

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

Rule 3:1. Scope.

There shall be one form of civil case, known as a civil action. These Rules apply to all civil actions, in the circuit courts, whether the claims involved arise under legal or equitable causes of action, unless otherwise provided by law. These rules apply in cases appealed or removed to such courts from inferior courts whenever applicable to such cases. These Rules shall not apply in petitions for a writ of habeas corpus. In matters not covered by these Rules, the established practices and procedures are continued. Whenever in this Part Three the words "action" or "suit" appear they shall refer to a civil action, which may include legal and equitable claims.

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

Rule 3:2. Commencement of Civil Actions.

(a) *Commencement.* A civil action shall be commenced by filing a complaint in the clerk's office. When a statute or established practice requires, a proceeding may be commenced by a pleading styled "Petition." Upon filing of the pleading, the action is then instituted and pending as to all parties defendant thereto. The statutory writ tax and clerk's fees shall be paid before the summons is issued.

(b) *Caption.* The complaint shall be captioned with the name of the court and the full style of the action, which shall include the names of all the parties. The requirements of Code § 8.01-290 may be met by giving the address or other data after the name of each defendant.

(c) *Form and Content of the Complaint.*

(i) It shall be sufficient for the complaint to ask for the specific relief sought. Without more it will be understood that all defendants mentioned in the caption are made parties defendant and required to answer the complaint; that proper process against them is requested; that answers under oath are waived, except when required by law, and that all relief authorized by law and demanded in the complaint may be granted. No formal conclusion is necessary.

(ii) Every complaint requesting an award of money damages shall contain an ad damnum clause stating the amount of damages sought. Leave to amend the ad damnum clause shall be available under Rule 1:8.

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

Rule 3:3. Filing of Pleadings; Return of Certain Writs.

(a) *Filing Generally.* The clerk shall receive and file all pleadings when tendered, without order of the court. The clerk shall note and attest the date of filing thereon. In an Electronically Filed Case, the procedures of Rule 1:17 shall be applicable to the notation by the clerk of the date of filing. Any controversy over whether a party who has filed a pleading has a right to file it shall be decided by the court.

(b) *Electronic Filing.* In any circuit court which has established an electronic filing system pursuant to Rule 1:17:

(1) Any civil action for which electronic filing is available in the circuit court may be designated as an Electronically Filed Case upon consent of all parties in the case. Such designation shall be made promptly, complying with all filing and procedural requirements for making such designations as may be prescribed by such circuit court.

(2) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other filings in an Electronically Filed Case shall be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party shall notify the clerk of court that the original document must be retained.

(i) Any pleading or affidavit required by statute or rule to be sworn, verified or certified as provided in Rule 1:17(d)(5).

(ii) Any last will and testament or other testamentary document, whether or not it is holographic.

(iii) Any contract or deed.

(iv) Any prenuptial agreement or written settlement agreement, including any property settlement agreement.

(v) Any check or other negotiable instrument.

(vi) Any handwritten statement, waiver, or consent by a defendant or witness in a criminal proceeding.

(vii) Any form signed by a defendant in a criminal proceeding, including any typed statements or a guilty plea form.

(viii) Any document that cannot be converted into an electronic document in such a way as to produce a clear and readable image.

(c) *Return of writs.* No writ shall be returnable more than 90 days after its date unless a longer period is provided by statute.

Last amended by Order dated November 1, 2012; effective January 1, 2013.

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

Rule 3:4. Copies of Complaint.

(a) *Copies for Service.* Except in cases where service is waived pursuant to Code § 8.01-286.1, the plaintiff shall furnish the clerk when the complaint is filed with as many paper copies thereof as there are defendants upon whom it is to be served. In an Electronically Filed Case, the plaintiff shall file the complaint electronically and furnish paper copies to the clerk as provided in this Rule.

(b) *Exhibits.* It is not required that physical copies of exhibits filed with the complaint be furnished or served. Unless an individual case is exempted by order of the court for good cause shown, an electronic or digitally imaged copy of all exhibits that are incorporated by reference in the pleading shall be filed with the complaint. Upon the adoption of standards for the preparation of electronic or digital records for use in appeals, exhibits under this Rule shall comply with such standards.

(c) *Additional copies.* A deficiency in the number of copies of the complaint shall not affect the pendency of the action.

