

THE 20TH CIRCUIT LEARNING SERIES

CIR 104

THE CRIMINAL DOCKET



MAY 28, 2025

WHAT WE WILL COVER TODAY:

The Criminal Docket:

- 1) *Docket structure & procedures*
- 2) *Best practices: Scheduling, Bail, Pleas, Sentencing, Probation Violations, Motions docket*
- 3) *Q&A*

THE LEARNING SERIES: 20TH CIRCUIT



- What it is:

- ✓ BEST PRACTICES
- ✓ Help improve your level of practice / avoid common pitfalls
- ✓ Provide consistent Bench Feedback

- What it isn't (Disclaimer):

- ✗ NOT a citable authority; *rather, highlights applicable authority*
- ✗ NOT an Advisory Ruling
- ✗ NOT a replacement for judicial discretion

✓ *Cite to the underlying authority, not the CLE itself*

ADDITIONAL RESOURCES:

RE: Criminal Law / Proceedings

Recommended VACLE On Demand Seminars:

- “Annual Criminal Law Seminar 2025”
(2025) (6.0 MCLE) (On Demand; Available through 1/31/2028)
- “Handling Probation and Parole Violation Hearings Effectively”
(2024) (2.0 MCLE) (On Demand; available through 08/31/2027)
- “Guilty: Sentencing Issues at Trial”
(2023) (1.5 MCLE) (On Demand; available through 11/30/2025)

The Criminal Docket: 20th Judicial Circuit

Part 1:
Criminal Docket Structure

THE CRIMINAL DOCKET (A)



Loudoun County (LR III)

- **Grand Jury**: 2nd Mondays (GJR: 2pm Tue)
- **Scheduling**: GJR @ 2pm; or Thurs @ 9am
- **Bond**: Set by Clerk
- **Crim Docket**: every Thursday:
 - 9:00 am - misd. appeals & scheduling
 - 10:00 am - pleas, sentencings, PV's
 - 1:00 pm - motions & specially set

Fauquier County (LR III)

- **Grand Jury**: 4th Mondays (odd months) (GJR: 1pm)
- **Scheduling**: @ 1pm on Crim dockets
- **Bond**: Set by Clerk
- **Crim Docket**: 1st & 2nd Thurs; 4th Mon
 - 9:00 am - bond motions, capias return
 - 10:00 am - pleas, sentencings, PV's
 - 1:00 pm - scheduling, misd. appeals, motions & specially set

DURATION ASSUMPTIONS ^(B)



- In placing matters on a docket, certain duration assumptions are made by the Clerk:
 - Scheduling/Status :05 mins
 - Bond Hearing :10 mins
 - Plea/PV/Sent. :20 mins
 - Motions :20 mins
- **If you believe your matter will exceed one of these duration assumptions, then it is best practice to **notify** the court in advance of the hearing*
- **Time limits enforced in the discretion of the judge, balancing applicable due process*

DOCKETING METHODS ^(c)



- **Docketing by Court Order**

- scheduling in court or by clerk/docket manager
- ex: Indictment returns, scheduling docket or capias return
- **If you have a jury trial and want to advance for a plea, best practice is to contact the clerk / docket manager to set a plea date (w/ sufficient notice)*

- **Docketing by Praecipe**

- **Uncontested:** 7 day notice
- **Contested:** 14 day notice + briefing requirements

**If matter is set by Order, only the Court can remove or change it;*

**If the matter is set by Praecipe, the moving party can remove it on their own (removal praecipe)*

SCHEDULING DOCKETS ^(D)



- **At a scheduling docket, be ready with:**
 - Time estimate (*duration*)
 - Jury or no Jury requested (*as applicable*)
 - Speedy trial deadline (*as applicable*)
 - Requested date range for when hearing is set (*as applicable*)
 - Avoid dates for necessary witnesses/parties
 - Any evaluations requested (*as applicable*)

SPECIAL DOCKETING ^(E)



- Bail Hearings
 - No Praecipe required
 - File motion; contact Clerk / Docketing Manager for docketing
- Motions to Reconsider
 - d/n get docketed by the parties
 - file w/ Clerk, directed to chambers / attention of the Ruling Judge
 - reviewed by the Ruling Judge; only docketed for hearing at direction of the Court (can be denied on the papers)
 - *Note: filing a m/reconsider does **not** toll Rule 1:1. Only a suspending order can toll the 21 day clock*

