

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

Rule 4:0. Application of Part Four.

(a) The Rules in this Part Four shall apply in civil cases in the circuit courts. They also shall apply to proceedings for separate maintenance, divorce or annulment of marriage, for the exercise of the right of eminent domain, and for writs of habeas corpus or in the nature of coram nobis as provided in Rule 4:1(b)(5). Whenever in this Part Four the word "action" appears it shall mean a civil case, whether the claims arise at law or in equity.

(b) No provision of any of the Rules in this Part Four shall affect the practice of taking evidence at trial in any action; but such practice, including that of generally taking evidence ore tenus in actions upon claims arising at law and of generally taking evidence by deposition in equitable claims, shall continue unaffected hereby.

Last amended by Order dated November 1, 2016; effective January 1, 2017

**RULES OF SUPREME COURT OF VIRGINIA
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Rule 4:1. General Provisions Governing Discovery.

(a) *Discovery Methods.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) *Scope of Discovery.* Unless otherwise limited by order of the court in accordance with these Rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Subject to the provisions of Rule 4:8 (g), the frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice to counsel of record or pursuant to a motion under subdivision (c).

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person (which includes any individual, corporation, partnership or other association) carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this Rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this Rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts; Costs - Special Provisions for Eminent Domain Proceedings. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this Rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) A party may depose any person who has been identified as an expert whose opinion may be presented at trial, subject to the provisions of subdivision (b)(4)(C) of this Rule concerning fees and expenses. (iii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this Rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in

anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent and expenses incurred in responding to discovery under subdivisions (b)(4)(A)(ii), (b)(4)(A)(iii), and (b)(4)(B) of this Rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(iii) of this Rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this Rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(D) Notwithstanding the provisions of subdivision (b)(4)(C) of this Rule, the condemnor in eminent domain proceedings, when it initiates discovery, shall pay all reasonable costs thereof, including the cost and expense of those experts discoverable under subdivision (b) of this Rule. The condemnor shall be deemed to have initiated discovery if it uses, or gives notice of the use of, any discovery method before the condemnee does so, even though the condemnee subsequently engages in discovery.

(5) Limitations on Discovery in Certain Proceedings. In any proceeding (1) for separate maintenance, divorce, or annulment of marriage, (2) for the exercise of the right of eminent domain, or (3) for a writ of habeas corpus or in the nature of coram nobis; (a) the scope of discovery shall extend only to matters which are relevant to the issues in the proceeding and which are not privileged; and (b) no discovery shall be allowed in any proceeding for a writ of habeas corpus or in the nature of coram nobis without prior leave of the court, which may deny or limit discovery in any such proceeding. In any proceeding for divorce or annulment of marriage, a notice to take depositions must be served in the Commonwealth by an officer authorized to serve the same, except that, in cases where such suits have been commenced and an appearance has been made on behalf of the defendant by counsel, notices to take depositions may be served in accordance with Rule 1:12.

(6) Claims of Privilege or Protection of Trial Preparation Materials.

(i) When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information

itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(ii) If a party believes that a document or electronically stored information that has already been produced is privileged or its confidentiality is otherwise protected the producing party may notify any other party of such claim and the basis for the claimed privilege or protection. Upon receiving such notice, any party holding a copy of the designated material shall sequester or destroy its copies thereof, and shall not duplicate or disseminate such material pending disposition of the claim of privilege or protection by agreement, or upon motion by any party. If a receiving party has disclosed the information before being notified of the claim of privilege or other protection, that party must take reasonable steps to retrieve the designated material. The producing party must preserve the information until the claim of privilege or other protection is resolved.

(7) *Electronically Stored Information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 4:1(b)(1). The court may specify conditions for the discovery, including allocation of the reasonable costs thereof.

(8) *Pre-Motion Negotiation.* A motion under this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

(c) *Protective Orders.* Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county or city where the deposition is to be taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not

be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery.

(1) Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(2) Discovery shall continue after a demurrer, plea or dispositive motion addressing one or more claims or counter-claims has been filed and while such motion is pending decision – unless the court in its discretion orders that discovery on some or all issues in the action should be suspended.

(e) Supplementation of Responses. A party who has responded to a request for discovery is under a duty to supplement or correct the response to include information thereafter acquired in the following circumstances.

