

2024 EDITION

Virginia Family Law: A Systematic Approach

Julia S. Savage



Continuing Legal Education
by the Virginia Law Foundation



Virginia Family Law: A Systematic Approach

Copyright © 1998, 2004, 2011, 2014-2016, 2018, 2020, 2023
Virginia Law Foundation. All rights reserved.

This electronic book is licensed for use on a single personal computer only. It must be treated in the same way as the print edition. It may not be copied, made accessible on a computer network, or otherwise shared by electronic or optical means. No derivative works may be made, but the purchaser may electronically copy short passages to include in memoranda, briefs, and similar documents.

This publication is presented with the understanding that the authors, the reviewers, and the publisher do not render any legal, accounting, or other professional service. It is intended for use by attorneys licensed to practice law in Virginia. Because of the rapidly changing nature of the law, information contained in this publication may become outdated. As a result, an attorney using this material must always research original sources of authority and update information to ensure accuracy when dealing with a specific client's legal matters. In no event will the authors, the reviewers, or the publisher be liable for any direct, indirect, or consequential damages resulting from the use of this material. The views expressed herein do not necessarily represent those of the Virginia Law Foundation.

Citations to statutes, rules, and regulations are to the versions in effect at the time the material was written, unless otherwise noted. An effort has been made to ensure the material is current as of November 2023.

Click the left mouse button twice on the link below to view tips on using Virginia CLE Electronic Books (requires Adobe® Reader version 6 or later).



VIRGINIA LAWYERS PRACTICE HANDBOOK

VIRGINIA FAMILY LAW:
A SYSTEMATIC APPROACH

Tenth Edition

VOLUMES 1 & 2

Julia S. Savage
Julia Savage Law / Colonial Beach

 Virginia CLE[®]
Publications

TABLE OF CONTENTS

<i>About the Author</i>	iii
<i>Preface</i>	v
<i>Electronic Forms: Instructions and Table</i>	vii

Volume 1

CHAPTER 1: FORMING THE ATTORNEY-CLIENT RELATIONSHIP

1.1	INITIAL CONTACT.....	1
1.101	Checking for Conflicts of Interest	1
1.102	Prospective Clients and Conflicts of Interest	3
1.103	Setting an Initial Appointment.....	4
1.2	INITIAL INTERVIEW.....	5
1.3	ACCEPTING OR DECLINING REPRESENTATION.....	7
1.301	General Considerations	7
1.302	Ethical Considerations	7
1.303	Declining Representation	7
1.304	Accepting Representation.....	8
1.305	Fee Agreements	9
1.4	EXPLAINING THE NEXT STEPS TO A CLIENT.....	11
1.401	In General	11
1.402	Information Resources for Clients	12
1.403	Artificial Intelligence in the Law	13
1.404	Gathering Information from a Client	13
	APPENDIX 1-1: CONFLICT OF INTEREST DATA	15
	APPENDIX 1-2: NEW CLIENT INQUIRY	17
	APPENDIX 1-3: LETTER TO CLIENT DECLINING REPRESENTATION	19
	APPENDIX 1-4: LETTER TO CLIENT REGARDING SCOPE OF REPRESENTATION	21
	APPENDIX 1-5: AVAILABILITY RETAINER.....	23
	APPENDIX 1-6: FEE AGREEMENT—SHORT FORM.....	25

TABLE OF CONTENTS

APPENDIX 1-7: FEE AGREEMENT—LONG FORM 29

APPENDIX 1-8: COMPREHENSIVE INFORMATION FORM 35

CHAPTER 2: DIVORCE

2.1 INTRODUCTION 47

2.2 JURISDICTION..... 48

 2.201 Circuit Court..... 48

 2.202 Residence and Domicile Requirements 48

 2.203 In Rem Jurisdiction and In Personam Jurisdiction 50

 2.204 Service of Process if Personal Jurisdiction..... 51

 2.205 Service of Process if In Rem Jurisdiction..... 61

 2.206 Other Forms of Notice..... 67

2.3 VENUE..... 67

 2.301 Preferred Venue..... 67

 2.302 Objection and Transfer..... 67

2.4 SPECIAL PARTIES..... 68

 2.401 Person Under a Disability..... 68

 2.402 Military Personnel..... 72

2.5 PRO BONO LEGAL ASSISTANCE..... 74

 2.501 Waiving Fees and Costs 74

 2.502 Dispensing with Publication in Newspaper 75

 2.503 Costs of Guardian ad Litem 75

2.6 DIVORCE FROM BED AND BOARD (A MENSA ET THORO)..... 76

 2.601 Grounds..... 76

 2.602 When to Seek Divorce from Bed and Board 77

 2.603 Legal Effects of Divorce from Bed and Board 81

2.7 DIVORCE—FINAL 81

 2.701 Overview 81

 2.702 Grounds for Final Divorce..... 82

 2.703 Pleading 86

 2.704 Confidential Information and Separate Addenda 90

 2.705 Answer 90

 2.706 Defenses 92

TABLE OF CONTENTS

2.707	Counterclaim.....	95
2.708	Answer to Counterclaim.....	95
2.8	PENDENTE LITE RELIEF	96
2.801	What Relief Is Available?	96
2.802	Procedure.....	98
2.9	MOTIONS.....	100
2.10	INFORMATION-GATHERING AND DISCOVERY	100
2.11	ARRANGING FOR AN EVIDENTIARY HEARING	101
2.12	ENTRY OF A FINAL ORDER OF DIVORCE	103
2.1201	Merger of Bed and Board Decree into Final Order	103
2.1202	Entry of No-Fault Divorce Under Fault-Based Complaint	103
2.1203	Final Divorce Under No-Fault Pleadings	104
2.13	DIVORCE ORDERS—FINAL (A VINCULO MATRIMONII)	105
2.1301	Parts of a Final Order of Divorce	105
2.1302	Forms.....	110
2.1303	Presentation of Order	110
2.1304	60-Day Deadline for Decision.....	110
	APPENDIX 2-1: COURT FORMS.....	113
	APPENDIX 2-2: RETURN OF SERVICE BY PRIVATE PROCESS SERVER	115
	APPENDIX 2-3: CERTIFICATE OF SERVICE.....	117
	APPENDIX 2-4: RULE 1:4 COMPLIANCE—ATTORNEY INFORMATION	119
	APPENDIX 2-5: NOTICE OF PENDING PROCEEDING	121
	APPENDIX 2-6: PLEADING LONG-ARM JURISDICTION	123
	APPENDIX 2-7: LETTER TO SHERIFF IN ANOTHER STATE.....	125
	APPENDIX 2-8: PROOF OF SERVICE BY LAW ENFORCEMENT OFFICER IN ANOTHER STATE	127