SPECIAL DOCKETING ^(F)



- **Emergency Motions:**

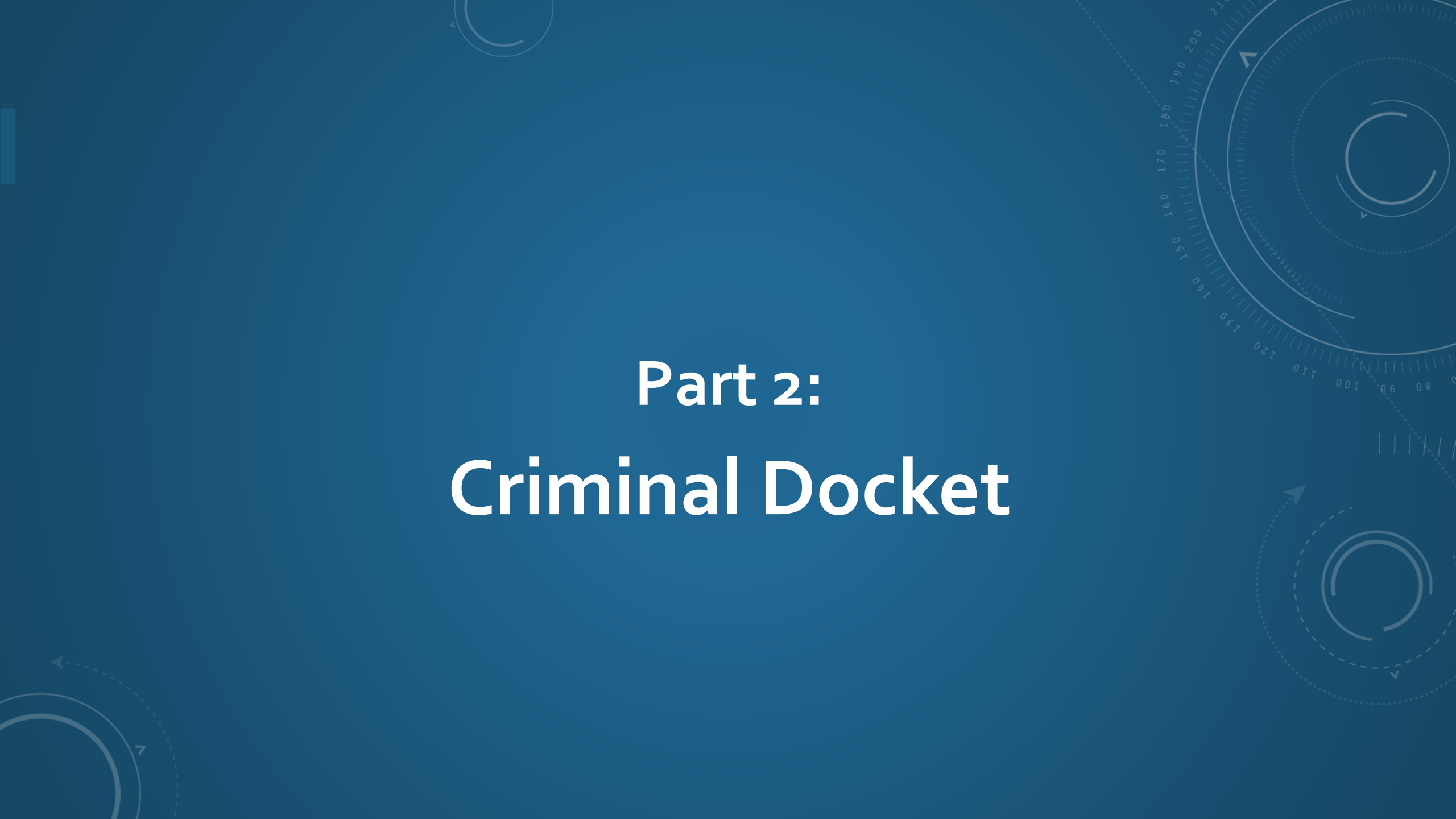
- d/n get docketed by the parties
- file w/ Clerk, clearly marked as Emergency motion
- Request that it be directed to chambers / attention of a Judge
- Upon review, if a judge deems it sufficient to be an “emergency,” then it will be authorized for docketing by the Clerk / Docketing Mgr
- If it is denied “emergency” status, then the party will have to pursue normal docketing procedures to get the matter heard