(1) If the plaintiff fails to furnish the required number of copies, the clerk shall request that additional copies be furnished by the plaintiff as needed, and if the plaintiff fails to do so promptly, the clerk shall bring the fact to the attention of the judge, who shall notify the plaintiff's counsel, or the plaintiff personally if no counsel has appeared for plaintiff, to furnish them by a specified date. If the required copies are not furnished on or before that date, the court may enter an order dismissing the suit.

(2) Additionally, in an Electronically Filed Case, if the clerk has been provided by the plaintiff with a credit or payment account through which to obtain payment of fees for duplication of required copies of filings, the clerk shall promptly prepare additional copies of the pleading as needed, and process payment through such credit or payment account; or, if processing by the clerk of the proper payment for duplication of additional copies of the pleading through a credit or payment account authorized by the filing party is not feasible, the clerk shall proceed as provided in subpart (c)(1) of this Rule.

Last amended by Order dated November 1, 2012; effective January 1, 2013.

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

Rule 3:5. The Summons.

(a) *Form of process.* The process of the courts in civil actions shall be a summons in substantially this form:

Commonwealth of Virginia

In the Court of the of

SUMMONS

Civil Action No. . . .

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia, this day of 20.....

....., Clerk.

(b) *Affixing summons for service; voluntary appearance.* Upon the commencement of a civil action defendants may appear voluntarily and file responsive pleadings and may appear voluntarily and waive process, but in cases of divorce or annulment of marriage only in accordance with the provisions of the controlling statutes. With respect to defendants who do not appear voluntarily or file responsive pleadings or waive service of process, the clerk shall issue summonses and securely attach one to and upon the front of each copy of the complaint to be served. The copies of the complaint, with a summons so attached, shall be delivered by the clerk for service together as the plaintiff may direct.

(c) *Defendant under a disability.* Except when sued for divorce or annulment of marriage, or a judgment in personam is sought, a summons need not be issued for or served upon a defendant who is a person under a disability (except as otherwise provided in § 8.01-297), the procedure described in Code § 8.01-9 constituting due process as to such defendants.

(d) *Additional summonses.* The clerk shall on request issue additional summonses, dating them as of the day of issuance.

(e) *Service more than one year after commencement of the action.* No order, judgment or decree shall be entered against a defendant who was served with process more than one year after the institution of the action against that defendant unless the court finds as a fact that the plaintiff exercised due diligence to have timely service on that defendant.

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

Rule 3:6. Proof of Service.

Returns shall be made on a paper styled "Proof of Service" which shall be substantially in this form:

Virginia:

In the Court of the of :

.....)

v. (short style)) Proof of Service

.....)

Returns shall be made hereon, showing service of the summons issued 20, with copy of the complaint filed 20, attached.

The clerk shall prepare as many as may be needed and deliver them with the summons and copies of the complaint.

The summons with copy of the complaint attached shall constitute and be served as one paper.

It shall be the duty of all persons eligible to serve process to make service within five days after receipt, and make return as to those served within 72 hours after the earliest service upon any party shown on each Proof of Service; but failure to make timely service and return shall not prejudice the rights of any party except as provided in Rule 3:5.

Additional copies of the Proof of Service may be obtained from the clerk and returns thereon made in similar manner.

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

Rule 3:7. Bills of Particulars.

(a) *Timing and Grounds.* On motion made promptly, a bill of particulars may be ordered to amplify any pleading that does not provide notice of a claim or defense adequate to permit the adversary a fair opportunity to respond or prepare the case.

(b) *Striking of Insufficient Bills of Particulars.* A bill of particulars that fails to inform the opposing party fairly of the true nature of the claim or defense may, on motion made promptly, be stricken and an amended bill of particulars ordered. If the amended bill of particulars fails to inform the opposite party fairly of the true nature of the claim or defense, the pleading not so amplified and the bills of particulars may be stricken.

(c) *Date for Filing Bill of Particulars.* An order requiring or permitting a bill of particulars or amended bill of particulars shall fix the time within which it must be filed.

(d) *Date for Responding to Amplified Pleading.* If the bill of particulars amplifies a complaint, a defendant shall respond to the amplified pleading within 21 days after the filing thereof, unless the defendant relies on pleadings already filed. If the bill of particulars amplifies any other pleading, any required response shall be filed within 21 days after the filing of the bill of particulars, or within such shorter or longer time as the court may prescribe.

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 shall 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 demurrer, plea, motion to dismiss, and motion for a bill of particulars shall each be deemed a pleading in response for the count or counts addressed therein. If a defendant files no other pleading than the answer, it shall be filed within said time. An answer shall respond to the paragraphs of the complaint. A general denial of the entire complaint or plea of the general issue shall not be 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, such defendant shall, 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.