TABLE OF CONTENTS

APPENDIX 2-9: AFFIDAVIT FOR SERVICE BY PUBLICATION—
DEFENDANT’S WHEREABOUTS UNKNOWN..... 129

APPENDIX 2-10: AFFIDAVIT FOR SERVICE BY PUBLICATION—
SHERIFF UNABLE TO SERVE..... 131

APPENDIX 2-11: AFFIDAVIT FOR SERVICE BY PUBLICATION—
OUT-OF-STATE DEFENDANT 133

APPENDIX 2-12: ORDER OF PUBLICATION 135

APPENDIX 2-13: AFFIDAVIT OF NEWSPAPER PUBLISHER 137

APPENDIX 2-14: LETTER TO COUNSEL REGARDING
OBJECTION TO VENUE 139

APPENDIX 2-15: MOTION TO TRANSFER (OBJECTION TO
VENUE) 141

APPENDIX 2-16: ORDER TO TRANSFER—BY AGREEMENT 143

APPENDIX 2-17: MOTION FOR APPOINTMENT OF GUARDIAN
AD LITEM FOR A PERSON UNDER A DISABILITY 145

APPENDIX 2-18: ORDER APPOINTING GUARDIAN AD LITEM
FOR A PERSON UNDER A DISABILITY 147

APPENDIX 2-19: AFFIDAVIT REGARDING MILITARY SERVICE..... 149

APPENDIX 2-20: LETTER TO MILITARY LEGAL OFFICER..... 151

APPENDIX 2-21: WAIVER OF RIGHTS UNDER THE
SERVICEMEMBERS CIVIL RELIEF ACT AND
ACKNOWLEDGMENT OF MILITARY LEGAL OFFICER 153