SPECIAL DOCKETING ^(G)



- Emergency Motions (part 2)

- Note: “emergency” means in effect: asking to deviate from standard docketing procedures
- No legal definition of “emergency”. Matter of judicial discretion.
- General guidance: Dictionary definition of “emergency”
 1. “an unforeseen combination of circumstances or the resulting state that calls for immediate action”
 2. “an urgent need for assistance or relief”
- *Note: an error / mistake of counsel does **not** make an emergency*



Part 2: Criminal Docket



Part 2(a): Bail Hearings

BAIL/BOND HEARINGS (A)



- *Although often used interchangeably, the terms **bail** and **bond** have different definitions:*
 - **Bail:** pretrial release
 - **Bond:** surety / collateral as condition(s) of release (bail)
- Va. Code 19.2-120:
 - There is a presumption in favor of admission to bail; *however...*
 - There is also a low standard for rebutting that presumption - **Probable cause:**
 - Defendant **will not appear** for trial or hearing; OR
 - Defendant's liberty will constitute an **unreasonable danger** to self or others / the public

BAIL/BOND HEARINGS ^(B)



- **Bench tips:**

- **Preferred procedure:** evidence 1st , argument 2nd
- **Rules of Evidence are relaxed**; main issue is reliability
 - Proffers:
 - the Court expects counsel to vet/verify facts or only rely on a known source
 - simply repeating as fact something that your client tells you is not a good faith proffer
 - if a proffer is not accepted, counsel will need to be ready to prove via evidence
- **Pretrial Risk Assessment:** statute contemplates its use by the Court; thus, if not available, Court may order and reschedule hearing (*plan ahead*)
- *Note: cross examination of witnesses is permitted; but not a fishing expedition*

BAIL/BOND HEARINGS ^(C)



- **Bench tips:**

- **Presumption of Innocence does not apply to bail hearings**

- “The presumption of innocence is a doctrine that allocates the burden of proof in criminal trials ... [b]ut it has **no application** to a determination of the rights of a pretrial detainee during confinement before his trial has even begun.”

CW v. Duse, 295 Va 1, 7-8 (2018) (citing *Bell v. Wolfish*, 441 U.S. 520, 533 (1979)).

- **Revocation of Bail**

- “If an application for bail, i.e., release from custody, can be denied upon a finding of **probable cause** to believe that the accused will not appear or will constitute an unreasonable danger while at liberty, bail can be **revoked** upon such a finding.”

Dorsey v. CW, 32 Va. App. 154, 168 (2000)

