

RULES OF SUPREME COURT OF VIRGINIA
PART EIGHT JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Rule 8:1. Scope.

Part Eight of the Rules shall apply to all proceedings in the Juvenile and Domestic Relations District Courts.

NOTES:

Effective date. -- This part was adopted January 22, 1992, and became effective July 1, 1992.

~~Comment. — The Juvenile and Domestic Relations District Courts Rules of Court Subcommittee, at the suggestion of the juvenile judges, recommends that there be a separate part to avoid confusion with the Rules for General District Courts.~~

Law Review. For article, "Legal Issues Involving Children," see 26 U. Rich. L. Rev. 797 (1992).

Rule 8:2. Definitions.

(a) Statutory Definitions. The definitions stated in § 16.1-228 are applicable to this Part.

(b) Additional Definitions. The following words and phrases used in this Part are defined as follows:

(1) "Counsel" or "attorney" includes a partnership, a professional corporation or an association of members of the Virginia State Bar practicing under a firm name or governmental agency name.

(2) "Counsel of Record" in any pending case includes an attorney who has signed a pleading in the case or who has notified the clerk or judge that the attorney appears in the case and shall also include a guardian ad litem and a party who appears in court pro se. Except as provided by statute, counsel of record shall not withdraw from a case except by leave of court with such notice as the court may require to the client of the time and place of a motion for leave to withdraw.

NOTES:

~~Comment. — This Rule largely tracks Rule 7A:3 with some slight modifications to reflect situations unique to the Juvenile and Domestic Relations District Court.~~

Derogatory statement concerning judge. -- Derogatory statement concerning the qualifications or integrity of a judge, made by a lawyer with knowing falsity or with reckless disregard of its truth or falsity, created a substantial likelihood of material prejudice to the administration of justice, and was not, therefore, constitutionally protected speech. *Anthony v. Va. State Bar*, 2005 Va. LEXIS 103, 270 Va. 601, 621 S.E.2d 121 (2005), cert. denied, -- U.S. --, 126 S. Ct. 2871, 165 L. Ed. 2d 897 (2006).

Signature. -- Holding that a wife did not sign a notice of appeal and that it was not signed on her behalf as required by Va. Sup. Ct. R. 8:8(a) and 8:2(b)(2) was a finding of fact supported by the evidence as: (1) a husband testified that the wife's name as printed on the notice of appeal did not appear to be her signature; and (2) the printed name on the notice of appeal was unmistakably different from the cursive imprint of her name on a notice of change of address. *Piatt v. Colvin*, 2007 Va. App. LEXIS 470, -- Va. App. --, -- S.E.2d -- (Dec. 27, 2007).

Opinions of the Attorney General.

Access to court files of cases must be given to self-represented individuals by juvenile and domestic relations district courts. However, juvenile courts are not required to provide such self-represented litigants with notice regarding their rights of access. See opinion of Attorney General to The Honorable Onzlee Ware, Member, House of Delegates, 06-107 (2/20/07).

Rule 8:3. Contents of Petitions in Certain Proceedings.

(a) Proceedings for the Ordering of Services.

(1) Motion or Petition. When a party to a matter pending before the court, or a petition filed for the purpose, proposes that the court enter an order pursuant to § 16.1-278, directing that a governmental officer, employee, agency, or institution render information, assistance, services or cooperation, the petition or motion shall contain:

a) The information, assistance, services, or cooperation sought;

b) The state or federal law or regulation or city, county, or town ordinance that provides for the rendering of such information, assistance, services, or cooperation sought; and

c) The officer, employee, agency, or institution to whom the order should be directed.

(2) Notice. The motion or petition prescribed in paragraph (a)(1) of this Rule shall be served on the governmental officer, employee, agency, or institution in question pursuant to § 16.1-264.

(3) Hearing. The governmental officer, employee, agency, or institution against whom an order is sought shall be entitled to a hearing on the issues raised by the petition or motion. The hearing may be held at such time as the court deems appropriate.

(b) Proceedings for Judicial Consent to Emergency Surgical or Medical Treatment for a Juvenile. When a petition is filed for the purpose of seeking judicial consent for emergency surgical or medical treatment of a juvenile, the petition shall contain:

(1) The juvenile's name, date of birth, residence, and a statement as to whether or not the juvenile has ever been married;

(2) The names and residence of the juvenile's parents, guardian or legal custodian;

(3) The name and residence of the nearest known relative if no parent or guardian can be found;

(4) The name and address of the physician petitioning the court for authorization of surgical or medical treatment for the juvenile;

(5) The name and address of the hospital or medical facility petitioning for authorization of surgical or medical treatment for the juvenile;

(6) A statement of the diagnosis of the juvenile's physical condition, and the recommended medical, surgical, and nursing care; and

(7) A statement of the willingness of the physician and the hospital or medical facility to provide the necessary medical, surgical, and nursing care if judicial consent is given as requested.