APPENDIX 2-22: MOTION FOR APPOINTMENT OF ATTORNEY
FOR MILITARY SERVICE PERSON 155

APPENDIX 2-23: ORDER APPOINTING ATTORNEY FOR
MILITARY SERVICE PERSON 157

APPENDIX 2-24: MOTION TO DISPENSE WITH SERVICE BY
ORDER OF PUBLICATION AND TO NOTIFY DEFENDANT
BY MAIL AND POSTING 159

TABLE OF CONTENTS

APPENDIX 2-25: ORDER OF PUBLICATION PROVIDING NOTICE
BY MAIL AND POSTING 161

APPENDIX 2-26: ORDER APPOINTING GUARDIAN AD LITEM
(PRO BONO) 163

APPENDIX 2-27: NOTICE OF PENDENTE LITE HEARING 165

APPENDIX 2-28: PLAINTIFF’S COMPLAINT FOR DIVORCE A
MENSA ET THORO 167

APPENDIX 2-29: DEFENDANT’S ANSWER AND COUNTERCLAIM 171

APPENDIX 2-30: PLAINTIFF’S ANSWER TO DEFENDANT’S
COUNTERCLAIM 175

APPENDIX 2-31: ORDER OF DIVORCE A MENSA ET THORO..... 177

APPENDIX 2-32: MOTION FOR PENDENTE LITE RELIEF
(COSTS AND ATTORNEY FEES)..... 179

APPENDIX 2-33: ORDER GRANTING PENDENTE LITE RELIEF
(COSTS AND ATTORNEY FEES)..... 181

APPENDIX 2-34: PENDENTE LITE ORDER 183

APPENDIX 2-35: CONFIDENTIAL INFORMATION ADDENDUM..... 193

APPENDIX 2-36: PENDENTE LITE ORDER—SPOUSAL SUPPORT 195

APPENDIX 2-37: INCOME..... 199

APPENDIX 2-38: COMPLAINT (SIX-MONTH SEPARATION)
INCORPORATING AGREEMENT 201

APPENDIX 2-39: COMPLAINT (ONE-YEAR SEPARATION)
INCORPORATING AGREEMENT 203

APPENDIX 2-40: COMPLAINT PLEADING OTHER GROUNDS 205

APPENDIX 2-41A: PLEADING ADULTERY 207

APPENDIX 2-41B: PLEADING FELONY CONVICTION AND
CONFINEMENT..... 207

TABLE OF CONTENTS

APPENDIX 2-41C: PLEADING CRUELTY..... 207

APPENDIX 2-41D: PLEADING DESERTION OR ABANDONMENT 208

APPENDIX 2-42A: ANSWER—PLEADING CONDONATION 209

APPENDIX 2-42B: ANSWER—PLEADING RECRIMINATION..... 209

APPENDIX 2-42C: ANSWER—PLEADING JUSTIFICATION FOR
LEAVING..... 209

APPENDIX 2-42D: ANSWER—PLEADING CONNIVANCE 210

APPENDIX 2-43: NOTICE OF MOTION—GENERAL 211

APPENDIX 2-44: MOTION FOR EXTENSION OF TIME TO FILE
PLEADINGS 213

APPENDIX 2-45: ORDER GRANTING EXTENSION OF TIME TO
FILE PLEADINGS 215

APPENDIX 2-46: MOTION FOR LEAVE OF COURT TO FILE LATE
PLEADING 217

APPENDIX 2-47: ORDER PERMITTING THE LATE FILING 219

APPENDIX 2-48: DEMURRER..... 221

APPENDIX 2-49: ORDER OVERRULING DEMURRER 223

APPENDIX 2-50: ORDER GRANTING DEMURRER 225

APPENDIX 2-51: MOTION TO AMEND PLEADING 227

APPENDIX 2-52: ORDER PERMITTING AMENDMENT OF
PLEADING 229

APPENDIX 2-53: MOTION TO CONSOLIDATE..... 231

APPENDIX 2-54: ORDER OF CONSOLIDATION 233

APPENDIX 2-55: NOTICE OF DEPOSITION 235

TABLE OF CONTENTS

APPENDIX 2-56: ORDER OF REFERENCE TO COMMISSIONER
IN CHANCERY..... 237

APPENDIX 2-57: REQUEST TO SCHEDULE CIVIL TRIAL..... 239

APPENDIX 2-58: PETITION FOR MERGER OF DIVORCE A
MENSA ET THORO INTO A DIVORCE A VINCULO
MATRIMONII..... 241

APPENDIX 2-59: LETTER TO DEFENDANT TO SUPPORT NO-
FAULT DIVORCE 243

APPENDIX 2-60: ORDER OF DIVORCE A VINCULO MATRIMONII
UPON PETITION FOR MERGER WITH ORDER OF
DIVORCE A MENSA ET THORO 245

APPENDIX 2-61: MOTION FOR ORDER OF DIVORCE PURSUANT
TO SECTION 20-121.01 OF THE VIRGINIA CODE 247

APPENDIX 2-62: MOTION FOR FINAL ORDER OF DIVORCE
PURSUANT TO SECTION 20-121.02 OF THE VIRGINIA
CODE..... 249

APPENDIX 2-63: FINAL DIVORCE ORDER—SEPARATION OF
ONE YEAR..... 251

APPENDIX 2-64A: FINAL DIVORCE ORDER—SEPARATION OF
SIX MONTHS..... 253

APPENDIX 2-64B: FINAL DIVORCE ORDER—ADULTERY..... 254

APPENDIX 2-64C: FINAL DIVORCE ORDER—CRUELTY OR
CONSTRUCTIVE DESERTION 254

APPENDIX 2-64D: FINAL DIVORCE ORDER—DESERTION OR
ABANDONMENT 255

APPENDIX 2-64E: FINAL DIVORCE ORDER—CONVICTION OF A
FELONY AND SENTENCE OF CONFINEMENT..... 256

APPENDIX 2-65: ORDER FOR CHANGE OF NAME 257

APPENDIX 2-66: FINAL ORDER OF DIVORCE..... 259

TABLE OF CONTENTS

APPENDIX 2-67: NOTICE OF PRESENTATION OF FINAL ORDER OF DIVORCE..... 269

APPENDIX 2-68: AFFIDAVIT IN SUPPORT OF DIVORCE UNDER SECTION 20-91(A)(9)..... 271

CHAPTER 3: ANNULMENT

3.1 ANNULMENT AND ITS EFFECTS..... 273

3.2 WHY SEEK AN ANNULMENT?..... 274

3.3 GROUNDS AND DEFENSES 274

3.4 PROCEDURE 276

3.5 ANNULMENT FORMS..... 276

APPENDIX 3-1: COMPLAINT FOR ANNULMENT 277

APPENDIX 3-2: ORDER OF ANNULMENT 279

APPENDIX 3-3: FORM DC-507—PETITION FOR ORDER OF EMANCIPATION 281

APPENDIX 3-4: FORM DC-549—ORDER OF EMANCIPATION 283

CHAPTER 4: ALTERNATIVE DISPUTE RESOLUTION

4.1 INTRODUCTION 285

4.2 MEDIATION, COLLABORATIVE LAW, AND OTHER FORMS OF DISPUTE RESOLUTION 285

4.3 REFERRAL TO MEDIATION AND OTHER TYPES OF ALTERNATIVE DISPUTE RESOLUTION 287

4.4 REFERRAL TO EDUCATIONAL PROGRAMS 289

APPENDIX 4-1: COURT FORMS 291

APPENDIX 4-2: LETTER TO CLIENT CONCERNING MEDIATION 297

TABLE OF CONTENTS

APPENDIX 4-3: ORDER OF REFERRAL—GENERAL	301
APPENDIX 4-4: COLLABORATIVE ENGAGEMENT AGREEMENT	303
APPENDIX 4-5: COLLABORATIVE DIVORCE: WHAT TO EXPECT	309
APPENDIX 4-6: LETTER TO ENROLL CLIENT’S SPOUSE IN THE COLLABORATIVE PROCESS.....	313
APPENDIX 4-7: COLLABORATIVE PARTICIPATION AGREEMENT	315
APPENDIX 4-8: MOTION TO QUASH SUBPOENA.....	333
APPENDIX 4-9: ORDER QUASHING SUBPOENA	335
APPENDIX 4-10: LETTER TO CLIENT CONCERNING EDUCATIONAL PROGRAMS	337
APPENDIX 4-11: FORM CC-1419—ORDER OF DESIGNATION AND REFERRAL TO SETTLEMENT CONFERENCE	339
 CHAPTER 5: INFORMATION-GATHERING AND DISCOVERY	
5.1 INTRODUCTION.....	341
5.2 INFORMAL INFORMATION-GATHERING	341
5.3 DISCOVERY	343
5.301 In General	343
5.302 Depositions	345
5.303 Interrogatories	347
5.304 Production of Documents or Things.....	349
5.305 Physical and Mental Examinations	355
5.306 Evaluation by Vocational Expert	356
5.307 Requests for Admissions.....	356
5.308 Protecting Information from Discovery	358
5.309 Enforcing Discovery	360
5.310 Discovery in the Juvenile and Domestic Relations District Court.....	362
5.4 PROFESSIONALISM	363

TABLE OF CONTENTS

APPENDIX 5-1: COURT FORMS 365

APPENDIX 5-2: CLIENT AUTHORIZATION FOR RELEASE OF
INFORMATION—GENERAL 369

APPENDIX 5-3: CLIENT AUTHORIZATION FOR RELEASE OF
FINANCIAL INFORMATION 371

APPENDIX 5-4: FORM VA-1—VIRGINIA DEPARTMENT OF
TAXATION REQUEST FOR COPY OF TAX RETURN..... 373

APPENDIX 5-5: IRS FORM 4506-T—REQUEST FOR TRANSCRIPT
OF TAX RETURN..... 375

APPENDIX 5-6: CLIENT AUTHORIZATION FOR RELEASE OF
INFORMATION BY THE DIVISION OF CHILD SUPPORT
ENFORCEMENT 377

APPENDIX 5-7: LETTER REQUESTING HEALTH RECORDS..... 379

APPENDIX 5-8: AUTHORIZATION TO RELEASE CONFIDENTIAL
HEALTH RECORDS 381

APPENDIX 5-9: ELECTRONICALLY STORED INFORMATION
PROTOCOL AGREEMENT 383

APPENDIX 5-10: CLIENT AUTHORIZATION FOR RELEASE OF
INFORMATION BY PREVIOUS ATTORNEY 387

APPENDIX 5-11: NOTICE OF DEPOSITION 389

APPENDIX 5-12: PLAINTIFF’S OR DEFENDANT’S FIRST
INTERROGATORIES 391

APPENDIX 5-13: ANSWERS AND OBJECTIONS TO
INTERROGATORIES 397

APPENDIX 5-14: OATH TO ANSWERS TO INTERROGATORIES 399

APPENDIX 5-15: MOTION FOR LEAVE OF COURT TO SERVE
MORE THAN THIRTY INTERROGATORIES..... 401

APPENDIX 5-16: ORDER GRANTING LEAVE OF COURT TO
SERVE MORE THAN THIRTY INTERROGATORIES 403

TABLE OF CONTENTS

APPENDIX 5-17: LETTER TO CLIENT CONCERNING INTERROGATORIES..... 405

APPENDIX 5-18: REQUEST FOR SUPPLEMENTATION OF ANSWERS TO INTERROGATORIES..... 407

APPENDIX 5-19: SUPPLEMENTAL ANSWERS TO INTERROGATORIES..... 409

APPENDIX 5-20: FIRST REQUEST FOR PRODUCTION OF DOCUMENTS 411

APPENDIX 5-21: RESPONSE TO REQUEST FOR PRODUCTION 417

APPENDIX 5-22: REQUEST FOR SUBPOENA DUCES TECUM 419

APPENDIX 5-23: NOTICE TO HEALTH CARE ENTITIES PURSUANT TO SECTION 32.1-127.1:03 OF THE VIRGINIA CODE..... 421

APPENDIX 5-24: NOTICE TO INDIVIDUAL PURSUANT TO SECTION 32.1-127.1:03 OF THE VIRGINIA CODE..... 423

APPENDIX 5-25: CERTIFICATION—NO MOTION TO QUASH FILED 425

APPENDIX 5-26: CERTIFICATION—MOTION TO QUASH FILED AND RESOLVED..... 427

APPENDIX 5-27: APPLICATION FOR DISCLOSURE OF SUBSTANCE ABUSE RECORDS 429

APPENDIX 5-28: ORDER FOR DISCLOSURE OF SUBSTANCE ABUSE RECORDS 431

APPENDIX 5-29: MOTION FOR PHYSICAL OR MENTAL EXAMINATION 433

APPENDIX 5-30: ORDER FOR PHYSICAL OR MENTAL EXAMINATION 435

APPENDIX 5-31: REQUEST FOR ADMISSIONS 437

APPENDIX 5-32: RESPONSE TO REQUEST FOR ADMISSIONS..... 439

TABLE OF CONTENTS

APPENDIX 5-33: MOTION TO QUASH SUBPOENA DUCES TECUM	441
APPENDIX 5-34: ORDER QUASHING SUBPOENA DUCES TECUM.....	443
APPENDIX 5-35: MOTION TO QUASH OR MODIFY SUBPOENA DUCES TECUM	445
APPENDIX 5-36: ORDER MODIFYING SUBPOENA DUCES TECUM	447
APPENDIX 5-37: MOTION FOR PROTECTIVE ORDER.....	449
APPENDIX 5-38: PROTECTIVE ORDER	451
APPENDIX 5-39: MOTION TO COMPEL.....	453
APPENDIX 5-40: ORDER.....	455
APPENDIX 5-41: MOTION TO COMPEL ANSWERS TO DEPOSITION QUESTIONS.....	457
APPENDIX 5-42: ORDER.....	459
APPENDIX 5-43: MOTION FOR SANCTIONS	461
APPENDIX 5-44: ORDER IMPOSING SANCTIONS	463
APPENDIX 5-45: MOTION FOR LEAVE OF COURT TO SERVE INTERROGATORIES—JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT	465
APPENDIX 5-46: ORDER PERMITTING INTERROGATORIES— JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT	467
 CHAPTER 6: SPOUSAL SUPPORT AND CHILD SUPPORT	
6.1 INTRODUCTION	469
6.2 JURISDICTION.....	469
6.201 Juvenile and Domestic Relations District Court	469
6.202 Circuit Court.....	470

