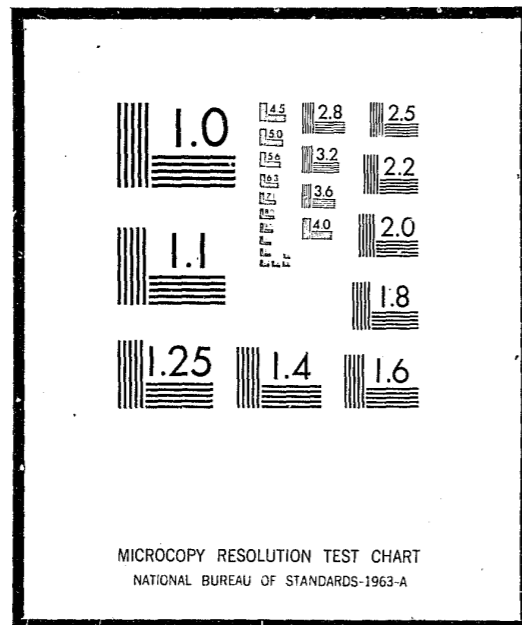


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COMMONWEALTH OF VIRGINIA
SUPREME COURT OF VIRGINIA

A HANDBOOK OF
STANDARD PROCEDURES AND MODEL ORDERS
IN CERTAIN CASES FOR JUDGES AND CLERKS
OF COURTS OF RECORD



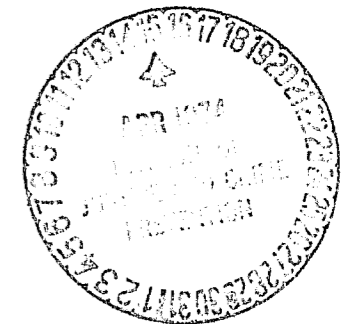
PREPARED FOR THE INFORMATION OF JUDGES
AND CLERKS OF COURTS OF RECORD OF THE
COMMONWEALTH OF VIRGINIA
BY THE
JUDICIAL COUNCIL FOR VIRGINIA

SUPREME COURT OF VIRGINIA
Office of the Executive Secretary
Richmond, Virginia

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COMMONWEALTH OF VIRGINIA
SUPREME COURT OF VIRGINIA

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STANDARD PROCEDURES AND MODEL ORDERS
IN CERTAIN CASES FOR JUDGES AND CLERKS
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COMMONWEALTH OF VIRGINIA
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SUPREME COURT OF VIRGINIA
Office of the Executive Secretary
Richmond, Virginia

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Second Printing

1971

700 Copies

I N D E X

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from

Office of the Executive Secretary
 Supreme Court of Virginia
 P. O. Box 1315
 Richmond, Virginia 23210

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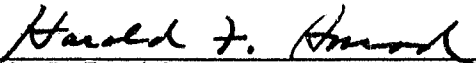
FOREWORD

This Handbook is a revision of the Handbook published and distributed during April, 1966, to present to the Trial Judges and Clerks of Courts of Record a ready reference to recommended standard procedures in the trial of civil, criminal and condemnation cases.

This revision has been prepared by Honorable Edmund W. Hening, Jr., Judge of the Tenth Judicial Circuit, who authored the original Handbook, and has been approved by the Criminal Procedure Committee of the Judicial Council of Virginia, which approved its publication and distribution at its meeting on December 17, 1971.

Throughout its history, the Commonwealth of Virginia, by constitution, statutes and case law, has emphasized the guarantee of "due process"; and the procedures outlined herein, as well as the model orders included in this Handbook, should substantially insure this important guarantee.

The continued diligence of and cooperation between the trial judges and the clerks of courts of record, including the application of the material in this Handbook, will achieve the goal of uniform and orderly administration of justice in the trial courts of the Commonwealth of Virginia.


Chief Justice
Supreme Court of Virginia

January 12, 1972.

PRE-TRIAL CONFERENCE AND DISCOVERY
IN CIVIL CASES

Rule 4:13 of Rules of the Supreme Court of Virginia reads as follows:

"Rule 4:13. PRETRIAL CONFERENCE. WHEN HELD - OBJECT - EFFECT.

"In any action at law or suit in equity, the court of its own motion or upon the timely motion of any party, may direct counsel for the parties to appear before it for a conference to consider:

"(a) Simplification of issues;

"(b) Amendment of pleadings, and filing of additional pleadings;

"(c) Stipulations as to facts, documents, records, photographs, plans and like matters, which will dispense with formal proof thereof; and

"(d) Such other matters as will aid in the disposition of the case.

"Upon consideration of the above matters the judge shall make an appropriate order which will control the subsequent conduct of the case unless modified before or at the trial or hearing to prevent manifest injustice."

Consult the other Rules adopted by the Supreme Court of Virginia relative to Discovery Depositions and other discovery processes in actions at law for broadening the scope of pretrial conference.

City of Portsmouth v. Cilumbrello, 204 Va. 11, 14, states:

"The purposes of the rule are to aid in the dispatch of litigation, to encourage the settlement of cases, to reduce the issues so as to shorten time consumed in trial and to prevent surprise."

In the event that the Trial Judge, on his own motion and on notice to counsel, desires to combine pre-trial conference, discovery and setting the trial docket into one hearing, the form hereinafter set out will prove useful.

FORM FOR
PRE-TRIAL CONFERENCE, DISCOVERY AND SETTING
CIVIL CASES FOR TRIAL

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF _____

NOTICE TO APPEAR FOR PRE-TRIAL CONFERENCE AND ASSIGNMENT OF TRIAL
DATE

v.

CIVIL ACTION NO. _____

TC: _____ p.q.

_____ p.d.

_____ p.d.

Please TAKE NOTICE that this Civil Action has been set
for PRE-TRIAL CONFERENCE and FIXING OF TRIAL DATE in the Judge's
Chambers, _____, _____, Virginia,
on _____, 19____, at _____ o'clock.

IT IS REQUIRED THAT COUNSEL BE PRESENT.

Judge(s)

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF _____

CASE NO. _____

_____	_____	p.g.
	(Name)	
v.	_____	
	(address)	
_____	_____	p.d.
	(Name)	

	(address)	
	_____	p.d.
	(Name)	

	(address)	

PRE-TRIAL CONFERENCE AND ASSIGNMENT OF TRIAL DATE: _____

1. Are Pleadings in Order? _____ Is Guardian Ad Litem needed? _____

*Additional pleadings needed: _____

2 Type of Case: () Negligence (auto) Traffic control? _____
 () Negligence (premises)
 () Contract
 () Other: _____

Plaintiff's Factual Version: _____

Defendant's Factual Version: _____

*Leave blank (to be completed by Judge.)

3. Issues:
- Status of plaintiff: (driver) (guest) (passenger) (invitee) (other _____)
 - (Simple) (Gross) negligence of defendant #1
 - (Simple) (Gross) negligence of defendant #2
 - Contributory negligence of plaintiff
 - Assumption of Risk
 - Sudden Emergency
 - Damages _____
 - Other: _____

4. Stipulations or Discovery re Medical Reports and Special Damages:
- a. Has plaintiff furnished medical reports and special damages? _____
 - *b. If so, same will be supplemented by _____
 - *c. If not, same will be supplied by _____
 - d. Does defendant desire independent medical exam? _____
 - e. Is plaintiff agreeable, subject to Rule 4:10, without Order? _____
 - *f. Independent medical will be completed by _____

5. Stipulations or Discovery re Photos, Documents, Witnesses and Evidence:
- | <u>a. Type of Documents</u> | <u>Who Possesses</u> | <u>Will Submit by:</u> |
|-----------------------------|----------------------|------------------------|
| Photos or Plats | _____ | _____ |
| Contracts | _____ | _____ |
| _____
(Other) | _____ | _____ |
- b. Number of witnesses for plaintiff: Lay ___ expert ___ Total ___
 - c. Number of witnesses for defendant(s) Lay ___ expert ___ Total ___
 - *d. Counsel for the Parties will exchange names of witnesses and their addresses by: _____
 - *e. ALL Discovery will be completed by: _____

6. Settlement, Preparation for Trial and Trial date:
- *a. Counsel for the parties will conduct an office conference in a bona fide endeavor to effect settlement by: _____
 - b. Counsel for Plaintiff will furnish final medical reports and special damages to be used at trial thirty (30) days before trial.
 - c. Time needed for trial: _____ days.
 - d. Is further pre-trial needed? _____ *New Pretrial Date: _____

*Leave blank (to be completed by Judge.)

*e. TRIAL DATE (ON MERITS) _____

*f. DATE FOR SUBMITTING INSTRUCTIONS: _____

COPIES of Instructions shall be submitted to the Court and exchanged between counsel on or before the date and time above stated. Such instructions shall contain the V.J.I., statutory and/or case authority relied upon by counsel offering said instructions. Authorities should be typed only on copies and not on the original of the instructions.

*g. Memorandum of law to be submitted by _____ on

(1) _____

(2) _____

WE AGREE THAT RECEIPT BY COUNSEL OF A PHOTOSTATIC COPY OF THIS FORM SHALL HAVE THE EFFECT OF A PRE-TRIAL CONFERENCE ORDER UNDER RULE 4:13.

WE AGREE THAT ALL DATES HEREIN STATED ARE BINDING ON THE PARTIES, UNLESS MODIFIED BY THE COURT, OR UNLESS CHANGED BY LETTER AGREEMENT OF THE PARTIES, WITH COPY TO AND APPROVAL BY THE COURT.

_____ p.q. _____ p.d.

_____ p.q. _____ p.d.

*Leave blank (to be completed by Judge).

CIVIL CASESGeneral Duties of Judge With Respect to Petit Jurors

The Trial Judge's responsibility for providing intelligent and responsible persons as petit jurors begins with the careful selection of outstanding citizens to serve as Jury Commissioners by the 15th day of February in each year pursuant to the provisions of Va. Code, § 8-180.

Thereafter and at least ten days prior to any term of Court, when the jury is drawn by lot in the manner described in Va. Code, § 8-187, the Trial Judge can arrange with his Sheriff to have a copy of "A Handbook for Jurors" (prepared by the Judicial Council of Virginia) distributed to each juror at the same time he is served with his summons for jury service.

As many citizens summoned as petit jurors have never previously served, or may have served as such while living in another jurisdiction, the Trial Judge has an additional responsibility in providing detailed instructions in writing to be distributed to each juror at the same time he is served with his summons for jury service. Examples of such helpful instructions, in whole or in part, are set forth on pages 8 through 10.

In order for the Trial Judge to obtain as much information about and any problems concerning the prospective service of a petit juror, juror registration and information sheets, similar to those on pages 11 and 12, should likewise be distributed to each juror at the same time he is served with his summons for jury service, with a request that same be returned at some reasonable date prior to the start of the Term.

Although it is time-consuming to the Court and to the juror, and likewise expensive and hence to be discouraged, additional instruction of the petit jurors as to the operation of each court can be accomplished by meeting with them on the return date of the summons to cover subjects set forth on page 13.

See: Carter v. Jury Commrs. etc., et al, 396 U. S. 320, 99 S. Ct. 518, 24 L. Ed.(2d) 549.

COMMONWEALTH OF VIRGINIA

COUNTY OF _____

INSTRUCTIONS TO PETIT JURORS SUMMONED TO SERVE
IN THE CIRCUIT COURT OF THE COUNTY OF _____
VIRGINIA

Pursuant to the appropriate provisions of the Code of Virginia, you have been selected as a juror to serve at the next term of the Circuit Court of _____ County. The Sheriff's Office of _____ County has now presented you with the following papers:

1. Summons for jury service;
2. A Handbook for Jurors;
3. Instructions to Petit Jurors Sheet;
4. Juror Registration and Information Sheet; and
5. Self-addressed and prestamped envelope, for returning No. 4 above to the Sheriff.

PLEASE READ CAREFULLY AND IN ITS ENTIRETY THE BOOKLET ENTITLED "A HANDBOOK FOR JURORS" AND THIS INSTRUCTION SHEET BEFORE RETURNING THE JUROR REGISTRATION AND INFORMATION SHEET IN THE SELF-ADDRESSED ENVELOPE, WHICH SHOULD BE RETURNED PROMPTLY, OR, IN NO EVENT LATER THAN _____.

TERM OF SERVICE: As each of the four terms of the Circuit Court of _____ County last _____ months, you will be subject to call as a juror during the _____ months commencing _____ and ending _____. However, in view of the Court's policy to divide the jury service equitably, past records indicate that the jurors seldom serve more than _____ to _____ times at any one term. Jurors are subject to call on Monday through Friday of each week, but never on Saturdays or on legal holidays. In addition, the Court is closed for vacations of Court attendants during the month of _____ in each year.

TYPE OF CASES: The cases coming before the Court are generally divided into two classes: Civil and Criminal. An explanation of the classes of cases and the number of jurors needed for each type is set forth on pages 11 and 12 of "A Handbook for Jurors."

DAILY PROCEDURE: As Court opens promptly at ten o'clock a.m., jurors are requested to be present prior to that time in the courtroom of the Circuit Court of _____ County on the _____ floor of the courthouse at _____. During the course of a trial, recesses are taken at periodic intervals. Luncheon recesses seldom last more than _____ minutes so that no time will be afforded the jurors to return to their offices during a luncheon recess. The Court normally finishes its business and adjourns as near as possible to _____ o'clock p. m., but in some instances

jurors might be requested to remain an hour or so longer, if it means the completion of the case on that day, rather than have jurors return on the same case for a second day of service.

PARKING LOTS AND DINING PLACES: On-street parking in the vicinity of the Courthouse is limited and is metered and is discouraged. Jurors may use available parking spaces located

GENERAL PRECAUTION DURING TRIAL OF CASES: Jurors should pay careful attention to the evidence as presented by the witnesses, under oath, on the witness chair and to any exhibits admitted by the Court. This is true because the opening statements of attorneys are simply to indicate what the evidence should or might be. Similarly, the closing arguments of counsel are based on counsel's recollection of the evidence. The law plainly states that it is the juror's recollection of the evidence that controls.

During the course of a trial jurors shall not discuss the case then in progress with any of the parties, their attorneys, or the witnesses, nor shall jurors allow any such person to discuss same with the jurors or even within their hearing. Should there be any violation of this precaution, the juror should report the matter at once to the presiding judge. The better rule is to avoid conversations with parties, attorneys, or witnesses.

After jurors have arrived at a verdict in the case and have been discharged by the Court, the jurors should not discuss the manner in which they arrived at their verdict with anyone, unless so instructed to do so by the Judge who presided at the trial, or any other judge of competent jurisdiction. Recent Virginia Bar Association rulings and certain court decisions indicate that attorneys should not approach jurors after they have rendered their verdict to make inquiry as to the manner in which they arrived at their verdict. In all cases the verdict of the jury must be based upon the evidence before it and the instructions (legal principles applicable to the evidence) read to the jury by the presiding judge.

JURORS PAY AND MILEAGE REIMBURSEMENT: For each day's attendance at court jurors will be paid \$8.00 per day, plus 7¢ per mile for the round trip mileage from their homes to the Courthouse. Compensation for jury service will be forwarded at the expiration of the Term.

DUTY TO SERVE AND EXCUSES FROM SERVING: In addition to their legal duty to serve, there is a civic and patriotic duty of citizens to assist in the disposal of the work load of the Court to resolve the issues in civil cases (where one person at law sues another person at law for damages) and in criminal cases (where the Commonwealth of Virginia or the County of proceeds against a person for violating the laws or ordinances). It is the duty of the

presiding judges to see that the cases of persons using the courts are disposed of properly and expeditiously. Accordingly, it is rare that any person is excused from jury service for the entire term, and then only on competent medical evidence. However, the Court endeavors to accommodate jurors to the extent possible by making certain adjustments based on certain engagements of an important nature, and in some cases for extreme hardship. The following examples may be of assistance to the jurors in filling out and returning the juror registration and information form:

1. Jurors cannot under the Virginia law be switched to serve at a later term.
2. No one can serve in the place of the juror duly summoned.
3. Jurors are always excused from service during their vacation periods.
4. Jurors will be excused for important family events, graduations, marriages, funerals, etc.
5. Jurors may be excused for important business meetings, particularly those scheduled out of town.

Any juror having a possible excuse under the above stated criteria should indicate the definite period on the enclosed Juror Registration and Information Sheet; should any unusual matter occur in the future, request for excuse may be telephoned directly to _____, telephone number _____, Ext. _____

NEXT NOTICE TO JURORS REGARDING SERVICE: To prevent the needless waste of time and money of having the jurors report each morning to determine if they are needed, the plan adopted by the Court is one whereby jurors will be telephoned between the hours of 2:00 and 4:00 on the afternoon prior to the day they are needed for jury service. No further summons will be delivered to the juror who must report pursuant to the notice by telephone. Failure to report when so notified may be construed as contempt of court and may be dealt with accordingly.

COMPLETION AND RETURN OF JUROR REGISTRATION AND INFORMATION SHEET: Jurors must complete in its entirety this Sheet and return it to the Sheriff in the self-addressed, prestamped envelope as promptly as possible, and in no event later than

We look forward to working with you in the orderly administration of justice.

Judges.

COMMONWEALTH OF VIRGINIA
CIRCUIT COURT OF THE COUNTY OF
VIRGINIA

JUROR REGISTRATION AND INFORMATION SHEET

Name _____ Age _____
(Please print)

Home Address _____ Occupation _____

Home Phone _____ Business Phone _____

Round Trip Mileage (Home to courthouse) _____

.....

PLEASE ANSWER THE FOLLOWING QUESTIONS:

Name of employer: _____

Length of employment: _____

Length of time you have lived in _____ County: _____

Have you previously served as a Juror? _____

In what Court did you serve? _____

When did you last serve? _____

Do you have a case before this Court for the three months term to which you are summoned? _____

What type case is it? _____

.....

ANY JUROR REQUESTING EXCUSE FOR ANY PORTION OF THE TERM TO WHICH HE IS SUMMONED, MUST COMPLETE THE FOLLOWING AS APPROPRIATE:

I request to be excused from jury service for the period indicated and for the reasons stated:

- 1. For all or part of the term for medical reasons:

Nature of Problem Attending Physician

Attach attending Physician's Report.
Attach attending Physician's Report.

1.)

2-

2. During my vacation period, which covers the dates of _____

3. For out of town (or other) business engagements as follows:

Date	Nature of Meeting
_____	_____
_____	_____
_____	_____

4. For special family event:

Date	Reason
_____	_____
_____	_____

5. For financial hardship:

- (a) For the following period _____
- (b) Basis of hardship. State reasons, including dependents and annual gross income. _____

6. Other:

Date	Reason
_____	_____
_____	_____

I hereby certify that the above information is correct.

