

CRIMINAL DOCKET CONTROL PROCEDURES

A. INTRODUCTION

These Criminal Docket Control Procedures were originally developed in 2000 in consultation with a consultant whose services were provided by the Supreme Court of Virginia. The Court adopted the procedures after consultation with members of the Bar. These procedures reflect minor revisions by the Court since that time.

B. FELONIES

1. The private attorney

a. Preliminary Hearing

Upon certification of probable cause, or waiver of preliminary hearing, an order is entered by the General District Court establishing the intention of the privately-retained counsel to remain in the case and to pre-set the case or to have the case set at the next docket call. If private counsel is permitted by a General District Court Judge to withdraw at the conclusion of the General District Court portion of a felony case, the defendant will be directed by Order of a General District Court Judge to appear at docket call so that the case can be set for trial and the Court can inquire as to the status of defendant's legal representation.

b. Attorney in case

Where the attorney appearing in General District Court continues to represent a defendant in Circuit Court, such attorney must contact the docket clerk of Circuit Court to schedule a trial date as soon as possible, and at the very least prior to docket call.

- i) The defense attorney and the Commonwealth's Attorney will contact the docket clerk with a proposed trial date.
- ii) Counsel will advise the docket clerk of jury/non jury status.
- iii) The trial date is set under the assumption that the grand jury will indict. If there is no indictment, then the court clerk will automatically remove the case from the trial docket. If the

defendant is incarcerated and no indictment occurs, the Clerk shall submit an order for the release of such defendant.

- iv) When a trial date is established by the docket clerk, the case management system is updated with the trial date.

After docket call, any subsequent request for a change of date must be directed to a judge of the Circuit Court in accordance with the continuance policy set forth below.

- vi) Once an attorney indicates that he/she is counsel of record in the matter he/she is expected to represent the defendant until relieved of representation by the Circuit Court.

c. Attorney not in case at conclusion of preliminary hearing

- i) When a private attorney is permitted to withdraw at the conclusion of the General District Court's involvement, the defendant will sign the order and is noticed to appear at the next docket call (a specific date will appear in the order) to advise the court of his intentions regarding the employment of counsel and to set a trial date.
- ii) Should private counsel become employed between the preliminary hearing and the docket call, they are encouraged to notify the docket clerk and establish a trial date. If this is not done, such counsel must appear at docket call.
- iii) Failure of the defendant to comply with the terms of the order shall be cause for the Circuit Court to revoke his/her bond and issue a capias for arrest.

2. The Public Defender/Court appointed counsel

- a. A public defender or Court appointed private counsel appointed in General District Court or Circuit Court shall remain as counsel unless and until they are relieved pursuant to an order of the Circuit Court, upon a showing of good cause. It will be assumed by the Circuit Court that the individual public defender who schedules a case is responsible thereafter until the

court is advised otherwise by the public defender or his duly designated representative.

- b. All public defenders and court appointed private counsel shall comply with the guidelines set out in section B.1.b. above.

3. Guidelines for trial dates

- a. All trial dates are to be obtained by conferring with the docket clerk
- b. The court expects counsel to make a good faith effort to set his/her cases in a timely fashion.
- c. Since cases are to be set in advance of grand jury action, there is no reason that dates in close proximity to the indictment may not be used. For purposes of these procedures, Counsel shall assume that an indictment will be returned and prepare accordingly.
- d. Genuine disputes should be referred to a judge for prompt resolution.
- e. The court will monitor the system to make corrections that may be justified by experience and to receive complaints or suggestions from the bar.

4. Straight Indictments

- a. New cases – A *capias* will be issued by the Clerk of Court. The defendant, upon arrest, will appear before the court for arraignment, determination of counsel and setting of a trial date.
- b. Straight Indictment combined with Indictment Flowing From General District Certification – Where a defendant is indicted for multiple matters in the same indictment and one or more count(s) of the indictment is a straight count (has not been certified by General District Court), the defendant will be served with notice of the new charge(s), arraigned, and the matter will be scheduled for trial along with the other counts(s) in the indictment. (See sections B 1, 2 and 3 above.)

The attorney for the commonwealth is also encouraged to advise defense counsel of the return of such an indictment as soon as practical.

Requests for continuances in such cases will be considered by the court on a case by case basis.

