

Tuesday

14th

June, 2005.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective January 1, 2006.

Repeal Part Two of the Rules of Court and reserve for future use.

Repeal existing Part Three of the Rules of Court and replace with the following:

Rule 3:1. Scope.

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

Rule 3:2. Commencement of Civil Actions.

(a) *Commencement.* — A civil action shall be commenced by filing a complaint in the clerk's office. The action is then instituted and pending as to all parties defendant thereto. The statutory writ tax and clerk's fees shall be paid before the summons is issued.

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

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

necessary.

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

(a) *Filing.* — The clerk shall receive and file all pleadings when tendered, without order of the court. The clerk shall note and attest the date of filing thereon. Any controversy over whether a party who has filed a pleading has a right to file it shall be decided by the court.

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

Rule 3:4. Copies of Complaint.

(a) *Copies for Service.* — The plaintiff shall furnish the clerk when the complaint is filed with as many copies thereof as there are defendants upon whom it is to be served.

(b) *Exhibits.* — It is not required that copies of exhibits filed with the complaint be furnished or served.

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

Rule 3:5. The Summons.

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

Commonwealth of Virginia

In theCourt of theof

SUMMONS

Civil Action No. ...

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

Appearance in person is not required by this summons.

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

....., Clerk.

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

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

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

(e) *Service more than one year after commencement of the action.* — No order, judgment or

decree shall be entered against a defendant who was served with process more than one year after the institution of the action against that defendant unless the court finds as a fact that the plaintiff exercised due diligence to have timely service on that defendant.

Rule 3:6. Proof of Service.

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

Virginia:

In the Court of theof

.....)

v. (short style)) Proof of Service

.....)

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

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

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

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

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

Rule 3:7. Bills of Particulars.

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

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

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

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

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

(a) *Response Requirement.* — A defendant shall file pleadings in response within 21 days after service of the summons and complaint upon that defendant. A demurrer, plea, motion to dismiss, and motion for a bill of particulars shall each be deemed a pleading in response for the count or counts addressed therein. If a defendant files no other pleading than the answer, it shall be filed within said time. An answer shall respond to the paragraphs of the complaint. A general denial of the entire complaint or plea of the general issue shall not be permitted.

(b) *Response After Demurrer, Plea or Motion.* — When the court has entered its order overruling all motions, demurrers and other pleas filed by a defendant, such defendant shall, unless the defendant has already done so, file an answer within 21 days after the entry of such order, or

within such shorter or longer time as the court may prescribe.

Rule 3:9. Counterclaims.

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

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

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

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

Rule 3:10. Cross-Claims.

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

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

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

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

Rule 3:11. Reply.

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

Rule 3:12. Joinder of Additional Parties.

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

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

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

adequate remedy if the action is dismissed for nonjoinder.

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

Rule 3:13. Third-Party Practice.

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

the claim made in the action against the third-party defendant.

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

Rule 3:14. Intervention.

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

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

Rule 3:15. Statutory Interpleader.

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

Rule 3:16. New Parties.

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

Rule 3:17. Substitution of Parties.

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

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

Rule 3:18. General Provisions as to Pleadings.

(a) Pleadings. — All motions in writing, including a motion for a bill of particulars and a motion to dismiss, are pleadings.

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

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

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

(e) Separate or combined papers. — Answers, counterclaims, cross-claims, pleas, demurrers, affirmative defenses and motions may all be included in the same paper if they are separately identified.

Rule 3:19. Default.

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

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

(c) Default Judgment and Damages. —

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

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

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

(d) Relief from Default Judgment. —

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

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

Rule 3:20. Summary Judgment.

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

Rule 3:21. Jury Trial of Right.

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

(b) *Demand.* — Any party may demand a trial by jury of any issue triable of right by a jury in the complaint or by (1) serving upon the other parties a demand therefore in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to the issue, and (2) filing the demand with the trial court. Such demand may be endorsed upon a pleading of the party. The court may set a final date for service of jury demands.

(c) *Specification of Issues.* — In the demand a party may specify the issues which the party

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

(d) *Waiver.* — The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury.

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

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

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

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

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

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

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

Rule 3:23. Proceedings Before a Commissioner in Chancery.

(a) *Referral to a commissioner.* — To the extent permitted by law, a judge of the circuit court may enter a decree referring any matter arising in an equitable claim to a commissioner in chancery. The clerk shall mail or deliver to the commissioner a copy of the decree of reference. Unless the decree prescribes otherwise, the commissioner shall promptly set a time and place for the first meeting of the parties or their attorneys, and shall notify the parties or their attorneys of the time and place so set. It shall be the duty of the commissioner to proceed with all reasonable diligence to execute the decree of reference.

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

(c) *Reports.* — The commissioner shall prepare a report stating findings of fact and conclusions of law with respect to the matters submitted by the decree of reference. The commissioner shall file the report, together with all exhibits admitted in evidence and a transcript of the proceedings and of the testimony taken, with the clerk of the court. The commissioner shall mail or deliver to counsel of record and to parties not represented by counsel, using the last address shown in the record, written notice of the filing of the report. Provided, however, that in divorce cases a copy of the report shall accompany the notice. Provided, further, that no such notice or copy shall be given parties who have not appeared in the proceeding.

Amend Rule 2A:4 to read as follows:

Rule 2A:4. Petition for Appeal.

(a) Within 30 days after the filing of the notice of appeal, the appellant shall file his petition for appeal with the clerk of the circuit court named in the first notice of appeal to be filed. Such filing shall include all steps provided in Rules 3:2, 3:3 and 3:4 to cause a copy of the petition to be served (as in a civil action) on the agency secretary and on every other party.

* * *

Amend Rule 4:0 to read as follows:

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.

Amend Rule 4:5 to read as follows:

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.

* * *

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

* * *

(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.

* * *

Amend Rule 4:7 to read as follows:

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.

* * *

Amend Rule 4:8 to read as follows:

Rule 4:8. Interrogatories to Parties.

* * *

(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.

A Copy,

Teste:

Clerk