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

Rule 3:9. Counterclaims.

(a) *Scope.* A defendant may, at that defendant's option, plead as a counterclaim any cause of action that the defendant has against the plaintiff or all plaintiffs jointly, whether or not it grows out of any transaction mentioned in the complaint, whether or not it is for liquidated damages, whether it is in tort or contract, and whether or not the amount demanded in the counterclaim is greater than the amount demanded in the complaint.

(b) *Time for initiation.*

(i) A counterclaim shall, subject to the provisions of Rule 1:9, be filed within 21 days after service of the summons and complaint upon the defendant asserting the counterclaim, 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.

(ii) If a demurrer, plea, motion to dismiss, or motion for a bill of particulars is filed within the period provided in subsection (b)(i) of this Rule, the defendant may file any counterclaim at any time up to 21 days after the entry of the court's order ruling upon all such motions, demurrers and other pleas, or within such shorter or longer time as the court may prescribe.

(c) *Response to counterclaim.* The plaintiff shall file pleadings in response to such counterclaim within 21 days after it is served.

(d) *Separate trials.* The court in its discretion may order a separate trial of any cause of action asserted in a counterclaim.

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

Rule 3:10. Cross-Claims.

(a) *Scope.* A defendant may, at that defendant's option, plead as a cross-claim any cause of action that such defendant has or may have against one or more other defendants growing out of any matter pled in the complaint. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(b) *Time for initiation.* A cross-claim shall, subject to the provisions of Rule 1:9, be filed within 21 days after service of the summons and complaint on the defendant asserting the cross-claim, 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.

(c) *Response to cross-claim.* The cross-claim defendant shall file pleadings in response to such cross-claim within 21 days after it is served.

(d) *Separate trials.* The court in its discretion may order a separate trial of any cause of action asserted in a cross-claim.

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

Rule 3:11. Reply.

Responding to new matter. If a pleading, motion or affirmative defense sets up new matter and contains words expressly requesting a reply, the adverse party shall within 21 days file a reply admitting or denying such new matter. If it does not contain such words, the allegation of new matter shall be taken as denied or avoided without further pleading. All allegations contained in a reply shall be taken as denied or avoided without further pleading.

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

Rule 3:12. Joinder of Additional Parties.

(a) *Persons to Be Joined if Feasible.* A person who is subject to service of process may be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest of the person to be joined. If such a person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) *Method of Joinder.* A motion to join an additional party shall, subject to the provisions of Rule 1:9, be filed with the clerk within 21 days after service of the complaint and shall be served on the party sought to be joined who shall thereafter be subject to all provisions of these Rules, except the provisions requiring payment of writ tax and clerk's fees.

(c) *Determination by Court Whenever Joinder Not Feasible.* If a person as described in subdivision (a) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the absent person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(d) *Pleading Reasons for Nonjoinder.* A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) hereof who are not joined, and the reasons why they are not joined.

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

Rule 3:13. Third-Party Practice.

(a) *When Defendant May Bring in Third Party.* At any time after commencement of the action a defending party, as a third-party plaintiff, may file and serve a third-party complaint upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave therefore if the third-party complaint is filed not later than 21 days after the third-party plaintiff serves an original pleading in response. Otherwise the third-party plaintiff must obtain leave therefore on motion after notice to all parties to the action. The person served with the third-party complaint, hereinafter called the third-party defendant, shall make defenses to the third-party plaintiff's claim as provided in Rules 3:7 and 3:8. The third-party defendant may plead counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rules 3:9 and 3:10. The third-party defendant may assert against the plaintiff any defenses that the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may, at plaintiff's option, within 21 days after service of the third-party complaint upon the third-party defendant, assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert defenses as provided in Rules 3:7 and 3:8 and any counterclaims and cross-claims, including claims against the plaintiff, as provided in Rules 3:9 and 3:10. Any party may move to strike the third-party complaint, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) *When Plaintiff May Bring in Third Party.* When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances that under this rule would entitle a defendant to do so.

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

Rule 3:14. Intervention.

A new party may by leave of court file a pleading to intervene as a plaintiff or defendant to assert any claim or defense germane to the subject matter of the proceeding.

All provisions of these Rules applicable to civil cases, except those provisions requiring payment of writ tax and clerk's fees, shall apply to such pleadings. The parties on whom such pleadings are served shall respond thereto as provided in these Rules.

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

Rule 3:15. Statutory Interpleader.

