

CHAPTER 1 - OVERVIEW**I. CIVIL LAW - GENERALLY**

Civil cases involve disputes among individuals (including corporations, which are treated legally as an individual) or groups of individuals. Unlike criminal law which is intended to deter behavior deemed detrimental to society and to deal fairly with those who misbehave, civil law is intended to make a wronged person whole again through specific performance, monetary compensation by the wrongdoer or a restitution of rights.

The remedy sought in civil actions involves the right to recover damages, usually in monetary terms, or require a party to the suit to complete an agreement or refrain from some activity. The person or party who initiates the case is termed the “plaintiff” and the person or party against whom the suit is brought is termed the “defendant.” *See* the subsection in this chapter, “Participants in a Civil Action” for more detailed information. The number of plaintiffs or defendants included in a suit is unlimited. In civil cases, the plaintiff must prove his/her contentions by a preponderance or greater weight of evidence.

Sources of law applicable to civil procedure in Virginia include federal, state and local law. The United States Constitution, federal statutes, and court cases construing federal law comprise the body of federal law. Virginia civil law consists of the state constitution, state statutes and court decisions addressing issues of state law. Specific sources of state civil law are Article I, Section 11 of the Constitution of Virginia and Title 8.01 of the Code of Virginia.

II. CIVIL ACTIONS - LAW AND CHANCERY NO LONGER DISTINGUISHED

One of the most common questions asked upon the filing of a civil action has always been - Is the case to be filed one “at law” or “in equity”. Prior to January 1, 2006, cases were distinguished as either “Law” or “Chancery” and filed on either the law or chancery “side” of the court. Effective January 1, 2006, however, amendments to the CODE OF VIRGINIA and the Rules of Court eliminated the distinction of a case as either “Law” or “Chancery” and instead classified cases as “Civil”, in essence abolishing the “chancery side” of the court. While the case itself may remain either “legal” or “equitable” in nature, beginning January 1, 2006, the case is filed in the unified Civil Division of the court. This manual has attempted to identify many of the suits/actions filed in the clerk's office. *See* the chapter, “Suits/Action Types” for a complete listing of the most common suits/actions filed in the circuit court.

A statutory proceeding which provides an adequate and complete remedy at law is not an equity case. *See* 7 MICHIES JURISPRUDENCE, “Equity”, § 3 and Attorney General Opinion to Crockett, dated 12/29/69 (1969-70, page 237); *Proceeding for sale of property - Not Chancery cause*. Prior to January 1, 2006, Part Two of the Rules of the Supreme Court applied to all chancery suits or suits in equity, i.e. divorces, injunctions, partition suits whereas Part Three of the Rules of the Supreme Court applied to cases on the law docket. Specifically, Part Three Rules then applied to all civil actions for law in a court of record

seeking a judgment personam for money only, actions for establishment of boundaries, ejectment, unlawful detainer, detinue, a refund of taxes, and declaratory judgments at law, including cases appealed or removed to such courts from inferior courts whenever applicable to such cases. Effective January 1, 2006, Part Three of the Rules of the Supreme Court was amended to pertain to all “civil” cases, whether legal or equitable in nature.

A. Common Law and Statute Law

The basic law of Virginia is the Common Law of England, which continues in full force and effect until altered by the General Assembly. ([Va. Code § 1-200](#)).

The Common Law of England is composed of uncodified case law providing precedents and treatises of opinions of English courts. These opinions are also the source of the subject matter of common law and for the extent of its jurisdiction.

Statute Law, the enactments of the General Assembly which are codified in the Code of Virginia, change the Common Law of Virginia, and either abolish, amend or establish rights and remedies which previously may (or may not) have existed at common law. Actions “at law” usually *seek* monetary damage awards.

B. Equity

- The system of law known as Equity was borrowed from England, called the court of chancery, and has been expanded by judicial interpretation and statutory enactments which have given equity courts powers to resort to various common law remedies, such as jurisdiction to:
 - Decree a monetary award (Jones v. Tunis, 99 Va. 220, 37 S.E. 841 (1901); Grubb v. Starkey, 90 Va. 831, 20 S.E. 784 (1894)).
 - Litigate a dispute before any damages have occurred by declaratory judgment. ([Va. Code § 8.01-184](#)).
 - Award an attachment during a pending action. ([Va. Code § 8.01-574](#)).
 - Issue a writ of fieri facias based on a decree in equity as if it were a judgment at common law. ([Va. Code §§ 8.01-426](#) and [8.01-427](#)).
- The equity court has been empowered by statute law entirely has been given new jurisdictions that were previously handled by ecclesiastical courts:
 - To grant divorces and annulments from marriage. ([Va. Code § 20-96](#)).
 - To probate wills. ([Va. Code § 64.2-443](#)).
 - In addition, the General Assembly gave equity courts jurisdiction to:

- Impeach or establish a will. ([Va. Code § 64.2-448](#)).
- To order adoptions (which was previously unknown to either English or Virginia law), in 1942. ([Va. Code § 63.2-1201](#)).
- A list of subjects of equity jurisdiction, first set out in Notes On Virginia Civil Procedure, by W. H. Bryson, published in 1979, follows:
 - To administer decedent's estate;
 - To supervise accounts of fiduciaries;
 - To supervise estates of persons under disabilities;
 - To supervise charities and public trusts;
 - To grant divorces, alimony and separate maintenance;
 - To assign dower rights and compel election of rights;
 - To interpret wills and deeds;
 - To impeach instruments of fraud;
 - To reform contracts and writings;
 - To set up lost instruments
 - To review order of probate;
 - To hear creditor's bills;
 - To marshal assets;
 - To compel contribution, exoneration, and subrogation;
 - To set aside fraudulent conveyances;
 - To set aside awards of arbitrators;
 - To appoint receivers;
 - To settle partnership affairs;
 - To specifically enforce contracts
 - To enforce trusts;
 - To foreclosure or redeem mortgages;
 - To compel partition of common interests
 - To enjoin torts and nuisances;
 - To enforce liens;
 - To remove clouds on title and to quiet title;
 - To compel claimants to interplead;
 - To enjoin fraudulent judgments; and
 - To compel joining in bills of peace.

C. Effect of Distinction between Law and Equity

While the federal courts merged law and equity in 1938, Virginia courts retained a bifurcated system until January 1, 2006.

- Classification of an action as one of “at law” or one “in equity” affects the documentation of:
 - 1) Availability and forms of relief;
 - 2) Availability of certain defenses; and

3) Form and type of review:

Bill of Review in Equity ([Va. Code § 8.01-623](#)), and Appeals to either the Supreme Court of Virginia (Va. Code Title 17.1 Ch. 3) or the Court of Appeals (Va. Code Title 17.1 Ch. 4).

III. COURT ORGANIZATION AND JURISDICTIONAL DISTINCTIONS

The organizational structure of Virginia's court system has been streamlined in recent years to increase the quality of the judicial system as well as the efficiency with which justice is dispensed. Virginia has four levels of courts: 1) the Supreme Court, 2) the Court of Appeals, 3) the circuit court, and 4) the district court (composed of the general district court and juvenile and domestic relations district courts). For purposes of this manual, jurisdictional distinctions among the courts are presented only as they relate to civil cases.

A. Supreme Court of Virginia

The Supreme Court of Virginia is made up of seven justices elected by a majority vote of both houses of the General Assembly for a term of twelve years. The Supreme Court of Virginia is the highest court in the Commonwealth and is frequently referred to as the “court of last resort.” It has both original and appellate jurisdiction, but its primary purpose is to review decisions of lower courts from which appeals have been allowed. Va. Const. Article VI, § 1.

Virginia does not allow an appeal to the Supreme Court as a matter of right except in cases involving the [State Corporation Commission](#), the disbarment of an attorney, and review of the death penalty. The Court's original jurisdiction is limited to cases of habeas corpus (ordering one holding custody to produce the detained person before the Court for the purpose of determining whether such custody is proper), mandamus (ordering the holder of an office to perform his/her duty), and prohibition (ordering an action stopped in a lower court). The Court also has original jurisdiction in matters filed by the [Judicial Inquiry and Review Commission](#) relating to judicial censure, retirement, and removal of judges.

The Supreme Court may, in its discretion, on motion of the Court of Appeals or on its own motion, certify an appeal which was filed with the Court of Appeals for review by the Supreme Court. Certification is appropriate when the Supreme Court determines that the case is of great public importance or that the docket or status of work of the Court of Appeals warrants transfer of jurisdiction of the case. [Va. Code § 17.1-409](#). For a further discussion of appellate procedure in the Supreme Court, *See* the “Appeals” chapter.