(1) A party is under a duty promptly to amend and/or supplement all responses to discovery requests directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony, when additional or corrective information becomes available.

(2) A party is under a duty promptly to amend and/or supplement all other prior responses to interrogatories, requests for production, or requests for admission if the party learns that any such response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(3) A court may order, or the parties may agree to provide, supplementation in addition to that required in subsections (1) and (2) of this subpart (e).

(4) A party may supplement a prior discovery response by filing an updated response labelled "Supplemental" or "Amended", or by otherwise

notifying all other parties of the updated information in writing, signed by counsel of record.

(f) *Service Under This Part.* Except for the service of the notice required under Rule 4:2(a)(2), any notice or document required or permitted to be served under this Part Four shall be served as provided in Rule 1:12 except that any notice or document permitted to be served with the initial pleading shall be served (or accepted) in the same manner as such pleading.

(g) *Signing of Discovery Requests, Responses, and Objections.* Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection, and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these Rules and warranted by existing law or a good faith argument for extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

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Rule 4:2. Depositions Before Action or Pending Appeal.

(a) Before Action.

(1) *Petition.* A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of this Commonwealth may file a verified petition in the circuit court in the county or city of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (A) that the petitioner expects to be a party to an action cognizable in a court of this Commonwealth but is presently unable to bring it or cause it to be brought; (B) the subject matter of the expected action and his interest therein; (C) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it; (D) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and (E) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) *Notice and Service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 21 days before the date of hearing the notice shall be served either within the Commonwealth in the manner provided for service of a complaint or without the Commonwealth in the manner provided by Code § 8.01-320; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not so served, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a person under a disability, a guardian ad litem shall be appointed to attend on his behalf.

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these Rules. The attendance of witnesses may be compelled by subpoena, and the court may make orders of the character provided for by Rules 4:9 and 4:10. For the purpose of applying these Rules to depositions

for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) *Cost.* The cost of such depositions shall be paid by the petitioner, except that the other parties in interest who produce witnesses on their behalf or who make use of witnesses produced by others shall pay their proportionate part of the cost of the transcribed testimony and evidence taken or given on behalf of each of such parties.

(5) *Filing.* The depositions shall be certified as prescribed in Rule 4:5 and then returned to and filed by the clerk of the court which ordered its taking.

(6) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these Rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a court of this Commonwealth in accordance with the provisions of Rule 4:1.

(b) *Pending Appeal.* If an appeal has been taken from a judgment of a court of record or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in that court. In such case the party who desires to perpetuate the testimony may make a motion in the court in which the judgment was rendered for leave to take the depositions, upon the same notice and service thereof as if the action was pending therein. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make orders of the character provided for by Rules 4:9 and 4:10, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these Rules for depositions taken in pending actions.

(c) *Perpetuation of Testimony.* This Rule provides the exclusive procedure to perpetuate testimony.

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Rule 4:3. Persons Before Whom Depositions May Be Taken.

(a) *Within this Commonwealth.* Within this Commonwealth depositions may be taken before any person authorized by law to administer oaths, and if certified by his hand may be received without proof of the signature to such certificate.

(b) *Within the United States.* In any other State of the United States or within any territory or insular possession subject to the dominion of the United States, depositions may be taken before any officer authorized to take depositions in the jurisdiction wherein the witness may be, or before any commissioner appointed by the Governor of this Commonwealth.

(c) *No Commission Necessary.* No commission by the Governor of this Commonwealth shall be necessary to take a deposition whether within or without this Commonwealth.

(d) *In Foreign Countries.* In a foreign state or country depositions shall be taken (1) before any American minister plenipotentiary, charge d'affaires, secretary of embassy or legation, consul general, consul, vice-consul, or commercial agent of the United States in a foreign country, or any other representative of the United States therein, including commissioned officers of the armed services of the United States, or (2) before the mayor, or other magistrate of any city, town or corporation in such country, or any notary therein.

(e) *Certificate When Deposition Taken Outside Commonwealth.* Any person before whom a deposition is taken outside this Commonwealth shall certify the same with his official seal annexed; and, if he have none, the genuineness of his signature shall be authenticated by some officer of the same state or country, under his official seal, except that no seal shall be required of a commissioned officer of the armed services of the United States, but his signature shall be authenticated by the commanding officer of the military installation or ship to which he is assigned.