(c) Proceedings for Support. Except for temporary child support orders issued pursuant to Va. Code § 16.1-279.1, when a petition is filed seeking a court order for support of a spouse or child, the petition shall contain:

(1) The name and residential address of the person seeking support;

(2) The name and residential address of the person from whom support is sought;

(3) The name, date of birth, and residential address of the person or persons for whom support is sought and the relationship of that person or those persons to the respondent;

(4) A statement whether the Division of Child Support Enforcement is involved in the case;

(5) If child support is at issue, a statement whether or not the petitioner and respondent are presently or have ever been married to each other and, if not, whether paternity has ever been adjudicated;

(6) If child support is at issue, a statement whether the child's custody has been adjudicated;

(7) If known, the name, date of birth, and social security number of each parent or spouse and, if different and if known, the name, date of birth, and social security number of the person responsible for support and, unless otherwise ordered, the residential and, if different, mailing address, residential and employer telephone number, driver's license number, and the name and address of the employer of each such parent or responsible person;

(8) As an attachment, a copy of the most recent court order, if any, concerning support of the person for whom support is sought in this petition; and

(9) A statement whether either or both parents hold a license, certificate, registration, or other authorization to engage in a profession, trade, business or occupation issued by the Commonwealth and, if so, the type of authorization held. In the case of a petition for support, if a protective order has been issued or if a party asserts that the party is at risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be required on the petition; however, the information shall be provided to the court and shall not be disclosed except by order of the court.

NOTES:

~~Comment.—A. Section 16.1-278 is the so-called mandamus statute which gives the Juvenile and Domestic Relations District Court the power to order services, etc., that are required by law to be provided by a governmental agency. The statute provides for notice and an opportunity to be heard, but it is silent on all other procedural matters. This proposal fleshes out the statute by detailing the statements required in the petition, the type of notice to be given and the right to a hearing.~~

~~B. Section 16.1-24D gives jurisdiction to the Juvenile and Domestic Relations District Courts to authorize emergency medical treatment in certain circumstances. Section 16.1-262 specifies the form and content of petitions. The latter section is, however, very general and does not cover the specifics of an emergency medical situation. Further, there usually are no hearings in these cases as the court, by telephone, has already given authorization. The petition and order follow by several days~~

~~the permission to treat. Without the statements under this rule, the record, at best, is very skimpy regarding the particulars of the child's condition and the reason for the request (see Rule 8:22 for time requirement).~~

~~C. There is a statutory requirement for the content of support orders (§ 20-60.3), but there is no requirement that these items be in the support petition. This rule corrects this deficiency and further includes other important items of which the court should be aware such as prior support orders, etc.~~

Comment. - For subdivision (a) Proceedings for the Ordering of Services, see § 16.1-278. For subdivision (b) Proceedings for Judicial Consent to Emergency Surgery or Medical Treatment for a Juvenile, see § 16.1-241(D), and Rule 8:22 for time requirement. For subdivision (c) Proceedings for Support, see § 20-60.3 and § 20-107.1 for the statutory requirements for the content of support orders.

Effects of Amendment. --

The amendment, effective March 1, 1998, adopted December 9, 1997, in subdivision (c)(7), substituted "residential and, if different, mailing address, residential and employer telephone number, driver's license number, and the name and address of the employer" for "current address and place of employment"; and added the concluding paragraph.

The amendment, effective September 30, 2004, adopted September 30, 2004, added "Except for temporary child support orders issued pursuant to Va. Code § 16.1-279.1," at the beginning of the introductory paragraph of subsection (c).

The amendment effective July 1, 2009, adopted June 1, 2009, substituted "business, occupation or recreational activity" for "business or occupation" in subdivision (c)(9).

Rule 8:4. Service of Process -- Motion to Reduce Support Arrearages to Judgment.