Name of Juror

PLEASE COMPLETE THIS FORM AND RETURN IN THE SELF-ADDRESSED ENVELOPE PROMPTLY, AND IN NO EVENT LATER THAN _____.

1.)

Procedure for First Meeting with Petit Jurors:

1. Court is opened by the Sheriff or Bailiff.
2. The Clerk checks attendance of the jurors.
3. The Judge welcomes the jurors and discusses the following with them:
 - (a) The names of the Court attendants (Clerk, Commonwealth Attorney, Sheriff, etc.).
 - (b) The method of their selection (by Jury Commissioners).
 - (c) The determination of their further eligibility:
 1. Does any juror have a case set for trial at this term of Court? (V.C. § 8.177)
 2. Was any juror present when the grand jury was instructed? (V.C. §§ 19.1-154 and 196).
 - (d) The length of their term of jury service and the equitable division of the case load among the jurors.
 - (e) The type of cases to be heard by them and number of jurors needed in criminal and civil cases.
 - (f) The desirability of reading "A Handbook for Jurors." (Some Courts have adopted the policy of having this distributed to jurors when Sheriff summons them).
 - (g) The daily procedure (time for starting, luncheon recess, etc.).
4. The Judge, after advising jurors of their civic and patriotic duty to serve, hears excuses of individual jurors (who proceed in an orderly line in front of the bench).
5. The Judge recesses to consider excuses and prepare list of jurors who will serve on first jury case and then returns to the bench.
6. The Judge or Clerk reads list of jurors to report first.

Procedure for Trial by Jury

1. Court is opened by the Sheriff or Bailiff.
2. The Clerk states the style of the case and determines if counsel are ready for trial.
3. The Clerk swears the Court Reporter (Rule 1:10) or may record all proceedings by recording equipment (V. C. § 17-30.1)
4. The Clerk calls the jury to the jury box (usually by lot) and swears them on the voir dire.

NB: 13 jurors are seated if case is over \$300.00
11 jurors are seated if case is under \$300.00
5. The Judge explains the style and nature of the case to the jury, who are then questioned as follows:
 - (1) Are any of you related by blood or marriage to either (any) of the parties?
 - (2) If a corporation, are any of you officers, directors, stockholders, agents or employees of _____ corporation?
 - (3) Do any of you have any interest in the outcome of the case?
 - (4) Have any of you expressed or formed any opinion of this case?
 - (5) Are you sensible of any bias or prejudice herein?
 - (6) Do you know of any reason whatsoever why you should not give a fair and impartial trial to the parties according to the law and evidence?
6. The Judge inquires if counsel have any questions.
7. The jury list is next handed by the Sheriff to counsel for preemptory strikes (3 each, alternately).
8. The Clerk swears the jurors on the issue joined, as follows:

"You shall well and truly try the issue joined between _____, plaintiff, and _____ defendant, and a true verdict give according to the evidence, so help you God."

9. The Judge excuses jurors not needed, advising them of the date of their next service.
10. The Clerk swears the witnesses:

"Do each of you solemnly swear that the evidence you give in the case of _____, plaintiff, vs. _____, defendant, now before the Court, shall be the truth, the whole truth and nothing but the truth, so help you God?"
11. The Judge inquires of counsel if they desire the witnesses separated and, if so, explains the purpose of separation.*
12. The Judge reads preliminary, precautionary instructions to the jury. (See page 19A)
13. Counsel make opening statements.
14. The evidence is presented.
15. At recesses the Judge warns the jury against talking and unauthorized view.
16. Instructions are discussed with counsel in chambers, exceptions by attorneys to be made before leaving chambers.
17. The Judge instructs the jury.
18. Counsel argue the case - the plaintiff opening and closing.
19. The Court turns the case over to the jury for its decision, suggesting that they first select a foreman to conduct their deliberation and to write their verdict. Alternative verdicts in blank are a helpful aid to the jury in framing the wording of the verdict.

*See Braswell v. Florida, ___ U. S. ___ (10/19/70), footnote p. 33

CIVIL CASES
ALTERNATIVE FORM OF VERDICTS

I. Where Plaintiff seeks Compensatory Damages against one Defendant:

Verdict for the Plaintiff

We, the jury, on the issue joined find in favor of the plaintiff and assess (his) (her) damages at \$ _____.

Foreman

Verdict for the Defendant

We, the jury, on the issue joined, find in favor of the defendant.

Foreman

II. Where Plaintiff Seeks Compensatory and Punitive Damages:

Verdict for the Plaintiff

We, the jury, on the issue joined, find in favor of the plaintiff and assess (his) (her) compensatory damages at \$ _____ and (his) (her) punitive damages at \$ _____, or a total of \$ _____.

Foreman

Verdict for the Defendant

We, the jury, on the issue joined, find in favor of the defendant.

Foreman

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*

n.)

e-

III. Where Plaintiff seeks Damages in Death by Wrongful Act Case:

Verdict for the Plaintiff

We, the jury, on the issue joined, find in favor of the plaintiff and assess (his) (her) damages at \$ _____.

We direct that the damages be distributed as follows:

Father \$ _____

Mother \$ _____

Foreman

Verdict for the Defendant

We, the jury, on the issue joined, find in favor of the defendant.

Foreman

IV. Where Plaintiff Seeks Compensatory Damages against Two Defendants:

Verdict for the Plaintiff against both Defendants

We, the jury, on the issue joined, find in favor of the plaintiff against both defendants and assess (his) (her) damages at \$ _____.

Foreman

Verdict for the Plaintiff against one Defendant but not as to the Other

We, the jury, on the issue joined, find in favor of the plaintiff against the defendant _____ and assess (his)(her) damages at \$ _____ and we find in favor of the defendant _____.

Foreman

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Verdict for the Defendants

We, the jury, on the issue joined, find in favor of the defendants.

Foreman

V Where Counterclaim is Filed by Defendant:

Verdict for the Plaintiff
on Motion for Judgment and
on Counterclaim

We, the jury, on the issue joined, find in favor of the plaintiff and assess (his) (her) (its) damages at \$_____, and we further find in favor of the plaintiff on the defendant's counterclaim.

Foreman

Verdict where Defendant
prevails on Motion for
Judgment and on Counter-
claim

We, the jury, on the issue joined, find in favor of the defendant on the plaintiff's claim and we further find in favor of the defendant on (his) (her) (its) counterclaim against the plaintiff and assess (his) (her) (its) damages at \$_____.

Foreman

Verdict where Defendant
prevails on Motion for
Judgment and Plaintiff
on Counterclaim

We, the jury, on the issue joined, find in favor of the defendant on the plaintiff's Motion for Judgment and we further find for the plaintiff on the defendant's counterclaim.

Foreman

20. During the recess to await the verdict of the jury, the Sheriff or the Bailiff waits outside the jury room in order to notify the Court when the jury is ready to return a verdict.

21. The Judge re-convenes Court and the jury is assembled in the jury box, following which the Clerk receives the verdict of the jury by asking: "Gentlemen (Members) of the jury, have you agreed upon a verdict?"

Jury Foreman: "Yes." Whereupon the Clerk receives the verdict from the jury foreman and reads the verdict to the Court and counsel.

22. In the event counsel makes any motions, the Court disposes of same and renders judgment, or continues same for argument at a later date, requiring memoranda of law, if desired.

23. The Clerk prepares the usual order on trial, form for which is set out on the following page.

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Civil Cases, Petit Jury

CAUTIONARY INSTRUCTIONS TO THE JURY

- Note: The following instructions are to be given in every civil case by the presiding judge immediately after the jury has been sworn and before opening statements of counsel:
1. This case will proceed in the following order:
 - (a) The plaintiff may make an opening statement outlining his case. The defendant may also make an opening statement. Neither party is required to make an opening statement.
 - (b) The plaintiff will first introduce evidence. At the conclusion of the plaintiff's evidence the defendant has the right to introduce evidence. Rebuttal evidence may be introduced.
 - (c) At the conclusion of all the evidence, further instructions will be given you after which the attorneys may make their closing arguments, and then you will select a foreman, deliberate, and arrive at your verdict.
 2. Faithful performance by you of your duties is vital to the administration of justice.
 3. You must not be influenced in any degree by any personal feeling of sympathy for or prejudice against any party to this suit, for each party is entitled to the same fair and impartial consideration.
 4. The law applicable to this suit is given to you in these instructions and in other instructions that you will receive at the close of all the evidence in this case, and it is your duty to follow all such instructions.
 5. It is your duty to determine the facts and to determine them from the evidence and the reasonable inferences arising from such evidence, and in so doing you must not indulge in guesswork or speculation.
 6. The evidence which you are to consider consists of the testimony of witnesses and the exhibits admitted in evidence. The term "witness" means anyone who testifies in person. The admission of evidence in court is governed by rules of law. From time to time it may be the duty of the attorneys to make objections and my duty as Judge to rule on those objections and whether you can consider certain evidence. You must not concern yourself with

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Cautionary Instructions to the Jury con't.

the objections or the Court's reasons for these rulings. You must not consider testimony or exhibits to which an objection was sustained or which has been ordered stricken.

7. Opening statements and closing arguments of the attorneys are intended to help you in understanding the evidence and applying the law, but they are not evidence.
8. No statement or ruling or remark which I may make during the course of the trial is intended to indicate my opinion as to what the facts are. In this determination, you alone must decide upon the believability of the evidence and its weights and value. In considering the weight and value of the testimony of any witness you may take into consideration the appearance, attitude and behavior of the witness, the interest of the witness in the outcome of the suit, the relation of the witness to any parties to the suit, the inclination of the witness to speak truthfully or not, the probability or improbability of the witness' statements, and all other facts and circumstances in evidence. Thus, you may give the testimony of any witness just such weight and value as you may believe the testimony of such witness is entitled to receive.
9. Until the case is submitted to you for your deliberation, you must not discuss this case with anyone or remain within hearing of anyone discussing it. After this case has been submitted to you, you must discuss this case only in the jury room when all members of the jury are present. You are to keep an open mind and you shall not decide any issue in this case until the case is submitted to you for your deliberation under the instructions of the Court.

Civil Cases, Petit Jurors

FORM FOR
ORDER ON TRIAL BY JURY

_____, 19__.

v.

Plaintiff

Defendant

FINAL ORDER
CASE NO. _____

This day came the parties in person and by counsel, and the defendant(s) having heretofore filed his(her) (its) (their) grounds of defense herein, issue is joined.

Whereupon came a jury, to-wit: (List names of seven jurors) who were sworn to well and truly try the issue joined and a true verdict give according to the evidence and the law.

The evidence of the plaintiff was presented and at the conclusion thereof the defendant by counsel moved to strike the evidence of the plaintiff on grounds stated in the record, which motion was overruled and to which ruling of the Court counsel for the defendant excepted.

Thereupon, the evidence of the defendant was presented and at the conclusion of all of the evidence, the defendant by counsel renewed his motion to strike the plaintiff's evidence, on the same grounds, which motion was overruled and to which ruling of the Court counsel for the defendant excepted.

After receiving instructions from the Court and hearing arguments of counsel, the jury retired to their room to consult of their verdict and after some time returned into Court with the following verdict:

"We, the jury, on the issue joined, find for the defendant."

(Signed) _____ Foreman

- OR -

["We, the jury, on the issue joined, find for the plaintiff(s) and assess her (his)(its)(their) damages at \$_____."]

(Signed) _____ Foreman"]

Civil Cases, Form Order on
Trial by Jury

The plaintiff (defendant) by counsel, moved to set aside the verdict as being contrary to the law and evidence and to order a new trial, which motion was overruled and to which ruling of the Court, counsel for the plaintiff (defendant) excepts.

It is therefore ordered that the plaintiff take nothing and that judgment be entered in favor of the defendant.

- OR -

[It is therefore ordered that the plaintiff recover and have judgment against the defendant in the amount of \$ _____, with 6% interest thereon from _____ until paid and the costs.]

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Civil Cases, Trial by Court

CIVIL CASES

Procedure for Trial by the Court

1. Court is opened by the Sheriff or Bailiff
2. The Clerk states the style of the case and determines if counsel are ready for trial.
3. The Clerk swears the Court Reporter (Rule 1:10 or may record all proceedings by recording equipment, V.C. § 17-30.2).
4. The Clerk swears the witnesses. e
5. The Judge inquires of counsel if they desire the witnesses separated and, if so, explains purpose of separation.
6. Counsel make opening statements.
7. The Evidence is presented.
8. Counsel argue the case, the plaintiff opening and closing.
9. In the event counsel make any motions, the Court disposes of same and renders judgment, or continues the same for argument at a later date, requiring memoranda of law, if desired. e-
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HIGHWAY CONDEMNATION CASESProcedure for Trial by Commissioners

1. Court is opened by the Sheriff or Bailiff.
2. The Clerk states the style of the case and determines if Counsel are ready for trial.
3. The Clerk swears the Court Reporter.
4. The Clerk calls the Commissioners to the jury box.
5. The Judge explains the nature of the case to the Commissioners, who are then questioned as follows, (in the event that their eligibility has not been previously determined on return day of notice to appoint commissioners.)

(See page 27 for questions usually propounded by Court for Cause, and by counsel for peremptory challenge.)
6. The list of Commissioners is next handed by the Sheriff to counsel for peremptory strikes (2 each, alternately).
7. The Clerk swears the Commissioners on the issue joined in the language of Virginia Code, § 33.1-107.
8. The Judge excuses Commissioners not needed.
9. The Clerk swears the witnesses.
10. The Judge inquires if opening statements are to be made.
11. The Judge instructs the Commissioners about the purpose of the view to be taken.
12. Court recesses to permit view by the Commissioners (who ride with the Sheriff or his Deputy) usually in the presence of the Court.
13. Court reconvenes and the evidence is presented, first by the condemnor and then by the land owner.

Highway Condemnation Cases -

14. Court recesses to discuss instructions with counsel.
15. The Judge instructs the Commissioners.
16. Counsel argue the case, the condemnor opening and closing.
17. The Judge turns the case over to the Commissioners for their award to be made on the form prepared pursuant to Virginia Code, § 33.1-108.
18. The Commissioners award is received and lodged with the papers.
19. The Court confirms the award, or awaits the filing of written exceptions and sets argument thereon.

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Highway Condemnation Cases

LIST OF QUESTIONS THAT COULD BE PROPOUNDED TO
MEMBERS OF A CONDEMNATION COMMISSION FOR CAUSE
AND PURPOSES OF PEREMPTORY CHALLENGE

I. FOR CAUSE:

1. Are you a resident of _____ County?
2. Do you now own a freehold interest in land situated in this County?
3. Are you a stockholder of the defendant in this case?
4. Do you have any interest, direct or indirect, in the land involved in this case?
5. Are you an agent, servant or employee of the Virginia Department of Highways?
6. Do you have any interest in the outcome of this case?
7. Have you made or been requested to make an appraisal of the property involved in this case?
8. Have you formed or expressed any opinion with regard to any of the issues involved in this case?
9. Are you sensible of any bias or prejudice herein?
10. Do you know of any reason why you could not make fair and impartial awards of compensation and damages, if any, according to the law and the evidence in this case?

II. FOR PEREMPTORY CHALLENGE:

1. Does any member of your family have any interest, direct or indirect, in the land involved in this case?
2. Are you associated in any business venture with the owners of this land?
3. Do you have any contracts with the Virginia Department of Highways?
4. Are you related to or do you have any business connection or association with any of the lawyers in this case (or any member or associate in their law firms)?

Highway Condemnation Cases

5. Do you own any property or have any interest in land through which the State Highway Commissioner has acquired land for highway purposes, or is taking or threatening to take by condemnation?
6. Have you previously served upon any commission in a condemnation proceeding to acquire property for Inter-state Highway ? (And if so, would that proceeding influence your conclusions in this case?)
7. Before you were notified of your appointment, did anyone (aside from the Judge, Clerk, Deputy Clerk, Sheriff, etc.) ask you whether or not you would be able to serve as a commissioner in this case?
8. Has this case been discussed with you or in your presence?

May v. Crockett, 202 Va. 438:

To preserve public confidence in findings of Commissioners, the same tests of bias or interest should be applied to them as are applied to Juries.

CRIMINAL CASESProcedure for Opening Day of Criminal Term

1. Court is opened by the Sheriff or Bailiff:

"The Honorable _____, Judge. Oyez, oyez, oyez! Silence is commanded upon pain of imprisonment while the Honorable Judge of the _____ Court of the _____ of _____ is now sitting. All persons having motions to make, pleas to enter, suits to prosecute, or other business before the court, come forward and they shall be heard. God save the Commonwealth and this Honorable Court."

NOTE: "Oyez" is pronounced O-yes, with strong emphasis on the first syllable.

2. The Judge asks the Commonwealth Attorney for any indictments.
3. The Clerk takes the attendance of the Grand Jury.*
4. The Clerk inquires of the Foreman (previously designated by the Judge) and members of the Grand Jury as to their eligibility and the following oaths are administered:

TO FOREMAN:

Are you a citizen of the Commonwealth of Virginia and over the age of twenty-one years?

Have you resided therein for one year last part and in the County of _____ for six months last past?

TO JURY:

Are each of you likewise citizens of the Commonwealth of Virginia and over the age of twenty-one years?

Have each of you resided therein for one year last past and in the County of _____ for six months last past?

Now members of the Grand Jury, attend to your Foreman's oath.

* See Rule 3A:6, Criminal Practice and Procedures

Criminal Cases

TO FOREMAN: *

You shall diligently inquire, and true presentment make, of all such matters as may be given you in charge, or come to your knowledge, touching the present service. You shall present no person through prejudice or ill-will, nor leave any unpresented through fear or favor, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth. So help you God.

TO JURY: *

The same oath that your foreman has taken on his part, you and each of you shall observe and keep on your part. So help you God.

5. The Judge ascertains that no petit juror is present ** and then instructs the Grand Jury as follows:

"You have been chosen by the Court as members of the Grand Jury because of your impartiality, integrity, good judgment, and your good standing in the County of _____.

"The Commonwealth's Attorney complains that certain public offenses have been committed. The protection of a person's good name must be as keen a concern to you as any other fact you may investigate. A person's innocence is just as important to you as his guilt.

"If you find from the evidence before you that the law has been violated, it is your positive and sworn duty to indict, but when you find charges are made without foundation, it is also your duty to exonerate.