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Rule 4:4. Stipulations Regarding Discovery.

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions and (2) modify the procedures provided by these Rules for other methods of discovery, including discovery of electronically stored information. Stipulations may include agreements with non-party witnesses, consistent with Code § 8.01-420.4. Such stipulations shall be filed with the deposition or other discovery completed pursuant thereto.

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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, shall 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) shall 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 shall 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 shall have 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 shall 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 depositions 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 shall 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 shall be 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 shall give reasonable notice in writing to every other party to the action. The notice shall 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 shall 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 shall 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) [Deleted.]

(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 shall apply to the request.

(6) A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these Rules.

(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 shall 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) Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall 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 shall be transcribed.

(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 shall transmit them to the officer, who shall 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 shall 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 shall be 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 shall be submitted to the witness for examination and shall 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 shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall 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 shall 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 shall 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 shall 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 shall 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 shall 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) shall 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 shall be made electronically unless otherwise ordered by the judge.

Documents and things produced for inspection during the examination of the witness, shall, 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 shall 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 shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall 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.

Last amended by Order dated May 1, 2017; effective August 1, 2017.

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Rule 4:6. Depositions Upon Written Questions.

(a) *Serving Questions; Notice.* After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take the deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, 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, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 4:5(b)(6).

Within 21 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) *Officer to Take Responses and Prepare Record.* A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 4:5(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file the electronic or digitally imaged deposition or lodge the deposition with the attorney for the party who initiated the taking of the deposition, attaching thereto the copy of the notice and the questions received.

(c) *Notice of Filing.* When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.

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

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Rule 4:6A. Number of Depositions.

There shall be no limit on the number of witnesses whose depositions may be taken by a party except by order of the court for good cause shown.

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Rule 4:7. Use of Depositions in Court Proceedings.

(a) *Use of Depositions.* At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition taken in a civil action may be used for any purpose in supporting or opposing an equitable claim; provided, however, that such a deposition may be used on an issue heard by an advisory jury empaneled pursuant to Code § 8.01-336(E) or a hearing ore tenus only as provided by subdivision (a)(4) of this Rule.

(2) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(3) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 4:5(b)(6) or 4:6(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(4) The deposition of a witness, whether or not a party, may be used by any party for any purpose in any action upon a claim arising at law, issue heard by an advisory jury empaneled pursuant to Code § 8.01-336(E), or hearing ore tenus upon an equitable claim if the court finds: (A) that the witness is dead; or (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of this Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) that the witness is a judge, or is a superintendent of a hospital for the insane more than 30 miles from the place of trial, or is a physician, surgeon, dentist, chiropractor, or registered nurse who, in the regular course of his profession, treated or examined any party to the proceeding, or is in any public office or service the duties of which prevent his attending court provided, however, that if the deponent is subject to the jurisdiction of the court, the court may, upon a showing of good cause or sua sponte, order him to attend and to testify ore tenus; or (F) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the

interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(6) No deposition shall be read in any action against a person under a disability unless it be taken in the presence of the guardian ad litem appointed or attorney serving pursuant to § 8.01-9, or upon questions agreed on by the guardian or attorney before the taking.

(7) In any action, the fact that a deposition has not been offered in evidence prior to an interlocutory decree or order shall not prevent its thereafter being so offered except as to matters ruled upon in such interlocutory decree or order; provided, however, that such deposition may be read as to matters ruled upon in such an interlocutory decree or order if the principles applicable to after-discovered evidence would permit its introduction.

Substitution of parties does not affect the right to use depositions previously taken; and when there are pending in the same court several actions or suits between the same parties, depending upon the same facts, or involving the same matter of controversy, in whole or in part, a deposition taken in one of such actions or suits, upon notice to the same party or parties, may be read in all, so far as it is applicable and relevant to the issue; and, when an action in any court of the United States or of this or any other state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the one action may be used in the other as if originally taken therefor.