B. Court Of Appeals of Virginia

The Court of Appeals was established January 1, 1985 and consists of ten judges who are elected for eight-year terms by a majority of the members of each house of the General Assembly. The Court has authority to hear appeals as a matter of right from:

- any final judgment, order, or decree of a circuit court involving affirmation or annulment of a marriage, divorce, custody, spousal or child support, or control or disposition of a child, as well as other domestic relations cases;
- any final decision of the [Department of Workers' Compensation](#);
- any final decision of a circuit court on appeal from a decision of an administrative agency;
- any criminal conviction of the circuit court; and
- any interlocutory order granting, dissolving, or denying an injunction or adjudicating the principles of a cause in any of the cases listed above.

Also, the Court of Appeals has authority to consider petitions from final decisions of a circuit court on an application for concealed weapons permit.

Actions rejecting a petition for appeal, dismissing an appeal, and deciding an appeal are final in cases originating before any administrative agency of the Workers' Compensation Commission, and divorce, custody, and any other domestic relations cases.

C. Circuit Courts

The circuit court is the trial court of general jurisdiction in Virginia. It is the sole court with the authority to try all types of cases except as specifically provided by statute.

In civil cases, the circuit court has concurrent jurisdiction with the general district court over claims from \$4,500 to \$25,000 and exclusive original jurisdiction over almost all claims exceeding \$25,000. The circuit court also has jurisdiction over all equity matters. These include divorce cases, disputes concerning wills and estates, and controversies involving property. Both law and equity cases are now classified as civil actions. To bring a civil action in a circuit court, the person bringing the case (plaintiff) files a complaint with the clerk. [Va. Code § 16.1-77](#).

The final decision of the circuit court may be appealed to either the Supreme Court or the Court of Appeals, depending upon the type of case involved. Death penalty, lawyer disbarment, and most civil cases are appealed to the Supreme Court. While death penalty and disbarment case appeals are a matter of right, civil appeals are commenced by the filing of a petition for appeal.

D. District Courts

District courts in Virginia are courts of limited jurisdiction. They have jurisdiction only in cases where jurisdiction is specifically given by statute. Jury trials are not conducted in district courts. All cases are heard by a judge.

Virginia has a unified district court system that consists of general district courts and juvenile and domestic relations district courts. Some general district and juvenile and domestic relations district courts are served jointly by one clerk and are referred to as “combined” district courts. Combined district courts, however, maintain their separateness in terms of case processing. Furthermore, general district court judges hear only general district court cases, and juvenile and domestic relations district court judges hear only juvenile and domestic relations cases, except when they consent to serve as a replacement judge when the regular judge is unable to preside over a case.

The General District Court decides civil suits involving amounts of money up to \$25,000. In civil cases, the circuit court has concurrent jurisdiction with the general district court over claims from \$4,500 to \$25,000 and exclusive original jurisdiction over almost all claims exceeding \$25,000. **NOTE:** Jurisdictional limits of actions governing the enforcement of mechanics' liens in the circuit court also begin at \$25,000. A suit is begun in General District Court by filing a civil warrant or motion for judgment with the clerk of the court. The General District Court is the only court where suits may be filed for claims under \$4,500. **NOTE:** The \$25,000 limit shall not apply with respect to distress warrants under the provisions of [Va. Code § 55-230](#) nor shall it apply to cases involving liquidated damages for violations of vehicle weight limits pursuant to [Va. Code § 46.2-1135](#) in the district courts.

The juvenile and domestic relations district court has exclusive jurisdiction over individuals under the age of eighteen alleged to have committed acts which, if committed by an adult, would constitute a crime. [Va. Code § 16.1-241](#). Such cases are referred to as “delinquency” cases. The juvenile and domestic relations district court has jurisdiction of cases where a juvenile has committed certain actions which, if committed by adults, would not be considered criminal offenses such as truancy or habitually running away from home. Such cases are known either as “CHINS” (child in need of services) cases or “CHINSUP” (child in need of supervision) cases. The juvenile and domestic relations district court also has jurisdiction of all misdemeanor offenses committed by one member of the family against another.

Small Claims Court

- On or before July 1, 1999, each general district court shall establish, using existing facilities, a small claims division to be designated a small claims court.
- Such courts shall not have jurisdiction over suits against the Commonwealth under the Virginia Tort Claims Act ([Va. Code § 8.01-195.1](#) et seq.) or suits

against any officer or employee of the Commonwealth for claims arising out of the performance of their official duties or responsibilities. [Va. Code § 16.1-122.1](#).

- Notwithstanding any provision of law to the contrary, the small claims court shall have jurisdiction, concurrent with that of the general district court, over the civil action specified in [Va. Code § 16.1-77 \(1\)](#) when the amount claimed does not exceed \$5,000, exclusive of interest. [Va. Code § 16.1-122.2](#).