Any motion to enter judgment for support arrearages pursuant to § 16.1-278.18 shall be served upon the respondent in accordance with the provisions of §§ 8.01-296, 8.01-327, 8.01-329, or by (1) certified mail, return receipt requested, and (2) first class mail. Upon sufficient showing that a diligent effort was made to ascertain the location of a party, that party may be served with any required notice by delivery of the written notice to that party's residential or business address as filed with the court pursuant to Code § 20-60.3 or the Department of Social Services, or if changed, as shown in the records of the Department of Social Services.

NOTES:

~~Comment. — This rule corrects a serious problem under § 16.1-279(O) (see now § 16.1-278.18) relating to monetary judgments for support arrearages. The statute provided for notice "in accordance with the applicable provisions of law relating to notice when proceedings are reopened." The problem is that judges and attorneys cannot agree on what this means. Guidance is necessary (see *Garrity* and *Sheffield* cases).~~

Effects of Amendment. --

The amendment, effective March 1, 1998, adopted December 9, 1997, added the last sentence.

Rule 8:5. Court-Ordered Reports.

Copies of all studies and reports pursuant to §§ 16.1-269.2, 16.1-273, 16.1-274, 16.1-275 and 63.1-248.14, when received by the court shall be furnished by the court to counsel of record, and upon request shall be mailed to such counsel. Counsel of record shall return such reports to the clerk upon the conclusion of the hearing and shall not make copies of such report or amended report or any portion of either.

NOTES:

Comment. -- The statutes cited in the rule refer to reports for transfer hearings; social history reports; custody, visitation, or support reports; and reports of physical and mental evaluations. Reports generated pursuant to subsection A of § 16.1-237, § 16.1-273, or § 9.1-153, or an evaluation pursuant to § 16.1-278.5 shall be returned to the clerk upon the conclusion of the hearing and counsel of record shall not make copies of any such report or amended report or any portion of either. The chief judge of each juvenile and domestic relations district court may provide for an alternative means of copying and distributing reports or amended reports filed pursuant to § 9.1-153. See Virginia Code § 16.1-274.

For the right to and limitations on access to juvenile records generally, including the authority of the judge to regulate the photocopying of juvenile records, see Virginia Code § 16.1-305.

~~Section 16.1-274 specifies time limits for the filing of reports and directs that "The clerk shall furnish a copy of such report to all attorneys representing parties in the~~

~~matter before the court" but the statute does not specify whether the clerk has an affirmative obligation to mail copies of the report to all attorneys. Due to the heavy workload in many clerk's offices, it was felt that mailing of reports should not be required in every case, but the rule would require mailing upon request.~~

~~For a definition of~~ The term "counsel of record," in the rule includes parties appearing pro se (see Rule 8:2(b)(2), which incorporates both pro se parties and guardians ad litem into the term.). ~~This would satisfy the requirement in § 16.1-305(B) that all records or reports which are presented to the judge shall also be made available to the parties and their attorneys.~~

Editor's Note. -- The reference in the text of this Rule to § 63.1-248.14 should now refer to § 63.2-1524.

Rule 8:6. The Roles of Counsel and of Guardians Ad Litem When Representing Children.

The role of counsel for a child is the representation of the child's legitimate interests.

When appointed for a child, the guardian ad litem shall vigorously represent the child, fully protecting the child's interest and welfare. The guardian ad litem shall advise the court of the wishes of the child in any case where the wishes of the child conflict with the opinion of the guardian ad litem as to what is in the child's interest and welfare.

NOTES:

~~Comment. — This is an effort to satisfy concerns of the Judicial Council of the original proposal. The rule has been narrowed in scope, i.e., the role is merely defined with a caveat of the duty of the guardian ad litem when the child's wishes run counter to what the guardian ad litem deems to be in the interest or welfare of the child. The language defining the two roles has been modified to track that of the ABA Standards and Virginia case law.~~

For annual survey article on legal issues involving children, see 38 U. Rich. L. Rev. 161 (2003).

Comment. - See also Virginia Code § 16.1-266 regarding appointment of a guardian ad litem or counsel for a child. The Judicial Council of Virginia has adopted STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN, which may be found on the Internet at

http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/gal_performance_standards_children.pdf. The Virginia Indigent Defense Commission has established STANDARDS OF PRACTICE FOR INDIGENT DEFENSE COUNSEL, which include standards for counsel appointed to represent juveniles in either delinquency proceedings or proceedings to determine whether a juvenile is in need of services or supervision. The STANDARDS OF PRACTICE FOR INDIGENT DEFENSE COUNSEL may be found on the Internet at <http://www.indigentdefense.virginia.gov/PDF%20documents/Standards%20of%20Practice.pdf>.