(b) *Form of Presentation; Objections to Admissibility.* A party may offer deposition testimony pursuant to this Rule in stenographic or nonstenographic form. Except as otherwise directed by the court, if all or part of a deposition is offered, the offering party shall provide the court with a transcript of the portions so offered in either form or in electronic or digitally imaged form. Except as provided in Rule 1:18 and subject to the provisions of subdivision (d)(3) of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) *Effect of Taking or Using Depositions.* A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under

subdivision (a)(3) of this Rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) *Effect of Errors and Irregularities in Depositions.*

(1) As to Notice. – All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. – Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition. –

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 4:6 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. – Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer under Rules 4:5 and 4:6 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(e) *Limitation on Use of Depositions.* No motion for summary judgment or to strike the evidence shall be sustained when based in whole or in part upon any depositions under Rule 4:5, unless such use of depositions is permitted by § 8.01-420.

(f) *Record.* Depositions shall become a part of the record only to the extent that they are offered in evidence.

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

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Rule 4:7A. Audio-Visual Depositions.

(a) *When Depositions May Be Taken by Audio-Visual Means.* Any depositions permitted under these Rules may be taken by audio-visual means including, but not limited to, videoconferencing and teleconferencing, as authorized by and when taken in compliance with law.

(b) *Procedure.*

(1) The deposition must begin with an oral or written statement on camera which includes (i) each operator's name and business address or, if applicable, the identity of the video conferencing or teleconferencing proprietor and locations participating in the video conference or teleconference; (ii) the name and business address of the operator's employer; (iii) the date, time and place of the deposition; (iv) the caption of the case; (v) the name of the witness; (vi) the party on whose behalf the deposition is being taken; (vii) with respect to video conferencing or teleconferencing, the identities of persons present at the deposition and the location of each such person; and (viii) any stipulations by the parties; and

(2) In addition, all counsel present on behalf of any party or witness shall identify themselves on camera. The oath for witnesses shall be administered on camera. If the length of a deposition requires the use of more than one recording unit, the end of each unit and the beginning of each succeeding unit shall be announced on camera. At the conclusion of a deposition, a statement shall be made on camera that the deposition is concluded. A statement may be made on camera setting forth any stipulations made by counsel concerning the custody of the audio-visual recording and exhibits or other pertinent matters; and

(3) All objections must be made as in the case of stenographic depositions.

(c) *Editing.* No audio-visual deposition shall be edited except pursuant to a stipulation of the parties or pursuant to order of the court and only as and to the extent directed in such stipulation and/or order. In any case where the parties stipulate or the court orders the audio-visual recording to be edited prior to its use, the original recording shall not be altered and the editing shall be done on a copy or copies.

(d) *Recording and Transcription.*

(1) Any deposition may be recorded by audio-visual means without a stenographic record. The audio-visual recording is an official record of the deposition. A transcript prepared by a court reporter shall also be deemed an official record of the deposition. Any party may make, at its own expense, a

simultaneous stenographic or audio record of the deposition. Upon request and at his own expense, any party is entitled to an audio or audio-visual copy of the audio-visual recording.

(2) If an appeal is taken in the case, the appellant must cause to be prepared and filed with the clerk a written transcript of that portion of an audio-visual deposition made a part of the record in the trial court to the extent germane to an issue on appeal. The appellee may designate additional portions to be so prepared by the appellant and filed.

(e) *Use.* An audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used.

(f) *Submission to the Witness; Changes; Signing.* The provisions of Rule 4:5(e) shall not apply to an audio-visual deposition. The other provisions of Rule 4:5 shall be applicable to the extent practicable.

(g) *Filing.* Unless otherwise stipulated by the parties or ordered by the court, the original audio-visual recording of a deposition, any copy edited pursuant to stipulation or an order of the court, and exhibits shall be filed only in accord with Rule 4:5(f)(1).

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Rule 4:8. Interrogatories to Parties.

(a) *Availability; Procedures for Use.* Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint upon that party.

(b) *Form.* The party answering the interrogatories shall restate each question, by photocopying it or otherwise, then insert the word "Answer" and immediately thereafter state the response to that question. The answering party shall attach the necessary oath and certificate of service to the answers.

(c) *Filing.*

(1) Interrogatories and answers or objections thereto shall not be filed unless the court directs such filing on its own initiative or upon the request of any party prior to or during the trial.