[Virginia Code § 16.1-242.1](#) provides that upon appeal to the circuit court of any case involving a child placed in foster care and in any appeal to the Court of Appeals or Supreme Court of Virginia, the juvenile court shall retain jurisdiction to continue to hear petitions filed pursuant to [Va. Code §§ 16.1-282](#) and [16.1-282.1](#). Orders of the juvenile court in such cases shall continue to be reviewed and enforced by the juvenile court until the circuit court, Court of Appeals or Supreme Court rules otherwise.

IV. PARTICIPANTS IN A CIVIL ACTION

Virginia's Civil Justice system, designed to settle disputes between private individuals, is comprised of a network of courts that deal with the law applicable to these disputes. Judges and lawyers are the primary figures, but other persons connected with the courts will also come into play as the cases progress through the system.

This section identifies those that may be involved in the civil system on the circuit court level only and attempts to give briefly an explanation of their role.

A. Plaintiff

The individual who initiates a civil case against others is known as a plaintiff. In some instances he/she may be called complainant. The plaintiff may be one person, more than one, a corporation or a partnership.

B. Defendant

A defendant in a civil action is the person against whom the action is brought. In some instances, he/she may be called respondent. A defendant can be one or more individuals, a corporation or a partnership. In rare cases if the names of the defendants are not known, they can be listed as "John Doe."

C. Attorneys

The lawyer who files a suit on behalf of his/her client is known as plaintiff's attorney or counsel. The lawyer who defends is known as defense counsel. If there are multiple plaintiffs, there may be multiple plaintiff attorneys. If there are multiple defendants, there may be multiple defense attorneys.

D. *Pro se* Litigants

Persons may choose to represent themselves as either plaintiffs or defendants. If so, they are referred to as *pro se* plaintiffs or *pro se* defendants.

E. Guardian *Ad litem*

In legal causes of action, if any of the parties are either minors (under age eighteen) or incompetent and have not had a legal guardian appointed, the court or clerk will appoint an attorney to represent the interests of that minor or incompetent in the proceedings. These attorneys are called Guardians *ad litem*. They file all pleadings required. Their fee is usually awarded by the Court at the conclusion of the case. See "Pre Trial" chapter, subsection "Appointment of Guardian *Ad litem*" of this manual for more information on guardians *ad litem*.

F. Commissioner in Chancery

In certain civil actions, the Court will appoint an attorney, not involved in a case, to hear certain evidence and make a recommendation to the Court. This commissioner then becomes a "substitute judge" in the case insofar as the matters referred. The commissioner will file a report to the Court. Then the Court can make final disposition of the action. Commissioners in Chancery may be appointed only by agreement of the parties with the concurrence of the court, upon motion of a party, or upon the court's own motion. The court must make a finding of good cause shown for appointing a Commissioner in Chancery in each individual case.

G. Judges

Virginia judges are assigned the responsibility to decide civil cases in a fair and timely fashion. If the Judge hears a case without a jury, the judge alone will decide the facts and make the final decision. If a jury is used, the jury will decide the facts and return a verdict in favor of either the plaintiff or the defendant. However, a judge may set aside a verdict if it is contrary to the law and evidence in a given case. Judges must follow the law in conducting the trial. His/her rulings may be appealed to an appellate court.

H. Clerk of Circuit Court

The clerk of the circuit court is an elected official. He/she serves as the administrative officer for the circuit court. Original suit papers are filed in the circuit court. The clerk has the responsibility to file and store the cases properly, to issue all summonses for the cases, to ensure juries are present for the cases, and to record properly all orders. Clerks also are responsible for preparing all cases filed that are appealed to either the Court of Appeals or the Supreme Court of Virginia.

I. Juries

Juries may be used in some cases. If the amount in dispute is more than \$25,000, a jury of seven from not less than thirteen impaneled will try the case. If the amount in dispute is less than \$25,000, a jury of five out of not less than eleven impaneled will try the case. If it is a special jury, twelve out of not less than twenty impaneled will try the case. If it is a complicated case that may last for an unusual amount of time, the Court may seat alternate jurors. [Va. Code § 8.01-359](#)

J. Condemnation Commissioners

Similar to a jury, in cases where a public body *seeks* to condemn private property for certain public use, "Condemnation Commissioners" may be empanelled. The attorneys for each side will provide the names of those to be summoned.

K. Special Commissioners

In some civil cases, the Court must appoint an attorney as a special commissioner to execute certain orders of the Court, such as selling property. The special commissioner so appointed may appear before the clerk to post a bond. They will file a final report and/or accounting with the Court.