Guardian ad litem's recommendation due to be considered. -- The recommendation of the guardian ad litem in instant child custody case, while not binding or controlling, should not be disregarded. The duty of a guardian ad litem in a child custody dispute is to see that the interest of the child is represented and protected. This child had no other independent participant in the proceeding, aside from the trial court, to protect his interests. Thus, this diligent guardian ad litem's recommendation that custody be awarded to the grandmother was entitled to be considered by the court in reaching a decision on the issue. *Bottoms v. Bottoms*, 249 Va. 413, 457 S.E.2d 102 (1995).

Guardian ad litem fees. -- Record supported the trial court's findings that the services of a guardian ad litem were required in the contentious custody dispute, and that mother was in contempt for failing to pay one-half the fees as ordered; the trial court did not violate the Thirteenth Amendment, as to involuntary servitude, in finding the mother in contempt. *Walker-Duncan v. Duncan*, No. 1752-03-1, 2004 Va. App. LEXIS 26 (Ct. of Appeals Jan. 20, 2004).

Rule 8:7. Size of Paper.

(a) All pleadings, motions, briefs and all other documents filed in any clerk's office in any proceeding pursuant to the Rules or statutes shall be 8-1/2 by 11 inches in size. All typed material shall be double spaced except for quotations.

(b) This Rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.

(c) No paper shall be refused for failure to comply with the provisions of this Rule, but the clerk or judge may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel shall certify that the substituted paper is identical in content to the paper initially filed.

NOTES:

Comment. -- ~~This Rule is identical to~~ See also Rules 1:16 and 7A:7.

Rule 8:8. Pleadings.

(a) General. Counsel of record tendering a pleading gives assurances that it is filed in good faith and not for delay, and counsel of record who files a pleading shall sign it and state counsel's address and telephone number. A pleading that is sworn to is an affidavit for all purposes for which an affidavit is required or permitted. The mention in a pleading of an accompanying exhibit shall, of itself and without more, make such an exhibit a part of the pleading.

(b) Denial, Admission, Objection. A party respondent need not file a pleading or may file a pleading denying or admitting all or any facts alleged in the petition, motion, or summons, or the respondent may file a motion raising objections. Any allegation not admitted is deemed denied. If a respondent fails to file a pleading, the failure will be taken as a denial of the allegations in the petition, motion, or summons.

(c) Amendment of Written Pleading. Except as hereinafter provided, or as provided pursuant to §§ 16.1-129.2, 16.1-93 and 16.1-259, no amendment shall be made to any pleading after it is filed with the clerk, except by leave of court. Leave to amend a pleading shall be liberally granted in furtherance of the ends of justice. In granting leave to amend, the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper.

In delinquency, child in need of services, child in need of supervision, and status offense proceedings, the court may permit amendment of the written pleading at any time before adjudication, provided that the amendment does not change the nature or character of the matter alleged. If the amendment is made after the respondent pleads or is made after any evidence is heard, the amended pleading shall be read to him and he shall be allowed to change his plea. If the court finds that the amendment operates as a surprise to the respondent, it shall upon request grant a continuance for a reasonable time.

(d) Bill of Particulars. The court may direct the filing of a bill of particulars at any time before trial.

(e) Copies of Pleadings to be Furnished. All pleadings not otherwise required to be served shall be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing a copy to each on or before the day of filing. At the foot of such pleadings shall be appended either ac-

ceptances of service or a certificate that copies were served as this Rule requires, showing the date of delivery, dispatching, transmitting or mailing.

NOTES:

Comment. -- ~~Paragraph (a) is virtually identical to Rule 7A:8 of the Rules for General District Courts.~~

Paragraph (b) provides that any allegation of a pleading which is not admitted is deemed denied. This is the converse of the rule applied in ~~circuit~~other courts (see Rule ~~1:42~~ 1:4(e)). ~~because responsive pleadings are generally not required or filed in Juvenile and Domestic Relations District Courts.~~

~~The first paragraph under (c) is substantially identical to Rule 1:8 and Rule 7A:9 but adds statutory references. The second paragraph under (c) pertains to certain proceedings that are unique to the Juvenile and Domestic Relations District Court.~~

Paragraph (d) (~~Bill of Particulars~~) is adapted from § 16.1-69.25:1.

~~Paragraph (e) is patterned after Rules 1:12 and 7A:10 with minor modifications.~~

Effects of Amendment. --

The amendment, effective February 1, 1999, adopted November 23, 1998, in subdivision (e), inserted "dispatching by commercial delivery service, transmitting by facsimile" in the first sentence and inserted "dispatching, transmitting" in the second sentence.

