

Circuit Court Mediation Program
Excerpts from Virginia Code Provisions
(See Virginia Code §§ 8.01-576.4 – 576.12 and other noted sections for full provisions)

Court May Order Case to Orientation Session

Virginia Code § 8.01-576.5 “ While protecting the right to trial by jury, on its own motion or on motion of one of the parties, a court may refer any contested civil matter, or selected issues in a civil matter, to an orientation session in order to encourage the early resolution of disputes through the use of procedures that facilitate (i) open communication between the parties about the issues in the dispute, (ii) full exploration of the range of options to resolve the dispute, (iii) improvement in the relationship between the parties, and (iv) control by the parties over the outcome of the dispute.”

Virginia Code § 8.01-576.6 “When a court has determined that referral to an orientation session is appropriate, an order of referral to a neutral or to a dispute resolution program shall be entered and the parties shall be so notified as expeditiously as possible.”

Virginia Code § 20-124.2(A) “Mediation shall be used as an alternative to litigation where appropriate. When mediation is used in a custody and visitation matter, the goals may include development of a proposal addressing the child’s residential schedule and care arrangements, and how disputes between the parents will be handled in the future.”

Virginia Code § 20-124.4 “In any appropriate case the court shall refer the parents or persons with a legitimate interest to a dispute resolution [orientation] session to be conducted by a mediator certified pursuant to guidelines promulgated by the Judicial Council at no cost and in accordance with the procedures set out in Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01. In assessing the appropriateness of a referral, the court shall ascertain upon motion of a party whether there is a history of family abuse. If an agreement is not reached . . . the court shall proceed with a hearing on any unresolved issue The fee of a mediator appointed in any custody, support or visitation case shall be \$100 per appointment and shall be paid by the Commonwealth from the funds appropriated for payment of appointments made pursuant to subsection B of § 16.1-267.”

Virginia Code § 25.1-205.1 “Following the filing of a petition initiating a condemnation proceeding, the court shall refer the matter to a dispute resolution orientation as provided in § 8.01-576.5. The court shall set a date for the parties to return to court in accordance with its regular docket and procedure, irrespective of the referral to an orientation session. The parties shall notify the court, in writing, if the dispute is resolved prior to the return date.

Upon such referral, the parties shall attend one orientation session. Further participation in a dispute resolution proceeding shall be by consent of all parties. Attorneys for any party may be present during a dispute resolution proceeding.”

Hearing Date

Virginia Code § 8.01-576.5 “The court shall set a date for the parties to return to court in accordance with its regular docket and procedure, irrespective of the referral to an orientation

session. The parties shall notify the court, in writing, if the dispute is resolved prior to the return date.”

Opportunity to Object

Virginia Code § 8.01-576.6 “The court shall excuse the parties from participation in an orientation session, if, within fourteen days after entry to the order, a written statement signed by any party is filed with the court, stating that the dispute resolution process has been explained to the party and he objects to the referral.”

Cost to Parties

Virginia Code § 8.01-576.7 “The orientation session shall be conducted at no cost to the parties. Unless otherwise provided by law, the cost of any subsequent dispute resolution proceeding shall be as agreed to by the parties and the neutral.”

Virginia Code § 8.01-576.8 “If one or more of the parties is indigent or no agreement as to payment [for the mediation] is reached between the parties and a neutral, the court shall set a reasonable fee for the service of any neutral who accepts such referral pursuant to this paragraph.”

Virginia Code § 20-124.4 “The fee of a mediator appointed in any custody, support or visitation case shall be \$100 per appointment and shall be paid by the Commonwealth from the funds appropriated for payment of appointments made pursuant to subsection B of § 16.1-267.”
[Please note that mediator participation in this “free-to-parties” program is voluntary and not all certified mediators participate. See the Circuit Court Mediation Program list of eligible mediators for mediators designated as willing to accept referrals under this program.]

Orientation Session

Virginia Code § 8.01-576.5 “The neutral or intake specialist conducting the orientation session shall provide information regarding dispute resolution options available to the parties, screen for factors that would make the case inappropriate for a dispute resolution proceeding, and assist the parties in determining whether their case is suitable for a dispute resolution process such as mediation.”