L. Registered Agents

A registered agent is a person who has been designated by another, usually a corporation or business, to accept service of process on behalf of the corporation or business. Very often, the corporation or business is a resident of another state and the registered agent is a state resident. A resident agent can be appointed to represent an individual also. However, they are usually not actual parties in civil suits and do nothing more than accept service of process.

M. Executors/Administrators

Virginia law allows executors and administrators of deceased persons' estates to bring civil suits and to defend the estate in civil actions. Thus, the executor or administrator of an estate may be involved as a plaintiff or defendant.

N. Sheriff

A sheriff of a city or county is the person responsible for serving papers in civil suits, summoning a jury and providing bailiff services in court during the trial.

O. Judge Pro Tempore

A judge pro tempore is one appointed for the term or some part thereof. During such time he/she exercises all the functions of the regular judge. Also, such person must be a citizen of and shall be licensed to practice law in this Commonwealth. Any

cause pending in a circuit court, when the judge of the court is disqualified or unable, for any reason, to try the same, may be tried by a judge pro tempore. [Va. Code §§ 17.1-109, 17.1-110, and 17.1-111.](#)

P. Mediators

Please *see* the subsection “Referral” in the “Pre Trial” chapter for a discussion of Alternative Dispute Resolution

Q. Police Officers

A police officer has no authority in civil matters, except (i) to execute and serve temporary detention and emergency custody orders and any other powers granted to law-enforcement officers in [Va. Code §§ 37.2-808 or 37.2-809](#), (ii) to serve an order of protection pursuant to [Va. Code §§ 16.1-253.1, 16.1-253.4 and 16.1-279.1](#), or (iii) to execute all warrants or summons as may be placed in his/her hands by any magistrate for the locality and to make due return thereof. A town police officer, after receiving training under [Va. Code § 9.1-102](#), may, with the concurrence of the local sheriff, also serve civil papers, and make return thereof, only when the town is the plaintiff and the defendant can be found within the corporate limits of the town.

V. GENERAL DESCRIPTION OF CIVIL CASE PLEADINGS

Pleadings are the formal allegations by the parties of their respective claims and defenses. The clerk shall receive and file all pleadings without order of the court. Any controversy over whether a party who has filed a pleading had a right to file it shall be decided by the court, not clerk. Rule 3:3.

Rule 1:4 of the Supreme Court of Virginia provides the general provisions relating to Pleadings as follows:

1.	Must be filed in Good Faith:	Counsel tendering a pleading gives his/her assurance as an officer of the court that it is filed in good faith and not for delay.
2.	Sworn Pleading as Affidavit:	A pleading that is sworn to is an affidavit for all purposes for which an affidavit is required or permitted.
3.	Counsel Must Sign:	Counsel or an unrepresented party who files a pleading shall sign it and state his/her address
4.	Must Inform Opponent of Facts:	Every pleading shall state the facts on which the party relies in numbered paragraphs, and it shall be sufficient if it clearly informs the opposite party of the true nature of the claim or defense

5.	Allegations Admitted or denied:	An allegation of fact in a pleading that is not denied by the adverse party's pleading, when the adverse party is required by these Rules to file such pleading, is deemed to be admitted. An allegation in a pleading that the party does not know whether a fact exists shall be treated as a denial that the fact exists.
6.	Instruments Under Seal:	Requirements of pleadings applicable to instruments not under seal shall apply to instruments under seal
7.	Equitable Defenses:	Requirements of pleadings applicable to legal defenses shall apply to equitable defenses
8.	Filing Date Attested:	The clerk shall note and attest the filing date on every pleading
9.	Exhibits:	The mention in a pleading of an accompanying exhibit shall, of itself and without more, make such exhibit a part of the pleading
10.	Brevity:	Brevity is enjoined as the outstanding characteristic of good pleading. In any pleading, a simple statement, in numbered paragraphs, of the essential facts is sufficient
11.	Pleading Alternative Facts Against Alternate Parties:	A party asserting either a claim, counterclaim, cross-claim, or third-party claim or a defense may plead alternative facts and theories of recovery against alternative parties, provided that such claims, defenses, or demands for relief so joined arise out of the same transaction or occurrence. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds.
12.	Contents of pleading:	Every pleading, motion or other paper served or filed shall contain at the foot the Virginia State Bar number, office address and telephone number of the counsel of record submitting it, along with any electronic mail (E-mail) address and facsimile number regularly used for business purposes by such counsel of record.