Signature. -- Holding that a wife did not sign a notice of appeal and that it was not signed on her behalf as required by Va. Sup. Ct. R. 8:8(a) and 8:2(b)(2) was a finding of fact supported by the evidence as: (1) a husband testified that the wife's name as printed on the notice of appeal did not appear to be her signature; and (2) the printed name on the notice of appeal was unmistakably different from the cursive imprint of her name on a notice of change of address. *Piatt v. Colvin*, 2007 Va. App. LEXIS 470, -- Va. App. -- , -- S.E.2d -- (Dec. 27, 2007).

Rule 8:9. Discretion of Court.

All steps and procedures in the clerk's office touching the filing of pleadings and the maturing of suits or actions may be reviewed and corrected by the court.

The time allowed for filing pleadings may be extended by the court in its discretion, and such extension may be granted although the time fixed already has expired.

NOTES:

~~Comment. — This rule tracks Rules 1:9 and 7A:5.~~

Rule 8:10. Motions to Transfer Venue.

A motion to transfer venue shall be made in writing or in court with the parties present. When a written motion is filed, it shall be set for hearing, and the motion and notice of hearing shall be served on all other parties or on counsel of record, if any.

NOTES:

~~Comment. — Section 16.1-243 specifies the proper venue for various types of cases in the Juvenile and Domestic Relations District Court but does not specify the procedure for transfer. There is a lack of uniformity among the various courts in transferring venue. For example, some courts require a hearing to decide whether venue should be transferred while others do not; some courts will only transfer active cases, while others will transfer inactive or closed cases.~~

~~The rule would apply to both pending and inactive cases and would make it clear that proper notice must be given and a hearing held in every case.~~

Comment. - This Rule applies to both pending and inactive cases.

Rule 8:11. Reporters and Transcripts of Proceedings in Court.

Any party shall have the right to have a court reporter present to take down or record the proceedings. In all proceedings not open to the public it shall be within the sound discretion of the judge as to whether a court reporter may take down or record the proceedings on behalf of a person not a party. In all other proceedings, any person not a party may bring a court reporter to take down the proceedings. Court reporters, when present, shall be first duly sworn to take down and transcribe the proceedings faithfully and accurately to the best of their ability and shall be subject to the control and discipline of the judge.

In proceedings open to the public, when a court reporter is present and takes down or records the proceeding, any interested person shall be entitled to obtain a transcript, unless the court records remain confidential pursuant to § 16.1-305. In proceedings not open to the public, when a court reporter is present and takes down or records the proceeding, a party shall be entitled to obtain a transcript without prior court order, but the court may limit the circulation of the transcript by a party. In such

proceedings not open to the public, other than (i) proceedings closed for good cause pursuant to subsection C of § 16.1-302 and which result in an adjudication of delinquency of a juvenile, who was fourteen years or older at the time of the offense, on the basis of an act which would be a felony if committed by an adult or (ii) proceedings resulting in a subsequent adjudication of delinquency as described in subsection B1 of § 16.1-305, all other interested persons shall only be entitled to a transcript by order of court which shall state for whom such transcript shall be prepared and what restrictions, if any, are imposed on the use and distribution of the transcript, its contents or any part. In delinquency proceedings which are closed for good cause pursuant to subsection C of § 16.1-302 and which result in an adjudication of delinquency of a juvenile, who was fourteen years or older at the time of the offense, on the basis of an act which would be a felony if committed by an adult, when a court reporter is present and takes down or records the proceeding, any interested person shall be entitled to a transcript, except for those transcripts or portions of transcripts which the judge has ordered shall remain confidential pursuant to subsection B1 of § 16.1-305. In proceedings resulting in an adjudication of delinquency which is subsequent to a prior adjudication of delinquency of a juvenile who was fourteen years or older at the time of the prior offense and whose prior adjudication was on the basis of an act which would be a felony if committed by an adult, when a court reporter is present and takes down or records the proceeding, any interested person shall be entitled to obtain a transcript, except for those transcripts or portions of transcripts which the judge has ordered shall remain confidential pursuant to subsection B1 of § 16.1-305.

The proceedings may be taken down by means of any recording device approved by the court.

NOTES:

~~Comment.—This language tracks Rule 7A:4 with modifications that relate to the confidentiality of proceedings not open to the public as set forth in §§ 16.1-302 and 16.1-305.~~

Rule 8:12. Preservation of the Record.