TABLE OF CONTENTS

6.203	Concurrent Jurisdiction.....	471
6.204	Division of Child Support Enforcement.....	473
6.3	VENUE.....	474
6.301	Juvenile and Domestic Relations District Court.....	474
6.302	Circuit Court	474
6.303	Cases Transferred to a More Appropriate Forum.....	475
6.4	PLEADING.....	475
6.401	Juvenile and Domestic Relations District Court.....	475
6.402	Circuit Court	477
6.5	SERVICE OF PROCESS AND NOTICE	478
6.501	In General	478
6.502	Juvenile and Domestic Relations District Court.....	479
6.503	Circuit Court	480
6.6	INFORMATION-GATHERING AND DISCOVERY	480
6.7	PENDENTE LITE RELIEF	481
6.8	SPOUSAL SUPPORT AND MAINTENANCE.....	483
6.801	Sequence of Determining Issues	483
6.802	When Spousal Support May Be Granted.....	483
6.803	Eligibility.....	484
6.804	Factors to Consider in Awarding Support.....	486
6.805	Different Forms of Spousal Support	488
6.806	Written Findings of the Court.....	489
6.807	Reservation of Right to Seek Support.....	490
6.9	CHILD SUPPORT.....	490
6.901	Sequence of Determining Issues	490
6.902	Persons Liable for Child Support.....	491
6.903	Duration of Child Support Obligation	493
6.904	Child Support Guidelines.....	494
6.905	Determining Amount of Child Support Award	496
6.10	ORDERS AND DECREES.....	508
6.1001	Required Information and Notices.....	508
6.1002	Payroll Deduction Orders.....	510
6.1003	Child Income Tax Dependency Exemption Allocation.....	510
6.1004	Spousal Support Awards	511

TABLE OF CONTENTS

6.1005 Qualified Medical Child Support Orders (QMCSO)	512
6.1006 Attorney Fees.....	514
6.11 APPEALS FROM THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT	514
APPENDIX 6-1: COURT FORMS	517
APPENDIX 6-2: COMPLAINT FOR SEPARATE MAINTENANCE	541
APPENDIX 6-3: INCOME AND EXPENSE STATEMENT.....	543
APPENDIX 6-4: MOTION FOR VOCATIONAL EVALUATION	547
APPENDIX 6-5: ORDER OF SUPPORT: CHILD AND SPOUSAL SUPPORT	549
APPENDIX 6-6: ORDER OF SUPPORT: SPOUSAL SUPPORT ONLY.....	559
APPENDIX 6-7: CHILD INCOME TAX CREDIT ALLOCATION	563
APPENDIX 6-8: IRS FORM 8332.....	565
APPENDIX 6-9: RESERVATION OF SPOUSAL SUPPORT: PRESUMED 50-PERCENT DURATION.....	567
APPENDIX 6-10: RESERVATION OF SPOUSAL SUPPORT: PRESUMED 50-PERCENT DURATION REBUTTED	569
APPENDIX 6-11: AWARDING SPOUSAL SUPPORT: PERIODIC (UNDEFINED DURATION).....	571
APPENDIX 6-12: AWARDING SPOUSAL SUPPORT: LUMP SUM.....	573
APPENDIX 6-13: AWARDING SPOUSAL SUPPORT: PERIODIC (DEFINED DURATION—REHABILITATIVE—DEFINED BY DATE).....	575
APPENDIX 6-14: AWARDING SPOUSAL SUPPORT: PERIODIC (DEFINED DURATION—REHABILITATIVE—DEFINED BY EVENT).....	577

TABLE OF CONTENTS

APPENDIX 6-15: QUALIFIED MEDICAL CHILD SUPPORT ORDER
(QMCSO) 579

APPENDIX 6-16: MIXED CUSTODY GUIDELINES 583

INDEX I-1

Volume 2

CHAPTER 7: PROPERTY

7.1 IN GENERAL..... 603

7.2 INFORMATION-GATHERING AND DISCOVERY 603

7.3 PRELIMINARY REQUIREMENTS..... 604

 7.301 Decree of Dissolution or Divorce 604

 7.302 Request for Equitable Distribution..... 604

 7.303 Retention of Jurisdiction 605

 7.304 Meaning of “Equitable”..... 605

7.4 CLASSIFICATION OF PROPERTY 606

 7.401 In General 606

 7.402 Separate Property and Separate Debt..... 607

 7.403 Marital Property and Marital Debt 607

 7.404 Hybrid Property 608

 7.405 Burden of Proof 613

7.5 DETERMINING TITLE, OWNERSHIP, VALUE, RIGHTS,
AND INTERESTS 614

 7.501 In General 614

 7.502 Valuation 615

7.6 TRIAL PREPARATION 617

 7.601 Evidentiary Requirements 617

 7.602 Organizing Exhibits..... 617

 7.603 Summary of Property for the Court..... 617

7.7 FACTORS THE COURT MUST CONSIDER..... 618

 7.701 In General 618

 7.702 Marital Misconduct..... 619

 7.703 Nonmonetary Contributions 620

TABLE OF CONTENTS

7.704	Tax Consequences	620
7.705	Waste or Dissipation of Marital Property	621
7.8	REMEDIES	622
7.801	In General	622
7.802	Division or Transfer of Property	623
7.803	Monetary Award	624
7.804	Personal Injury or Workers' Compensation Award	625
7.9	PENSION-BASED AWARDS	625
7.901	In General	625
7.902	Qualified Domestic Relations Orders	627
7.903	Authority to Distribute	628
7.904	Marital Share	629
7.905	Steps to Take	629
7.906	Virginia Retirement System	629
7.907	Federal Civilian Retirement Benefits	630
7.908	Military Retirement Benefits	631
7.10	FINDINGS FOR THE RECORD	631
7.11	AGREEMENTS	632
7.1101	In General	632
7.1102	Marital Agreements	632
7.1103	Premarital Agreements	633
	APPENDIX 7-1: LETTER TO CLIENT	635
	APPENDIX 7-2: PROPERTY INVENTORY	637
	APPENDIX 7-3: MOTION TO BIFURCATE DIVORCE	639
	APPENDIX 7-4: AGREEMENT (BIFURCATION)	641
	APPENDIX 7-5: <i>BRANDENBURG/HART</i> FORMULA WORKSHEET	643
	APPENDIX 7-6: LETTER TO APPRAISER	645
	APPENDIX 7-7: MOTION FOR ALTERNATE VALUATION DATE	647
	APPENDIX 7-8: ORDER	649
	APPENDIX 7-9: MASTER LIST OF TRIAL EXHIBITS	651