Proceedings brought pursuant to statutory provisions relating to interpleader shall, to the extent not inconsistent with the governing statutes, be conducted in accordance with the Rules contained in this Part Three.

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

Rule 3:16. New Parties.

A new party may be added, on motion of the plaintiff by order of the court at any stage of the case as the ends of justice may require. The motion, accompanied by a properly executed proposed amended complaint, shall be served on the existing parties as required by Rule 1:12. If the motion is granted, the amended pleading accompanying the motion shall be deemed filed in the clerk's office as of the date of the court's order permitting such amendment and all the provisions of Rule 3:4 shall apply as to the new parties, but no writ tax, clerk's fee or deposit for costs is required. All defendants shall file pleadings in response thereto as required by these Rules unless otherwise ordered by the court.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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

Rule 3:17. Substitution of Parties.

(a) *Substitution of a successor.* If a person becomes incapable of prosecuting or defending because of death, disability, conviction of felony, removal from office, or other cause, a successor in interest may be substituted as a party in such person's place.

(b) *Motion, Consent, Procedure.* Substitution shall be made on motion of the successor or of any party to the suit. If the successor does not make or consent to the motion, the party making the motion shall file the motion and a proposed amended pleading effecting the substitution in the clerk's office and serve a copy of the motion and the proposed amended pleading upon the party to be substituted in the manner prescribed by the Code of Virginia for serving original process upon such party. Unless the movant and the party to be substituted agree otherwise, or the court orders a different schedule, the party sought to be substituted shall file a written response to the motion for substitution within 21 days after service of the motion and proposed amended pleading upon the party sought to be substituted.

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

Rule 3:18. General Provisions as to Pleadings.

(a) *Pleadings.* All motions in writing, including a motion for a bill of particulars and a motion to dismiss, whether filed in paper document format or as electronic or digitally imaged filings, are pleadings.

(b) *Allegation of negligence.* An allegation of negligence or contributory negligence is sufficient without specifying the particulars of the negligence.

(c) *Contributory negligence as a defense.* Contributory negligence shall not constitute a defense unless pleaded or shown by the plaintiff's evidence.

(d) *Pleading the statute of limitations.* An allegation that an action is barred by the statute of limitations is sufficient without specifying the particular statute relied on.

(e) *Separate or combined filings.* Answers, counterclaims, cross-claims, pleas, demurrers, affirmative defenses and motions may all be included in the same filing if they are separately identified in both the caption and the body of the filing.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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

Rule 3:19. Default.

(a) *Failure Timely to Respond.* A defendant who fails timely to file a responsive pleading as prescribed in Rule 3:8 is in default. A defendant in default is not entitled to notice of any further proceedings in the case, including notice to take depositions, except that written notice of any further proceedings shall be given to counsel of record, if any. The defendant in default is deemed to have waived any right to trial of issues by jury.

(b) *Relief from Default.* Prior to the entry of judgment, for good cause shown the court may grant leave to a defendant who is in default to file a late responsive pleading. Relief from default may be conditioned by the court upon such defendant reimbursing any extra costs and fees, including attorney's fees, incurred by the plaintiff solely as a result of the delay in the filing of a responsive pleading by the defendant.

(c) *Default Judgment and Damages.*

(1) Except in suits for divorce or annulling a marriage, the court shall, on motion of the plaintiff, enter judgment for the relief appearing to the court to be due. When service of process is effected by posting, no judgment by default shall be entered until the requirements of Code § 8.01-296(2)(b) have been satisfied.

(2) If the relief demanded is unliquidated damages, the court shall hear evidence and fix the amount thereof, unless the plaintiff demands trial by jury, in which event, a jury shall be impaneled to fix the amount of damages.

(3) If a defendant participates in the hearing to determine the amount of damages such defendant may not offer proof or argument on the issues of liability, but may (i) object to the plaintiff's evidence regarding damages, (ii) offer evidence regarding the quantum of damages, (iii) participate in jury selection if a jury will hear the damage inquiry, (iv) submit proposed jury instructions regarding damages, and (v) make oral argument on the issues of damages.

(d) *Relief from Default Judgment.*

(1) *Within 21 Days.* - During the period provided by Rule 1:1 for the modification, vacation or suspension of a judgment, the court may by written order relieve a defendant of a default judgment after consideration of the extent and causes of the defendant's delay in tendering a responsive pleading, whether service of process and actual notice of the claim were timely provided to the defendant, and the effect of the delay upon the plaintiff. Relief from default may be conditioned by the court upon the defendant reimbursing any extra costs and

fees, including attorney's fees, incurred by the plaintiff solely as a result of the delay in the filing of a responsive pleading by the defendant.