A court may authorize the use of electronic or photographic means for the preservation of the record or parts thereof.

NOTES:

Comment. -- ~~This~~ See also ~~rule is identical to~~ Rule 7A:6.

Rule 8:13. Requests for Subpoenas for Witnesses and Records.

(a) Subpoenas for Witnesses.

(1) Requests for subpoenas for witnesses should be filed at least ten days prior to hearing.

(2) Requests for subpoenas for witnesses not timely filed should not be honored except when authorized by the court for good cause.

(b) Subpoenas Duces Tecum.

(1) Requests for subpoenas duces tecum should be filed at least 15 days prior to hearing.

(2) Requests for subpoenas duces tecum not timely filed should not be honored except when authorized by a judge for good cause.

(c) Meaning of Filed. The term "filed" as used in this Rule means received in the appropriate clerk's office or by an appropriate magistrate.

(d) Copies of Requests for Subpoenas Duces Tecum. All requests for subpoenas duces tecum shall be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing a copy to each on or before the day of filing. At the foot of such requests shall be appended either acceptance of service or a certificate that copies were served as this Rule requires, showing the date of delivery, dispatching, transmitting or mailing.

(e) Exception. This Rule does not apply to subpoenas for witnesses and subpoenas duces tecum issued by attorneys in civil cases as authorized by Virginia Code §§ 8.01-407 and 16.1-265.

NOTES:

~~Comment.—This tracks Rules 7A:10 and 7A:12 with the substitution of "hearing" for "trial" to recognize the multiplicity of pre- and post-trial hearings in the Juvenile and Domestic Relations District Court.~~

Effects of Amendment. --

The amendment, effective February 1, 1999, adopted November 23, 1998, in subdivision (d), inserted "dispatching by commercial delivery service, transmitting by facsimile" in the first sentence and inserted "dispatching, transmitting" in the second sentence.

The amendment effective July 1, 2000, adopted June 16, 2000, added subdivision (e).

Rule 8:14. Continuances.

(a) Continuation Granted for Good Cause. Continuances should not be granted except by, and at the discretion of, a judge for good cause shown, or unless otherwise provided by law. The judge may, by order, delegate to the clerk the power to grant continuances consented to by all parties under such circumstances as are set forth in the order. Such an order of delegation should be reasonably disseminated and posted so as to inform the bar and the general public.

(b) All Parties Agree to Continuation. If all parties to a proceeding agree to seek a continuation, the request may be made orally by one party as long as that party certifies to the judge that all other parties know of the request and concur. Such a request should be made as far in advance of the scheduled hearing or trial as is practicable. If granted, the moving party shall be responsible for assuring that notice of the continuation is given to all subpoenaed witnesses and that they are provided with the new court date. This obligation may be met by (i) an agreement between the parties that each side will notify its own witnesses; or (ii) any other arrangement that is reasonably calculated to get prompt notice to all witnesses.

(c) All Parties Do Not Agree to Continuation. If a request for continuation is not agreed to by all parties to a proceeding, such request should be made to the court prior to the time originally scheduled for the hearing or trial. If the court determines that a hearing on the request should be conducted prior to the time originally scheduled for the trial, all parties shall be given notice of such hearing by the requesting party.

(d) Continuances Requested at the Time of Hearing. Where a request for a continuation has not been made prior to the hearing or trial and other parties or witnesses are present and prepared for trial, a continuation should be granted only upon a showing that to proceed with the trial would not be in the best interest of justice.

(e) Parties. For purposes of this Rule, the term "parties" shall mean all plaintiffs, petitioners, the prosecution, defendants, respondents and any person who is the subject of the proceeding.

NOTES:

~~Comment.—This tracks Rule 7A:14 except in paragraph (e) which has been expanded to include the greater multiplicity of parties in Juvenile and Domestic Relations District Courts.~~

Rule 8:15. Discovery.

(a) Adult Criminal Case. In any cases involving adults charged with crime, the provisions of Rule 7C:5 shall govern discovery.

(b) Juvenile Delinquency Cases. In juvenile delinquency cases, when the juvenile is charged with an act that would be a felony if committed by an adult, or in a transfer hearing or a preliminary hearing to certify charges pursuant to § 16.1-269.1, the court shall, upon motion timely made by the juvenile or the Commonwealth's Attorney, and for good cause, enter such orders in aid of discovery and inspection of evidence as provided under Rule 3A:11.