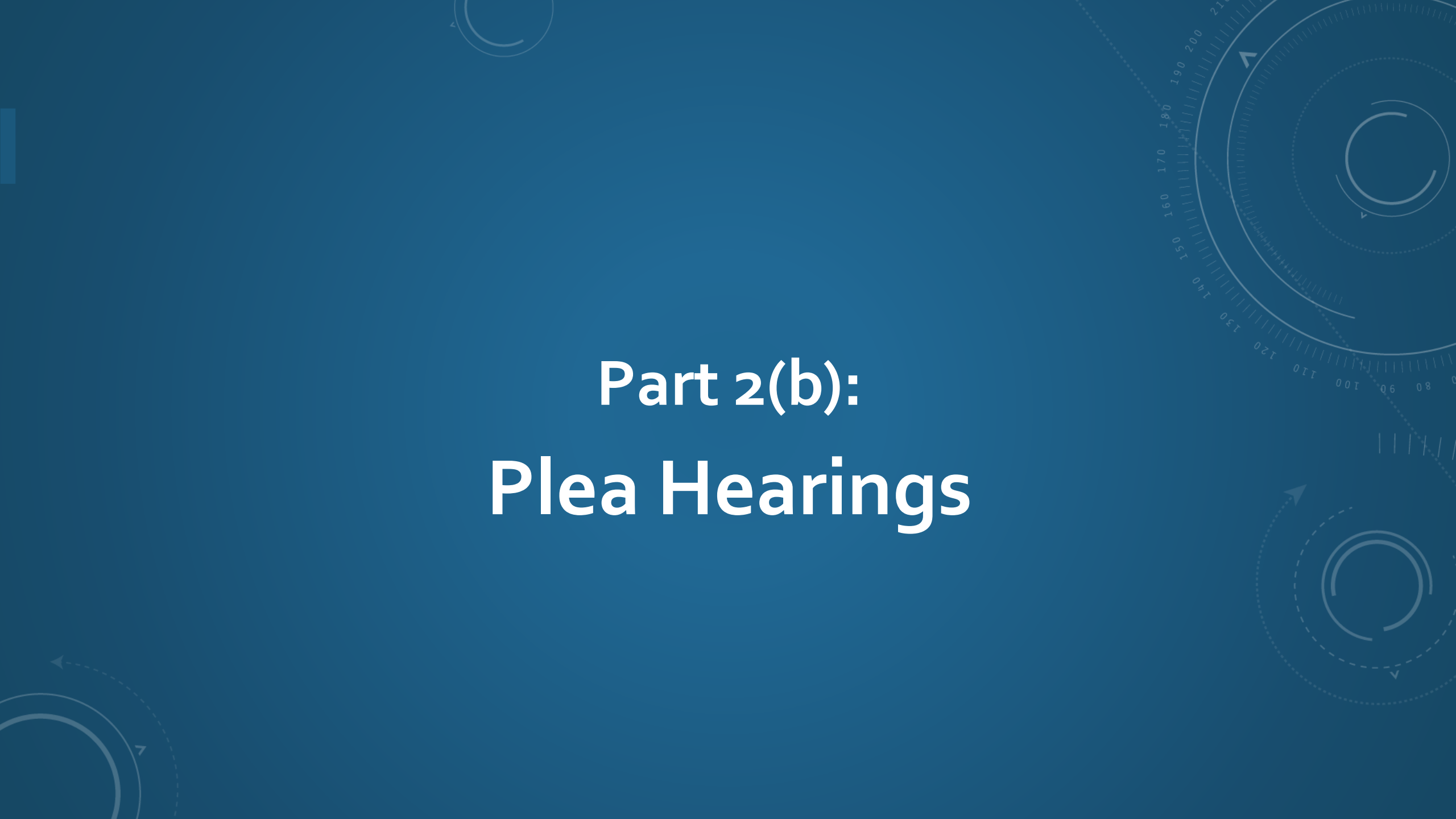
BAIL/BOND HEARINGS ^(D)



- **Bench tips:**

- ***We are not a FedEx Copy Center...***

- Come prepared. Make the copies that are needed for all parties to have copies of the relevant documents
 - (this applies to all hearings...)



Part 2(b): Plea Hearings

PLEA HEARINGS ^(A)



- **Plea Requirements (Rule 3A:8)**

- All felony plea agreements must be in writing & signed by all parties
 - *cf. misdemeanor pleas do not have to be in writing (but it is preferred)*
- Terms of any agreement **must be disclosed** in open court (*in camera only for good cause*)

- **Plea Agreement documents:**

- **Local Rule:** advance filing requirement (7 days)
- **Proofread** documents; check code sections
- Preference is for parties to sign the '**original**' in the court file (if possible)
- **Review** copies of all plea paperwork with your client **in advance**
- *If you need more time to review with your client on the day of, ask the clerk/judge to pass the matter until later in the docket*

PLEA HEARINGS ^(B)



- **Plea Agreements:**

- **Types: Determinate vs. Indeterminate vs. Hybrid**

- Different amounts of information needed depending on type of plea/plea terms
 - The Court bears the ultimate responsibility for any sentence imposed on a defendant; therefore, expect questions
 - *Rule of thumb: The more you limit the Court's discretion in the plea agreement, then the more information the Court will need from you before accepting a plea*

PLEA HEARINGS ^(C)



