RULES OF SUPREME COURT OF VIRGINIA
PART ONE
RULES APPLICABLE TO ALL PROCEEDINGS

Rule 1:19. Pretrial Conferences.

In addition to the pretrial scheduling conferences provided for by Rule 4:13, each trial court may, upon request of counsel of record, or in its own discretion, schedule a final pretrial conference within an appropriate time before the commencement of trial. In cases set for trial for five days or more, upon request of any counsel of record, made at least 45 days before trial, the court must schedule a final pretrial conference within an appropriate time before commencement of trial. At the final pretrial conference, which the trial court in its discretion may conduct in person or by telephone or by videoconference, the court and counsel of record may consider any of the following:

(a) settlement;

(b) a determination of the issues remaining for trial and whether any amendments to the pleadings are necessary;

(c) the possibility of obtaining stipulations of fact, including, but not limited to, the admissibility of documents;

(d) a limitation of the number of expert and/or lay witnesses;

(e) any pending motions including motions *in limine*;

(f) issues relating to proposed jury instructions; and

(g) such other matters as may aid in the disposition of the action.

Last amended by Order dated May 5, 2021; effective July 5, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE
PRACTICE AND PROCEDURE IN CIVIL ACTIONS

Rule 3:8. Answers, Pleas, Demurrers and Motions.

(a) *Response Requirement.* — A defendant must file pleadings in response within 21 days after service of the summons and complaint upon that defendant, or if service of the summons has been timely waived on request under Code § 8.01-286.1, within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the Commonwealth. ~~A~~ Pleadings in response under this Rule – other than an answer – are limited to the following, and are deemed responsive only to the specific count or counts addressed therein: a demurrer, plea, motion to dismiss, ~~and~~ motion for a bill of particulars, motion craving oyer, and a written motion asserting any preliminary defense permitted under Code § 8.01-276 ~~will each be deemed a pleading in response for the count or counts addressed therein~~. If a defendant files no other pleading in response than the answer, it must be filed within ~~said time~~ the applicable 21-day, 60-day, or 90-day period specified in this Rule. An answer must respond to the paragraphs of the complaint. A general denial of the entire complaint or plea of the general issue is not permitted.

(b) *Response After Demurrer, Plea or Motion.* — When the court has entered its order overruling all motions, demurrers and other pleas filed by a defendant as a responsive pleading, such defendant must, unless the defendant has already done so, file an answer within 21 days after the entry of such order, or within such shorter or longer time as the court may prescribe. If the court grants a motion craving oyer, unless the defendant has already filed an answer or another responsive pleading, the defendant must file an answer or another responsive pleading within 21 days after plaintiff files the document(s) for which oyer was granted, or within such shorter or longer time as the court may prescribe.

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RULES OF SUPREME COURT OF VIRGINIA
PART FOUR
PRETRIAL PROCEDURES, DEPOSITIONS AND PRODUCTION AT TRIAL

Rule 4:5. Depositions Upon Oral Examination.

(a) *When Depositions May Be Taken*. — After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition before the expiration of the period within which a defendant may file a responsive pleading under Rule 3:8, except that leave is not required (1) if a defendant has served a notice of taking deposition, or (2) if special notice is given as provided in subdivision (b)(2) of this Rule. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(a1) *Taking of Depositions.* — (i) Party Depositions. A deposition of a party, or any witness designated under Rule 4:5(b)(6) to testify on behalf of a party, must be taken in the county or city in which suit is pending, in an adjacent county or city, at a place upon which the parties agree, or at a place that the court in such suit may, for good cause, designate. Good cause may include the expense or inconvenience of a non-resident party defendant appearing in one of the locations specified in this subsection. The restrictions as to parties set forth in this subdivision (a1)(i) do not apply where no responsive pleading has been filed or an appearance otherwise made.

(ii) Non-party Witness Depositions. Unless otherwise provided by the law of the jurisdiction where a non-party witness resides, a deposition of a non-party witness must be taken in the county or city where the non-party witness resides, is employed, or has a principal place of business; at a place upon which the witness and the parties to the litigation agree; or at a place that the court may, for good cause, designate.

(iii) Taking Depositions Outside the State. Within another state, or within a territory or insular possession subject to the dominion of the United States, or in a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or, where applicable, the law of the United States, or (2) before a person appointed or commissioned by the court in which the action is pending, and such a person has the power by virtue of such appointment or commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or letter rogatory will be issued upon application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A commission or letter rogatory may be addressed "To the Appropriate Authority in (here name the state, territory, or country)." Witnesses may be compelled to appear and testify

at deposition taken outside this state by process issued and served in accordance with the law of the jurisdiction where the deposition is taken or, where applicable, the law of the United States. Upon motion, the courts of this State may issue a commission or letter rogatory requesting the assistance of the courts or authorities of the foreign jurisdiction.