(2) When the propriety or sufficiency of any interrogatory, answer or objection, or the service thereof, is challenged, or any other issue concerning such discovery is presented to the court for decision, copies of the relevant items, including any applicable certificates of service, shall be made available to the court by counsel.

(3) In an Electronically Filed Case, submission of interrogatories, answers, objections and certificates of service as provided in subdivisions (c)(1) and (c)(2) of this Rule shall be made by filing an electronic or digitally imaged copy thereof, unless the court directs otherwise.

(d) *Answers.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 21 days after the service of the interrogatories, except that a defendant may serve answers or objections within 28 days after service of the bill of complaint or motion for judgment upon that defendant. The court may allow a shorter or longer time. The party

submitting the interrogatories may move for an order under Rule 4:12(a) with respect to any objection to or other failure to answer an interrogatory.

(e) *Scope; Use.* Interrogatories may relate to any matters which can be inquired into under Rule 4:1(b), and the answers may be used to the extent permitted by the rules of evidence and for the purposes of Rule 3:20. Only such interrogatories and the answers thereto as are offered in evidence shall become a part of the record.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(f) *Option to Produce Business Records.* Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained. A specification of electronically stored information may be made under this Rule if the information will be made available in a reasonably usable form or forms.

(g) *Limitation on Interrogatories.* No party shall serve upon any other party, at any one time or cumulatively, more than thirty written interrogatories, including all parts and sub-parts without leave of court for good cause shown.

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

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Rule 4:9. Production by Parties of Documents, Electronically Stored Information, and Things; Entry on Land for Inspection and Other Purposes; Production at Trial.

(a) *Scope.* Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect, copy, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form), or to inspect, copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 4:1(b) and which are in the possession, custody, or control of the party upon whom the request is served; or (2) to produce any such documents or electronically stored information to the court in which the proceeding is pending at the time of trial; or (3) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 4:1(b).

(b) *Procedure.*

(i) *Initiation of the Request.* The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, period and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

(ii) *Response.* The party upon whom the request is served shall serve a written response within 21 days after the service of the request, except that a defendant may serve a response within 28 days after service of the complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the reasons for the objection. If objection is made to part of an item or category, the part shall be specified and production shall be permitted as to the remaining parts. If objection is made to the requested form or forms for producing electronically stored information /- or if no form was

specified in the request /- the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 4:12(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A motion under this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

(iii) Organization, Reasonable Accessibility, and Forms of Production. Unless the parties otherwise agree, or the court otherwise orders:

(A) Production of Documents. A party who produces documents for inspection either shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(B) Electronically Stored Information.

(1) Responses to a request for production of electronically stored information shall be subject to the provisions of Rules 4:1(b)(7) and 4:1(b)(8).

(2) If a request does not specify the form or forms for producing electronically stored information, or if a responding party objects to the requested form or forms of production, a responding party must produce the information as it is ordinarily maintained if it is reasonably usable in such form or forms, or must produce the information in another form or forms in which it is reasonably usable. A party need not produce the same electronically stored information in more than one form.

(iv) Proceedings Under the Uniform Interstate Depositions and Discovery Act. Production of documents and electronic records sought in Virginia pursuant to a subpoena issued under the authority of a foreign jurisdiction shall be subject to the provisions of the Uniform Interstate Depositions and Discovery Act, Virginia Code §§ 8.01-412.8 through 8.01-412.15.

(c) *Proceedings on Failure or Refusal to Comply.* If a party fails or refuses to obey an order made under section (b) of this Rule, the court may proceed as provided by Rule 4:12(b)(2).

(d) *Filing.* Requests to a party pursuant to this Rule and responses or objections shall be filed as provided in Rule 4:8(c).

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Rule 4:9A. Production from Non-Parties of Documents, Electronically Stored Information, and Things and Entry on Land for Inspection and Other Purposes; Production at Trial.

(a) *Issuance of a Subpoena Duces Tecum.* Except as provided in paragraph (d) of this Rule, a subpoena duces tecum may be issued:

(1) By the clerk of court. Upon written request therefor filed with the clerk of the court in which the action or suit is pending by counsel of record for any party or by a party having no counsel in any pending case, with a certificate that a copy thereof has been served pursuant to Rule 1:12 upon counsel of record and to parties having no counsel, the clerk shall issue to a person not a party therein a subpoena duces tecum subject to this Rule.