- **Bench tips re: Plea Agreements**

- If the agreement calls for fixed sentence, caps, agreements to sentencing within the guidelines, etc., ***then at the time of the plea be prepared with:***
 - CCH (criminal history)
 - Draft sentencing guidelines
 - Co-defendant information
 - Verification of consultation with any victim

PLEA HEARINGS ^(D)



- **Bench tips re: Proffer of Facts**

- Do not try to 'sanitize' or 'hide' relevant facts by excluding them from the proffer; all relevant information (incriminating / exculpatory) should be included
 - *Hiding facts could reflect poorly on your reputation before the court*
 - *Hiding facts may result in the plea being rejected*
 - *The proffer presented at the plea hearing does not limit the parties to only those facts at sentencing*
- Understand that the Bench knows less about the case than any of the parties; their knowledge is limited to the court file. Educate the judge; the judges want to understand the facts and the context

PLEA HEARINGS ^(E)



- **Bench tips re: The Plea Colloquy**

- Remember what the whole point of the colloquy it is: Is the plea **voluntary** and is it made with **understanding** of the nature and consequences
 - *i.e., does the Defendant fully and fairly understand the charges, his/her rights, his/her options, the terms of the agreement and the consequences of the plea (Rule 3A:8(b))*
- **Tip:** review/provide list of standard colloquy questions to your client in advance
 - *Colloquy may vary slightly from judge to judge, but Q's are fairly standard; sample questions are contained in appendix to criminal benchbook*
 - *Reduces client anxiety; helps plea process go smoother*
- Some defendants find it helpful to follow along in plea agreement document during parts of the colloquy; thus have it accessible

PLEA HEARINGS ^(F)



- **Bench tips re: Deferred Findings**

- Completed Sentencing Guidelines ***must*** be presented to the Court ***prior to*** accepting a deferred finding (i.e., at the time of the plea) (see Va. Code 19.2-298.01(A))
- At the plea, also be prepared with:
 - Updated CCH (criminal history)
 - Is the matter expungeable? If not stated explicitly, it is by default not expungeable
- *Note: the Defendant will almost always be required to appear for final DF review. If you want to change that, seek authorization*



Part 2(c): Sentencing Hearings

SENTENCING HEARINGS ^(A)



- **Bench tips:**

- Parties should spend more time preparing for sentencing hearings
- Both parties are free to present additional evidence relevant to sentencing (*but few do*)
- Both sides are free to file a Sentencing Memorandum
- Regardless, best practice is to file sentencing evidence *in advance* – this allows the Court to review prior to the hearing
- If no Presentence Investigation Report has been prepared, then the burden is on the parties to present sufficient information to the Court for sentencing
 - *failure to do so may result in the Court ordering a PSR and rescheduling the sentencing hearing*

SENTENCING HEARINGS ^(B)



- **Bench tips:**

- Remember: upon acceptance of a plea of guilt, the Defendant *waives* the right against self incrimination
 - *A Defendant declining to speak to the facts or the case following plea may be permissible but it may also be detrimental (PSR, Allocution, etc.). Defense counsel should consider that issue*

SENTENCING HEARINGS ^(C)



- **Bench tips: Restitution**

- *Parties should spend more time preparing for restitution issues...*
 - The Court **shall** determine restitution at sentencing (19.2-305.1)
 - The Defendant is expected to present a **plan** to pay (19.2-305.1(C))
 - *simply asking to pay prior to the end of probation is not a plan*
 - *the longer the plan, the less likely the Court is to approve it*
- Payment Deadline: should be **prior to** expiration of probation
 - Prepayment of Restitution is valuable mitigation



Part 2(d): Probation Violations

PROBATION VIOLATIONS (A)



"Probation is purely a creature of statute, a policy choice shaped by the General Assembly and administered through the courts. Courts have no inherent authority to suspend the execution of sentences or to impose probation conditions outside the parameters of the Virginia Code. As probation is an act of grace, this Court has liberally construed probation statutes to allow courts to achieve probation's remedial purpose, affording courts the latitude to rehabilitate the offenders before them. Within the bounds prescribed by the General Assembly, trial courts have discretion to assign terms to a suspended sentence, and in the event of a violation, revoke it."