(iv) Uniform Interstate Depositions and Discovery Act. Depositions and related documentary production sought in Virginia pursuant to a subpoena issued under the authority of a foreign jurisdiction are subject to the provisions of the Uniform Interstate Depositions and Discovery Act, Virginia Code §§ 8.01-412.8 through 8.01- 412.15.

(b) *Notice of Examination: General Requirements; Special Notice; Production of Documents and Things; Deposition of Organization*. —

(1) A party desiring to take the deposition of any person upon oral examination must give reasonable notice in writing to every other party to the action. The notice must state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena must be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the Commonwealth, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the period for filing a responsive pleading under Rule 3:8, and (B) sets forth facts to support the statement. The plaintiff's attorney must sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true.

If a party shows that when he was served with notice under this subdivision (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) Unless otherwise agreed to by the parties or otherwise provided by court order or by law, only the witness, the parties, their respective counsel including such counsel’s staff, experts identified pursuant to Rule 4:1(b)(4)(A), and those involved with the administration of the deposition (such as court reporters and translators) may attend the deposition, given the private nature of discovery. Counsel of record for the parties and counsel for any non-party deponent must timely confer regarding any other attendees

who are requested by a party or by the deponent to be present at the deposition. A party seeking to exclude any person from attending a deposition – or seeking authorization for any person to attend a deposition – must move for an order in the discretion of the circuit court.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 4:9 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 4:9 applies to the request.

(6) A party may in ~~his~~ the notice name as the deponent a public or private corporation, or a partnership, ~~or~~ an association, ~~or~~ governmental agency, or other entity, and must describe and designate with reasonable particularity the matters on which examination is requested. The organization so named must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf, and it may set ~~forth, for each person designated,~~ out the matters on which ~~he~~ each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to make this designation and to confer with the serving party. The persons so designated must testify as to matters known or reasonably available to the organization on the topics specified in the notice of deposition. ~~This~~ Except as provided in Virginia Code § 8.01-420.4:1, this subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these Rules and Virginia law.

(7) Unless the court orders otherwise, a deposition may be taken by telephone, video conferencing, or teleconferencing. A deposition taken by telephone, video conferencing, or teleconferencing must be taken before an appropriate officer in the locality where the deponent is present to answer questions propounded to him.

(c) *Examination and Cross-Examination; Record of Examination; Oath; Objections.* —

(1) Unless the parties agree otherwise, examination of a witness at deposition is begun by the party noticing the deposition. The officer before whom the deposition is to be taken must put the witness on oath and must personally, or by someone acting under his direction and in his presence, record the testimony of the witness. If requested by one of the parties, the testimony must be transcribed. The preservation or waiver of objections during the deposition is governed by the provisions of Rule 4:7.

(2) An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objections. Any objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege or protection for

attorney work-product pursuant to Rule 4:1(b)(3), to enforce a limitation ordered by the court, or to present a motion under subsection (d).

(3) In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he must transmit them to the officer, who must propound them to the witness and record the answers verbatim.

(d) *Motion to Terminate or Limit Examination.* — At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county or city where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 4:1(c). If the order made terminates the examination, it may be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition is suspended for the time necessary to make a motion for an order. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) *Submission to Witness; Changes; Signing.* — When the testimony is fully transcribed, the deposition must be submitted to the witness for examination and must be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make must be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition must then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 21 days of its submission to him, the officer must sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 4:7(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) *Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.* —

(1) The officer must prepare an electronic or digitally imaged copy of the deposition transcript, including signatures and any changes as provided in subsection (e) of this Rule, and must certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. In a divorce or annulment case, the officer must then promptly file the electronic or digitally imaged deposition in the office of the clerk, notifying all other parties of such action. In all other cases, the officer must then lodge the deposition with the attorney for the party who

initiated the taking of the deposition, notifying the clerk and all parties of such action. Depositions taken pursuant to this Rule or Rule 4:6 (except depositions taken in divorce and annulment cases) may not be filed with the clerk until the court so directs, either on its own initiative or upon the request of any party prior to or during the trial. Any such filing must be made electronically unless otherwise ordered by the judge.

Documents and things produced for inspection during the examination of the witness, must, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer must mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer must furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition must give prompt notice of its filing to all other parties.

(g) *Failure to Attend or to Serve Subpoena; Expenses*. —

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

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