In juvenile delinquency cases when the juvenile is charged with an act that would be a misdemeanor if committed by an adult, the court shall, upon motion timely made and for good cause, enter such orders for discovery as provided under Rule 7C:5.

(c) Other Cases. In all other proceedings, the court may, upon motion timely made and for good cause, enter such orders in aid of discovery and inspection of evidence as permitted under Part Four of the Rules, except that no depositions may be taken.

(d) In proceedings concerning civil support, the judge may require parties to file a statement of gross income together with documentation in support of the statement.

NOTES:

~~Comment.—The rule covers discovery in all types of cases in Juvenile and Domestic Relations District Court.~~

~~With regard to adult criminal cases, the rule would allow the same discovery that is allowed in the general district courts under Rule 7C:5. This would also be consistent with § 16.1-259(A).~~

~~With respect to juvenile delinquency cases, where the juvenile is charged with a felony or is the subject of a transfer hearing, the subcommittee believes that the juvenile should be afforded the same discovery rights as an adult under Rule 3A:11 in view of the potentially serious loss of liberty in such cases. To require less might result in a claim of denial of equal protection of law. However, in misdemeanor cases~~

~~juveniles would be granted the same, more limited discovery as adults under Rule 7C:5.~~

~~In civil cases (c), the subcommittee recommends that all of the forms of discovery authorized by Part Four of the Rules be permitted in Juvenile and Domestic Relations District Court except for the taking of depositions. The subcommittee did not recommend depositions because of the cost involved. However, the other types of discovery, such as interrogatories and motions for production, are already commonly used by many attorneys in Juvenile and Domestic Relations District Court and should be officially sanctioned in order to promote uniform procedure among the courts.~~

~~Chapters 755 and 914 of the 1996 Acts of the General Assembly amended § 16.1-269.1 to provide that a juvenile may be tried in circuit court subsequent to either a transfer hearing or a preliminary hearing and certification. The first paragraph of subsection (b) has been amended to reflect these provisions.~~

Rule 8:16. Arraignment in Juvenile Delinquency Cases.

Arraignment in a delinquency proceeding shall consist of reading to the juvenile the charge on which the juvenile will be tried and calling on the juvenile to plead thereto, and it shall be conducted in court. Arraignment may be waived by the juvenile in court, or by counsel.

NOTES:

~~Comment.—The Code is silent on this phase of a juvenile proceeding. It is felt that this gap in the Code should be filled in to have the rules more closely track an actual delinquency case. See Rule 8:18 on the types of pleas by the juvenile.~~

Rule 8:17. Notification and Waiver of Trial Rights of Parties.

Upon a juvenile's first appearance in court in a delinquency case, the juvenile shall be advised by the judge of the following trial rights: the right to counsel, to a public hearing, to the privilege against self-incrimination, to confront and cross-examine witnesses, to present evidence, and the right to appeal a final decision of the court. In determining whether a waiver of the right to counsel, of the right to a public hearing, and of the privilege against self-incrimination, is knowingly, voluntarily, and intelligently made, the court must find after a thorough inquiry that the juvenile is capable of making an intelligent and understanding decision in light of the child's age, mental condition, education, and experience, considering the nature and complexity of the

case. Such waiver of trial rights shall be made orally in open court, and the waiver of the right to counsel shall also be reduced to writing, signed by the juvenile and filed with the court records of the case.

NOTES:

~~Comment.—This rule deals with a crucial problem in the Juvenile and Domestic Relations District Court where a juvenile, presumptively incapable of having and exercising significant legal rights, is called on to waive some very basic Constitutional rights defined by the Supreme Court in *In re Gault*, 387 U.S. 1 (1967), and reaffirmed by the juvenile code. Such waivers should be surrounded by procedural protections to ensure that they are voluntarily, knowingly and intelligently made.~~

~~Since the Judicial Council last met and approved this rule in its original form, we have received comments that some judges may interpret the rule to require in all cases a suppression-type hearing for rights waived before the child ever appeared before a judge. To clarify the intent of the rule, we suggest that it be amended to reflect "trial" rights. Note that the word "trial" has been inserted at appropriate places.~~

Rule 8:18. Pleas.

(a) Permissible Pleas by Child. A child may admit the allegations of the petition or summons by pleading guilty, or the child may plead not guilty, nolo contendere, or enter no plea. If the child enters no plea, the court will proceed as if a denial were entered to the allegations of the petition or summons.