VI. LEGAL CAUSES OF ACTION (FORMERLY KNOWN AS ACTIONS AT LAW)

Part Three of the Rules of the Supreme Court applies to all civil cases. Legal causes of action include cases seeking a judgment in personam for money only, actions for establishment of boundaries, ejectment, unlawful detainer, detinue, a refund of taxes, and

declaratory judgments, including cases appealed to such courts from inferior courts whenever applicable to such cases.

NOTE: In matters not covered by the Rules, the established practices and procedures are continued. Rule 3:1. For example, mandamus, prohibition, and certiorari are instituted by a petition.

Matters initiated by either petition or application are distinct from matters initiated by complaint. Issuance of a summons as prescribed by Rule 3:5 is not applicable to legal process to be served upon the defendant or respondent. However, the Clerk shall issue a Proof of Service as prescribed by Rule 3:6. The Clerk is not responsible for making a decision on when response by the defendant is due.

A. Complaint

An action is commenced by filing in the clerk's office a written complaint. The statutory writ tax and clerk's fees must be paid before the summons is issued.

The complaint will contain a caption setting forth the name of the court and the title of the action, which will include the names of all parties. The complaint must be signed by counsel with his/her office address. The complaint must state facts, not conclusions, and should be in numbered paragraphs. Also, the complaint will be sufficient in fact if it clearly informs the defendant of the true nature of the claim asserted and it states the damages claimed or other relief for which judgment is sought. *See* form CC-1400, SUMMONS - CIVIL ACTION.

A party may join a claim in tort with one in contract, provided that all claims joined arise out of the same transaction or occurrence. Improper joinder is called "misjoinder of actions." The court may, on its own motion, order separate trials. [Va. Code § 8.01-272](#). Also, it is important to note that there is no rule of court on the splitting of a cause of action. It is generally not permissible over the objection or without waiver of the adverse party to split a single cause of action.

The following are typical activities followed when a complaint is filed with the court: (*See* also "Suits/Action Types" chapter of this manual for complete procedures)

- Step 1** The clerk receives complaint, receipts the applicable fees, opens files, docket the new case, and issues any requested process. The plaintiff must provide the clerk with a copy of the complaint for each defendant named. [Rule 3:4 \(a\)](#).
- Step 2** The clerk issues the summons, attaches a copy of the complaint with proof of service, and delivers for service as the plaintiff may direct.

Step 3 When service is made by officer, a Proof of Service is filed with the clerk.

If service is made by a “non-officer”, an affidavit of what was done in effecting service is filed with the clerk. [Rule 3:6](#).

Comments: Returns will be made to the court and show when, how, where and upon whom service was made.

No judgment can be entered against a defendant who was served with process more than one year after the commencement of the action. [Rule 3:5](#).

Any court in which is pending a case wherein process has not been served within one year of the commencement of the case may, in its discretion, order it to be struck from the docket, and the action shall thereby be discontinued.

[Va. Code § 8.01-335 \(D\)](#)

See form CC-1405, PROOF OF SERVICE.

Step 4 Defendant may file a responsive pleading within twenty-one days after service.

Comments: Defendant will be in default if he fails to file a pleading within this timeframe.

B. Bills Of Particulars

The object of the motion for a bill of particulars is to amplify any pleading. They are basically supplemental complaints. The motion must be made promptly. A bill of particulars that fails to inform the opposite party fairly of the true nature of the claim or defense, on motion, may be stricken and an amended bill of particulars ordered. Every order requiring a bill or amended bill of particulars shall fix the time within which it is to be filed.

C. Demurrers

A demurrer is a pleading by a defendant disputing the legal sufficiency of plaintiff's pleadings. In effect, it is an allegation that “even if the plaintiff's claims are true, he has not stated a claim which is sufficient for the judge to enter an order in his/her favor for the requested award.” It is used to attempt to have a case dismissed because the legal claims are not sufficient for granting judicial relief.

D. Venue

Motions objecting to venue must state why venue is improper and where proper venue may be found. The motion must be filed within twenty-one days of service of process commencing the action or within the period of any extension of time for filing responsive pleadings fixed by order of the court. Any party may move the court for a change of venue and any party may oppose such motion. [Va. Code § 8.01-265](#).

E. Answer

When the court has entered its order overruling all motions, demurrers and other pleas filed by a defendant, such defendant shall, unless he has already done so, file his/her answer within such time as the court may prescribe. If he/she fails to do so he/she is in default.