(2) By an attorney. In a pending civil proceeding, a subpoena duces tecum may be issued by an attorney-at-law as an officer of the court if he or she is an active member of the Virginia State Bar at the time of issuance. An attorney may not issue a subpoena duces tecum in those civil proceedings excluded in Virginia Code § 8.01-407. An attorney-issued subpoena duces tecum must be signed as if a pleading and must contain the attorney's address, telephone number and Virginia State Bar identification number. A copy of any attorney-issued subpoena duces tecum must be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance with a certificate that a copy thereof has been served pursuant to Rule 1:12 upon counsel of record and to parties having no counsel. If time for compliance with an attorney-issued subpoena duces tecum is less than fourteen (14) days after service of the subpoena, the person to whom the subpoena is directed may serve on the party issuing the subpoena a written objection setting forth any grounds upon which such production, inspection, copying, sampling or testing should not be had. If an objection is made, the party issuing the subpoena shall not be entitled to the requested production, inspection, copying, sampling or testing, except pursuant to an order of the court in which the civil proceeding is pending. If an objection is made, the party issuing the subpoena may, upon notice to the person to whom the subpoena is directed, move for an order to compel the production, inspection, copying, sampling or testing. Upon a timely motion, the court may quash, modify or sustain the subpoena as provided above in subsection (c) of this Rule.

(b) *Content of Subpoena Duces Tecum; Objections.* Subject to paragraph (d) of this Rule, a subpoena duces tecum shall command the person to whom it is directed, or someone acting on his behalf, to produce the documents, electronically stored information, or designated tangible things (including writings, drawings, graphs, charts, photographs, and other data or data compilations stored in any medium from which

information can be obtained, translated, if necessary, by the respondent into reasonably usable form) designated and described in said request, and to permit the party filing such request, or someone acting in his behalf, to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 4:1(b) which are in the possession, custody or control of such person to whom the subpoena is directed, at a time and place and for the period specified in the subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(c) Responding to a Subpoena; Objections; Production of Documents and Electronically Stored Information.

(1) Production of Documents. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) Electronically Stored Information.

(A) A person responding to a subpoena need not provide discovery of electronically stored information from sources the responder identifies as not reasonably accessible because of undue burden or cost. On motion to compel production or to quash a subpoena, the person from whom production is sought under the subpoena must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order production of responsive material from such sources if the subpoenaing party shows good cause, considering the limitations of Rule 4:1(b)(1). The court may specify conditions for the production of such information, including allocation of the reasonable costs thereof.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding thereto must produce the information as it is ordinarily maintained if it is reasonably usable in such form or forms, or must produce the information in another form or forms in which it is reasonably usable. A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) Objections and Procedures. The court, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (1) quash or modify the subpoena, or the method or form for production of electronically stored information, if the subpoena would otherwise be unduly burdensome or expensive, (2) condition denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of some or all of the reasonable cost of producing the

documents, electronically stored information, and tangible things so designated and described or (3) direct that the documents and tangible things subpoenaed, including electronically stored information (unless another location for production is agreed upon by the requesting and producing parties), be returned only to the office of the clerk of the court through which such documents and tangible things are subpoenaed in which event, upon request of any party in interest, or his attorney, the clerk of such court shall permit the withdrawal of such documents and tangible things by such party or his attorney for such reasonable period of time as will permit his inspection, photographing, or copying thereof.

(4) Pre-Motion Negotiation. A motion under this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

(d) *Certain Officials.* No request to produce made pursuant to paragraph (b) above shall be served, and no subpoena provided for in paragraph (c) above shall issue, until prior order of the court is obtained when the party upon whom the request is to be served or the person to whom the subpoena is to be directed is the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof; the President or Vice President of the United States; any member of the President's Cabinet; any Ambassador or Consul; or any Military Officer on active duty holding the rank of Admiral or General.

(e) *Certain Health Records.* Patient health records protected by the privacy provisions of Code Section 32.1-127.1:03 shall be disclosed only in accordance with the provisions and procedures prescribed by that statute.