"You are an investigative body and hence you do not determine the guilt or innocence of the accused. You are to determine whether there is sufficient probable cause to believe that a crime has been committed and that the accused did commit it.

"You will hear only the Commonwealth's evidence and not that of the defendant. If you find probable cause to exist that a person has violated the law, then you should vote for returning 'a True Bill,' otherwise you should vote for returning 'Not a True Bill.' In either event your findings shall be endorsed on the indictment and signed by your Foreman.

* Va. Code, § 19.1-152

** Va. Code, §§ 19.1-154 and 196

Criminal Cases

"An indictment shall not be found without concurrence of at least four of your members.

"The Commonwealth's Attorney is your legal advisor on all matters that may come before you, but you may come to the Court for advice if you feel an occasion may so demand.

"Each member of the Grand Jury shall keep absolutely secret whatever he or any other grand juror or witness has said or how a member voted while the Grand Jury was in session, unless permitted or instructed so to do by this Court, or some other court of competent jurisdiction.

"You may now retire to the jury room to hear evidence and for your deliberation."

6. The Judge sends the Grand Jury to its jury room.
7. The Clerk calls the Bills of Indictment and swears the witnesses who will appear before the Grand Jury.

"Do each of you solemnly swear that the evidence you give on the Bills of Indictment now before the Grand Jury shall be the truth, the whole truth and nothing but the truth, so help you God?"
8. The Grand Jury makes its first report and returns to the room for further deliberation.
9. The Clerk receives the Indictments and calls criminal cases on which True Bills have been returned, unless a definite hour has been previously designated for calling of the criminal docket.
10. The Judge determines if each accused has employed counsel of his own choice and if not,
11. The Judge determines if the accused is indigent and if so,
12. The Judge requires execution by accused of affidavit of poverty and request for Court appointed counsel. Virginia Code, § 19.1-241.1, et seq.
13. The Clerk files same with the papers.
14. The Judge appoints an able, discreet and competent attorney at law to represent indigent accused.
15. The Clerk enters such appointment of record.

See Felony Form Order No. 2 or 3.

Criminal Cases

16. The Court affords opportunity for appointed attorney to confer with indigent accused regarding tentative or final trial date and need for trial by the Court or by a jury.
17. The Judge sets criminal cases for trial later in the term, allowing Court appointed attorney ample time to confer with accused and prepare his case for trial.*
18. The Clerk recognizes witnesses to appear on trial date.
- "Each of you is hereby recognized in the sum of \$100.00 for your personal appearance in this Court on _____, 19____, to testify in the case of Commonwealth v. _____."
19. The Clerk swears the Commonwealth's Attorney in the event he is called by the Grand Jury to advise them.
- "Do you solemnly swear that the legal advice you will give to the Grand Jury will be in accord with your understanding of the law of Virginia, so help you God?"
20. The Grand Jury makes second (or final) report and is discharged.
21. The Court and the Clerk repeat the above procedures (10 - 18) until all criminal cases are set for trial.

* See: Whitley v. Cunningham, 205 Va. 251

Criminal Cases

Procedure for Trial
of Criminal Felony Case by Jury

1. In the trial of all criminal cases, whether the same be felony or misdemeanor cases, the court may, in its discretion, exclude from the trial any persons whose presence would impair the conduct of a fair trial, provided that the right of the accused to a public trial shall not be violated.*
2. Court is opened by the Sheriff or Bailiff.
3. The accused is led to the bar by the Sheriff or Bailiff or appears pursuant to his bond and is accompanied by his attorney.
4. The Clerk calls the case and swears the Court Reporter, or records all proceedings by recording equipment pursuant to Virginia Code, § 17-30.1
5. The Clerk takes the attendance of the petit jury.
6. The Clerk arraigns the accused. **
 Indictment read.
 Accused pleads in person.**
 Accused asked if he makes this plea after consulting with and being advised by his attorney.
7. If the accused has been previously arraigned, the Clerk states to the accused:
 "You have been previously arraigned on the charge of _____ and pled not guilty. Do you wish to be tried by the jury or by the court?"
8. The Clerk asks the accused if he will be tried by jury or by the Court. The accused answers "by jury."***
9. The Clerk advises the accused of his right to challenge the veniremen to be called.
 "A jury now to be called will pass between you and the Commonwealth upon your trial now to be had and if you have a mind to challenge any of them you must do so as they come to be sworn and you shall be heard."

*

Virginia Code, § 19.1-246 (1971 Cum. Supp.)

** See Rule 3A:10 and 3A:11, Criminal Practice and Procedures

*** See Rule 3A:19, Criminal Practice and Procedures

10. The Clerk calls the veniremen, by lot, in an orderly manner (10 at a time, 5 at a time, or 1 at a time, in the Court's discretion) and they align themselves in front of the bench and are sworn by the Clerk on the voir dire.
11. The Judge examines the veniremen until a panel of twenty for a felony (eleven for a misdemeanor) are acceptable, by asking these questions: *1
- (1) Are any of you related by blood or marriage to the accused or to the person against whom the alleged offense was committed?
 - (2) Are any of you officers, directors, stock holders, agents or employees of the accused?
 - (3) Do any of you have any interest in the outcome of the case?
 - (4) Do any of you know anything about the case or have you heard or read anything about it or about the alleged offense or the accused from news media or other sources - if so, have you expressed or formed any opinion as to the guilt or innocence of the accused - if there is an apparent affirmative indication, then the judge asks this additional question:

Considering what you have heard or read about the case, do you believe that you can enter the jury box with an open mind and wait until the entire case is presented before reaching a fixed opinion or conclusion as to the guilt or innocence of the accused? (Abdell v. Common., 173 Va. 458, 2 S.E.(2d) 293 (1939)).
 - (5) Are you sensible of any bias or prejudice against the Commonwealth or the accused?
 - (6) Does any juror reside within two (2) miles of the place where the crime is alleged to have been committed?*2
 - (7) In cases involving capital punishment (arson, murder, rape, robbery, etc.), do any of you have an opinion such as to prevent your convicting anyone of an offense punishable with death?*3

-- and --

Is there any juror who never could vote to impose the death

*1 Rule 3A:20, Criminal Practice and Procedure.

*2 Virginia Code, § 19.1-211. See: Fadely v. Com., 208 Va. 198

*3 Virginia Code, § 19.1-210.

penalty or who would refuse even to consider its imposition in this case?*1

(8) Do you know of any reason whatsoever why you should not give a fair and impartial trial to the Commonwealth and to the accused according to the law and the evidence?*2

12. The Court inquires if counsel have any questions.

13. The jury list is handed by the Sheriff or Bailiff to the Commonwealth's Attorney and defense counsel for alternate striking - Four (4) each in felony cases [three (3) each in misdemeanor cases]. (Va. Code, §§ 19.1-207 and 208)*3

14. The Court may exercise its discretion to use alternate jurors in cases that may be protracted (Va. Code, § 19.1-216).

15. The Court excuses jurors not needed, advising them of the date of their next service.

16. The Clerk swears the jury on the issue:

"You shall well and truly try and a true deliverance make between the Commonwealth of Virginia and the said _____, the prisoner at the bar, indicted for a felony, and a true verdict give according to the evidence, so help you God."

17. The Clerk swears the witnesses:

"Do each of you solemnly swear that the evidence you give in the case of Commonwealth v. _____, now before the Court, shall be the truth, the whole truth and nothing but the truth, so help you God?"

*1 Witherspoon v. Ill., 391 U.S. 510 - A jury from which veniremen having conscientious scruples against or opposed to capital punishment without stating that they would automatically vote against the imposition of capital punishment no matter what the trial would reveal fell short of that impartiality to which accused was entitled under the 6th and 14th Amendments. Such holding has full retroactive effect.

Bumper v. N. C., 391 U.S. 543 - Exclusion of jurors opposing capital punishment not reversible error in a sentence of life imprisonment (where case reversed on unlawful search).

Snider v. Comm. (6/14/71) Va. ___ - Separate trial on punishment alone.

*2 Hampton v. Comm., 190 Va. 531 - Questions regarding exposure to public news media.

*3 Va. Code, § 19.1-216 - Alternate jurors for protracted case.

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- 18. The Judge inquires if counsel desire the witnesses separated, and, if so, explains the significance to the witnesses.*¹
- 19. The Judge reads preliminary, cautionary Instructions to the jury. (See page 38).
- 20. Counsel make opening statements.
- 21. The evidence is presented.
- 22. The Court discusses instructions with counsel.*²
- 23. The jury is instructed.*²
- 24. Counsel argue the case, the Commonwealth opening and closing.
- 25. The jury is sent to the jury room to deliberate upon their verdict, It is discretionary with the presiding Judge in a felony case as to whether the jury shall be kept together. (Va. Code, §§ 19.1-213 through -215).
- 26. The jury verdict is received.

ALTERNATIVE FORMS OF VERDICT IN CRIMINAL CASES*³

FELONY

We, the jury, find the accused guilty of _____ as charged in the Indictment and fix his punishment at _____.

Foreman

We, the jury, find the accused not guilty as charged in the Indictment.

Foreman

MISDEMEANOR

We, the jury, find the accused guilty of _____ as charged in the warrant, and fix (his)(her) punishment at _____.

Foreman

We, the jury, find the accused not guilty as charged in the warrant.

Foreman

*¹ Braswell v. Fla., ___ U.S. ___ (10/19/70) - Writ of certiorari denied, where judge invoked "Witness Rule" directing prospective witnesses not to allow anyone to discuss the case in their presence and later denied right to testify to defense witness who arrived late, did not hear ruling and remained in courtroom during presentation of some of prosecutor's evidence.

*² Rule 3A:23, Criminal Practice and Procedure

*³ Rule 3A:23(d), Criminal Practice and Procedure

- 27. The Clerk reads same and asks:
 "Members of the jury, is this your verdict? And so say you all?"
- 28. The Clerk determines if counsel desire the jury polled, and, if so, the Clerk calls the name of each juror and asks if that is his verdict.
- 29. The Judge discharges the jury.
- 30. If accused is found not guilty, he is discharged.
- 31. In the event counsel make any motions when accused is found guilty, the Court disposes of same and renders judgment, or continues same for argument at a later date.
- 32. In the absence of any motions or upon overruling same, the Judge determines of accused why judgment should not be pronounced against him in accord with jury verdict, and if no reason for delay exists,
- 33. The Court pronounces judgment.*
- 34. The Judge recites for the record the fact that the accused has been personally present at every stage of the proceeding, that the attorney for the accused was likewise present, and capably represented the accused.
- 35. The Sheriff or Bailiff takes custody of the prisoner.
- 36. The Clerk prepares the usual order on trial.*

* See Model Order, Felony Form No. 9, page 62

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Criminal Cases-Cautionary Instructions

CRIMINAL CASES
PRELIMINARY, CAUTIONARY
INSTRUCTIONS TO THE JURY

The following instructions are to be given in every criminal case by the presiding judge immediately after the jury has been sworn and before opening statements of counsel:

1. This case will proceed in the following order:

First, the Commonwealth Attorney may make an opening statement outlining his case. The defendant may also make an opening statement outlining his case immediately after the Commonwealth Attorney's statement. Neither the Commonwealth Attorney nor the defendant is required to make an opening statement.

Second, the Commonwealth Attorney will first introduce evidence. At the conclusion of the Commonwealth Attorney's evidence the defendant has the right to introduce evidence. Rebuttal evidence may be introduced.

Third, at the conclusion of all the evidence, further instructions will be given you after which the attorneys may make their closing arguments and then you will select a foreman, deliberate, and arrive at your verdict.

2. Faithful performance by you of your duties is vital to the administration of justice.
3. You must not be influenced in any degree by any personal feeling of sympathy for or prejudice against any party to this suit, for each party is entitled to the same fair and impartial consideration.
4. The law applicable to this suit is given to you in these instructions and in other instructions that you will receive at the close of all the evidence in this case, and it is your duty to follow all such instructions.
5. It is your duty to determine the facts and to determine them from the evidence and the reasonable inferences arising from such evidence, and in so doing you must not indulge in guesswork or speculation.
6. The evidence which you are to consider consists of the testimony of witnesses and the exhibits admitted in evidence. The term "witness" means anyone who testifies in person. The admission of evidence in court is governed by rules of law. From time to time it may be the duty of the attorneys to make objections and my duty as judge to rule on those objections and whether you can consider certain evidence. You must not concern yourself with the objections or the court's reasons

Criminal Cases-Cautionary Instructions

for these rulings. You must not consider testimony or exhibits to which an objection was sustained or which has been ordered stricken.

7. Opening statements and closing arguments of the attorneys are intended to help you in understanding the evidence and applying the law, but they are not evidence.
8. No statement or ruling or remark which I may make during the course of the trial is intended to indicate my opinion as to what the facts are. You are to determine the facts. In this determination, you alone must decide upon the believability of the evidence and its weights and value. In considering the weight and value of the testimony of any witness you may take into consideration the appearance, attitude and behavior of the witness; the interest of the witness in the outcome of the suit, the relation of the witness to any parties to the suit, the inclination of the witness to speak truthfully or not, the probability or improbability of the witness' statements, and all other facts and circumstances in evidence. Thus, you may give the testimony of any witness just such weight and value as you may believe the testimony of such witness is entitled to receive.
9. Until this case is submitted to you for your deliberation, you must not discuss this case with anyone or remain within hearing of anyone discussing it. After this case has been submitted to you, you must discuss this case only in the jury room when all members of the jury are present. You are to keep an open mind and you shall not decide any issue in this case until the case is submitted to you for your deliberation under the instructions of the court.

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Criminal Cases - Trial by Court

CRIMINAL CASESProcedure for Trial of Criminal Felony Case by the Court

1. In the trial of all criminal cases, whether the same be felony or misdemeanor cases, the court may, in its discretion, exclude from the trial any persons whose presence would impair the conduct of a fair trial, provided that the right of the accused to a public trial shall not be violated.*¹
2. Court is opened by the Sheriff.
3. The accused is led to the bar by the Sheriff or Bailiff or appears pursuant to his bond and accompanied by his attorney.
4. The Clerk swears the Court Reporter or records all proceedings by recording equipment pursuant to Va. Code, § 17-30.1.
5. The Clerk arraigns the accused.*³

Indictment read.

Accused pleads in person.*³

Accused asked if he makes this plea after consulting with and being advised by his attorney.
6. If the accused has been previously arraigned, the Clerk states to the accused:

"You have been previously arraigned on the charge of _____ and pled not guilty. Do you wish to be tried by the jury or by the court?"
7. If the prisoner pleads guilty*⁴ it must be tendered in person after being advised by his attorney. This requires the Court to hear and determine the case, after examination of the accused by the Court to determine that he understands his plea, the penalties that may be imposed, his waiver of trial by jury and of appeal.*²(See NOTE on page 42)
8. If the accused pleads not guilty*⁴ it must be done in person. (Va. Code, § 19.1-240) (See NOTE on page 42)
9. The Clerk determines that the accused pleading not guilty desires to be tried by the Court rather than by a jury. (See NOTE on page 42)

*¹ Virginia Code, § 19.1-246 (1971 Cum. Supp.)

*² McG. v. G. (Va.), 296 F(2d) 600. Cert. Denied.

*³ Rules 3A:10 and 3A:11, Criminal Practice and Procedure

*⁴ See Criminal Practice and Procedure, Appendix of Forms, §§ 8 and 9. Va. Code, § 19.1-192

Criminal Cases - Trial by Court

10. Then the Court should hear and determine the case, provided:

- (1) Accused consents to trial by the Court after being advised by counsel; (See NOTE on page 40)
- (2) Commonwealth's Attorney so consents; and
- (3) Court so consents.

NB: The above three must be entered of record. (Va. Code, § 19.1-192)

- 11. The Clerk swears the witnesses.
- 12. The Judge inquires if counsel desire the witnesses separated; and, if so, explains the significance to the witnesses.*1
- 13. Counsel make opening statements.
- 14. The evidence is presented.
- 15. Counsel argue the case.
- 16. The Judge decides the case.
- 17. The Court determines the punishment of the accused, unless a Pre-Sentence Report is requested, pursuant to V.C. § 53-278.1, et seq. and Rule 3A:25(c), Criminal Practice and Procedure.
- 18. The Judge determines of accused why judgment should not be pronounced against him, and if no reason for delay exists,
- 19. The Judge pronounces judgment.
- 20. If, after 16 above, a Pre-Sentence Report is requested by defense attorney or by Court, accused is remanded to jail until Report is received and date set for sentencing. As counsel are present, the Court will set the date for sentencing on a date convenient to the Court and counsel and require that the Clerk give immediate notice to the District Probation Office, pursuant to the Form on page 44.
- 21. The Judge recites for the record the fact that the accused has been personally present at every stage of the proceeding, that the attorney for the accused was likewise present, and capably represented the accused.*2

*1 Braswell v. Florida, ___ U.S. ___ (10/19/70), ante p. 33.

*2 See Model Orders, Felony Forms Nos. 10, 11 and 12.

NOTE

Under recent decisions, where the accused pleads guilty, the safer course is for the Court to determine that the accused understands the nature of the charge and voluntarily and intelligently enters the plea with the knowledge of the punishment and knowledge of waiver of his appeal. The doctrine of Boykin v. Alabama, 395 U. S. 238, requiring that the record show that the defendant's plea was voluntarily and intelligently made, was held not to be applied retroactively before June 2, 1969, under the decision in Bridges v. Commonwealth, 211 Va. 370.

A plea of guilty waives all defenses other than that no offense is charged. Peyton v. King, 210 Va. 194; Arey v. Peyton, 209 Va. 370; Crutchfield v. Commonwealth, 187 Va. 291. However, since Nelson v. Peyton (4th CCA) 415 Fed(2d) 1154, seems to place on the Court the duty to advise the defendant of his right to appeal, the Court should follow the practice of including this in the examination of the accused on his understanding of the nature of his plea of guilty.

See North Carolina v. Alford, _____ U.S. ____ (Decided 11/23/70) holding that an accused may voluntarily consent to the imposition of a prison sentence by pleading guilty to a lesser offense (second degree murder--thirty-year sentence by the Court) even though he is unwilling to admit participation in the crime, when he intelligently concludes his interests require a guilty plea and the record strongly evidences guilt. The trial Court heard evidence unfavorable to the defendant before accepting his plea.