Hannah v. CW, 303 Va. 106, 119 (2024) (citations omitted)

PROBATION VIOLATIONS ^(B)



- **Know the applicable law:**
 - **19.2-306:** Burden of proof / finding standard:
 - -306(A): “for any cause the court deems sufficient”
 - -306(C): “good cause”
 - **19.2-306.1:** Punishment Limitations on Technical violations
 - 1st technical, 2nd technical, 3rd or subsequent

THE CANALES PROCEDURE^(C)



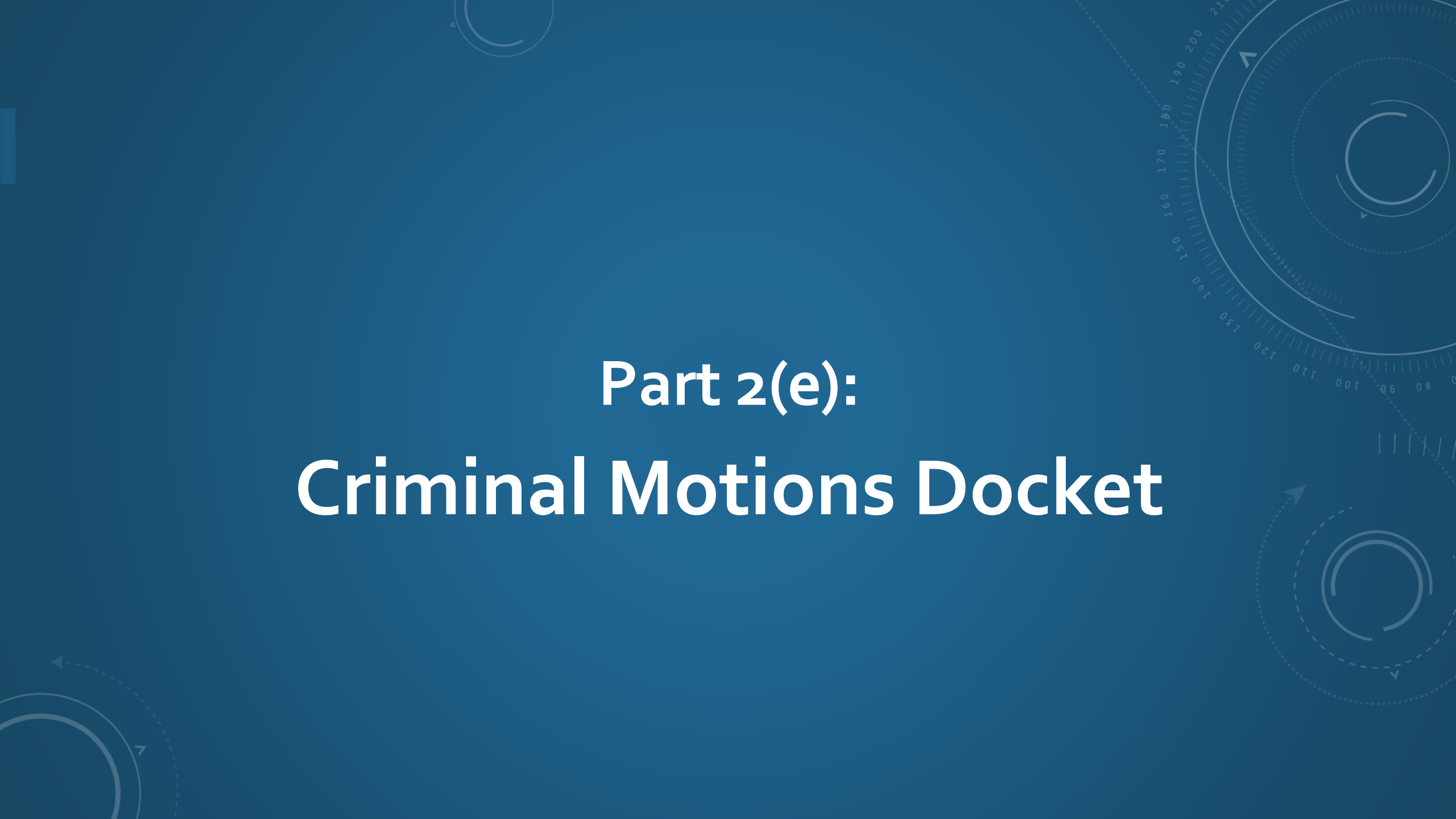
- The 20th Circuit makes use of the Canales procedure for multiple violations of probation that are not a single course of conduct
- Canales v. CW, 78 Va. App. 353 (2023), upholding Arlington Cir Ct severing individual (unrelated) violations of probation into separate hearings
- **Affirmed (in relevant part):** Canales v. CW, ___ Va. ___, 914 S.E.2nd 176, 2025 Va. LEXIS 18 (April 10, 2025):
 - *19.2-306.1 does not require a court to address all of the probation violations that are set forth in a major violation report in the same hearing; the court has broad discretion in a revocation proceeding.*
 - *Does not change existing case law that multiple technical violations constituting a 'single course of conduct' are not treated as separate violations.*