TABLE OF CONTENTS

APPENDIX 7-10: SUMMARY OF PROPERTY 655

APPENDIX 7-11: PREMARITAL AGREEMENT..... 657

CHAPTER 8: CHILD CUSTODY AND VISITATION

8.1 INTRODUCTION..... 669

 8.101 Advising Client About Child Custody Disputes 669

 8.102 Resources..... 670

 8.103 Seminars and Educational Programs 671

8.2 JURISDICTION 671

 8.201 Juvenile and Domestic Relations District Court..... 671

 8.202 Circuit Court 672

 8.203 Concurrent Jurisdiction..... 673

8.3 VENUE..... 675

 8.301 Juvenile and Domestic Relations District Court..... 675

 8.302 Circuit Court 676

8.4 TYPES OF CUSTODY 677

 8.401 In General 677

 8.402 Sole Custody..... 677

 8.403 Joint Custody 677

 8.404 Shared Custody..... 677

 8.405 Split Custody..... 678

 8.406 Divided Custody..... 678

8.5 FACTORS FOR THE COURT TO CONSIDER..... 678

8.6 PARTIES AND BURDEN OF PROOF 680

 8.601 “Person with a Legitimate Interest” 680

 8.602 Necessary Parties 681

 8.603 Parent Versus Parent 682

 8.604 Parents Versus Third Parties 683

 8.605 Parents Versus the Department of Social Services..... 684

8.7 INFORMATION-GATHERING..... 685

 8.701 Information Needed 685

 8.702 Sources of Information..... 688

TABLE OF CONTENTS

8.8	PLEADING	688
	8.801 Juvenile and Domestic Relations District Court	688
	8.802 Circuit Court.....	689
8.9	SERVICE OF PROCESS.....	690
	8.901 In Virginia.....	690
	8.902 In Another State.....	691
8.10	GUARDIAN AD LITEM.....	692
	8.1001 Appointment	692
	8.1002 Duties	694
8.11	COURT-APPOINTED SPECIAL ADVOCATE.....	695
	8.1101 In General	695
	8.1102 Duties	695
	8.1103 Access to Information.....	695
8.12	PENDENTE LITE RELIEF	696
8.13	DISCOVERY	697
	8.1301 In General	697
	8.1302 Access to Health Information	698
	8.1303 Pretrial Evaluations.....	701
8.14	ADJUDICATION.....	703
	8.1401 Standards of Proof.....	703
	8.1402 Evidentiary Issues.....	703
8.15	ORDERS AND DECREES	707
	8.1501 In General.....	707
	8.1502 Orders Regarding Custody and Visitation.....	709
	8.1503 Order Requiring Notice of Relocation.....	710
	8.1504 Orders Regarding Special Issues.....	710
8.16	POST-DECREE ISSUES.....	711
	8.1601 Access to Records.....	711
	8.1602 Participation in School Activities	712
	8.1603 Enforcement.....	712
	8.1604 Modification	713
8.17	STANDBY GUARDIANSHIP	716
	8.1701 In General.....	716
	8.1702 Juvenile Court Jurisdiction	716
	8.1703 Circuit Court Jurisdiction.....	717

TABLE OF CONTENTS

8.18 POWER OF ATTORNEY TO DELEGATE CUSTODIAL POWERS	718
APPENDIX 8-1: COURT FORMS.....	721
APPENDIX 8-2: AFFIDAVIT—UCCJEA (COMPUTER GENERATED).....	747
APPENDIX 8-3: INTERROGATORIES—CHILD CUSTODY AND VISITATION	749
APPENDIX 8-4: LETTER TO CLIENT REGARDING CUSTODY EVALUATION	751
APPENDIX 8-5: CLAUSE GRANTING SOLE CUSTODY—LIBERAL VISITATION BY AGREEMENT.....	753
APPENDIX 8-6: CLAUSE GRANTING ONE PARTY CUSTODY AND THE OTHER SPECIFIED VISITATION	755
APPENDIX 8-7: CLAUSE GRANTING SPLIT CUSTODY—LIBERAL VISITATION BY AGREEMENT.....	757
APPENDIX 8-8: CLAUSE GRANTING JOINT CUSTODY—SHARED DECISION-MAKING.....	759
APPENDIX 8-9: CLAUSE GRANTING JOINT CUSTODY—NO SHARED DECISION-MAKING.....	761
APPENDIX 8-10: CLAUSE REQUIRING NOTICE OF RELOCATION.....	763
APPENDIX 8-11A: CLAUSE GRANTING ACCESS TO INFORMATION ABOUT CHILD	765
APPENDIX 8-11B: CLAUSE CONCERNING PARTICIPATION IN THE CHILD’S ACTIVITIES.....	765
APPENDIX 8-11C: CLAUSE RESTRICTING ALCOHOL CONSUMPTION.....	765
APPENDIX 8-11D: CLAUSE RESTRICTING SEXUAL CONDUCT.....	766

TABLE OF CONTENTS

APPENDIX 8-11E: CLAUSE RESTRICTING TRAVEL WITH CHILD 766

APPENDIX 8-12: LETTER TO PRINCIPAL 767

CHAPTER 9: DOMESTIC VIOLENCE

9.1 INTRODUCTION 769

9.2 RELIEF AVAILABLE FROM THE CIRCUIT COURT 769

9.3 RELIEF AVAILABLE FROM THE JUVENILE AND
DOMESTIC RELATIONS DISTRICT COURT 771

9.301 Introduction 771

9.302 Definitions 772

9.303 Emergency Protective Orders 774

9.304 Preliminary Protective Orders—Family Abuse 776

9.305 Full Protective Orders—Family Abuse 780

9.306 Child’s Preliminary Protective Order 783

9.307 Confidentiality 784

9.4 SPECIAL RULES OF EVIDENCE 785

9.401 Admission of Medical Records 785

9.402 Child’s Statement or Testimony 786

9.5 CHILD CUSTODY AND SUPPORT DOCUMENTS 787

9.6 EXCLUSION FROM THE RESIDENCE—THE EFFECT ON
PROPERTY RIGHTS 788

APPENDIX 9-1: COURT FORMS 791

APPENDIX 9-2: COMPLAINT FOR DIVORCE ON GROUNDS OF
PHYSICAL ABUSE 813

APPENDIX 9-3: MOTION FOR TEMPORARY RELIEF 817

APPENDIX 9-4: ORDER PROTECTING PLAINTIFF 819

APPENDIX 9-5: NOTICE PURSUANT TO SECTION 16.1-245.2 OF
THE VIRGINIA CODE 821

APPENDIX 9-6: CERTIFICATE OF AUTHENTICITY—DOCTOR
OR OTHER HEALTH CARE PROVIDER 823

TABLE OF CONTENTS

APPENDIX 9-7: CERTIFICATE OF AUTHENTICITY—LAB ANALYST	825
APPENDIX 9-8: CERTIFICATE OF AUTHENTICITY—CUSTODIAN OF RECORDS	827
 CHAPTER 10: TRIAL PREPARATION AND TRIAL	
10.1 ORGANIZING TRIAL PREPARATION	829
10.101 Analyzing Claims and Proof.....	829
10.102 Proof Checklist.....	830
10.103 List of Witnesses and Exhibits.....	830
10.2 ASSISTANCE FROM OTHER PROFESSIONALS	830
10.3 PRETRIAL ORDERS AND CONFERENCES.....	830
10.4 WITNESSES AND EXHIBITS.....	832
10.401 Securing Witnesses for Trial.....	832
10.402 Securing Exhibits for Trial.....	835
10.403 Forms for Attorney-Issued Subpoenas	838
10.5 TRIAL.....	839
10.501 Stipulations.....	839
10.502 Agreements Resolving the Issues	840
10.503 Managing Exhibits.....	840
10.504 Managing Witness Information	841
10.505 Preserving Issues for Appeal.....	841
10.506 Protecting Private Information with Separate Addenda.....	843
APPENDIX 10-1: COURT FORMS.....	845
APPENDIX 10-2: TRIAL PREPARATION CHART.....	847
APPENDIX 10-3: AUTHORIZATION TO CONSULT WITH AND HIRE PROFESSIONALS	849
APPENDIX 10-4: UNIFORM PRETRIAL SCHEDULING ORDER.....	851
APPENDIX 10-5: PRETRIAL ORDER	855
APPENDIX 10-6: REQUEST FOR WITNESS SUBPOENA (CIRCUIT COURT).....	857