Virginia Code, § 19.1-192, provides that "upon a plea of guilty in a felony case the Court shall hear and determine the case" Before undertaking this duty and in view of the foregoing authorities, the Court should ask some or all of the following questions of the defendant who has been arraigned by the Clerk and who has plead guilty:*

What is your name and your age?

Are you the person named in the indictment just read to you by the Clerk?

Have you had ample time to discuss your case and your plea with your attorney _____ before today, and have you otherwise been advised by him on your case?

Did you discuss with your attorney the matter of your plea, whether guilty or not guilty?

* Criminal Practice and Procedure, Appendix of Forms, §§ 8 and 9.

CONTINUED

1 OF 3

Do you understand that -

that the indictment charges you with the offense of _____?

that the range of punishment on that charge is between _____ and that the maximum penalty that can be imposed is _____?

Do you understand that by pleading guilty -

you admit you committed the offense of _____?

the Judge must now hear and determine your case?

you are waiving your right to trial by jury?

you are waiving any appeal from the judgment of this Court except for jurisdictional reasons?

That you may get additional punishment under the recidivist (habitual offender) statutes in another court if you have previously been sentenced to and served a term in the penitentiary?

Do you have any statement you wish to make to the Court about any part of your case before commencing the trial?

Are you now ready for trial?

The Court may desire to ask some or all of the following questions of the accused after his arraignment and plea of guilty where indications are that there will be a recommendation from the Commonwealth's Attorney as to penalty:

Has any police officer or the Commonwealth's Attorney advised you or your attorney what punishment will be recommended if you plead guilty?

Has anyone made you any promise of leniency?

Do you understand that in imposing sentence I am not bound by any agreement between you and your counsel and the Commonwealth's Attorney, and that I need not follow any recommendation of the Commonwealth's Attorney?

Where the accused after arraignment pleads not guilty, some or all of the questions set forth in Appendix 9 to Rules of Criminal Practice and Procedure can be asked, with particular reference to the defendant's understanding of his waiver of trial by jury.

Criminal Cases - Presentence Report

CRIMINAL CASES

Form Requesting Pre-Sentence Report

Form requesting pre-sentence report, where sentencing date is decided upon on the date of trial and judgment.

VIRGINIA:

IN THE CIRCUIT COURT OF _____

COMMONWEALTH

v. _____

FELONY NO. _____

TO: Virginia State Probation and Parole Office

Street
_____, Virginia

The Court has ordered that a presentence report be submitted in this case.

Trial Date: _____

Found guilty of: _____

Presentence report to be submitted by: _____

Date of sentencing: _____

_____, Clerk

By _____
(Deputy) Clerk

Mailed to Probation District on _____, 19____.

Criminal Cases - Presentence Report

CRIMINAL CASES

Form Requesting Pre-Sentence Report

Form requesting pre-sentence report, where sentencing date is decided upon on the date of trial and judgment.

VIRGINIA:

IN THE CIRCUIT COURT OF _____

COMMONWEALTH

v. _____

FELONY NO. _____

TO: Virginia State Probation and Parole Office

Street
_____, Virginia

The Court has ordered that a presentence report be submitted in this case.

Trial Date: _____

Found guilty of: _____

Presentence report to be submitted by: _____

Date of sentencing: _____

_____, Clerk

By _____
(Deputy) Clerk

Mailed to Probation District on _____, 19____.

Criminal Cases, sentencing

CRIMINAL CASES

Procedure for Sentencing Where Pre-Sentence Report Has been
Ordered Subsequent to Date of Trial

In the event the procedure outlined on page 39, Item 20, is not followed, then before the date of sentencing, the Court notifies the Commonwealth's Attorney, defense counsel and other persons required to be present, that the presentence report has been received and should be reviewed with the accused, pursuant to the following form:

COMMONWEALTH OF VIRGINIA

v.

NOTICE

Take notice that the sentencing of the above named defendant will take place on _____ at _____ o'clock
____. m. in the _____ Court.

Counsel for the defendant is reminded to discuss the pre-sentence report with the defendant prior to the above hearing.

Judge

Copies of the above Notice
Mailed to the following
persons on _____, 19____:

Commonwealth Attorney
Counsel for the Defendant
Clerk's Office
Probation Officer
Sheriff's Office

1. Court is opened by the Sheriff or Bailiff.
2. The Clerk swears the Court Reporter or records all proceedings by recording equipment, pursuant to Va. Code, § 17-30.1.
3. The Clerk calls the case.
4. The Judge determines that the accused and his attorney are present and recites such fact for the record.

Criminal Cases, Sentencing

5. The Judge determines that the Commonwealth Attorney and Probation Officer are present and recites such fact for the record.
6. The Judge determines that defense attorney has reviewed the Pre-Sentence Report with the accused, and if not, recesses until such review is accomplished.*
7. The Clerk swears the Probation Officer and any other witnesses.
8. The Judge affords defense attorney and Commonwealth Attorney an opportunity to examine Probation Officer on contents of Report.*
9. The Judge affords defense attorney an opportunity to offer any evidence to contradict or clarify Pre-sentence Report and bring out any additional facts bearing upon the matter.*
10. The Judge orders the report of the Probation Officer filed by the Clerk as part of the record in the case.
11. The Judge affords opportunity to Commonwealth Attorney and to defense counsel to argue appropriate sentence.
12. The Judge inquires of accused why judgment should not be pronounced against him, and if no reason for delay exists,
13. The Judge determines the punishment of the accused.
14. The Judge pronounces judgment.
15. The Clerk prepares appropriate order, including credit for time spent in jail awaiting trial and sentencing.

SEE: Model Orders, Felony Forms Nos. 13, 14 and 15.

* Virginia Code, § 53-278.1.
Rule 3A:25(c)(2), Criminal Practice and Procedure.

CRIMINAL CASES

ORDER FOR RECORDING EVIDENCE

Pursuant to the provisions of Sections 17-30.1 and 17-30.1:1 of the Code of Virginia, 1950, as amended, the Court doth hereby provide, now entered of record, that the recording verbatim of the evidence and incidents of trial in all felony cases shall henceforth be by Court Reporter [or, by an electronic (Mechanical) recording device heretofore approved by the Court and now installed in each of the court rooms of this Court], until the further order of the Court.

SEE: Va. Code, §§ 17-30.1 and 17-30.1:1

Cabaniss v. Cunningham, 206 Va. 330

Tharp v. Commonwealth, 211 Va. 1

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CRIMINAL (AND CIVIL) CASES

ORDER DIRECTION CLERK
TO DRAW MORE THAN ONE JURY

The Court being of opinion that more than one jury will be necessary for the trial of cases at the _____ Term of Court, _____, Clerk of this Court, is directed to draw in the presence of the Judge of this Court, from the box and names provided for by law, in the manner prescribed by law, the names of persons qualified to serve as jurors, and to issue a writ of venire facias commanding the Sheriff of the County (City) of _____, to whom it shall be directed to summon persons on said writ, to be taken from the list of names on said writ, to be furnished by said Clerk who are qualified in all respects to serve as jurors to attend this Court on the ____ day of _____, 19____, at _____ o'clock (a. m.) (p. m.), the said jurors so summoned to be used for the trial of the cases which may be tried at said _____ Term, felonies, misdemeanors and civil.

See: Va. Code, §§ 8-190 and 19.1-194 through -199.

See page 7, ante.

FELONY FORM NO. 1

Note: This form order should appear in the order book on the opening day of the term to set forth action taken by the Court and the Grand Jury.

ORDER RE GRAND JURY

_____, Foreman, _____, _____,
_____, _____, _____ and _____, were
duly sworn a jury of inquest, in and for the county of _____,
and having been charged by the Court, withdrew to their room
and after some time returned into open court and made the follow-
ing presentments:

Commonwealth v. _____, An Indictment for a Felony A True
Bill

Etc.

Etc.

Commonwealth v. _____, An Indictment for a Felony Not a
True Bill

Etc.

And the Grand Jury having nothing else to present were
discharged (were recessed subject to being recalled at any time
during the Term).

The Court certifies that due inquiry was made and no
person summoned as a petit juror for this Term of Court was present
when said Grand Jury was charged.*

* Va. Code, §§ 19.1-154 and -196.
Rule 3A-6, Criminal Practice & Procedure

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FELONY FORM NO. 2

Note: This form is used where the accused (1) is in jail or on bond, (2) has counsel appointed in the lower court, (3) is not arraigned, and (4) trial is continued to a later day of the Term.

COMMONWEALTH

v.

_____, Defendant.

ORDER - FELONY NO. _____

This day came the Attorney for the Commonwealth, and _____, who stands indicted for a felony, to-wit: _____ (was led to the bar in the custody of the Sheriff) (appeared in court according to the condition of his recognizance). And it appearing to the Court that the accused has been determined by the County Court of the County of _____ to be without counsel of his own choosing and to be indigent and that _____, Esquire, an able and experienced attorney at law, practicing before the bar of this Court, has been appointed by that Court to defend him, such determinations and appointment are approved and confirmed by this Court before accepting any plea of the accused.

Whereupon with the consent and approval of the accused after private consultation with his counsel and with the approval of the Attorney for the Commonwealth, this case is set for trial on ___ day of _____, 19___, at _____ o'clock (a.m.) (p.m.). And the accused is remanded to jail, or (And the bond of the accused together with the surety thereon is continued in effect).

Va. Code, §§19.1-241.1, et seq.

FELONY FORM NO. 3

Note: This form is used where the accused (1) is in jail or on bond, (2) becomes indigent after appearance in lower court on preliminary hearing, or (3) was indicted without preliminary hearing, and (4) is not arraigned and trial is continued to a later date of the Term.

COMMONWEALTH

v.

_____ ,

Defendant.

ORDER - FELONY NO. _____

This day came the Attorney for the Commonwealth, and _____, who stands indicted for a felony, to-wit: _____ (was led to the bar in the custody of the Sheriff) (appeared in court according to the condition of his recognizance). And it appearing to the Court that the accused is not represented by counsel and is indigent as shown by his affidavit now filed with the Court (satisfactory evidence), before accepting any plea of the accused, doth appoint _____, an able and competent attorney at law, practicing before the bar of this Court, to defend him.

Whereupon with the consent and approval of the accused after private consultation with his counsel and with the approval of the Attorney for the Commonwealth, this case is set for trial on _____ day of _____, 19____, at _____ o'clock (a.m.) (p.m.). And the accused is remanded to jail or (And the bond of the accused together with the surety thereon is continued in effect.)

Va. Code, §§ 19.1-241.1, et seq.

FELONY FORM NO. 4

Note: This form to be used in cases where it is ascertained in Court of record, after indictment returned, that accused was under 18 years of age at time alleged offense was committed.

COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came the Attorney for the Commonwealth, and _____ who stands indicted for a felony, to-wit: _____ (was led to the bar in the custody of the Sheriff) or (appeared in court according to the condition of his recognizance), and came also _____, his attorney (heretofore appointed by the Court to defend him, and _____ his parent(s) (a person in loco parentis) (his guardian ad litem duly appointed).*

And the Court having ascertained that the accused was (claims to have been) under the age of eighteen years at the time the offense charged against him is alleged to have been committed, further proceedings in this case are continued until the completion of an investigation as prescribed in Section 16.1-176(b) of the Code of Virginia, 1950, as amended, in order that this Court may determine whether to transfer this case to the juvenile court for trial or to continue with the trial in this Court. It is further ordered that (the Probation Officer of this Court) (the Superintendent of the Department of Public Welfare of this [County] [City]) do make the investigation prescribed in Section 16.1-176(b) and return to this Court a written report thereof on the _____ day

of _____, 19____, at _____ (a.m.) (p.m.), to which date this case is continued.

Whereupon with the consent and approval of the accused after private consultation with his counsel and with the approval of the Attorney for the Commonwealth this case is set for trial on _____ day of _____, 19____, at _____ o'clock (a.m.) (p.m.) (And the accused is remanded to jail) or (And the bond of the accused together with the surety thereon is continued until the further order of the Court).

Va. Code, §§ 16.1-172, -173, -175, -177 and -176(b), and 16.1-164
See Felony Form No. 10 for trial of juvenile.

*Gregory v. Peyton, 208 Va. 157
Peyton v. French, 207 Va. 73
Norwood v. Richmond, 203 Va. 886

FELONY FORM NO. 5

Note: This form to be used in all felony cases where the accused is a juvenile and the pre-trial investigation and report required by Section 16.1-176(b) was made to the Juvenile Court and the results thereof certified to the court of record.

COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came the Attorney for the Commonwealth, and _____, who stands indicted for a felony to-wit: _____ (was led to the bar in the custody of the Sheriff) or (appeared in court according to the condition of his recognizance), and came also _____, his attorney (heretofore appointed by the Court to defend him) and _____ his parent(s) (a person in loco parentis) (his guardian ad litem duly appointed).

And it appearing to the Court that the defendant was under eighteen years of age at the time the offense alleged against him was committed, and that the investigation and report provided for in Section 16.1-176(b) was made by the juvenile court and the results thereof certified to this Court; which said report was examined by counsel for the accused and approved by him as being in full compliance with the statute; and the Court having fully examined and considered said report and being of opinion that it is in full compliance with said statute and that this case should not be transferred to the juvenile court, but should be tried and disposed of in this court in accordance with the criminal laws of

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of this State, Doth So Decide.

Whereupon with the consent and approval of the accused after private consultation with his counsel and with the approval of the Attorney for the Commonwealth this case is set for trial on _____ day of _____, 19____, at _____ o'clock (a. m.) (p. m.) (And the accused is remanded to jail) or (And the bond of the accused together with the surety thereon is continued until the further order of the Court).

Va. Code, §§ 16.1-172, -173, -175, -177 and -176(b), and 16.1-164

See Felony Form No. 10 for trial of juvenile.

Gregory v. Peyton, 208 Va. 157) Holding preliminary hearing is
Peyton v. French, 207 Va. 73) jurisdictional and not procedural
as to juvenile.
Norwood v. Richmond, 203 Va. 886

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FELONY FORM NO. 6

Note: This form is to be used where the accused (1) is in jail or on bond (2) is without counsel (3) pleads guilty, and (4) is tried and sentenced the same day.

Nota Bene: Although the accused is entitled to a speedy trial under the provisions of the Virginia Constitution, § 8, and the Virginia Code, § 19.1-190, the case of Whitley v. Cunningham, 205 Va. 251, indicates the dangers inherent in a trial of the accused on the first day of the term. Hence procedures pursuant to this order are to be discouraged.

COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came the Attorney for the Commonwealth, and _____ who stands indicted for a felony, to-wit: _____ (was led to the bar in the custody of the Sheriff (appeared in court according to the condition of his recognizance). And it appearing to the Court that the accused is not represented by counsel, the Court, before accepting any plea of the accused, doth appoint _____, an able and competent attorney at law, practicing before the bar of this Court, to defend him.

Whereupon the accused, after private consultation with his counsel, and being advised by the Court of his right to be tried at a later date, stated that he was ready for trial and desired and consented to be tried on this day. The Attorney for the Commonwealth also consented. Thereupon the accused was duly arraigned and after being advised by his counsel pleaded guilty to the Indictment, which plea was tendered by the accused in person, and the Court, having made inquiry and being of the opinion that the accused fully understood the nature and effect of his plea and of the penalties that may be imposed upon his conviction, and of the waiver of trial by jury and of appeal, proceeded to hear and determine the case without the intervention of a jury as provided by law, and having heard the evidence and argument of counsel doth find the accused guilty of _____ as charged in the Indictment.

[Counsel for the accused moved the Court to suspend the imposition of sentence (and to place the defendant on probation), which motion was overruled, to which ruling the defendant by counsel excepted (or, which motion was granted) and, being of the opinion that it is compatible with the public interest so to do, the Court doth adjudge and order that the imposition of sentence is suspended

and the said defendant is hereby placed on probation under the supervision of a Probation Officer of this Court, during his good behavior (for _____ years from this date) and (upon condition that the said defendant do pay fine of \$ _____ and costs of \$ _____ assessed against him) (and make restitution or reparation to _____ for actual damages or loss) (and provide reasonable support for his wife and child(ren)].

- OR -

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of _____ years, (of which term the Court doth suspend the execution of _____ years upon the conditions that he keep the peace and be of good behavior for _____ years) and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of \$ _____ by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed _____ days credit for the time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant (for which services he is allowed an attorney's fee of \$ _____).

And the prisoner is remanded to jail to await transfer to the penitentiary.

FELONY FORM NO. 7

Note: This form is to be used where the accused (1) is in jail or on bond (2) is without counsel (3) pleads not guilty (4) waives trial by jury (5) is tried and convicted the same day.

Nota Bene Although the accused is entitled to a speedy trial under the provisions of the Virginia Constitution, § 8, and the Virginia Code, § 19.1-190, the case of Whitley v. Cunningham, 205 Va. 251, indicates the dangers inherent in a trial of the accused on the first day of the term. Hence, procedures pursuant to this order are to be discouraged.

COMMONWEALTH

v.

_____ ,

Defendant.

ORDER - FELONY NO. _____

This day came the Attorney for the Commonwealth, and _____ who stands indicted for a felony, to-wit: _____ (was led to the bar in the custody of the Sheriff (appeared in court according to the condition of his recognizance). And it appearing to the Court that the accused is not represented by counsel, the Court, before accepting any plea of the accused, doth appoint _____, an able and competent attorney at law, practicing before the bar of this Court, to defend him.

Whereupon, the accused, after private consultation with his counsel and being advised by the Court of his right to be tried at a later date, stated that he was ready for trial and desired and consented to be tried on this day. The Attorney for the Commonwealth also consented. Thereupon the accused was duly arraigned and after being advised by his counsel pleaded not guilty to the Indictment, which plea was tendered by the accused in person, and after being first advised by his counsel and by the Court of his right to trial by jury, the accused in person, knowingly and voluntarily waived a trial by jury, and with the concurrence of the Attorney for the Commonwealth and the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury as provided by law and having heard the evidence and argument of counsel doth find the accused guilty of _____ as charged in the Indictment.

[Counsel for the accused moved the Court to suspend the imposition of sentence (and to place the defendant on probation), which motion was overruled, to which ruling the defendant by counsel excepted (or, which motion was granted), and, being of the opinion that it is compatible with the public interest so to do, the Court

doth adjudge and order that the imposition of sentence is suspended and the said defendant is hereby placed on probation under the supervision of a Probation Officer of this Court, during his good behavior (for _____ years from this date) and (upon condition that the said defendant do pay fine of \$ _____ and costs of \$ _____ assessed against him) (and make restitution or reparation to _____ for actual damages or loss) (and provided reasonable support for his wife and child(ren)].