5. Capital Murder Indictments

Upon certification of a capital murder case, the attorneys should promptly contact the office of the chief judge so that the case may be assigned to one of the judges. Such further proceedings will be arranged directly with the judge so assigned.

6. Criminal Docket Call

It is the policy of the court to continue to have a docket call for control purposes. Cases will not be routinely referred or continued to docket call. Counsel will be expected to appear at docket call if they represent a defendant who has not had his case pre-set for trial in accordance with this plan and has not reached agreement with opposing counsel for a trial date.

C. MISDEMEANORS

1. Notice of Appeal

Upon filing of an appeal with the General District Court or an adult criminal appeal with the Juvenile and Domestic Relations District Court, a date for trial will be established by the District Court Clerk.

2. Dates

The General District Court Clerk will be able to offer counsel/defendant a choice of several available dates provided by the Circuit Court.

- a) An agreed date will be selected on the 4th, 5th, or 6th Friday following the date of the appeal.
- b) If the available dates are not acceptable, then the clerk of the District Court will schedule the case for a default date assigned by the Circuit Court (4th Friday) and requests for dates other than that so assigned must be made by motion to a judge of the Circuit Court. If both counsel agree, and if it is the first time on the docket, counsel may contact the docket clerk directly to reschedule such a matter.
- c) Any disputes, problems, disagreements or other issues are to be directed to a judge of the Circuit Court.

- d) Misdemeanors will be tried every Friday that the court is in session.
- e) These rules will apply to all appeals, except matters involving juveniles or civil contempt from the Juvenile and Domestic Relations District Court. Those cases will continue to be heard on the first Thursday of the month.

3. Counsel

- a) If private counsel indicates, at the time the appeal is noted, that they are continuing to represent the defendant on his appeal, then they will be expected to appear ready for trial on the date selected at the time the appeal was noted.
- b) Appointed counsel in such misdemeanor cases shall remain as counsel and will be expected to appear ready for trial on the date and at the time the appeal was noted.
- c) Unrepresented parties shall be noticed for trial by the General District Court Clerk and are expected to be ready to proceed on the selected date.

D. GUILTY PLEAS

1. Policy

Guilty pleas which include matters that are negotiated between counsel are a valuable and appropriate tool in the effective administration of the justice system. The court firmly believes, however, that there should be certain guidelines.

2. Procedure

Rule 3A:8(c) requires all negotiated guilty pleas in felony cases to be in writing. Thus, no oral negotiated pleas are acceptable.

3. Acceptance

- a. The court has a legal duty to review and determine whether or not it will accept an agreed plea, and the court will generally require that the Commonwealth present evidence from a witness.

- b. We strongly urge that in cases set for trial with a jury, the attorneys complete plea negotiations by 4:30p.m. of the last business day prior to trial.
- c. When a case is scheduled to be tried before a jury and a plea agreement is reached, counsel shall notify the chambers of the assigned judge. Fax transmissions are acceptable. In the event that such notice cannot be provided due to the lack of availability of the assigned judge, then said notice shall be provided to the duty judge's chambers.
- d. Pleas of guilty without agreement are not affected by these procedures.

E. CONTINUANCE POLICY

1. Court Policy

It is the formal policy of the court to grant continuances for cause. An attorney has established good cause when the underlying eventuality is unforeseen, is not due to the lack of preparation, is brought to the Court's attention in a timely manner, and does not prejudice the adversary.

2. Procedure

Continuance requests should generally be made in person and always documented by court order. The order should include the name of the party making the request, the reason for the request, the concurrence or objection of the opposing party, and a proposed new trial date. No new jury trial date should be proposed to a judge unless the parties have recently conferred with the docket control clerk to determine such date is available. A party or attorney, who is connected with the General Assembly or Division of Legislative Services, shall be entitled to a continuance as a matter of right only as specified in Virginia Code Section 30-5. A similar right is granted to military reserve component personnel as defined in Virginia Code Section 44-97.1, or to active military personnel pursuant to the terms of the Service Members Civil Relief Act of 2003, 50 U.S.C. Appx. §§ 501 et seq. A written motion for continuance in these situations shall be filed with the Court by personal appearance, mail, or facsimile, at least three (3) days prior to trial.