TABLE OF CONTENTS

APPENDIX 10-7: PROPOSED WITNESSES AND EXHIBITS.....	859
APPENDIX 10-8: OBJECTIONS TO PROPOSED WITNESSES AND EXHIBITS.....	861
APPENDIX 10-9: EXHIBITS CHART.....	863
APPENDIX 10-10: WITNESS CHART.....	865
APPENDIX 10-11: OBJECTIONS TO FINAL ORDER OF DIVORCE.....	867
APPENDIX 10-12: CHECKLIST OF INFORMATION TO BE PRESENTED TO THE COURT.....	869
APPENDIX 10-13: CHECKLIST FOR ATTORNEY-ISSUED SUBPOENAS.....	883
APPENDIX 10-14: TRANSMITTAL LETTER TO SHERIFF.....	885
APPENDIX 10-15: TRANSMITTAL CHECKLIST FOR ATTORNEY- ISSUED SUBPOENAS.....	887
APPENDIX 10-16: MOTION FOR PARTY OR WITNESS TO APPEAR REMOTELY.....	889
APPENDIX 10-17: RETURN OF SERVICE BY PRIVATE PROCESS SERVER—SUBPOENA.....	891
 CHAPTER 11: ENFORCEMENT AND MODIFICATION OF ORDERS AND DECREES	
11.1 INTRODUCTION.....	893
11.2 ENFORCEMENT: CONTEMPT OF COURT.....	893
11.201 Jurisdiction.....	893
11.202 Applicability.....	894
11.203 Criminal Versus Civil Contempt.....	894
11.204 Elements.....	895
11.205 Defenses.....	896
11.206 Procedures.....	897
11.207 Forms.....	898

TABLE OF CONTENTS

11.3	ENFORCEMENT: NONCONTEMPT REMEDIES	899
11.301	In General	899
11.302	Concurrent Remedies of Obligees and the Division of Child Support Enforcement	899
11.303	Exclusive Remedies of the Division of Child Support Enforcement.....	903
11.304	Property Decrees.....	906
11.4	MODIFICATION.....	907
11.401	Jurisdiction to Modify Orders	907
11.402	Child Custody and Visitation.....	907
11.403	Child Support.....	908
11.404	Spousal Support.....	911
11.405	Property Orders	914
	APPENDIX 11-1: COURT FORMS.....	917
	APPENDIX 11-2: MOTION FOR ORDER TO SHOW CAUSE (SUPPORT)	933
	APPENDIX 11-3: ORDER TO SHOW CAUSE (SUPPORT)	935
	APPENDIX 11-4: ORDER OF CIVIL CONTEMPT OF COURT (SUPPORT)	937
	APPENDIX 11-5: PETITION FOR RULE TO SHOW CAUSE (VISITATION).....	939
	APPENDIX 11-6: ORDER TO SHOW CAUSE (VISITATION).....	941
	APPENDIX 11-7: CIVIL CONTEMPT ORDER (VISITATION)	943
	APPENDIX 11-8: NOTICE OF POSSIBLE SUSPENSION OF OCCUPATIONAL OR RECREATIONAL LICENSE TO ENFORCE CHILD SUPPORT OBLIGATION.....	945
	APPENDIX 11-9: PETITION TO SUSPEND OCCUPATIONAL OR OTHER LICENSE	947
	APPENDIX 11-10: ANSWER TO PETITION TO SUSPEND OCCUPATIONAL OR OTHER LICENSE.....	949
	APPENDIX 11-11: ORDER SUSPENDING OCCUPATIONAL OR OTHER LICENSE	951
	APPENDIX 11-12: ORDER OF REINSTATEMENT.....	953

TABLE OF CONTENTS

CHAPTER 12: INTERSTATE DIVORCE JURISDICTION

12.1 INTRODUCTION 955
 12.101 A Defensive Perspective 955
 12.102 Migratory Marriages 955

12.2 THE CONSTITUTIONAL FRAMEWORK..... 956
 12.201 Due Process and the Full Faith and Credit Clause 956
 12.202 Applying the Principles 967

12.3 THE VIRGINIA LONG-ARM STATUTE 968
 12.301 Relationship with Constitutional Framework 968
 12.302 Long-Arm Jurisdiction in Domestic Relations Matters 968

12.4 STRATEGIES FOR REPRESENTING THE OUT-OF-STATE
DEFENDANT 969
 12.401 Direct and Collateral Attack 969
 12.402 Challenging Plaintiff’s Domicile 971
 12.403 Challenging the Lack of Personal Jurisdiction over the
 Defendant 975
 12.404 Estoppel 979

APPENDIX 12-1: MOTION TO MAKE A SPECIAL APPEARANCE
FOR PURPOSE OF MOTION TO QUASH SERVICE OF
PROCESS AND OBJECTION TO JURISDICTION 981

CHAPTER 13: INTERSTATE SUPPORT CASES

13.1 UNIFORM INTERSTATE FAMILY SUPPORT ACT 983
 13.101 Introduction 983
 13.102 Basic Principles and Design 984

13.2 CONTINUING, EXCLUSIVE JURISDICTION 988

13.3 DETERMINING THE CONTROLLING ORDER 989
 13.301 In General 989
 13.302 Basic Rules 990

13.4 LONG-ARM JURISDICTION 992
 13.401 More One-State Proceedings Allowed 992
 13.402 Bases for Exercise of Long-Arm Jurisdiction 992

TABLE OF CONTENTS

13.5	GENERAL CIVIL PROVISIONS	994
	13.501 Action by Minor Parent	994
	13.502 Pleadings and Forms	994
	13.503 Procedure and Evidence	995
13.6	CHOICE OF LAW	996
	13.601 Introduction.....	996
	13.602 Choice of Law Rules.....	997
	13.603 Advising a Client	999
13.7	PARENTAGE PROCEEDINGS	1001
	13.701 In General	1001
	13.702 One-State Proceeding Exercising Long-Arm Jurisdiction	1001
	13.703 Two-State Proceeding	1002
	13.704 Parentage Previously Determined.....	1002
13.8	ESTABLISHING A SUPPORT ORDER.....	1002
13.9	SIMULTANEOUS PROCEEDINGS.....	1003
	13.901 “Race to the Courthouse”.....	1003
	13.902 Determining Which Tribunal Should Defer	1004
	13.903 Advising the Client	1004
13.10	ENFORCING SUPPORT ORDER WITHOUT REGISTRATION.....	1006
	13.1001 Direct Interstate Enforcement of Income- Withholding Order	1006
	13.1002 Direct Administrative Enforcement of Orders.....	1008
13.11	ENFORCING SUPPORT ORDER AFTER REGISTRATION	1009
	13.1101 In General.....	1009
	13.1102 Procedures	1009
	13.1103 Contest of Registered Order	1012
13.12	MODIFICATION OF CHILD SUPPORT ORDERS.....	1015
	13.1201 Continuing, Exclusive Jurisdiction to Modify.....	1015
	13.1202 Registering a Child Support Order for Modification	1021
	13.1203 Limitations on Jurisdiction to Modify Registered Order	1022
	13.1204 Notice and Recognition of Modified Order	1022