- OR -

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of _____ years, (of which term the Court doth suspend the execution of _____ years upon the conditions that he keep the peace and be of good behavior for _____ years) and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of \$ _____ by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed _____ days credit for the time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant (for which services he is allowed an attorney's fee of \$ _____).

And the prisoner is remanded to jail to await transfer to the penitentiary.

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FELONY FORM NO. 8

Note: This form to be used where the accused (1) is in jail or on bond (2) is without counsel (3) waives indictment by Grand Jury and agrees to be tried on the warrant or on information, (4) pleads guilty and (5) is tried the same day.

Nota Bene Although the accused is entitled to a speedy trial under the provisions of the Virginia Constitution, § 8, and the Virginia Code, § 19.1-190, the case of Whitley v. Cunningham, 205 Va. 251, indicates the dangers inherent in a trial of the accused on the first day of the term. Hence, procedures pursuant to this order are to be discouraged.

COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came the Attorney for the Commonwealth, and _____ who stands charged in a warrant with a felony, to-wit: _____ (was led to the bar in the custody of the Sheriff (appeared in court according to the condition of his recognizance). And it appearing to the Court that the accused is not represented by counsel, the Court doth appoint _____, an able and competent attorney at law, practicing before the bar of this Court, to represent and defend the accused in this case.

Whereupon the accused was advised by the Court of his right to be indicted by a Grand Jury for the charge contained against him in the warrant and the accused, after private consultation with his attorney, in open court and in writing signed by him knowingly and voluntarily waived an indictment by the Grand Jury and agreed to be tried on the charge contained in the warrant, which waiver in writing signed by the accused as aforesaid, is ordered to be filed.

Whereupon the accused, after private consultation with his counsel, and being advised by the Court of his right to be tried at a later date, stated that he was ready for trial and desired to be tried on this day. Thereupon the accused was duly arraigned and after being advised by his counsel pleaded guilty to the warrant, which plea was tendered by the accused in person, and the Court,

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having made inquiry and being of the opinion that the accused fully understood the nature and effect of his plea, and of the penalties that may be imposed upon his conviction and of the waiver of trial by jury and of appeal, proceeded to hear and determine the case without the intervention of a jury as provided by law, and having heard the evidence and argument of counsel doth find the accused guilty of _____ as charged in the warrant.

Note: Hereafter the order will be substantially the same as in Felony Form No. 6. In the event the defendant pleads not guilty, paragraph 3 above would be modified in accord with the language in paragraph 2 of Felony Form No. 7.

FELONY FORM NO. 9

Note: This form is used when the accused (1) is arraigned
(2) pleads not guilty, and (3) is tried by a jury.

COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came the Attorney for the Commonwealth, and _____
who stands indicted for a felony, to-wit: _____ as
charged in the indictment (was led to the bar in the custody of
the Sheriff of this Court) (appeared according to the condition of
his recognizance); and came also _____, his attorney
(heretofore appointed).

Whereupon the accused was arraigned and after private con-
sultation with his said attorney, pleaded not guilty to the indict-
ment, which plea was tendered by the accused in person.

The Court then impanelled twenty qualified jurors, free from
exception for the trial of the defendant, in the manner provided by
law.* Whereupon the attorney for the Commonwealth and the
Attorney for the defendant exercised their rights to strike names
from the panel, as provided by law, and the remaining twelve
jurors, constituting the jury for the trial of the defendant, were
duly sworn.

After opening statements, the court and jury heard the evi-
dence presented by the Commonwealth and the defendant. [At the
conclusion of the Commonwealth's evidence, the attorney for the
defendant moved the court to strike the Commonwealth's evidence,
which motion was overruled and exception was noted; (at the con-
clusion of all the evidence, the attorney for the defendant re-
newed his motion to strike the Commonwealth's evidence, which
motion was overruled and exception was noted.)]

After hearing the evidence, the instructions of the court
and argument of counsel, the jurors were sent to the jury room to
consider their verdict. They subsequently returned their
verdict in open court, reading:

*If the court overruled an objection to a juror for cause,
that fact may be recorded here.

We, the jury, find the defendant guilty* of _____
as charged in the indictment and fix his punishment at _____

(Foreman)

The attorney for the defendant then moved the court to set aside the verdict, which motion was overruled and exception was noted.

The court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him. The defendant having declined [The court having heard and considered the defendant's statement], the court finds the defendant guilty of _____ as charged in the indictment and sentences the defendant to confinement in the penitentiary of this Commonwealth [county jail] for the term of _____ years [months].

After pronouncing sentence, the court advised the defendant of his right to petition for an appeal to the Supreme Court of Virginia [and of his right to proceed in forma pauperis and to have the assistance of court-appointed counsel].

At all times during the trial of this case the defendant and his counsel were present.

The court orders that the defendant be allowed _____ days credit for the time spent in jail awaiting trial.

It is adjudged that the Commonwealth recover from the defendant the sum of \$ _____, the costs assessed in this proceeding.

[_____, Esq., is allowed \$ _____ for his services as court-appointed counsel for the defendant in this court.]

The defendant is remanded to jail [to await transfer to the penitentiary].

* In the event that the verdict of the jury is not guilty, the remaining portion of this order is not applicable, and the following provision of the order would read:

"Thereupon, the jury was discharged. It is considered by the Court that this defendant stands acquitted of the charge in the Indictment; in accordance with the verdict of the jury, the defendant is allowed to depart."

FELONY FORM NO. 10

Note: This form is to be used where accused (1) is a juvenile (2) pretrial investigation report is received and accused (3) is arraigned (4) pleads guilty (5) is tried and sentenced.

COMMONWEALTH

v.

_____,
Defendant.

ORDER - FELONY NO. ____

This day came again the Attorney for the Commonwealth, and _____ who stands indicted for a felony, to-wit: _____ (was again led to the bar in the custody of the Sheriff) or (appeared in court according to the condition of his recognizance), and came also _____ his attorney (heretofore appointed by the Court to defend him) and _____, his parent(s) (a person in loco parentis) (his guardian ad litem duly appointed)*

And the Court having received the report of the Superintendent of Public Welfare or (The Probation Officer), upon the investigation as prescribed in Section 16.1-176(b) of the Code of Virginia, 1950, as amended, (made pursuant to order of this Court entered _____) which said report was examined by counsel for the accused and approved by him as being in full compliance with the aforesaid statute; and the Court having fully examined and considered said report is of opinion that said report fully complies with the statute, and that this case should not be transferred** to the juvenile court of this county but that this Court should proceed with the trial thereof under the criminal laws of this Commonwealth, Doth So Decide.

Whereupon the accused, after private consultation with his counsel, stated that he was ready for trial and desired to be tried

* Gregory v. Peyton, 208 Va. 157
Peyton v. French, 207 Va. 73

** If case is transferred, at this point conclude the order as follows: "be transferred to the Juvenile Court of this county, and it is accordingly so ordered, as prescribed by § 16.1-175; and the Clerk of this Court is directed to deliver to the said Court the Indictment, a certified copy of this order and all papers, documents and evidence connected with this case and to remove this case from the docket of this Court."

on this day. Thereupon the accused was duly arraigned and after being advised by his counsel pleaded guilty* to the indictment, which plea was tendered by the accused in person, and the Court, having made inquiry and being of the opinion that the accused fully understood the nature and effect of his plea and of the penalties that may be imposed upon his conviction and waiver of trial by jury and of appeal, proceeded to hear and determine the case without the intervention of a jury as provided by law, and having heard the evidence and argument of counsel doth find the accused guilty of _____ as charged in the indictment.

[Counsel for the accused moved the Court to suspend the imposition of sentence (and to place the defendant on probation), which motion was overruled, to which ruling the defendant by counsel excepted (or, which motion was granted) and, being of the opinion that it is compatible with the public interest so to do, the Court doth adjudge and order that the imposition of sentence is suspended and the said defendant is hereby placed on probation under the supervision of a Probation Officer of this Court, during his good behavior (for _____ years from this date) and (upon condition that the said defendant do pay fine of \$ _____ and costs of \$ _____ assessed against him) (and make restitution or reparation to _____ for actual damages or loss) (and provide reasonable support for his wife and child(ren))].

- OR -

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth (in the County jail) for the term of _____ years (months), (of which term the Court doth suspend the execution of _____ years (months) upon the condition that he keep the peace and be of good behavior for _____ years) and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of \$ _____ by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the entry of this Order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed _____ days credit for the time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant (for

*In the event the defendant pleads not guilty, paragraph 3 above will be modified in accord with paragraph 2 of Felony Form No. 7. Norwood v. Richmond, 203 Va. 886.

which services he is allowed an attorney's fee of \$_____).

And the prisoner is remanded to jail to await transfer to the penitentiary.

Note: A follow-up to Felony Form No. 5,

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FELONY FORM NO. 11

Note: This form to be used where accused is not tried until later in the term and where accused (1) is arraigned (2) pleads guilty and (3) is convicted and sentenced.

COMMONWEALTH

v.

_____, Defendant.

ORDER - FELONY NO. _____

This day came again the Attorney for the Commonwealth, and _____, who stands indicted for a felony, to-wit: _____ (was led to the bar in the custody of the jailer of this Court) (appeared according to the condition of his recognizance) and came also _____ his attorney (heretofore appointed).

Whereupon the accused was arraigned and after private consultation with and being advised by his said counsel, pleaded guilty to the indictment, which plea was tendered by the accused in person, and the Court having made inquiry and being of the opinion that the accused fully understood the nature and effect of his plea and of the penalties that may be imposed upon his conviction and of the waiver of trial by jury and of appeal, proceeded to hear and determine the case without the intervention of a jury as provided by law, and having heard the evidence and argument of counsel, doth find the accused guilty of _____ as charged in the indictment.

[Counsel for the accused moved the Court to suspend the imposition of sentence (and to place the defendant on probation), which motion was overruled, to which ruling the defendant by counsel excepted (or, which motion was granted) and, being of the opinion that it is compatible with the public interest so to do, the Court doth adjudge and order that the imposition of sentence is suspended and the said defendant is hereby placed on probation under the supervision of a Probation Officer of this Court, during his good behavior (for _____ years from this date) and (upon condition that the said defendant do pay fine of \$ _____ and costs of \$ _____ assessed against him) (and make restitution or reparation to _____ for actual damages or loss) (and provide reasonable support for his wife and child(ren)].

- OR -

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against

him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth (County jail) for the term of _____ years (months) (of which term the Court doth suspend the execution of _____ years (months) upon the conditions that he keep the peace and be of good behavior for _____ years) and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of \$ _____ by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the entry of this Order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed _____ days credit for the time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant (for which services he is allowed an attorney's fee of \$ _____).

And the prisoner is remanded to jail to await transfer to the penitentiary.

SEE: Va. Code, § 19.1-192

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FELONY FORM NO. 12

Note: This form to be used where accused is not tried until later in the term, and when arraigned (1) enters a plea of not guilty (2) waives trial by jury and is convicted and sentenced on the latter date.

COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came again the Attorney for the Commonwealth, and _____ who stands indicted for a felony, to-wit: _____ (was led to the bar in the custody of the jailer of this Court) (appeared according to the condition of his recognizance), and came also _____ his attorney (heretofore appointed).

Whereupon the accused was arraigned and after private consultation with and being advised by _____, his counsel, pleaded not guilty to the indictment, which plea was tendered by the accused in person. And thereupon, after having been first advised by his attorney and by the Court of his right to trial by jury, the accused knowingly and voluntarily waived trial by a jury and with the concurrence of the Attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury, as provided by law, and having heard the evidence and argument of counsel, doth find the accused guilty of _____ as charged in the indictment.

[Counsel for the accused moved the Court to suspend the imposition of sentence (and to place the defendant on probation), which motion was overruled, to which ruling the defendant by counsel excepted (or, which motion was granted) and, being of the opinion that it is compatible with the public interest so to do, the Court doth adjudge and order that the imposition of sentence is suspended and the said defendant is hereby placed on probation under the supervision of a Probation Officer of this Court, during his good behavior (for _____ years from this date) and (upon condition that the said defendant do pay fine of \$ _____ and costs of \$ _____ assessed against him)(and make restitution or reparation to _____ for actual damages or loss) (and provide reasonable support for his wife and child(ren)].

- OR -

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the

defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth (County jail) for the term of _____ years (months). (of which term the Court doth suspend the execution of _____ years (months) upon the conditions that he keep the peace and be of good behavior for _____ years) and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of \$ _____ by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the entry of this Order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed _____ days credit for the time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant (for which services he is allowed an attorney's fee of \$ _____).

And the prisoner is remanded to jail to await transfer to the penitentiary.

SEE: Va. Code, § 19.1-192

FELONY FORM NO. 13

Note: This form to be used where accused is not tried until later in the term and when arraigned (1) enters a plea of not guilty to the indictment and waives a trial by jury (2) and pleads guilty to a lesser included offense as charged in the indictment and is convicted and sentenced on the trial date.

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COMMONWEALTH

v.

_____,'

Defendant.

ORDER - FELONY NO. _____

This day came the Attorney for the Commonwealth, and _____ who stands indicted for a felony, to-wit: _____ (was led to the bar in the custody of the jailer of this Court) (or appeared according to the condition of his recognizance), and came also _____, his attorney (heretofore appointed).

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Whereupon the accused was arraigned and after private consultation with and being advised by _____, his counsel, pleaded not guilty to _____, as charged in said indictment but guilty to _____, as charged in said indictment, which pleas were tendered by the accused in person. And thereupon, after having been first advised by his attorney and by the Court of his right to trial by jury upon his plea of not guilty to _____, the accused knowingly and voluntarily waived trial by a jury, and with the concurrence of the attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury, as provided by law.

And the Court, having made inquiry and being of the opinion that the accused fully understood the nature and effect of his plea of guilty to _____, and of the penalties that may be imposed upon his conviction and of the waiver of trial by jury and of appeal, proceeded to hear and determine the case without the intervention of a jury, as provided by law.

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And having heard the evidence and argument of counsel, the Court doth find the accused not guilty of _____, as charged in the indictment but guilty of _____, as charged in the indictment.

[Counsel for the accused moved the Court to suspend the imposition of sentence (and to place the defendant on probation) which motion was overruled, to which ruling the defendant by counsel excepted, (or, which motion was granted) and, being of the opinion that it is compatible with the public interest so to do, the Court doth adjudge and order that the imposition of sentence is suspended and the said defendant is hereby placed on probation under the supervision of a

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Probation Officer of this Court, during his good behavior (for _____ years from this date) and (upon condition that the said defendant do pay _____ costs of \$ _____ assessed against him) (and make restitution or reparation to _____, for actual damages or loss) (and provide reasonable support for his wife and child(ren)].

- OR -

And it being demanded of the said defendant, if anything for himself he had or knew to say why judgment should not now be pronounced against him according to law and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of _____ years (the jail of this County for the term of _____ months and a fine of \$ _____) (of which term the Court doth suspend the execution of _____ years (months) upon the condition that he keep the peace and be of good behavior for _____ years (months), and that the Commonwealth of Virginia recover against the defendant a fine of \$ _____ and costs in the amount of \$ _____, by it about its prosecution in this behalf expended.

[And after having heard further argument of counsel, the Court doth adjudge and order that the _____ year (month) sentence this day imposed shall run concurrently with the _____ year (month) sentence heretofore imposed upon the defendant by this Court on _____, in Case No. F _____.]

[And it is further ordered that as soon as possible after the entry of this order that the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept confined and treated in the manner provided by law.]

The Court orders that the prisoner be allowed _____ days credit for the time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the defendant was personally present and his above named attorney was likewise personally present and capably represented the defendant, for which services he is allowed an attorney's fee of \$ _____.

[And the prisoner is remanded to jail to await transfer to the penitentiary.]

Va. Code, § 19.1-192

FELONY FORM NO. 14

Note: This form is to be used where accused is not tried until later in the term, and when arraigned (1), pleads guilty, (2) is convicted, and (3) sentencing is deferred for receipt of a presentence report by the Probation Officer.

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COMMONWEALTH

v.

Defendant,

ORDER - FELONY NO. _____

This day came again the Attorney for the Commonwealth, and _____ who stands indicted for a felony, to-wit: _____ was led to the bar in the custody of the jailer of this Court (appeared according to the condition of his recognizance) and came also _____ his attorney (heretofore appointed).

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Whereupon the accused was arraigned and after private consultation with and being advised by his said counsel, pleaded guilty to the indictment, which plea was tendered by the accused in person, and the Court, having made inquiry and being of the opinion that the accused fully understood the nature and effect of his plea and of the penalties that may be imposed upon his conviction, and of the waiver of trial by jury and of appeal, proceeded to hear and determine the case without the intervention of a jury as provided by law, and having heard the evidence and argument of counsel, doth find the accused guilty of _____ as charged in the indictment.

The Court (on motion of the defendant by counsel), before fixing punishment or imposing sentence, doth direct the Probation Officer of this Court to thoroughly investigate and report to the Court as provided by law, on the _____ day of _____, 19____, at _____ o'clock (a.m.) (p.m.), and sentencing is set for the _____ day of _____, 19____, at _____ o'clock (a.m.) (p.m.), to which time this case is continued.

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n.)

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant.

And the defendant is remanded to jail.

Va. Code, § 53-278.1, and Rule 3A:25, Criminal Practice and Procedure.

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CLERK: See p. 41, Item 20, and Form on p. 44.

FELONY FORM NO. 15

Note: This form to be used where the accused is not tried until later in the term, and when arraigned (1) enters a plea of not guilty (2) waives trial by jury, (3) is convicted and (4) sentencing is deferred for receipt of pre-sentence report by the Probation Officer.

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COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came again the Attorney for the Commonwealth, and _____ who stands indicted for a felony, to-wit: _____ (was led to the bar in the custody of the jailer of this Court) (appeared according to the condition of his recognizance), and came also _____ his attorney (heretofore appointed).

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Whereupon the accused was arraigned and after private consultation with _____ his counsel, pleaded not guilty to the indictment, which plea was tendered by the accused in person. And thereupon, after having been first advised by his attorney and by the Court of his right to trial by jury, the accused knowingly and voluntarily waived trial by a jury and with the concurrence of the Attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury, as provided by law, and having heard the evidence and argument of counsel doth find the accused guilty of _____ as charged in the indictment.