F. Cross-Demands

1. Counter Claim

A counterclaim claim presented by a defendant in opposition to or deduction from the claim of the plaintiff. Any such action filed in an equity suit would be treated as a cross-claim. Within twenty-one days after service on him of the summons, a defendant may, at his/her option, plead as a counterclaim any cause of action for a money judgment that he has against the plaintiff or all plaintiffs jointly, whether or not it grows out of any transaction mentioned in the summons, whether or not it is for liquidated damages, whether it is tort or contract, and whether or not the amount demanded in the counterclaim is greater than the amount demanded in the summons. Rule 3:9.

2. Cross-Claim

A cross-claim is asserted by one defendant against one or more other defendants arising out of any matter pleaded in the complaint. A cross-claim against a codefendant is considered a new action and all provisions of the Rules of the Supreme Court applicable to complaints shall apply to cross-claims, except those requiring payment of writ tax and clerk's fees.

One defendant may cross-claim against another defendant only pursuant to Rule 3:10. The subject of the cross-claim must grow out of some matter pleaded in the plaintiff's complaint. It may include a claim that the codefendant is liable to the cross-claimant for all or part of the damages alleged by the plaintiff. This liability may be secondary as well as primary. The difference between cross-claims against codefendants and counterclaims against plaintiffs is that the former must arise out of the same occurrence as the original claim in the complaint.

3. Interpleader

When two or more persons claim the same thing (or fund) of a third, and he, laying no claim to it himself, is ignorant which of them has right to it, and fears he may be prejudiced by their proceeding against him to recover it, he may join such claimants as defendants and require them to interplead their claims so that he may not be exposed to double or multiple liability.

VII. SUITS IN EQUITY

Part Three Rules of Court also apply to all suits in equity. As to matters not specifically covered, established practices and procedures are continued. Rule 3:1.

A. Complaint

A Complaint is the pleading used to state a party's claim in an equity case. Variations include an amended complaint (amendment to the original complaint), complaint for notary service (party accepts or waives service on affidavit pursuant to [Va. Code § 20-99.1:1](#)), complaint for non-resident service (service of process to be made outside Virginia) and a cross-claim (complaint filed by the party being sued in the original complaint).

See “Suits/Action Types” chapter of this manual for complete procedures.

A suit in equity shall be commenced by filing a complaint in the clerk's office. The suit is then instituted and pending as to all parties defendant thereto. The statutory writ tax and clerk's fees shall be paid before the summons is issued.

The complaint shall be captioned with the name of the court and the full style of the suit. The requirements of [Va. Code § 8.01-290](#) may be met by giving the address or other data after the name of each defendant.

The following are typical activities followed when a complaint is filed with the court:

- Step 1** Clerk receives Complaint, receipts applicable fees, opens file and docket the case, and issues any requested process. The plaintiff must provide the clerk with a copy of the complaint for each defendant named. It is not required that copies of exhibits filed with the complaint be furnished or served.
- Step 2** The clerk shall issue a Summons – Civil Action and attach it to a copy of the complaint together with a proof of service used by the process server to note the date, place, how and to whom the summons was served. *** See Note Below***

Step 2 (cont'd) **Comments:** Upon the commencement of a suit in equity defendants may appear voluntarily and file responsive pleadings and may appear voluntarily and waive process, but in cases of divorce or annulment of marriage only in accordance with the provisions of the controlling statutes. With respect to defendants who do not appear voluntarily and/or file responsive pleadings or waive service of process, the clerk shall issue summonses and securely attach one to and upon the front of each copy of the complaint to be served. The copies of the complaint, with a summons so attached, shall be delivered by the clerk for service together as the plaintiff may direct.

See form CC-1400, SUMMONS - CIVIL ACTION.

Step 3 When service is made by officer, a Proof of Service is filed with the clerk.

Comments: Returns will be made to the court and show when, how, where and upon whom service was made.

No decree can be entered against a defendant who was served with process more than one year after the institution of the suit against him. Rule 3:5.

Any court in which is pending a case wherein process has not been served within one year of the commencement of the case may, in its discretion, order it to be struck from the docket, and the action shall thereby be discontinued. [Va. Code § 8.01-335 \(D\)](#)

See form CC-1405, PROOF OF SERVICE.

Step 4 Defendant may file his/her answer within twenty-one days after entry of order overruling all motions, demurrers and other pleas.