TABLE OF CONTENTS

13.13 SPOUSAL SUPPORT ORDERS—MODIFICATION ONLY
BY THE ISSUING TRIBUNAL 1023

13.14 CRIMINAL PROSECUTION IN INTERSTATE CASES 1023

 13.1401 State Prosecutions and Interstate Rendition 1023

 13.1402 Federal Prosecution 1024

 13.1403 Federal Forms for UIFSA Proceedings 1025

CHAPTER 14: INTERSTATE CHILD CUSTODY CASES

14.1 INTRODUCTION 1027

 14.101 Child Custody Disputes Involving Different States 1027

 14.102 Development of the Uniform Child Custody
 Jurisdiction and Enforcement Act 1027

 14.103 UCCJEA Purposes..... 1028

 14.104 Basic Principles and Design..... 1028

 14.105 Application of the UCCJEA 1029

14.2 INITIAL CHILD CUSTODY DETERMINATIONS 1030

 14.201 Due Process Requirements 1030

 14.202 Hierarchy of Jurisdictional Bases 1031

 14.203 “Home State” Jurisdiction..... 1032

 14.204 “Significant Connection” Jurisdiction 1032

 14.205 “More Appropriate Forum” Jurisdiction 1033

 14.206 “Necessity” Jurisdiction 1033

14.3 MODIFICATION OF CUSTODY DETERMINATIONS 1033

 14.301 Exclusive, Continuing Jurisdiction 1033

 14.302 Jurisdiction to Modify 1033

14.4 TEMPORARY EMERGENCY JURISDICTION 1034

14.5 PROCEDURES 1034

 14.501 Information to Be Submitted to the Court..... 1034

 14.502 Notice 1035

 14.503 Priority Scheduling of Jurisdictional Issue..... 1035

 14.504 Limited Immunity Related to Appearance..... 1035

 14.505 Evidence 1036

14.6 SIMULTANEOUS PROCEEDINGS IN OTHER STATES 1036

TABLE OF CONTENTS

14.7	DECLINING JURISDICTION	1036
14.8	ENFORCEMENT.....	1037
 CHAPTER 15: CONCLUDING REPRESENTATION		
15.1	CONCLUDING THE ATTORNEY-CLIENT RELATIONSHIP	1039
	15.101 In General	1039
	15.102 Concluding After Completing All Work.....	1039
	15.103 Concluding Before Completing Work	1041
15.2	RETAINING THE FILE	1042
	APPENDIX 15-1: LETTER TO CLIENT.....	1043
	APPENDIX 15-2: MOTION TO WITHDRAW AS COUNSEL	1045
	APPENDIX 15-3: ORDER	1047
	TABLE OF AUTHORITIES	1049
	INDEX	I-1

CHAPTER 6

SPOUSAL SUPPORT AND CHILD SUPPORT

6.1 INTRODUCTION

Virginia support law has undergone significant changes during the past 30 years. Child support laws have moved toward the application of mathematical guidelines. Different guidelines have been developed to address family configurations such as “split custody” and “shared custody.” Trial courts have been granted the authority to refer support matters to mediation.¹ An administrative agency, the Division of Child Support Enforcement of the Department of Social Services, has taken the lead in establishing and enforcing support obligations. Statutes have been amended frequently in a continuing effort to strengthen the enforcement of child support orders. The General Assembly significantly altered the spousal support laws to give the courts authority to award “rehabilitative alimony” in contrast to the traditional awards of either a lump sum or periodic support payments. The spousal support laws also provide rules governing the reservation of jurisdiction to award spousal support in the future. Both child and spousal support files are confidential and protected from public view in some circumstances.²

6.2 JURISDICTION

6.201 Juvenile and Domestic Relations District Court. The juvenile and domestic relations district court has jurisdiction to hear original actions for spousal support where spouses have separated.³ A decision of the juvenile and domestic relations district court is not *res judicata* in any subsequent action for spousal support in a circuit court. The district court order remains in effect until the circuit court rules on the issue.⁴

¹ Va. Code § 20-124.4. Form DC-604 is an order of referral and mediator appointment form that may be used by a juvenile and domestic relations district court or a circuit court. *See* Appendix 4-1 to Chapter 4 of this book.

² Va. Code §§ 16.1-302, -305.01 (addressing confidentiality in both the juvenile and domestic relations district courts and the circuit courts).

³ Va. Code § 16.1-241(L); *see also* Va. Code § 16.1-278.17.

⁴ Va. Code § 16.1-244(A).

The juvenile and domestic relations district court has jurisdiction to make initial determinations regarding child support in cases filed in that court.⁵ The court also has jurisdiction over several other petitions related to the support of a child, such as petitions to modify or enforce its orders, petitions to enforce administrative support orders, petitions to determine parentage, and petitions charging individuals with the criminal offense of failing to provide support in violation of law.

The juvenile and domestic relations district court also may share concurrent jurisdiction with the circuit court concerning issues of support and maintenance of a spouse and maintenance, support, care, and custody of a child or children.⁶ Paragraph 6.203 below describes the circumstances under which the two courts share concurrent jurisdiction and the types of issues that may be determined by the juvenile and domestic relations district court.

6.202 Circuit Court. Circuit court jurisdiction in spousal support and child support matters may be obtained in the following ways:

A. Appeal from Juvenile and Domestic Relations District Court. An appeal from a decision of the juvenile and domestic relations district court goes to the circuit court, where the case is tried *de novo*.⁷ The procedure conforms to equity practice, and evidence is heard *ore tenus*. The burden of proof is on the petitioning party, which may not be the appellant. On appeal, the circuit court can exercise “all the powers and authority” given to the juvenile and domestic relations district court in the disposition of the case.⁸

B. Incidental to Divorce and Other Proceedings. The circuit court may enter decrees concerning spousal support and child support upon:

1. Decreeing the dissolution of a marriage;
2. Decreeing a divorce from bed and board;
3. Decreeing a divorce from the bond of matrimony;

⁵ Va. Code § 16.1-241(A)(3).

⁶ Va. Code §§ 16.1-244, 20-79.

⁷ *Box v. Talley*, 1 Va. App. 289, 338 S.E.2d 349 (1986).

⁸ Va. Code § 16.1-296(I).

4. Decreeing that neither party is entitled to a divorce;
or
5. Decreeing separate maintenance.⁹

C. Action for Separate Maintenance. An independent action for “separate maintenance” is an equitable claim within the jurisdiction of the circuit court.¹⁰ This is a common law action that recognizes that a court of equity has the inherent power to award separate maintenance to a spouse independent of any statutory powers.¹¹ The suit for separate maintenance does not share the jurisdictional requirements of a divorce suit. Neither party need be domiciled in the state for any length of time before commencing the suit, because the cause of action is a transitory one.¹² In an action for separate maintenance, the circuit court may also grant an award of child support if it has been requested to do so and the facts warrant an award.¹³

6.203 Concurrent Jurisdiction. Sections 16.1-244 and 20-79 of the Virginia Code provide a framework for the concurrent jurisdictional relationship between the circuit court and the juvenile and domestic relations district court in spousal support and child support matters. The circuit court has concurrent original jurisdiction with the juvenile and domestic relations district court over cases in which the parentage of a child is at issue in any matter otherwise before the circuit court.¹⁴ Section 16.1-244(A) provides for a situation in which a suit for divorce has been filed in a circuit court, spousal support, child support, or both forms of support are put at issue in the pleadings, and a hearing, including a pendente lite hearing, is set by the circuit court on any such issue for a date certain or the matter has been placed on a motions docket to be heard within 21 days of the filing, though the hearing itself may occur after that 21-day period. When this occurs, the juvenile and domestic relations district court is “divested” of the right to enter any further decrees or orders, and the circuit court will decide the matter, unless both parties agree to refer the matter to the juvenile and domestic relations district court.¹⁵

⁹ See Va. Code §§ 20-107.1(A), -107.2.