THE CANALES PROCEDURE^(D)



In the 20th Circuit...

- Upon receipt of a major violation report, allegations of distinct courses of conduct are severed by the Court into separate cases/sub-action numbers
 - The Court may docket the cases on the same date for efficiency, but each case maintains separate status
 - On the hearing date(s), the Court conducts separate violation hearings on each distinct matter
 - *Following findings, some defendants request the Court to hear disposition evidence/argument all at once for judicial efficiency; approval of such is a matter of judicial discretion*



Part 2(e): Criminal Motions Docket

MOTIONS DOCKET ^(A)



- Docketing Assumptions:

- Uncontested matters: 5 mins or less
- Contested matters: 20 mins or less
 - *unless noted on Praecipe or otherwise advise the court*
 - *Evidentiary hearings should be noted and appropriate time estimate given*
 - *e.g., Motion to Suppress: 2 hours; Motion in Limine: :30 min*
 - *The more information given, the more assistance it is to scheduling*

MOTIONS DOCKET ^(B)



- Uncontested:

- What is “uncontested”
 - Presentation of a fully endorsed order
 - Assumes you have spoken to the other side
 - Assumption: 5 mins or less
 - No briefing requirement; thus, only 7 day notice

Note:

- *fully endorsed orders may also be filed with the Clerk for chambers review/entry*
- *If matter is contested, it will be rescheduled to another date and briefing required*

MOTIONS DOCKET: FREQUENT ISSUES ^(C)



MOTIONS in LIMINE: ^(A)

- Requests for pretrial rulings
- However, courts do not conduct piecemeal trials
- **Not many motions in limine can properly be decided pretrial*
 - Examples of items unlikely to be decided pretrial:
 - “Relevance” “more prejudicial than probative”
 - Examples that may be conducive to pretrial decisions:
 - improper expert designations, discovery violations, etc...

MOTIONS DOCKET: FREQUENT ISSUES ^(D)



MOTIONS in LIMINE: ^(B)

- Harward v. CW, 5 Va. App. 468 (1988): emphasizes that not all motions *in limine* are properly decided pretrial
- Bottoms v. CW, 22 Va. App. 378 (1996): holds that a ruling on a motion *in limine* is not “the law of the case,” and that if the “development of the case requires reversal of an earlier ruling, it is the trial judge’s duty to order that reversal...”

See also:

- Walls v. CW, 38 Va. App. 273 (2002)
- Blanchard v. CW, 23 Va. App. UNP 150422 (2023)

MOTIONS DOCKET: FREQUENT ISSUES ^(E)



MOTIONS to SUPPRESS: ^(A)

- Filing prior to trial (19.2-266.2)
- Briefing is required (contested motion)
- **Take note of which party has the burden of proof and/or the burden of production*
 - Differs depending on the nature of the alleged violation
 - *Best practice: identify the burden/bearer in your brief; thus, if the parties disagree, more likely to be addressed prior to hearing*

Q & A

SEE YOU NEXT TIME FOR...

THE 20TH CIRCUIT LEARNING SERIES

CIR 105

TOPIC: COURTROOM SKILLS



SCHEDULED FOR JUNE 18, 2025