(f) *Copies of Documents and Other Subpoenaed Information.*

(1) Documents. When one party to a civil proceeding subpoenas documents, the subpoenaing party, upon receipt of the subpoenaed documents, shall, if requested, provide true and full copies of the same to any party or to the attorney for any other party in accordance with Code § 8.01-417(B).

(2) Electronically stored information. When one party to a civil proceeding subpoenas and obtains electronically stored information, the subpoenaing party shall, if requested, provide true and full copies of the same to any party or that party's attorney, in the form the subpoenaing party received the information, upon reimbursement of the proportionate cost of obtaining such materials.

(g) *Proceedings on Failure or Refusal to Comply.* If a non-party, after being served with a subpoena issued under the provisions of this Rule, fails or refuses to comply therewith, he may be proceeded against as for contempt of court as provided in § 18.2-456.

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Rule 4:10. Physical and Mental Examination of Persons.

(a) *Order for Examination.* When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending, upon motion of an adverse party, may order the party to submit to a physical or mental examination by one or more health care providers, as defined in § 8.01-581.1, employed by the moving party or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties, shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made, and shall fix the time for filing the report and furnishing the copies.

(b) *Out-of-State Examiners.* Examiners named in such an order shall be licensed to practice in, and shall be residents of or have an office in, this Commonwealth. However, notwithstanding the reference to licensure by this Commonwealth in the definition of health care providers in § 8.01-581.1, the court may, in the exercise of its sound discretion and upon determining that the ends of justice will be served, order an examination by one who is not licensed to practice in, is not a resident of, and does not have an office in, this Commonwealth but who is duly licensed in his or her jurisdiction.

(c) *Report of Examiner.*

(1) A written report of the examination shall be made by the examiner to the court and filed with the clerk thereof before the trial and a copy furnished to each party. The report shall be detailed, setting out the findings of the examiner, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. In an Electronically Filed Case, the report of examination shall be filed in electronic or digital image form as provided in Rule 1:17.

(2) The written report of the examination so filed with the clerk may be read into evidence if offered by the party who submitted to the examination. A party examined who takes the deposition of any examiner who shall have conducted an examination ordered pursuant to this Rule, waives any privilege that might have been asserted in that action or in any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examination made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of a health care examiner or the taking of a deposition of such examiner in accordance with the provisions of any other Rule.

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

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PRETRIAL PROCEDURES, DEPOSITIONS AND PRODUCTION AT TRIAL

Rule 4:11. Requests for Admission.

(a) *Request for Admission.* A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 4:1(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 21 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 28 days after service of the complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 4:12(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) *Effect of Admission.* Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 4:13 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

(c) *Filing.* Except as provided in Rules 3:3 and 1:17, requests for admissions and answers or objections shall be served and filed as provided in Rule 4:8.

(d) *Part of Record.* Only such requests for admissions and the answers thereto as are offered in evidence shall become a part of the record.

(e) *Limitation on Number of Requests.* –

(1) Requests for admission not related to genuineness of documents. Unless all parties agree, or the court grants leave for good cause shown, no party shall serve upon any other party, at any one time or cumulatively, more than 30 requests for admission, including all parts and subparts, that do not relate to the genuineness of documents. Leave to propound additional requests shall be liberally granted in the interests of justice.

(2) Requests for admission relating to the genuineness of documents. The number of requests for admissions relating to the genuineness of documents shall not be limited unless the court enters a protective order pursuant to the provisions of Rule 4:1(c) upon a finding that justice so requires in order to protect the responding party from unwarranted annoyance, embarrassment, oppression, or undue burden or expense.

Last amended by Order dated February 27, 2015; effective May 1, 2015.

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

Rule 4:12. Failure to Make Discovery; Sanctions.

(a) *Motion for Order Compelling Discovery.* A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) *Appropriate Court.* An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the county or city where the deposition is to be taken. An application for an order to a deponent who is not a party shall be made to the court in the county or city where the deposition is being taken.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rule 4:5 or 4:6, or a corporation or other entity fails to make a designation under Rule 4:5(b)(6) or 4:6(a), or a party fails to answer an interrogatory submitted under Rule 4:8, or if a party, in response to a request for inspection submitted under Rule 4:9, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

A motion under subdivision (a) of this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 4:1(c).