NOTE: On December 7, 1999, the Court of Appeals issued a decision holding that Supreme Court Rule 2:2 “does not require a party, after filing a bill of complaint, make a separate request for service of process.” *Kessler v. Smith*, Record No. 2397-98-4 (December 7, 1999) at 6. Rather, the court went on to conclude, “[N]othing more than the filing of a bill of complaint is required in order to request service of process.” The issue arose in this case because the appellant sought to proceed in forma pauperis and, therefore, no sheriff's fee had been proffered to indicate that service was sought. Therefore, if litigants wish to defer service for a period of time, it is suggested that the clerk's office obtain a written statement to that effect and place in the case file.

B. Demurrers

A demurrer is a pleading by a defendant disputing the legal sufficiency of plaintiff's pleadings. In effect, it is an allegation that "even if the plaintiff's claims are true, he has not stated a claim which is sufficient for the judge to enter an order in his/her favor for the requested award." It is used to attempt to have a case dismissed because the legal claims are not sufficient for granting judicial relief.

C. Pleas in Equity

A plea in equity is a pleading in which a party asserts that the entire case can be decided on one very specific set of facts, which if true, would decide the case in that party's favor.

D. Disclaimers

A disclaimer is a pleading in which the defendant states that he has no interest in the subject of the case. The defendant will appear in court, submit his/her disclaimer, agree to the order set forth by the court, and ask the court to dismiss him from the case.

E. Answers

An answer is a pleading by which a defendant in an equity suit endeavors to resist the plaintiff's demand by stating facts. The defendant may deny the claims of the plaintiff, or agree to them. Also, he/she may introduce a new matter.

F. Cross-Claims

A cross-claim against a codefendant or a third party is a complaint, analogous to a counterclaim or cross-claim. A cross-claim against a codefendant is considered a new suit. All provisions of the Rules of the Supreme Court of Virginia applicable to complaints and summonses, except those provisions requiring payment of writ tax and clerk's fees, apply to cross-claims of this type.

No amendments shall be made to any pleading after it is filed, except by permission of the court. Permission to amend will be liberally granted in furtherance of the ends of justice. In granting permission to amend, the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper. Rule 1:8.

VIII. SOURCES OF LAW APPLICABLE TO CIVIL CASES**A. Statutory Law**

The Code of Virginia of 1950 is the source of all state statutory law. It sets forth matters of jurisdiction, venue, applicable statutory causes of actions and periods of limitations thereon, rules of civil procedure and practice in all state courts.

A summary of all legislative action taken on the statute is found in parenthesis immediately after the text of each statute. Such summary provides the year and chapter of the Acts of the General Assembly, either establishing, amending or recodifying the statute. The text of each statute is followed by annotations citing case law decisions involving applications of the particular statute to the subject case. The Code of Virginia and supplements thereto are provided to each clerk annually, at no cost, through the [Virginia Code Commission](#).

B. Acts of the General Assembly

The Acts of the General Assembly of Virginia provide (in part) the complete text of new statutes and amendments to existing statutes. These amendments can be reviewed by noting that statutory sections or wording printed in italics denotes new statutory language added by the Act, while lines printed through existing statutory language denote deletion or repeal of that language from the text of the statute. Amendments to related statutes are grouped into chapters in the Acts.

The Acts of the General Assembly are published annually after the conclusion of regular and special sessions of the state legislature. The Acts are provided, at no cost, to clerks upon written request, from the [Division of Legislative Services](#).

C. Case Reporters

The Virginia Reports contain the full-published text of the opinions of the Supreme Court of Virginia. The Virginia Court of Appeals Reports contain the full text of opinions of the Court of Appeals of Virginia.

These case reporters can be obtained by clerks, at no expense, from the Supreme Court of Virginia.

D. Opinions of the Attorney General

The Annual Report of the Attorney General contains (in part) the text of opinions of the Attorney General, answering specific questions proposed to him/her by clerks, judges, etc. These opinions will often address issues involving civil actions.

Published annually, the Opinions are provided to clerks, at no expense, from the [Office of the Attorney General](#) of Virginia.

E. Other Reference Works

The [Circuit Clerks Duties List](#), annually published and distributed to clerks from the Department of Legal Research of Supreme Court of Virginia, provides (in part) a quick - reference to statutes involving the clerk's responsibilities in filing, processing and storing civil cases, and other related subjects.

The Circuit Court Clerk's Manual - Criminal is published and distributed by the Supreme Court of Virginia in cooperative effort with the Virginia Court Clerks Association. The manual contains a comprehensive discussion of criminal case processing, a descriptive listing of selected case types, and appendixes of forms, schedules, fee charts, etc. The complete manual is available on the intranet or through the Supreme Court website (www.courts.state.va.us) under the heading Resources and Manuals.