(2) *After 21 Days.* - A final judgment no longer within the jurisdiction of the trial court under Rule 1:1 may not be vacated by that court except as provided in Virginia Code §§ 8.01-428 and 8.01-623.

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

Rule 3:20. Summary Judgment.

Any party may make a motion for summary judgment at any time after the parties are at issue, except in an action for divorce or for annulment of marriage. If it appears from the pleadings, the orders, if any, made at a pretrial conference, the admissions, if any, in the proceedings, or, upon sustaining a motion to strike the evidence, that the moving party is entitled to judgment, the court shall enter judgment in that party's favor. Summary judgment, interlocutory in nature, may be entered as to the undisputed portion of a contested claim or on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment shall not be entered if any material fact is genuinely in dispute. No motion for summary judgment or to strike the evidence shall be sustained when based in whole or in part upon any discovery depositions under Rule 4:5, unless all parties to the action shall agree that such deposition may be so used, or unless the motion is brought in accordance with the provisions of subsection B of § 8.01-420.

Amended by Order dated June 21, 2013; effective July 1, 2013.

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

Rule 3:21. Jury Trial of Right.

(a) *Jury Trial Situations Unchanged.* The right of trial by jury as declared by the Constitution of Virginia, or as given by an applicable statute or other authority, is unchanged by these rules, and shall be implemented as established law provides. Established practice for the trial and decision of equitable claims by the judge alone shall be continued.

(b) *Demand.* Any party may demand a trial by jury of any issue triable of right by a jury in the complaint or by (1) serving upon other parties a demand therefore in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to the issue, and (2) filing the demand with the trial court. Such demand may be endorsed upon a pleading of the party. In an Electronically Filed Case, endorsement of such demand may be made as provided in Rule 1:17. The court may set a final date for service of jury demands. Leave to file amended pleadings shall not extend the time for serving and filing a jury demand unless the order granting leave to amend expressly so states.

(c) *Specification of Issues.* In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) *Waiver.* Absent leave of court for good cause shown, the failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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

Rule 3:22. Trial by Jury or by the Court.

(a) *By Jury.* When trial by jury has been demanded as provided in Rule 3:21, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury; or (2) the court upon motion or of its own initiative finds that a right of trial by jury on some or all of those issues does not exist under applicable law.

(b) *By the Court.* Except as otherwise provided in this Rule, issues not demanded for trial by jury as provided in Rule 3:21, and issues as to which a right of trial by jury does not exist, shall be tried by the court.

(c) *Statutory Jury Rights in Certain Equitable Claims.*

(1) In an equitable claim where no right to a jury trial otherwise exists, where impaneling of an advisory jury pursuant to Code § 8.01-336(E) to hear an issue will be helpful to the court concerning disputed fact issues, such a jury may be seated. Decision on such claims and issues shall be made by the judge.

(2) Where a jury trial on a defendant's plea in an equitable claim is authorized under Code § 8.01-336(D), trial of the issues presented by the plea shall be by a jury whose verdict on those issues has the same effect as if trial by jury had been a matter of right.

(d) *Party Consent to Jury.* As to any claim not triable of right by a jury, the court, with the consent of the parties, may (i) order trial of any claim or issue with an advisory jury or, (ii) a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

(e) *Trial by Mixed Jury and Non-Jury Claims.* In any case when there are both jury and non-jury issues to be tried, the court shall adopt trial procedures and a sequence of proceedings to assure that all issues properly heard by the jury are decided by it, and applicable factual determinations by the jury shall be used by the judge in resolving the non-jury issues in the case.

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

Rule 3:22A. Examination of Prospective Trial Jurors (Voir Dire).

(a) *Examination.* After the prospective jurors are sworn on the voir dire, the court shall question them individually or collectively to determine whether anyone:

(1) Is related by blood, adoption, or marriage to the accused or to the Plaintiff or Defendant;

(2) Is an officer, director, agent or employee of the Plaintiff or Defendant;

(3) Has any interest in the trial or the outcome of the case;

(4) Has acquired any information about the case or the parties from the news media or other sources and, if so, whether such information would affect the juror's impartiality in the case;

(5) Has expressed or formed any opinion about the case;

(6) Has a bias or prejudice against the Plaintiff or Defendant; or

(7) Has any reason to believe the juror might not give a fair and impartial trial to the Plaintiff and Defendant based solely on the law and the evidence.