(3) *Evasive or Incomplete Answer.* For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) *Award of Expenses of Motion.* If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply With Order.

(1) Sanctions by Court in County or City Where Deposition Is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county or city in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 4:5(b) (6) or 4:6(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this Rule or Rule 4:10, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 4:10(a) requiring him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the

party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) *Expenses on Failure to Admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 4:11, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 4:11(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) *Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 4:5(b) (6) or 4:6(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 4:8, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 4:9, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this Rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 4:1(c).

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

Rule 4:13. Pretrial Procedure; Formulating Issues.

The court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

- (1) A determination of the issues;
- (2) A plan and schedule of discovery;
- (3) Any limitations on the scope and methods of discovery;
- (4) The necessity or desirability of amendments to the pleadings;
- (5) The possibility of obtaining admissions of fact and admissions regarding documents and information obtained through electronic discovery;
- (6) The limitation of the number of expert witnesses;
- (7) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- (8) issues relating to the preservation of potentially discoverable information, including electronically stored information and information that may be located in sources that are believed not reasonably accessible because of undue burden or cost;
- (9) provisions for disclosure or discovery of electronically stored information;
- (10) any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production;
- (11) any provisions that will aid in the use of electronically stored or digitally imaged documents in the trial of the action; and
- (12) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by

admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

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

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

Rule 4:14. Disposition of Discovery Material.

Any discovery material not admitted in evidence filed in a clerk's office may be destroyed by the clerk after one year after entry of the final judgment or decree. But if the action or suit is the subject of an appeal, such material shall not be destroyed until the lapse of one year after receipt of the mandate on appeal or the entry of any final judgment or decree thereafter.

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

Rule 4:15. Motions Practice.

All civil case motions in circuit court shall be scheduled and heard using the following procedures:

(a) Scheduling – All civil case motions in circuit court shall be scheduled and heard using the following procedures:

1. Presenting the motion on a day the court designates for motions hearings, or
2. Contacting designated personnel in the office of the clerk of the court or the chambers of the judge or judges of the court.

(b) Notice – Reasonable notice of the presentation of a motion shall be served on all counsel of record. Absent leave of court, and except as provided in paragraph (c) of this Rule, reasonable notice shall be in writing and served at least seven days before the hearing. Counsel of record shall make a reasonable effort to confer before giving notice of a motion to resolve the subject of the motion and to determine a mutually agreeable hearing date and time. The notice shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. In an Electronically Filed Case, the notice provisions of this paragraph and the filing and service requirements of paragraph (c) of this Rule shall be accomplished in accord with Rule 1:17.

(c) Filing and Service of Briefs – Counsel of record may elect or the court may require the parties to file briefs in support of or in opposition to a motion. Any such briefs should be filed with the court and served on all counsel of record sufficiently before the hearing to allow consideration of the issues involved. Absent leave of court, if a brief in support of a motion is five or fewer pages in length, the required notice and the brief shall be filed and served at least 14 days before the hearing and any brief in opposition to the motion shall be filed and served at least seven days before the hearing. If a brief will be more than five pages in length, an alternative hearing date, notice requirement, and briefing schedule may be determined by the court or its designee. Absent leave of court, the length of a brief shall not exceed 20 pages, double spaced.

(d) Hearing – Except as otherwise provided in this subparagraph, upon request of counsel of record for any party, or at the court's request, the court shall hear oral argument on a motion. Oral argument on a motion for reconsideration or

any motion in any case where a pro se incarcerated person is counsel of record shall be heard orally only at the request of the court. A court may place reasonable limits on the length of oral argument. No party shall be deprived of the opportunity to present its position on the merits of a motion solely because of the unfamiliarity of counsel of record with the motions procedures of that court. A court, however, at the request of counsel of record, or in the judge's discretion, may postpone the hearing of the motion, or require the filing of briefs to assure fairness to all parties and the ability of the court to review all such briefs in advance of the hearing.

(e) Definition of Served – For purposes of this Rule, a pleading shall be deemed served when it is actually received by, or in the office of, counsel of record through delivery, mailing, facsimile transmission or electronic mail as provided in Rule 1:12.

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