The Court (on motion of the defendant by counsel), before fixing punishment or imposing sentence, doth direct the Probation Officer of this Court to thoroughly investigate and report to the Court as provided by law, on the _____ day of _____, 19____, at _____ o'clock (a.m.) (p.m.), and sentencing is not set for the _____ day of _____, 19____, at _____ o'clock (a.m.) (p.m.) to which time this case is continued.

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The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant.

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And the defendant is remanded to jail.

Va. Code, § 53-278.1, and Rule 3A:25, Criminal Practice and Procedure

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CLERK: See p. 41 Item 20, and Form on p. 44.

FELONY FORM NO. 16

Note:; This form is to be used in all felony cases where, after pre-sentence report is received, accused is sentenced to confinement.

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COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came again the Attorney for the Commonwealth, and _____ who stands convicted for a felony, to-wit: _____ was again led to the bar in the custody of the jailer of this Court and came also _____ attorney for the accused.

And the Probation Officer of this Court, to whom this case has been previously referred for investigation, appeared in open court with a written report, which report he presented to the Court in open court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for accused.

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Thereupon the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is hereby filed as a part of the record in this case.

Whereupon the Court taking into consideration all of the evidence in the case, the report of the Probation Officer, the matters brought out on cross-examination of the Probation Officer and such additional facts as were presented by the defendant, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of the Commonwealth for the term of _____ years, (to confinement in jail for the term of _____ months and to pay a fine of \$ _____), and that the Commonwealth of Virginia do recover against the said defendant its costs by it about its prosecution in this behalf expended in the amount of \$ _____.

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And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary,

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therein to be kept, confined and treated in the manner provided by law.)

The Court orders that the prisoner be allowed _____ days credit for the time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant (for which services he is allowed an attorney's fee of \$_____)

**

And the defendant is remanded to jail (to await transfer to the penitentiary.)

Va. Code, § 53-278.1

This Form supplements Forms 14 and 15.

** In the event the defendant had plead not guilty (as in Felony Form Order 15) the order should preferably include a provision reading: "Counsel for the defendant advised the Court that he had fully advised the defendant of his rights regarding appeal and the defendant, in person, so acknowledged."

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FELONY FORM NO. 17

Note: This form is to be used in all felony cases where, after pre-sentence report is received, imposition of sentence is suspended and defendant is placed on probation.

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COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came again the Attorney for the Commonwealth, and _____ who stands convicted of a felony, to-wit: _____ was again led to the bar in the custody of the jailer of this Court and came also _____ attorney for the accused.

And the Probation Officer of this Court, to whom this case has been previously referred for investigation, appeared in open court with a written report, which report he presented to the Court in open court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for accused.

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Thereupon the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is hereby filed as a part of the record in this case.

Whereupon the Court taking into consideration all of the evidence in the case, the report of the Probation Officer, the matters brought out on cross-examination of the Probation Officer and such additional facts as were presented by the accused, and being of the opinion that it is compatible with the public interest so to do, the Court doth adjudge and order that the imposition of sentence is suspended and the said defendant is hereby placed on probation under the supervision of a Probation Officer of this Court, during his good behavior (for _____ years from this date) (and upon condition that the said defendant do pay the costs of \$ _____ assessed against him) (and make restitution or reparation to _____ for actual damages or loss) (and provide reasonable support for his wife and child(ren)).

y.

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The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant (for which services he is allowed an attorney's fee of \$ _____).

And the defendant is allowed to depart.

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FELONY FORM NO. 18

Note: This form is to be used in all felony cases referred for post-sentence report. The pre-sentence procedure outlined in Forms 14, 15, 16 and 17 is more frequently employed in Virginia and affords the Court a more intelligent basis for pronouncing sentence. Hence, the post-sentence procedures covered by Forms 18, 19 and 20 are discouraged.

COMMONWEALTH

v.

Defendant.

_____ O R D E R - FELONY NO. _____

(Use appropriate provisions from other forms [11, 12, etc., and then add the following paragraphs:)

Whereupon the defendant, by counsel, moved the Court to suspend execution of the sentence aforesaid and place the defendant on probation, which motion is continued until the _____ day of _____, 19____, and this case is referred to the Probation Officer of this Court for a post-sentence report returnable on the _____ day of _____, 19____, at _____ o'clock (a.m.) (p.m.).

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant.

And the defendant is remanded to jail.

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FELONY FORM NO. 19

Note: This form is to be used in all cases where execution of sentence is suspended after post-sentence report is received. The pre-sentence procedure outlined in Forms 14, 15, 16 and 17 is more frequently employed in Virginia and affords the Court a more intelligent basis for pronouncing sentence. Hence, the post-sentence procedures covered by Forms 18, 19 and 20 are discouraged.

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COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came again the Attorney for the Commonwealth, and _____ who was on the _____ day of _____, 19____, convicted of a felony, to-wit: _____ and sentenced to confinement in the (penitentiary) (jail of this Court) for the term of _____ (was again led to the bar in the custody of the jailer of this Court) (appeared according to the condition of his recognizance) and came also _____ attorney for the defendant.

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And having received and considered the post-sentence report of the Probation Officer and having considered the defendant's motion to suspend execution of the aforesaid sentence and place the defendant on probation, and being of the opinion that it is compatible with the public interest so to do, the Court doth adjudge and order that the execution of the sentence of _____, in the (penitentiary) (jail of this Court) pronounced against the defendant as aforesaid, be and the same is hereby suspended and the defendant is hereby placed on probation under the supervision of the Probation Officer of this Court, during his good behavior for _____ years from this date, (and upon condition that said defendant do pay the (fine and) costs assessed against him by the judgment aforesaid), (including a[n] [additional] fee of \$_____ to _____ attorney appointed by the Court to defend the accused for [additional] services rendered the accused).

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The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant.

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FELONY FORM NO. 20

Note: This form is to be used in all cases overruling motion to suspend execution of sentence after post-sentence report is received. The pre-sentence procedure outlined in Forms 14, 15, 16 and 17 is more frequently employed in Virginia and affords the Court a more intelligent basis for pronouncing sentence. Hence, the post-sentence procedures covered by Forms 18, 19 and 20 are discouraged.

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COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came again the Attorney for the Commonwealth, and _____, who was on the _____ day of _____, 19____, convicted of a felony, to-wit: _____ and sentenced to confinement in the (penitentiary) (jail of this Court) for the term of _____ (was again led to the bar in the custody of the jailer of this Court) (appeared according to the condition of his recognizance) and came also _____ attorney for the defendant.

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And having received and considered the post-sentence report of the Probation Officer and having heard argument upon and considered the defendant's motion to suspend execution of the aforesaid sentence and place the defendant on probation, and being of the opinion that it is not compatible with the public interest so to do, the Court doth overrule the said motion (to which ruling of the Court the defendant, by counsel, excepted) and the defendant is ordered to serve said sentence.

The Court certifies that at all times during the trial of this case the accused was personally present and his attorney was likewise personally present and capably represented the defendant (for which services he is allowed an attorney's fee of \$_____).

y.

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And the prisoner is remanded to jail (to await transfer to the penitentiary).

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FELONY FORM NO. 21

Note: This form to be used where Probation Officer requests
capias to show cause why probation should not be
revoked.

COMMONWEALTH

v.

_____ defendant.

ORDER - FELONY NO. _____

Upon the written request of the Probation Officer, this
day filed, the Court doth order that the Clerk do issue a capias
directed to the Sheriff (Sergeant) of the County (City) of
_____ commanding him to arrest the defendant _____,
and confine him in jail so that he can appear before this Court
(forthwith) (on the _____ day of _____, 19____,) to show cause
if any he can why the order entered on the _____ day of _____,
19____, suspending execution of a certain sentence imposed upon
the defendant by the judgment of this Court and placing him on
probation should not be revoked because of the violation of the
terms of his probation and the defendant sentenced in accord
with law.

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FELONY FORM NO. 22

Note: This form to be used where capias has been issued under Form 21 and Probation Officer requests release of prisoner from custody.

COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came the Attorney for the Commonwealth, and _____, who was previously convicted on the _____ day of _____, 19____ of a felony, to-wit: _____ was led to the bar in the custody of the jailer of this Court, and came also _____ his attorney (heretofore appointed).

After hearing evidence of the Commonwealth and of the defendant and argument of counsel [upon the recommendation of the Probation Officer], it is ordered that _____ now in custody under a capias issued by order of this Court on the _____ day of _____, 19____, to show cause why his probation should not be revoked, be and he is hereby released from custody and restored to the original terms of his probation.

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Note: This form is to be used in all felony cases where the prisoner (on capias) is sentenced after a hearing for violation of probation.

FELONY FORM NO. 23

COMMONWEALTH

v.

Defendant.

ORDER - FELONY NO. _____

This day came again the Attorney for the Commonwealth, and _____ who was heretofore convicted of a felony, to-wit: _____ and [was sentenced to the penitentiary (jail) for a term of _____ years (months), the execution of which sentence was suspended on good behavior] and placed on probation under the supervision of the Probation Officer of this Court during his good behavior, was again led to the bar in the custody of the jailer, and came also _____ his attorney* (heretofore appointed (and _____ his parent(s)) (a person in loco parentis) (his guardian ad litem duly appointed)].

And the Court received and considered the evidence of the Probation Officer (and the additional evidence adduced) in open court in the presence of the defendant. The defendant and his counsel were given the right to cross-examine fully the Probation Officer (and other witnesses) and to present any additional facts bearing upon the matter as they desired to present.

Whereupon, after taking into consideration all the evidence in the case and the argument of counsel, the Court doth adjudge and order that the suspension of the execution of the sentence in the penitentiary (jail) for a term of _____ years (months) (and the placing of the defendant on probation under the supervision of the Probation Officer), as heretofore pronounced, is hereby revoked.

And it being demanded of the defendant if anything for himself he had or knew why judgment should not be pronounced against him

* Mempa v. Rhay, 389 U. S. 128, 88 S. Ct. 254 (Nov. 13, 1967) accused is entitled to representation by an attorney where revocation of probation (or deferred sentencing) results in substantial confinement. Applied retroactively in McConnell v. Rhay, 89 S. Ct. 32.

Coffey v. Com., 209 Va. 760 - Defendant's conditional freedom on suspended sentence is forfeited by misbehavior (later felony conviction) and revocation is proper.

according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of the Commonwealth (jail) for the term of _____ years (months).

(And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.)

The Court orders that the defendant be allowed _____ days credit for the time spent in jail awaiting trial.

The Court certifies that at all times during the trial of this case the accused was personally present and his attorney was likewise personally present and capably represented the defendant (for which services he is allowed an attorney's fee of \$_____).

And the prisoner is remanded to jail (to await transfer to the penitentiary.)

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Criminal Cases, Misdemeanor Cases

MISDEMEANOR CASES

The Trial Judge's responsibility for the expediting of the trial of appeals in misdemeanor cases and to save time and expense of the court, the defendant, the defendant's attorney, if any, and witnesses, can be accomplished by the elimination of docket-calling days for appeal cases, and by pre-arranging on the docket a day(s) certain for the trial of misdemeanor appeals. By reserving dates on his docket for such cases, the Trial Judge can request the County Judge to notify appellants of the precise date of trial in the Circuit Court by use of the "Notice Regarding Your Appeal" set forth on page 89. The County Judge or Clerk executes the notice form in duplicate, giving the appellant one copy and placing the other copy in the misdemeanor file.

Since the trial procedure is substantially the same as for felony cases (except that appointment of attorney is not required by law) reference is made to the previous sections.

ALTERNATIVE FORM OF JURY VERDICT IN MISDEMEANOR CASES

We, the jury, find the accused guilty of _____ as charged in the warrant* and fix his punishment at _____.

Foreman

We, the jury, find the accused not guilty as charged in the warrant.

Foreman

* This form of verdict would end at the asterisk in the trial of those traffic offenses where the defendant has a prior traffic record and the Commonwealth Attorney elects to present to the jury for its consideration the defendant's prior traffic record before imposing sentence, as permitted by § 19.1-186.2, in which event on the two-step trial the second verdict of the jury will be in the following form:

"We, the jury fix the punishment at _____.

Foreman

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Criminal Cases, Misdemeanor Cases

MISDEMEANOR CASES

The Circuit Court Judge's responsibility for the expediting of the trial of appeals in misdemeanor cases and to save time and expense of the court, the defendant, the defendant's attorney, if any, and witnesses, can be accomplished by the elimination of docket-calling days for appeal cases, and by pre-arranging on the circuit court docket a day(s) certain for the trial of misdemeanor appeals. By reserving dates on its docket for such cases, the Circuit Court can request the District Court Judge to notify defendant/appellant of the precise date of trial in the Circuit Court by use of the "Notice Regarding Your Appeal" set forth on page 89. The District Court Judge or Clerk executes the notice form in triplicate, giving the defendant/appellant and his attorney one copy each, and placing the other copy in the misdemeanor file.

Pursuant to the dictates of Argersinger v. Hamil, 407 U. S. 25 (6/12/72), and Virginia Code, §§ 19.1-241.7, et seq.,* that an attorney be appointed in misdemeanor cases for indigent defendants on a charge that may result in confinement in jail, the following procedures are required:

After the Clerk calls the case and before arraignment, where the defendant is not represented by counsel, the Court asks the defendant under oath and further advises as follows:

Are you represented by an attorney at law?

If not --

You are entitled to an attorney at law to represent you on this charge.

You have three choices:

- (1) You can employ your own attorney and the Court will grant a reasonable continuance for you to do so.
- (2) If you do not have means to employ an attorney, you must complete a questionnaire form as to your indigency. This must be sworn to under penalty of perjury for any false answer. Then, if the Court finds you indigent, an attorney at law will be appointed to represent you.**
- (3) You are entitled to waive representation by an attorney at law on this charge. If you so decide, you must sign a written waiver. (See p. 85B for suggested waiver form.)

* Va. Code, § 16.1-173, is applicable to a child or minor within the purview of the Juvenile law.

**If determined to be indigent, defendant must execute under oath the following statement:

"I have been advised this ___ day of ___, 19___, by the ___ court of my rights to representation by counsel in the trial of the charge pending against me; I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me."

(Signature of Accused.)

Criminal Cases, Misdemeanor Cases

Since the trial procedure is substantially the same as for felony cases, reference is made to page 33 for trial by jury, or to page 40 for trial by the court.

ALTERNATIVE FORM OF
JURY VERDICT IN
MISDEMEANOR CASES

We, the jury, find the accused guilty of _____, as charged in the warrant* and fix his punishment at _____.

Foreman

We, the jury, find the accused not guilty as charged in the warrant.

Foreman.

* This form of verdict would end at the asterish in the trial of those traffic offenses where the defendant has a prior traffic record and the Commonwealth Attorney elects to present to the jury for its consideration the defendant's prior traffic record before imposing sentence, as permitted by Virginia Code, § 19.1-186.2, in which event on the two-step trial the second verdict of the jury will be in the following form:

"We, the jury fix the punishment at _____.

Foreman"

VIRGINIA:

IN THE CIRCUIT COURT OF _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

CASE NO. _____

v.

WAIVER OF REPRESENTATION
BY ATTORNEY AT LAW

I have been advised this _____ day of _____,
19____, by the _____ court of my rights to representation
by counsel in the trial of the charge pending against me. I have
been further advised that, if I am unable to afford counsel, one
will be appointed for me free of charge.

Understanding my right to have counsel appointed for me
free of charge, I wish to waive that right and have the court
proceed with my case without an attorney being appointed for me.

I hereby waive my right to have counsel appointed for me,
voluntarily and of my own free will, without any threats, promises,
force or undue influence.

(Signature of Accused)

Judge

NOTE: This form is required by Va. Code, § 19.1-241.9.

Criminal Cases, Form orders

MISDEMEANOR FORM NO. 1

Note: This form is to be used where defendant is found guilty in a misdemeanor case regardless of whether his plea has been guilty or not guilty.

COMMONWEALTH
(COUNTY OF _____)

v.

Defendant.

ORDER - M _____

This day came the Attorney for the Commonwealth and the defendant, in person (and by his attorney, _____).

Whereupon, the accused was arraigned and pleaded (NOT) GUILTY to _____ as charged in the warrant.

If plea of guilty insert this:

The Court, having made inquiry and being of the opinion that the accused fully understood the nature and effect of said plea, the penalties that may be imposed upon conviction and waiver of trial by jury and of appeal, proceeded to hear and determine the case without a jury, and having heard the evidence and argument of counsel, doth find the accused GUILTY of _____, as charged in the warrant.

- OR -

If plea of not guilty, insert this:

[And after being advised by the Court of his right to trial by jury, the accused knowingly and voluntarily waived trial by a jury, and with the concurrence of the attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the case without a jury and having heard the evidence and argument of counsel, doth find the accused GUILTY of _____, as charged in the warrant.]

Jail Sentence

The Court doth ADJUDGE and ORDER that the defendant is sentenced to confinement in jail for a period of _____ months (days), [the execution of which sentence is suspended on condition that he keep the peace and be of good behavior for a period of _____ years, (months)]

CONTINUED

2 OF 3

Fines: [said period to be credited by _____ days spent in jail awaiting trial], (said sentence to be served on consecutive weekends from Friday 6:00 p.m. to Sunday at 6:00 p.m.), and that the defendant pay, and the Commonwealth (County) recover a fine of \$ _____ and \$ _____ costs, which fine and costs were paid [for the non-payment of which the defendant is committed to jail until same are paid as provided by law].

Revocation: It is the further judgment of the Court that the defendant's motor vehicle operator's permit is revoked (suspended) for _____ months (days).

Bureau of Correctional Field Units The said jail sentence shall be served in the appropriate correctional field unit, pursuant to Virginia Code, § 53-103, and the defendant thereafter held until the said fine and costs* are paid pursuant to Virginia Code, § 19.1-334.

Thereupon the defendant: was allowed to depart;
 _____ was committed to jail to serve his sentence (for failure to pay fine and costs);
 _____ was committed to jail to await transfer to the appropriate correctional field unit.

[] () = optional provisions.

* Wright v. Matthews, 209 Va. 246, holding that court costs are not part of punishment and hence imprisonment for non-payment of costs contravenes Thirteenth Amendment guarantee against involuntary servitude.
 SEE: Tate v. Short, 91 Sup. Ct. 668 (decided 3/2/71) holding that imprisonment of indigent for nonpayment of fines is unconstitutional, but that the burden of proof rests on the person claiming inability to pay, and permitting the court to adopt a plan of deferred payment of such fines.