Thereafter, the court, and counsel as of right, may examine on oath the venire, and any prospective juror, and ask questions relevant to the qualifications as an impartial juror. A party objecting to a juror may introduce competent evidence in support of the objection.

(b) *Challenge for Cause.* The court, on its own motion or following a challenge for cause, may excuse a prospective juror if it appears the juror is not qualified, and another shall be drawn or called and placed in the juror's stead for the trial of that case.

Promulgated by Order dated November 1, 2012; effective January 1, 2013.

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

Rule 3:23. Use of and Proceedings Before a Commissioner in Chancery.

(a) Commissioners in chancery may be appointed in cases in circuit court, including uncontested divorce cases, only when (1) there is agreement by the parties with concurrence of the court or (2) upon motion of a party or the court on its own motion with a finding of good cause shown in each individual case.

(b) Upon entry of a decree by the court referring any matter to a commissioner in chancery, the clerk shall mail or deliver to the commissioner a copy of the decree of reference. Unless the decree prescribes otherwise, the commissioner shall promptly set a time and place for the first meeting of the parties or their attorneys, and shall notify the parties or their attorneys of the time and place so set. It shall be the duty of the commissioner to proceed with all reasonable diligence to execute the decree of reference.

(c) A commissioner may require the production of evidence upon all matters embraced in the decree of reference including the production of all books, papers, vouchers, documents and writings applicable thereto. The commissioner shall have the authority to call witnesses or the parties to the action to testify and may examine them upon oath. The commissioner may rule upon the admissibility of evidence unless otherwise directed by the decree of reference; but when a party so requests, the commissioner shall cause a record to be made of all proffered evidence which is excluded by the commissioner as inadmissible.

(d) The commissioner shall prepare a report stating his findings of fact and conclusions of law with respect to the matters submitted by the decree of reference. The commissioner shall file the report, together with all exhibits admitted in evidence and a transcript of the proceedings and of the testimony, with the clerk of the court. In an Electronically Filed Case, filing as required in this Rule shall be in accord with the requirements of Rule 1:17. The commissioner shall mail or deliver to counsel of record and to parties not represented by counsel, using the last address shown in the record, written notice of the filing of the report. Provided, however, that in divorce cases a copy of the report shall accompany the notice. Provided, further, that no such notice or copy shall be given parties who have not appeared in the proceeding.

Last amended by Order dated March 1, 2011; effective May 2, 2011.

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

Rule 3:24. Appeal of Orders of Quarantine or Isolation regarding Communicable Diseases of Public Health Threat.

A. Where an order of quarantine has been issued relating to a communicable disease of public health threat pursuant to § 32.1-48.09, the provisions of § 32.1-48.010, and related sections of Article 3.02 of Title 32.1 of the Code of Virginia, shall govern any appeal of such order to the appropriate circuit court.

B. Where an order of isolation has been issued relating to a communicable disease of public health threat pursuant to § 32.1-48.012, the provisions of § 32.1-48.013 and related sections of Article 3.02 of Title 32.1 of the Code of Virginia shall govern any appeal of such order to the appropriate circuit court.

C. The circuit court shall hold hearings under this rule in a manner to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, witnesses, and the general public. To this end, the circuit court may take measures including, but not limited to, ordering the hearing to be held by telephone or video conference or ordering those present to take appropriate precautions, including wearing personal protective equipment.

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

Rule 3:25. Claims for Attorney's Fees.

A. *Scope of Rule.* This rule applies to claims for attorney's fees, excluding (i) attorney's fees under § 8.01-271.1 of the Code of Virginia, and (ii) attorney's fees in domestic relations cases.

B. *Demand.* A party seeking to recover attorney's fees shall include a demand therefor in the complaint filed pursuant to Rule 3:2, in a counterclaim filed pursuant to Rule 3:9, in a cross-claim filed pursuant to Rule 3:10, in a third-party pleading filed pursuant to Rule 3:13, or in a responsive pleading filed pursuant to Rule 3:8. The demand must identify the basis upon which the party relies in requesting attorney's fees.

C. *Waiver.* The failure of a party to file a demand as required by this rule constitutes a waiver by the party of the claim for attorney's fees, unless leave to file an amended pleading seeking attorney's fees is granted under Rule 1:8.

D. *Procedure.* Upon the motion of any party, the court shall, or upon its own motion, the court may, in advance of trial, establish a procedure to adjudicate any claim for attorney's fees.