITH SUCH A MOTION?

The Court will either deny the motion outright and enter an order to that effect, or the Judge's clerk will inform counsel of record for the prevailing party that a written response is warranted for one or more issues. The Court may also schedule a hearing on the motion if that is deemed necessary.

18. PROPOSED ORDERS

A. DOES THE COURT REQUIRE THE PARTIES TO BRING PROPOSED ORDERS TO HEARINGS ON MOTIONS DAY?

Yes, the Court requires proposed orders to be brought to a hearing in order to avoid multiple hearings on the same motion.

B. WHAT HAPPENS IF NEITHER PROPOSED ORDER IS CONSISTENT WITH THE COURT'S RULING?

When this happens, counsel of record are required to (a) obtain a blank form in the courtroom and neatly complete it in black ink; (b) make appropriate interlineations on one of the proposed orders; or (c) have a new Order drafted so that it can be delivered to the Judge or the Judge's Clerk by 4:00 p.m. on the date of the hearing.

C. WHAT IF ONE OF THE PARTIES LEAVES THE COURTHOUSE WITHOUT ENDORSING AN ORDER REFLECTING THE COURT'S RULING?

The remaining party should prepare an Order reflecting the Court's ruling and should present it to the Judge presiding over the motion on the day of the hearing.