SEE: Va. Code, § 19.1-347.1, which makes provision for installment basis for paying fine and costs; and

Va. Code, § 46.1-423.3, which makes provision for revocation or suspension of operator's license for failure to pay fine and costs.

Criminal Cases, Form orders

MISDEMEANOR FORM NO. 2

Note: This form is to be used where the defendant is found not guilty in a misdemeanor case.

COMMONWEALTH
COUNTY OF _____

v.

Defendant.

ORDER - M- _____

This day came the Attorney for the Commonwealth and came also the defendant in person (and by his attorney, _____).

Whereupon, the accused was arraigned and plead not guilty to _____ as charged in the warrant.

And after being advised by the Court of his right to trial by jury, the accused knowingly and voluntarily waived trial by a jury, and with the concurrence of the attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the case without a jury, and having heard the evidence and argument of counsel, doth find the accused not guilty, and he was allowed to depart.

Criminal Cases, Misdemeanor Cases

APPEAL NOTICE

IN THE COUNTY COURT OF _____ COUNTY

COMMONWEALTH
COUNTY OF _____

v.

NOTICE REGARDING YOUR APPEAL

You have appealed the judgment rendered this day (on _____, 19____) by this Court to the Circuit Court of the County of _____.

You are now advised that your case will be tried in the Circuit Court of _____ County, _____, Virginia, on _____, 19____, at 9:00 o'clock a. m.

You must be present on the above date and ready for trial.

You must arrange for the presence of any witnesses in your behalf. If you desire an attorney to represent you on your appeal, you should employ him promptly and show him this notice. The failure to employ an attorney until just before the above trial date is not a ground for continuance.

If you wish to withdraw your appeal, you may do so within 10 days after the date of your conviction, by paying the fine of \$ _____ and costs of \$ _____ by cash or certified check or money order to " _____ County Court," and serve the sentence, if any imposed by the Court.

I certify that the original of this notice was delivered to the defendant, in person, or to his attorney, this _____ 19____.

Judge/Clerk - _____ County Court

DIVORCE CAUSES

Judges Check List of Irregularities

Note: The Judge, or "Chancellor" (the correct title when acting on the equity side of the Court), can expedite the handling and review of divorce causes by having before him a "check list of irregularities" form. After the Judge checks the space(s) for the deficiency to be corrected, the form is left in the file with directions to his Clerk or secretary to supply a photocopy to counsel of record.

The check list of irregularities may substantially conform to the following:

I. BILL OF COMPLAINT:

- a ___ Failure to allege jurisdiction of this Court (V.C. 20-98)
- b ___ Failure to allege domicile and 1 year residence (V.C. 20-97).
- c ___ Failure to allege specific grounds for divorce, (V.C. 20-91 and 95).
- d ___ Failure of infant plaintiff to sue by next friend.
- e ___ Failure to show in caption that defendant is an infant.
- f ___ Failure to file marriage certificate (V.C. 20-100)
- g ___ Attempting to file amended Bill of Complaint without Court Order (Rule 2:12).
- h ___ Non-resident attorney cannot sign or appear (Rule 1:6).
- i ___ Other: _____

II. SERVICE OF PROCESS:

- a ___ No proof of service of process in file.
- b ___ Improper or inadequate service of process or return thereon in that there is a failure to comply with requisites as to:
 - 1 ___ personal service (V.C. 8-54 and 51)
 - 2 ___ substituted service (V.C. 8-54 and 51)
 - 3 ___ poste service (V.C. 8-54 and 51)
 - 4 ___ acceptance of service not notarized (court policy)
 - 5 ___ no affidavit or improper affidavit for Order of Publication.
 - 6 ___ order of publication not complete (V.C. 20-104 and Rule 2:6).
 - 7 ___ certificate of publication not filed.
 - 8 ___ personal service out of state not on Court approved form (V.C. 8-74).
 - 9 ___ infant defendant against whom personal judgment sought not served, (Rule 2:4).
 - 10 ___ no guardian ad litem appointed for infant defendant against whom personal judgment is sought (V.C. 8-38).
 - 11 ___ defendant in penitentiary not properly served (V.C. 8-55).

DIVORCE CAUSESIrregularities - con't.

- 12__ defendant in service not afforded attorney pursuant
to Soldiers and Sailors Civil Relief Act.
13__ other: _____

UNLESS AND UNTIL CORRECTED, NO
FURTHER PROCEEDING CAN BE HAD.

III. ANSWER:

- a__ not filed at all (Rule 2:7 and 2:11)
b__ lodged with Clerk after 21 days and needing Court order,
(Rule 2:23).

IV. CROSS BILL:

- a__ not filed within 21 days and needing Court order (Rule 2:13)

V. NOTICE TO TAKE DEPOSITIONS LACKING OR INADEQUATE (REQUIRING COMPLIANCE OR NEW DEPOSITIONS WITH NOTICE BEFORE DEPOSITIONS CAN BE READ).

- a__ no notice in file showing return of service
b__ no notice at all (V.C. 8-307 or Rule 1:14)
c__ notice not reasonable (5 days minimum by Court policy)
d__ continuance of taking depositions not shown of record
(Mackey v. Mackey, 203 Va. 526).
e__ rejected, as taken without notice or without reasonable
notice (V.C. 8-307 and Rule 1:14)
f__ rejected, as taken before date of notice.
g__ rejected, as taken before passing of 38 days from date of
first publication in newspaper of Order of Publication.
h__ rejected, as taken before passing of 21 days where personal
service made on non-resident (Owens v. Owens, 197 Va. 681).
(V.C. 8-74 and Rules 2:6(c) and 2:21).
i__ rejected, because guardian ad litem not present, (V.C. 8-309
and 8-88).
j__ rejected, because defendant in penitentiary not served or
represented by Committee or guardian ad litem (V.C. 8-55).
k__ rejected, because defendant in service not represented by
attorney under Soldiers and Sailors Civil Relief Act.

VI. SUBSTANCE OF DEPOSITIONS INADEQUATE (REQUIRING NEW DEPOSITIONS WITH NOTICE BEFORE DECREE CAN BE ENTERED).

- a__ because no proof or corroboration of:
1__ jurisdiction of this Court.
2__ domicile and residence of 1 year.

DIVORCE CAUSES con't.Irregularities con't.

- 3 ___ grounds of divorce.
 4 ___ need for alimony.
 5 ___ need for support.
 6 ___ ability of husband/father to pay.
 7 ___ proper custodian of children in relation to best interests and welfare of children.
 8 ___ Other: _____

VII. DECREE:

- a ___ Not in accord with standard form as to _____
 b ___ Not endorsed by counsel of record (Rule 2:18).
 c ___ No notice to guilty party of intention to apply for merger, (V.C. 20-121).
 d ___ No provision for custody and support of children, (V.C. 20-107-8).
 e ___ No basis for personal judgment as to alimony or support, as defendant a non-resident or an infant not personally served.
 f ___ Bed and board decree necessary before consideration of final decree.
 g ___ Other: _____

Clerk/Secretary:

Please send photocopy of this form to counsel of record, noting date of mailing on the margin hereof.

Judge

Date

CIRCUIT COURT
ACCEPTABLE FORMS FOR DECREES
IN DIVORCE CAUSES*

VIRGINIA:
IN THE CIRCUIT COURT OF THE COUNTY OF _____

Plaintiff
v.

Defendant.

BED AND BOARD DECREE
or
FINAL DECREE (Case No. _____)

100 This cause, which has been regularly docketed, matured and set for hearing (as to the defendant, who has failed to plead, answer or demur), came on this day to be heard upon the Bill of Complaint and exhibit filed therewith; upon proof of proper and legal service of process upon the defendant (a non-resident, by Order of Publication); upon the answer (and cross bill) of the defendant); upon the plaintiff's answer to the cross bill); upon the answer of the infant by his/her guardian ad litem); upon the depositions of witnesses on behalf of the plaintiff (and the defendant), regularly taken after proper and legal notice to the defendant ((in the presence of said guardian ad litem) and filed in accordance with law, and was argued by counsel.

99 Upon consideration whereof, the Court finds from the evidence, independently of the admission of the parties in the pleadings or otherwise, the following facts: that the parties
101 are members of the (white) (negro) race and over the age of twenty-one; that they were lawfully married in the city (county) of _____ on _____, 19____; that there (is) (are) (no) (one) (two, etc.) infant child(ren) born of this marriage, whose name(s) (is) (are) _____; that the plaintiff is domiciled in and is and has
97 been an actual bona fide resident of the Commonwealth of Virginia for a period of more than one year immediately preceding the commencement of this suit; that the plaintiff and defendant last
98 cohabited as husband and wife in the County of _____, Virginia, (that the defendant was a resident of the County of _____, Virginia, at the time of the commencement of this suit) (that the plaintiff was a resident of the County of _____, Virginia, and the defendant was not a resident of Virginia at the time of the commencement of this suit); that the charge of wilful (constructive)

Original references are to Code sections throughout.
Indicate optional provisions throughout.

Bed and Board or Final Decree con't.

desertion, (cruelty, reasonable apprehension of bodily harm) of the plaintiff by the defendant on the ____ day of _____, 19____, as alleged in the Bill of Complaint, has been fully proved by the evidence, and that the plaintiff is entitled to the relief prayed for, (the Court doth dismiss the Cross Bill of the defendant).

FOR BED AND BOARD DECREE*

Accordingly, it is ADJUDGED, ORDERED and DECREED that the plaintiff, _____, is now divorced from the defendant, _____, from bed and board,* on the ground of _____, with leave to either of the parties to have the same merged into a decree of divorce from the bond of matrimony as provided by law.

*NOTE - FOR LANGUAGE IN FINAL DECREE SEE NEXT PAGE

INSERT HERE ANY APPROPRIATE PROVISIONS
RESPECTING CUSTODY, VISITATION, SUPPORT OF
CHILDREN, ALIMONY, etc. (See the attached forms).

This is not a final decree of divorce and does not permit either of the parties to marry another, but this cause is retained on the docket for such further proceedings herein as may be provided by law.

ENTER: / /

Judge

I ask for this:

_____ p.d.

I have seen this:

_____ p.d.

FOR FINAL DECREE

grounds:
0-91(6)

Accordingly, it is ADJUDGED, ORDERED and DECREED that the plaintiff, _____, is now absolutely divorced from the defendant, _____, from the bond of matrimony on the ground of wilful desertion of the plaintiff by the defendant for a period of more than one year* and that the bond of matrimony created by the marriage between these parties on _____, 19____, is dissolved.

INSERT HERE ANY APPROPRIATE PROVISIONS RESPECTING CUSTODY, VISITATION AND SUPPORT OF CHILDREN, ALIMONY, etc. (See the attached forms).

And nothing further remaining to be done herein, it is ORDERED that this cause is stricken from the docket and placed among the ended causes.

ENTER: / /

Judge

I ask for this:
_____ p.q.

I have seen this:
_____ p.d.

0-91(9) * REQUIRED TERMINOLOGY UNDER SO CALLED 2 YEAR SEPARATION RULE

"that the parties have lived separate and apart without any cohabitation and without interruption for more than two years."

0-91(1) * REQUIRED TERMINOLOGY FOR ADULTERY

&
0-94

"that the defendant was guilty of adultery occurring on _____, 19____, that the said adultery did not occur more than five years prior to the institution of this suit and was not committed by the procurement or connivance of the plaintiff and that the plaintiff did not cohabit with the defendant after knowledge of said adultery."

FORM OF DECREE FOR MERGING
BED AND BOARD INTO FINAL DECREE

20-121

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF _____

_____, Plaintiff

v.

_____, Defendant

FINAL DECREE - Case No. ____

Final
Decree on
Merger

20-121

This cause, in which a decree of divorce from bed and board was awarded to the plaintiff on _____, 19____, came again this day to be heard upon the petition of the plaintiff (defendant), hereby filed by leave of Court, to have the divorce from bed and board merged into an absolute divorce from the bond of matrimony (upon proof of proper and legal service of notice upon the plaintiff as required by law); upon depositions regularly taken in support of the said Petition and filed in accordance with law, and was argued by counsel.

Upon consideration whereof, the Court finds from the evidence, independently of any admissions of the parties in the pleadings or otherwise, that the parties are members of the (white) (negro) race and over the age of twenty-one; that the parties have not cohabited as man and wife since their separation from each other on _____, 19____, and that no reconciliation has taken place or is probable, accordingly it is ADJUDGED, ORDERED and DECREED that the divorce from bed and board is now merged into an absolute divorce from the bond of matrimony on the ground of wilful (constructive) desertion of (cruelty to) the plaintiff by the defendant for a period of more than one year, and that the bond of matrimony created by the marriage between the parties on _____, 19____, is dissolved.

INSERT HERE ANY APPROPRIATE PROVISIONS
RESPECTING CUSTODY, VISITATION AND SUPPORT
OF CHILDREN, ALIMONY, etc. (See the attached forms).

And nothing further remaining to be done herein, it is ORDERED that this cause is stricken from the docket and the papers placed among the ended causes.

ENTER: / /

I Ask For This: _____ p.q.

Judge

I have Seen This: _____ p.d.

MISCELLANEOUS ORDERS IN DIVORCE CAUSES

8-88

ORDER APPOINTING GUARDIAN AD-LITEM

It appearing to the Court that the defendant (plaintiff) is an infant under the age of twenty-one (21) years, it is ORDERED that _____, a discreet and competent attorney at law practicing in this Court is appointed Guardian ad litem to defendant his (her) interests, with leave to file such pleadings as he may be advised.

ORDER APPOINTING ATTORNEY FOR SERVICEMAN

It appearing to the Court that the defendant is a member of the armed services (Army, Navy, Marine Corp., U.S. Government), it is ordered that _____, a discreet and competent attorney at law practicing in this Court, is appointed attorney to defend his (her) interests, with leave to file such pleadings as he may be advised.

INJUNCTION ORDER

This day came the plaintiff, in person and by counsel, to be heard upon her prayer for an injunction as set forth in her bill of complaint this day filed.

After hearing evidence ore tenus and the argument of counsel, it is ORDERED that the defendant, _____, is now enjoined and restrained from imposing any restraint on the plaintiff, either directly or indirectly, by physical force or threats, or otherwise at her place of abode, or elsewhere (and the defendant is also enjoined and restrained from remaining in or entering the premises briefly described as _____, until he shall provide comparable housing accommodations for the plaintiff and their child(ren).

This Injunction shall be effective from the time of service of a copy thereof on the defendant for a period of _____ days, unless sooner enlarged, modified or dissolved.

No Bond is required.

It is further ordered that a certified copy of this Injunction Order be served forthwith on the defendant in person.

ORDERS RELATING TO CUSTODY, VISITATION
AND SUPPORT OF CHILD(REN)
(Usual Provision Code § 20-107)

It is ADJUDGED and ORDERED that custody of Name(s), infant child(ren) of the parties, is awarded to the plaintiff, but leave is granted to the defendant to see and visit the said child(ren) at reasonable times and places; and it is further ORDERED that the defendant pay to the plaintiff for the care, support, and maintenance of the said child(ren) \$_____, per _____.

-OR-

It is further ORDERED that the provisions regarding custody, visitation and support of Name(s), infant child(ren) of the parties (and alimony), contained in the decree entered in this cause on _____, 19____, are continued in full force and effect.

-79(c)

ORDER TRANSFERRING TO JUVENILE COURT

It is further ORDERED that, pursuant to Va. Code § 20-79(c), all matters pertaining to (alimony) custody, visitation and support of the child(ren) are transferred to the appropriate Juvenile and Domestic Relations Court having jurisdiction, for the enforcement of the decrees of this Court, or for the modification or revision thereof as the circumstances may require.

ORDER WHERE JUVENILE COURT HAS
EXERCISED ORIGINAL JURISDICTION

It appearing to the Court that the Juvenile and Domestic Relations Court of the city (county) of _____ is now exercising jurisdiction over all matters pertaining to custody, visitation and support of the child(ren) of the parties (and of alimony), this Court does not exercise any jurisdiction of such matters.

-107

ORDER FOR ALIMONY

It is further ADJUDGED and ORDERED that the defendant pay to the plaintiff the sum of \$_____ per _____ as alimony (until further order of this Court).

00-109

ORDER WHERE CONTRACT EXISTS

And it appearing that the parties have entered into a written agreement dated _____, 19____, it is ORDERED that a copy thereof be filed with the papers in this cause.

ORDER REGARDING PROPERTY RIGHTS*

It is further ORDERED that all of the property rights which either of the parties hereto may now have or could hereafter acquire in and to the property of each other by reason of the afore-said marriage are forever barred and extinguished.

*NOTE: See Va. Code §§ 20-111 and 20-116.

ORDER FOR ATTORNEY'S FEES AND COSTS

It is further ORDERED that the defendant pay to _____, counsel for the plaintiff, the sum of \$)_____, for legal services rendered on behalf of the plaintiff, and the further sum of \$ _____, court costs.

FORM OF ORDER SEALING PAPERS
IN AN ENDED CAUSE

It is ORDERED that the Clerk of this Court seal all papers in this cause and place the papers among the ended causes with an endorsement showing that they are not to be opened or inspected except upon the Order of the Court entered of record after such notice as the Court may require.

ORDER DISMISSING SUIT UPON RECONCILIATION
AND WHEN NO PRIOR DECREE ENTERED

This day came the plaintiff by counsel, and represented to the Court that since the institution of this cause on _____, 19____, the parties have become reconciled; accordingly, it is ORDERED that this cause is dismissed, stricken from the docket and the papers placed among the ended causes.

0-120

ORDER DISMISSING SUIT, UPON RECONCILIATION,
AFTER BED AND BOARD DECREE

This cause came again on this day to be heard upon joint representation of the parties that they have become reconciled since the entry of the Bed and Board decree on the _____ day of _____, 19____; upon their joint application and upon satisfactory evidence, all as indicated by their endorsements on the sketch for this order; accordingly, it is ADJUDGED, ORDERED and DECREED, that the bed and board decree entered on _____, 19____, is now revoked and declared null and void.

Nothing further remaining to be done herein, it is ORDERED that this cause is stricken from the docket and the papers placed among the ended causes.

SHOW CAUSE ORDER FOR NONSUPPORT. etc.

This day came the plaintiff (defendant) by counsel, and by leave of Court filed her petition (and moved the Court to reinstate this cause on the docket), representing to the Court that the defendant (plaintiff) is in violation of the decree entered in this cause on _____, 19____, for failing to pay child support (and alimony) and is in arrears of such payment in the approximate sum of \$_____.