Virginia Code § 8.01-576.4 Definitions: “*Mediation* means a process in which a neutral facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.” “*Orientation session* means a preliminary meeting during which the dispute resolution proceeding is explained to the parties and the parties and the neutral assess the case and decide whether to continue with a dispute resolution proceeding or adjudication.”

Virginia Code § 8.01-576.5 “Upon such referral, the parties shall attend one orientation session unless excused pursuant to § 8.01-576.6. Further participation in a dispute resolution proceeding shall be by consent of all parties. Attorneys for any party may participate in a dispute resolution proceeding.”

Choosing a Certified Mediator

Virginia Code § 8.01-576.8 “A neutral who desires to provide mediation and receive referrals from the court shall be certified pursuant to guidelines promulgated by the Judicial Council of Virginia.”

“At the conclusion of the orientation session, or no later than ten days thereafter, parties electing to continue with the dispute resolution proceeding may: (i) continue with the neutral who conducted the orientation session, (ii) select any neutral or dispute resolution program from the list maintained by the court to conduct such proceedings, or (iii) pursue any other alternative for voluntarily resolving the dispute to which the parties agree. If the parties choose to proceed with the dispute resolution proceeding but are unable to agree on a neutral or dispute resolution program during that period, the court shall refer the case to a neutral or dispute resolution program who accepts such referrals, on the list maintained by the court on the basis of a fair and equitable rotation, taking into account the subject matter of the dispute and the expertise of the neutral, as appropriate.”

Duties of Neutral

Virginia Code § 8.01-576.9 “A neutral selected to conduct a dispute resolution proceeding under this chapter may encourage and assist the parties in reaching a resolution of their dispute, but may not compel or coerce the parties into entering into a settlement agreement. A neutral has an obligation to remain impartial and free from conflict of interest in each case, and to decline to participate further in a case should such partiality or conflict arise.”

Confidentiality

Virginia Code § 8.01-576.9 “Unless expressly authorized by the disclosing party, the neutral may not disclose to either party information relating to the subject matter of the dispute resolution proceeding provided to him in confidence by the other. In reporting on the outcome of the dispute resolution proceeding to the referring court, the neutral shall indicate whether an agreement was reached, the terms of the agreement if authorized by the parties, the fact that no agreement was reached, or the fact that the orientation session or mediation did not occur. The neutral shall not disclose information exchanged or observations regarding the conduct and demeanor of the parties and their counsel during the dispute resolution proceeding, unless the parties agree otherwise.”

Virginia Code § 8.01-576.10 “All memoranda, work products and other materials contained in the case files of a neutral or dispute resolution program are confidential. Any communication made in or in connection with the dispute resolution proceeding which relates to the controversy, including screening, intake and scheduling a dispute resolution proceeding, whether made to the neutral or dispute resolution program staff or to a party, or to any other person, is confidential. However, a written settlement agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except (i) where all parties to the dispute resolution proceeding agree, in writing, to waive the confidentiality, (ii) in a subsequent action between the neutral or dispute resolution program and a party to the dispute resolution proceeding for damages arising out of the dispute resolution proceeding, (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the dispute resolution proceeding, (iv) where a threat to inflict bodily injury is made, (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime, (vi) where an ethics complaint is made against the neutral by a party to the dispute resolution proceeding to the extent necessary for the complainant to prove misconduct and the neutral to defend against such complaint, (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation, (viii) where communications are sought or offered to prove or disprove any of the grounds listed in § 8.01-576.12 in a proceeding to vacate a mediated agreement, or (ix) as provided by law or rule. The use of attorney work product in a dispute resolution proceeding shall not result in a waiver of the attorney work product privilege.

Notwithstanding the provisions of this section, in any case where the dispute involves support of the minor children of the parties, financial information, including information contained in the child support guidelines worksheet, and written reasons for any deviation from the guidelines shall be disclosed to each party and the court for the purpose of computing a basic child support amount pursuant to § 20-108.2.”

Effect of Written Settlement Agreement

Virginia Code § 8.01-576.11 “If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. Upon request of all parties and consistent with law and public policy, the court shall incorporate the written agreement into the terms of its final decree disposing of a case. In cases in which the dispute involves support for the minor children of the parties, an order incorporating a written agreement shall also include the child support guidelines worksheet and, if applicable, the written reasons for any deviation from the guidelines. The child support guidelines worksheet shall be attached to the order.”