Continuance requests for all unassigned cases shall be made to the Duty Judge. Assigned cases that are continued will remain assigned to the same

judge. The case will be set for a new date and time when the continuance is granted. In cases that involve a Virginia Code Section 30-5 continuance, care should be taken that the new date assigned falls outside a window of time that would require an additional continuance (i.e., 30 days before or after a regular session of General Assembly). Attorneys shall notify the Court, in writing, of any potential future conflict in order to avoid additional delay.

F. **APPENDIX** – copies of forms and orders.

VIRGINIA: IN THE PORTSMOUTH GENERAL DISTRICT COURT

COMMONWEALTH OF VIRGINIA :

v. : Case No: _____

_____ :

ORDER

The Defendant appeared before this Court for a preliminary hearing,
Represented by attorney _____.

The Defendant having waived the preliminary hearing or the Court having heard evidence and certified the charge(s) to the Circuit Court for consideration by the Grand Jury, it is hereby **ORDRED** that the bail of the defendant is amended to require the Defendant to appear at the Criminal Docket call of the Circuit Court of the City of Portsmouth on _____ at _____ P.M.

If this Order is signed by the attorney for the Defendant, the attorney agrees to represent the Defendant in all Circuit Court proceedings unless permitted by the Circuit Court to withdraw. The attorney agrees to immediately preset the case(s) with the Docket Clerk for trial in the Circuit Court. If the attorney and the Docket Clerk cannot agree on a trial date, then the attorney agrees to appear at the docket call date set forth above to schedule the case(s) for trial.

Entered this _____ day of _____, 20 _____

Judge

I AGREE TO THE ABOVE:

ATTORNEY FOR THE DEFENDANT

I ACKNOWLEDGE THAT I HAVE BEEN ADVISED TO APPEAR AT THE CRIMINAL DOCKET CALL OF THE CIRCUIT COURT OF PORTSMOUTH ON _____ AT _____ P.M. I FURTHER UNDERSTAND THAT IF I DO NOT APPEAR AT THE CRIMINAL DOCKET CALL I MAY BE ARRESTED.

DEFENDANT

Original to Circuit Court; Copy to Docket Clerk, Defense Attorney, and Defendant

CRIMINAL CONTINUANCE ORDER

Date Case Originally Set for Trial _____

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

on the _____ day of _____, 20 _____

COMMONWEALTH OF VIRGINIA

v

Docket No.: _____

On indictment(s) charging: _____

This day came the defendant, by counsel, in the person of _____,
and came as well the Attorney for the Commonwealth, in the person of _____
_____, and thereupon, on motion of _____, for
good cause shown, over objection/by agreement, it is Ordered that the trial of this case be
continued from _____ to _____.

This case has/has not been previously continued on the docket for this Court.

The good cause is _____

The Defendant requests trial by jury *** by the court without a jury.

Counsel estimates that the trial will require _____ days/hours.

ENTER:

Judge _____

I ask for this:

Assigned Open Only

Attorney for the _____

Seen and objected to/seen and agreed:

Attorney for the _____

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

COMMONWEALTH OF VIRGINIA

VS.

Defendant

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INDICTMENT NO. CR

CHARGE(S):

BOND ORDER

**THIS MATTER comes to be heard upon the motion of _____,
Attorney for the Defendant, to set the bond of the defendant.**

**AFTER CONSIDERING the arguments of counsel for the defendant, and counsel for the
Commonwealth, and for GOOD CAUSE SHOWN, it is hereby ORDERED that the bond in this
matter shall be set at \$ _____ with/without surety.**

ENTER: / /

JUDGE

I ASK FOR THIS:

Attorney for the Defendant

SEEN AND AGREED/OBJECTED:

Attorney for the Commonwealth

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF PORTSMOUTH

COMMONWEALTH OF VIRGINIA

VS.

INDICTMENT NO: CR

Defendant

WITHDRAWAL OF COUNSEL ORDER

THIS DAY came _____, Court Appointed Counsel/Retained Counsel of record and moved this Honorable Court to be relieved as counsel of record in the above-referenced matter.

UPON CONSIDERATION WHEREOF, it is accordingly

ADJUDGED, ORDERED and DECREED that good cause exists to permit the withdrawal of _____, as attorney of record, and that said attorney is hereby allowed to withdraw and that the Clerk of the Court is hereby ORDERED to withdraw _____ name from the file jacket as attorney of record.

ENTER: / /

JUDGE

I ASK FOR THIS:

_____, Esquire