Accordingly, it is ORDERED that this cause is reinstated on the docket and set down for hearing before this Court in the Courthouse at (insert here address of Courthouse), on Monday, _____, 19____, at _____ o'clock _____ m., and that the defendant shall appear and show cause, if any he can, why he should not be held in contempt of Court and fined, or imprisoned, or both, for failure to comply with the prior order entered on _____, 19____, (why judgment should not be awarded to the plaintiff (defendant) for the amount of child support (and/or alimony) found to be owing as of the date of the hearing), (and why the defendant should not pay a reasonable attorney's fee to counsel for the plaintiff for this proceeding and costs).

It is further ordered that a certified copy of this order, and of the petition, be served forthwith upon the defendant, in person.

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ORDER REINSTATING FOR FURTHER RELIEF -
CHANGE OF CUSTODY, INCREASE OR DECREASE OF SUPPORT, etc.

This day came the plaintiff (defendant) by counsel, and by leave of court filed her (his) petition, seeking reinstatement of this cause on the docket and certain relief therein stated.

Upon consideration whereof, it is ORDERED that this cause in reinstated on the docket, and

It is now ORDERED that the defendant (plaintiff) _____, shall appear before this Court in its Courthouse at (insert here address of Courthouse), on Monday _____, 19____, at _____, o'clock. ___ m., to answer and be heard upon the prayer of said petition for change of custody of the infant child(ren) from the plaintiff (defendant) to the defendant (plaintiff), increase (decrease) of support for the child(ren) of the parties, or increase (decrease) of alimony of the plaintiff (defendant).

It is further ordered that a certified copy of the order and of the petition filed herein be served forthwith upon the defendant (plaintiff) in person.

ADOPTIONS CASESADOPTION FORM No. 1

Form for Petition for Adoption (Va. Code, §§ 63.1-221 and -225).
When the petition is filed by a child placing agency or the local board of public welfare, the consent of the agency or board, together with copy of court commitment order or parental entrustment agreement must accompany the petition. Otherwise, parental consent must accompany the petition.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF _____

In the Matter of
The Proposed Adoption of

An Infant

PETITION FOR ADOPTION

TO THE HONORABLE JUDGE(S) OF THE CIRCUIT COURT OF THE COUNTY OF

Your petitioners, _____ and _____, his wife, (maiden surname _____) who reside at _____, in the County of _____, Virginia, ask leave to adopt as their own child, the above named male/female infant, born _____, 19____, in _____, _____, who is of the White/Negro race and the child of _____.

The infant is now*

Your petitioners affirm that they are financially able and morally fit to care for and train the infant, and they desire the name of the child to be changed to _____.

* Here give a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioners.

Adoption Cases - Form No. 1

Respectfully,

Petitioners

_____, 19__.

Form of Consent of parent and/or infant of the age of 14 years or over, to be filed with petition (Va. Code, § 63.1-225).

In the Matter of
The Proposed Adoption of

An Infant

CONSENT

I (we) do hereby consent to the adoption of my (our) child(ren) _____, born _____, 19__, and _____, born _____, 19__, by _____ and _____, and further consent to the change of his (her) (their) name(s) to _____ and _____.

Mother

Address

Father

Address

Infant (if 14 or over)

Address

Adoption Cases - Form No. 1

STATE OF _____)
_____ OF _____) To-wit:

I, _____ a Notary Public in and for the

_____ aforesaid in the State of _____, do certify

that _____

whose name _____ signed to the foregoing consent to adoption ha__

acknowledged the same before me in my _____ and State

aforesaid.

Given under my hand this _____ day of _____,
19____.

Notary Public

My commission expires on the _____ day of _____, 19____.

Adoption Cases - Form 2

ADOPTION FORM NO. 2

Form of Affidavit where order of publication is needed pursuant to Va. Code, § 63.1-225(4).

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF _____

In the Matter of
The Proposed Adoption of

_____ An Infant

AFFIDAVIT

_____, being first duly sworn, deposes and says, as follows:

- (1) That she is the natural mother of said infant.
- (2) That she and her present husband are the petitioners for the adoption of _____ by _____.
- (3) That due diligence has been used by the petitioners to ascertain in what county or city the natural father, _____, is, without effect.
- (4) That to the best of her knowledge and belief _____ is not a resident of the State of Virginia.
- (5) That the last known address of _____ is _____, _____.

State of Virginia)
County of _____) To-wit:

Subscribed and sworn to before me this _____ day of _____, 19____.

My commission expires on the _____ day of _____, 19____.

Notary Public

(Seal)

Adoption Cases - Form No. 3

ADOPTION FORM NO. 3Form for Order of Publication pursuant to Va. Code, § 63.1-225(4)

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF _____

In the Matter of
The Proposed Adoption of

An Infant

ORDER OF PUBLICATION

The object of this proceeding is to effectuate the adoption of the above named infant by _____, and to change the name of the said infant to _____.

An affidavit having been made and filed that due diligence has been used by and on behalf of the petitioners herein to ascertain in what county or city the natural father, _____, is, without effect, it is ORDERED that he appear here within ten days after due publication of this order and indicate his attitude toward the proposed adoption or otherwise do what is necessary to protect his interests herein.

It is further ORDERED that the foregoing portion of this Order be published once a week for four successive weeks in the _____, a newspaper having general circulation in _____, Virginia.

Adoption Cases - Form No. 4

ADOPTION FORM NO. 4

Form for Order of Reference to Commissioner of Public Welfare
 (Va. Code, § 63.1-225)

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF _____

In the Matter of
 The Proposed Adoption of

An Infant

ADOPTION ORDER OF REFERENCE

Upon consideration of the petition of _____
 and _____, his wife, filed the _____ day of _____,
 19____, to adopt the above named infant and to change its name
 to _____, and it appearing that there is appended
 thereto the written consent duly acknowledged of _____,
 it is ORDERED that the Clerk forward an attested copy of the
 petition and of this Order to the Commissioner of Public Welfare,
 who will, in addition to the investigation, report and recommenda-
 tion required by law, also inquire and report whether the
 requirements of law with respect to consent have been met,
 stating the facts specially, with his recommendation touching
 further consent or notice of this proceeding.

Adoption Cases - Form No. 5

ADOPTION FORM NO. 5

Form for Interlocutory Adoption Order, pursuant to the provisions of Va. Code, § 63.1-226.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF _____

In the Matter of
The Proposed Adoption of

An Infant

INTERLOCUTORY ADOPTION ORDER

Upon consideration of the petition heretofore filed of _____ and _____, his wife, together with the consent therewith duly acknowledged of _____ and of the report of the Commissioner of Public Welfare dated _____, 19____, and duly filed herein, the Court being satisfied that under the circumstances of this case no notice to or consent of any other person is required, that all the requirements of law have been met, that the petitioners are financially able to maintain adequately and are morally suitable and proper persons to care for and train the child, that the child is suitable for adoption by the petitioners, and that the best interests of the child will be promoted by the adoption, it is now by this Interlocutory Order of Adoption ADJUDGED and DECREED that henceforth, subject to the probationary period provided by law and to the provisions of such final order of adoption as may hereafter be entered in this matter, _____ will be to all intents and purposes the child of _____ and that the name of the child may upon the entry of the final order of adoption be changed to _____.

Subject to such further orders as may be entered by the Court in this matter, the petitioners will have the care, custody and control of the child during the probationary period provided by law.

Adoption Cases - Form No. 6

ADOPTION FORM NO. 6

Form for Final Adoption Order, pursuant to Va. Code, § 63.1-230

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF _____

In the Matter of
The Proposed Adoption of

An Infant

FINAL ADOPTION ORDER

Six months having elapsed since the entry of the Interlocutory Order of Adoption on _____, 19____, the Court, having considered the report of the Commissioner of Public Welfare dated _____, 19____, and duly filed, and being satisfied that all the requirements of law have been met and that the best interests of the child will be served thereby, doth now, by this Final Order of Adoption, DECLARE, ADJUDGE and DECREE that the child, _____ is henceforth to all intents and purposes the child of _____, the petitioners, and that the name of the child is hereby changed to _____.

The Clerk is directed to forward an attested copy of this Order to the Commissioner of Public Welfare and return his reports, retaining the copies thereof furnished by the Commissioner with the papers in this matter.

And the Court doth ORDER that the papers in this matter be placed in the ended files, endorsed and indexed in the new as well as the old name of the child; and that they be sealed in the usual manner with an endorsement showing that they are not to be opened or inspected except upon the order of this Court entered of record after such notice as the Court may require.

ADOPTION FORM NO. 7

Form for Final Adoption Order pursuant to Va. Code, § 63.1-229
where probationary period and interlocutory order may be omitted.

FINAL ADOPTION ORDER

This matter came on to be heard upon the petition herein filed of _____ whose legal residence is _____, in the County of _____ within the jurisdiction of this Court; upon satisfactory evidence that the infant, _____ is the child by birth of _____ the petitioning _____ who unites in the petition for the purpose of indicating _____ consent to this adoption, which consent is duly acknowledged in the petition filed herein; [upon the written consent of _____, the natural father of said infant, duly acknowledged and filed herein] or [upon the written consent of the said _____, being over the age of fourteen years]; upon the report of the Commissioner of Public Welfare dated _____, 19____, and duly filed herein; the Court doth ADJUDGE and DECREE that no further consent to this adoption or notice of these proceedings is required, and that all the requirements of law have been met.

And the Court being satisfied that the said _____ is legally the child by birth of _____, one of the petitioners; and the Court being of opinion that the entry of an interlocutory order would otherwise be proper, it is ORDERED that the probationary period and the interlocutory order of adoption be omitted; and the Court being further satisfied that all the requirements of law have been met, that the petitioners are financially able to maintain adequately and are morally suitable and proper persons to care for and train the child, that the child is suitable for adoption by _____ one of the petitioners, and that the best interest of the child will be promoted, it is now by this Final Order of Adoption ADJUDGED and DECREED that _____ is henceforth to all intents and purposes, the child of _____ and that the name of the child is hereby changed to _____.

The Clerk is directed to forward an attested copy of this Order to the Commissioner of Public Welfare and return his report, retaining the copy thereof furnished by the Commissioner with the papers in this matter.

And the Court doth order that the papers in this matter be placed in the ended files, endorsed and indexed in the new as well as the old name of the child; and that they be sealed in the usual manner with an endorsement showing that they are not to be opened or inspected except upon the order of this Court entered of record after such notice as the Court may require.

Adoption Cases - Form No. 8

ADOPTION FORM NO. 8

Form for Final Adoption Order pursuant to Va. Code, § 63.1-229, omitting probationary period and interlocutory order where infant has been placed in home of petitioner by child placing agency 6 months prior to filing petition.

FINAL ADOPTION ORDER

This matter came on to be heard upon the petition heretofore filed of _____, his wife, who reside at _____, in the County of _____, within the jurisdiction of this Court, together with the consent duly acknowledged therewith filed of _____, a child placing agency; upon the report of the Commissioner of Public Welfare dated _____ and duly filed herein; upon the certificate of placement and visitation of the said child placing agency duly filed.

The Court doth adjudge and decree that no further consent to this adoption or notice of these proceedings is required, and that all the requirements of law have been met.

And the Court being of opinion that the entry of an interlocutory order would otherwise be proper, it is ORDERED that the probationary period and the interlocutory order of adoption be omitted; and the Court being further satisfied that all the requirements of law have been met, that the petitioners are financially able to maintain adequately and are morally suitable and proper persons to care for and train the child, that the child is suitable for adoption by the petitioners, and that the best interest of the child will be promoted, it is now by this Final Order of Adoption ADJUDGED and DECREED that _____ is henceforth to all intents and purposes, the child of _____, his wife, and that the name of the child is hereby changed to _____.

The Clerk is directed to forward an attested copy of this Order to the Commissioner of Public Welfare and return his report, retaining the copy thereof furnished by the Commissioner with the papers in this matter.

And the Court doth ORDER that the papers in this matter be placed in the ended files, endorsed and indexed in the new as well as the old name of the child; and that they be sealed in the usual manner with an endorsement showing that they are not to be opened or inspected except upon the order of this Court entered of record after such notice as the Court may require.

ADOPTION FORM NO. 9

Form for Final Adoption Order pursuant to Va. Code, § 63.1-222

FINAL ADOPTION ORDER

This matter came on to be heard upon the petition herein filed of _____ whose legal residence is _____, in the County of _____, within the jurisdiction of this Court, for the adoption of his stepchild, _____, over the age of twenty-one years, to whom he has stood in loco parentis for a period of at least one year, and in whose home the said _____ resided for a period of at least five years prior to becoming twenty-one years of age; upon the written consent, duly acknowledged of _____, the person to be adopted; upon evidence heard ore tenus; and upon consideration thereof, the Court doth ADJUDGE and DECREE that no further consent to this adoption or notice of these proceedings is required, and that all the requirements of law have been met.

The Court being of opinion that the entry of an interlocutory order of adoption would otherwise be proper, it is ORDERED that any investigations or visitations required by statute, the probationary period and the interlocutory order be omitted; and the Court being further satisfied that all the requirements of law have been met; that the petitioner is financially able to maintain adequately and is morally suitable and a proper person to care for the said _____; that the best interest of the person to be adopted will be promoted, it is now by this Final Order of Adoption, ADJUDGED and DECREED that _____ is henceforth to all intents and purposes, the child of _____, and that the name of the child is hereby changed to _____.

The Clerk is directed to forward an attested copy of this order to the Commissioner of Public Welfare.

And the Court doth ORDER that the papers in this matter be placed in the ended files, endorsed and properly indexed; and that they be sealed in the usual manner with an endorsement showing that they are not to be opened or inspected except upon the order of this Court entered of record after such notice as the Court may require.

ADOPTION FORM NO. 10

Form of Final Adoption Order pursuant to Va. Code, § 63.1-231
(omitting reference to director of welfare and hearing evidence
ore tenus).

FINAL ADOPTION ORDER

This matter came on to be heard upon the petition heretofore filed of _____ and _____, his wife, who reside at _____ in the County of _____, within the jurisdiction of this Court; upon satisfactory evidence this day heard that the infant, _____, is the natural son of _____ and _____, who departed this life on _____; that _____ and _____ were lawfully married on _____; that the said _____ desires to adopt the said infant child and to change _____ name; that the said _____ is willing for the adoption and change of name of said child by _____, as evidenced by her uniting in said petition indicating her consent.

The Court doth ADJUDGE and DECREE that no further consent to this adoption or notice of these proceedings is required, and that all the requirements of law have been met.

And the Court being of opinion that the entry of an interlocutory order would otherwise be proper and that no good purpose would be served by referring the matter to the Director of Welfare and Institutions, it is further ORDERED that said reference and the probationary period and the interlocutory order of adoption be omitted; and the Court being further satisfied that all the requirements of law have been met, that the petitioners are financially able to maintain adequately and are morally suitable and proper persons to care for and train the child, that the child is suitable for adoption by _____, one of the petitioners, and that the best interest of the child will be promoted, it is now by this Final Order of Adoption ADJUDGED and DECREED that _____ is henceforth to all intents and purposes, the child of _____ and _____, his wife, and that the name of the child is hereby changed to _____.

The Clerk is directed to forward an attested copy of this Order to the Commissioner of Public Welfare.

And the Court doth ORDER that the papers in this matter be placed in the ended files, endorsed and indexed in the new as well as the old name of the child; and that they be sealed in the usual manner with an endorsement showing that they are not to be opened or inspected except upon the order of this Court entered of record after such notice as the Court may require.

ADOPTION FORM NO. 11

Form of Order for Hearing, pursuant to Va. Code, § 63.1-225,
where consent of any party is withheld or unobtainable.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF _____

In the Matter of
The Proposed Adoption of

An Infant

ORDER FOR HEARING

It appearing to the Court that the consent of _____,
the natural father of the above named infant, has not been
obtained, and that the Report of the Commissioner of Public
Welfare dated _____, _____, recommends a hearing to give the
natural father an opportunity to be heard; it is ORDERED that
this proceeding be set for hearing on the _____ day of _____,
19____, at _____ o'clock ____ . m., at which time, any interested
party desiring to be heard shall appear.

It is further ORDERED that the Clerk mail attested copies
of this Order as follows:

It is further ORDERED that a certified copy of this Order be
served in person on _____,
Virginia, or wherever he may be found.

ADOPTION FORM NO. 12

Form of Final Adoption Order, pursuant to Va. Code, § 63.1-225(4) after hearing.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF _____

In the Matter of
The Proposed Adoption of

An Infant

FINAL ADOPTION ORDER

This matter came on to be heard upon the petition herein filed of _____ and _____, his wife, whose legal residence is _____, in the County of _____, within the jurisdiction of this Court; upon satisfactory evidence that the infant, _____, is the child by birth of _____, the petitioning wife, who unites in the petition for the purpose of indicating her consent to this adoption, which consent is duly acknowledged in the petition filed herein; upon the Report of the Commissioner of Public Welfare dated _____, 19____, and duly filed herein; upon an order entered _____, 19____, fixing a hearing on _____, 19____, in this proceeding; upon personal service of a copy of said Order on _____, the father of said infant, who failed to appear for the hearing; and it appearing to the Court, after hearing evidence ore tenus of the petitioners, who appeared in person and by counsel, and of a representative of the State Department of Public Welfare, that the consent of _____ is being withheld contrary to the best interest of the child, (or, is unobtainable), and that no further consent to this adoption or notice of these proceedings is required, and that all the requirements of law have been met.

And the Court being satisfied that the said _____ is legally the child by birth of _____, one of the petitioners; that all the requirements of law have been met; that the petitioners are financially able to maintain adequately, and are morally suitable and proper persons to care for and train the child; that the child is suitable for adoption by _____, one of the petitioners; and that the best interest of the child will be promoted.

The Court being of opinion that the entry of an interlocutory order would otherwise be proper, it is ordered that the probationary period and the interlocutory order of adoption be omitted; and it is now by this Final Order of Adoption ADJUDGED and DECREED that _____ is henceforth to all intents and purposes, the child of _____ and _____, his wife, and

that the name of the child is hereby changed to _____.

The Clerk is directed to forward an attested copy of this Order to the Commissioner of Public Welfare and return his report, retaining the copy thereof furnished by the Commissioner with the papers in this matter.

And the Court doth order that the papers in this matter be placed in the ended files, endorsed and indexed in the new as well as the old name of the child; and that they be sealed in the usual manner with an endorsement showing that they are not to be opened or inspected except upon the order of this Court entered of record after such notice as the Court may require.