¹⁰ See Va. Code § 20-96; *Wilson v. Wilson*, 178 Va. 427, 17 S.E.2d 397 (1941); *Bray v. Landergren*, 161 Va. 699, 172 S.E. 252 (1934).

¹¹ *Bray*, 161 Va. at 706, 172 S.E. at 254.

¹² *White v. White*, 181 Va. 162, 168, 24 S.E.2d 448, 451 (1943).

¹³ *Id.* at 169, 24 S.E.2d at 451-52.

¹⁴ See Va. Code §§ 16.1-241(Q), 20-49.2.

¹⁵ Va. Code § 16.1-244(A).

Where a suit for divorce or suit for maintenance and support is pending in circuit court, issues concerning support and maintenance of a spouse and maintenance, support, care, and custody of the child or children may be transferred from the circuit court to the juvenile and domestic relations district court following the procedures set forth in section 20-79(c). The circuit court is authorized to transfer a matter to the juvenile and domestic relations district court where the only relief sought is the enforcement of an order. However, the circuit court may not transfer a matter to the juvenile and domestic relations district court for modification of an order except upon motion. If the request is made *before* entry of a final decree, the circuit court may transfer the case only upon the motion of both parties. If the request is made *after* entry of a final decree, the circuit court may transfer the case for modification of an order upon motion of either party. But the circuit court cannot transfer a case for modification to the juvenile and domestic relations district court on its own motion, nor can it require transfer of a case for modification by the parties as a condition of entry of a final decree of divorce.

A circuit court that acquires jurisdiction over a support matter in the context of a divorce does not lose its concurrent jurisdiction by transferring the support matter to the juvenile and domestic relations district court. In contrast, a circuit court that acquires jurisdiction over a support matter on direct appeal from a juvenile and domestic relations district court loses its jurisdiction after determining the appeal and remanding the matter to the juvenile and domestic relations district court. Following the remand, the juvenile and domestic relations district court¹⁶ continues to exercise its “exclusive original jurisdiction” over the matter.¹⁷

The divestiture provision of section 16.1-244(A) does not annul the judgment of the juvenile and domestic relations district court as if no previous hearing had occurred. Rather, the judgment of the juvenile and domestic relations district court remains in full force and effect until it is modified by the circuit court to which jurisdiction has been transferred. The juvenile and domestic relations district court retains jurisdiction to enforce its valid orders before the entry of a conflicting order of any circuit court for any period during which the order was in effect.¹⁸ Moreover, if no final support order has been

¹⁶ *Calfee v. Calfee*, 29 Va. App. 88, 509 S.E.2d 552 (1999).

¹⁷ *Id.* at 92-93, 509 S.E.2d at 554.

¹⁸ Va. Code § 16.1-244; *see also Martin v. Bales*, 7 Va. App. 141, 371 S.E.2d 823 (1988).

entered, any support order will be retroactive to the date on which the proceeding was commenced in the juvenile and domestic relations district court, provided due diligence was exercised in the service upon the respondent.¹⁹

A pendente lite support order has no presumptive effect on the determinations made by the court in its final decree.²⁰ It is an interlocutory order that does not adjudicate the principles of a cause.²¹ A pendente lite order will remain in effect as long as the suit is pending and a final decree has not yet been entered. If the divorce suit is dismissed, either voluntarily or involuntarily, any pendente lite order entered while the suit was pending will abate.²² If the divorce suit proceeds on the merits and a final decree is entered, the relief granted in the pendente lite order will end and be superseded by the court's determination in the final decree that relief will be granted or denied.

Because a pendente lite award is interlocutory, it can be retroactively modified by the final award.²³ Likewise, if both pendente lite and permanent spousal support were sought in the pleadings, the final award of spousal support may be retroactively made to relate back to the commencement of the lawsuit even if a pendente lite award was not sought.²⁴

6.204 Division of Child Support Enforcement. The Department of Social Services, through its Division of Child Support Enforcement (DCSE), is authorized to issue administrative orders establishing child support obligations. Unless a court has ordered otherwise, DCSE has the authority to issue orders directing the payment of child support and to require health care coverage for the dependent children of the parents.²⁵

¹⁹ Va. Code §§ 16.1-244(A), 20-103(A2).

²⁰ Va. Code § 20-103(J).

²¹ *Beatty v. Beatty*, 105 Va. 213, 53 S.E. 2 (1906).

²² Va. Code § 20-79; *Harrell v. Harrell*, 272 Va. 652, 636 S.E.2d 391 (2006) (dismissed by court); *Ipsen v. Moxley*, 49 Va. App. 555, 642 S.E.2d 798 (2007) (voluntary nonsuit). If an order was entered by the juvenile and domestic relations district court before the commencement of the circuit court suit, the juvenile and domestic relations district court order will revive following dismissal of the circuit court suit. *Ipsen* at 560, 561.

²³ *Everett v. Tawes*, 298 Va. 25, 833 S.E.2d 876 (2019).

²⁴ *Chaudhry v. Chaudhry*, No. 0896-19-4, 2020 Va. App. LEXIS 27, 2020 WL 420805 (Va. Ct. App. Jan. 28, 2020).

²⁵ See Va. Code § 63.2-1900 *et seq.*

6.3 VENUE

6.301 Juvenile and Domestic Relations District Court. Venue in civil spousal support or child support matters lies in the city or county where either party resides or in the city or county where the respondent is present when the proceeding commences.²⁶ When the support proceeding is a companion case to a child custody or visitation proceeding, the provisions governing venue in the child custody or visitation case govern.²⁷

The juvenile and domestic relations district court may transfer a support proceeding to the city or county where the respondent resides on its own motion or a motion of a party for good cause shown or by agreement of the parties.²⁸ For the purpose of determining venue under section 16.1-243(B)(3), the respondent's "residence" includes any city or county in which the respondent has resided within the last six months before the commencement of the proceeding or in which the respondent is residing at the time that the motion for transfer of venue is made.

6.302 Circuit Court.

A. Incidental to Divorce. Venue for spousal support and child support cases incidental to divorce, annulment, or affirmation of marriage suits is governed by section 8.01-261(19) of the Virginia Code. The plaintiff may choose to file suit in the city or county where the parties last cohabited or where the defendant resides. If the defendant is a nonresident of Virginia, venue is in the city or county where the plaintiff resides.

On appeal from a juvenile and domestic relations district court order, venue lies in the circuit court of the same city or county. In any case that has been referred or transferred from a circuit court to a juvenile and domestic relations district court, the appeal must be taken to the circuit court in the same locality as the juvenile and domestic relations district court to which the case had been referred or transferred.²⁹

B. Action for Separate Maintenance. An action for separate maintenance is not governed by the venue rules governing actions for divorce, annulment, or affirmation of marriage. It is a common law cause of action that

²⁶ Va. Code § 16.1-243(A)(2).

²⁷ Va. Code § 16.1-243(B)(3). See ¶ 8.301 of Chapter 8 of this book.

²⁸ Va. Code § 16.1-243(B)(3).

²⁹ Va. Code § 16.1-296(J).