(b) Determining Voluntariness, Understanding, and Intelligence of a Plea of Guilty by a Juvenile. The court shall not accept a plea of guilty or nolo contendere to a charge of delinquency by a child without first determining that the plea is made voluntarily with an understanding of the nature of the allegations in the petition or summons and the consequences of the plea, including that such a plea constitutes a waiver of the right to confront one's accusers and the right against compulsory self-incrimination.

(c) Determining Voluntariness, Understanding, and Intelligence of a Plea of Guilty by an Adult. In any case involving an adult charged with a crime, the court shall not accept a plea of guilty or nolo contendere to a misdemeanor charge except in compliance with Rule 7C:6.

NOTES:

~~Comment.—There is no statute covering the types of pleas of a child. There is also considerable variance in the Commonwealth on the types of pleas allowed, e.g., "guilty," "within the purview" and "not innocent." This will ensure uniform procedure throughout the Commonwealth.~~

Effects of Amendment. --

The amendment, adopted March 1, 2005, effective June 1, 2005, added "including that such a plea constitutes a waiver of the right to confront one's accusers and the right against compulsory self-incrimination" at the end of subdivision (b), and added subdivision (c).

Rule 8:19. Endorsements of Orders.

Drafts of orders prepared by counsel of record shall be endorsed by all counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing to all counsel of record who have not endorsed them. Compliance with this Rule may be modified or dispensed with by the court in its discretion.

NOTES:

~~Comment.—This rule tracks Rule 7A:11, with a minor amendment to acknowledge that many orders in Juvenile and Domestic Relations District Court are form orders prepared by the court, rather than counsel.~~

Effects of Amendment. --

The amendment, effective February 1, 1999, adopted November 23, 1998, inserted "dispatching by commercial delivery service, transmitting by facsimile" in the first sentence.

Rule 8:20. Appeals.

All appeals shall be noted in writing. An appeal is noted only upon timely receipt in the clerk's office of the writing. An appeal may be noted by a party or by the attorney for such party.

NOTES:

~~Comment.—Rule 8:20 tracks the relevant language of Rule 7A:13.~~

Jurisdiction absent where improper party filed appeal. -- Nothing in this rule permits the notice of appeal to be filed by a person who is a regular and bona fide employee of the party. Therefore, because the notice of appeal was not filed by the Division of Child Support Enforcement's attorney, the requirement of this rule was not followed in filing the notice of appeal and, the circuit court never acquired jurisdiction over the appeal of the child support matter, from the juvenile court. *Jones v. Division of Child Support Enforcement ex rel. Owens*, 19 Va. App. 184, 450 S.E.2d 172 (1994).

Jurisdiction proper. -- Trial court had jurisdiction to hear an appeal of the juvenile and domestic relations district court's ruling on the biological mother's petition to modify custody and visitation; the biological mother filed a proper civil appeal notice in the case, was not required to serve the husband with it in order for the trial court to have jurisdiction over the appeal, and, in any event, the husband did not contend that he never received notice that the biological mother filed an appeal. *Albert v. Ramirez*, 2005 Va. App. LEXIS 225, 45 Va. App. 799, 613 S.E.2d 865 (2005).

Rule 8:21. Violations of Court Orders.

Proceedings for the violation of court orders shall be governed by the procedures, safeguards, rights and duties applicable to the original proceedings.

NOTES:

~~Comment.—This rule violates one of the subcommittee's principles which is not to have a Rule if the statutes are adequate. The subcommittee made this exception for the purpose of continuity in our effort to "track" juvenile proceedings. We also suggest that the comment section of the rule reference the applicable Code §§ 16.1-291 et seq.~~

Rule 8:22. Judicial Consent.

In any instance where the court is called upon in an emergency situation to give judicial consent as provided for by statute, the request and court consent may be oral, but a written request shall be filed in the clerk's office within five days of such consent, and the consent of the court shall also be reduced to a written order as soon as reasonably possible.

NOTES:

~~Comment. — This rule applies primarily to requests for emergency medical or surgical treatment of juveniles under § 16.1-241(D). Rule 8:3(b) covers the content of a petition filed for this purpose.~~

Comment. -- See also Virginia Code § 16.1-241 (D) and Rule 8:3 (b).

Rule 7A:6. Preservation of the Record

A court may authorize the use of electronic or photographic means for the preservation of the record or parts thereof.

NOTES:

Cross-References. -- See also Rules 1:14 and 8:12, § 16.1-69.35:2, Canons of Judicial Conduct Canon 3 B (7) and § 19.2-266.