

Friday

26th

February, 2010.

It is ordered that the Rule heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective May 3, 2010.

Amend Appendix of Forms following Part One to read as follows:

Appendix of Forms.

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3. Uniform Pretrial Scheduling Order (Rule 1:18B).

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XI. Deposition Transcripts to be Used at Trial

Counsel of record shall confer and attempt to identify and resolve all issues regarding the use of depositions at trial. It is the obligation of the proponent of any deposition of any non-party witness who will not appear at trial to advise opposing counsel of record of counsel's intent to use all or a portion of the deposition at trial at the earliest reasonable opportunity. Other than trial depositions taken after completion of discovery under Paragraph II, designations of portions of non-party depositions, other than for rebuttal or impeachment, shall be exchanged no later than 15 days before trial, except for good cause shown or by agreement of counsel. It becomes the obligation of the opponent of any such deposition to bring any objection or other unresolved issues to the court for hearing before the day of trial, and to counter-designate any additional

portions of designated depositions at least 5 days before such hearing.

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Amend Rule 2A:1 to read as follows:

Rule 2A:1. Authorization; Definitions; Application.

(a) These rules are promulgated pursuant to § 2.2-4026 of the Code of Virginia. They shall apply to the review of, by way of direct appeal from, the adoption of a regulation or the decision of a case by an agency.

(b) All terms used in this part that are defined in Chapter 40, Article 1 of Title 2.2 are used with the definitions therein contained. Every agency may designate some individual to perform the function of "agency secretary." If there is no designated "agency secretary," that term shall mean the executive officer of the agency.

(c) The term "party" means any person affected by and claiming the unlawfulness of a regulation, or a party aggrieved who asserts a case decision is unlawful or any other affected person or aggrieved person who appeared in person or by counsel at a hearing, as defined in § 2.2-4001, with respect to the regulation or case decision as well as the agency itself. Whenever a case decision disposes of an application for a license, permit or other benefit, the applicant, licensee or permittee shall be a necessary party to any proceeding under this part.

Amend Rule 2A:2 to read as follows:

Rule 2A:2. Notice of Appeal.

(a) Any party appealing from a regulation or case decision shall file with the agency secretary, within 30 days after adoption of the regulation or after service of the final order in the case decision, a notice of appeal signed by the appealing party or that party's counsel. In the event that a case decision is required by § 2.2-4023 or by any other provision of law to be served by mail upon a party, 3 days shall be added to the 30-day period for that party. Service under this Rule shall be sufficient if sent by registered or certified mail to the party's last address known to the agency.

(b) The notice of appeal shall identify the regulation or case decision appealed from, shall state the names and addresses of the appellant and of all other parties and their counsel, if any, shall specify the circuit court to which the appeal is taken, and shall conclude with a certificate that a copy of the notice of appeal has been mailed to each of the parties. Any copy of a notice of appeal that is sent to a party's counsel or to a party's registered agent, if the party is a corporation, shall be deemed adequate and shall not be a cause for dismissal of the appeal; provided, however, sending a notice of appeal to an agency's counsel shall not satisfy the requirement that a notice of appeal be filed with the agency secretary. The omission of a party whose name and address cannot, after due diligence, be ascertained shall not be cause for dismissal of the appeal.

(c) Any final agency case decision as described in § 2.2-4023 shall advise the party of the time for filing a notice of appeal under this Rule.

Amend Rule 2A:3 to read as follows:

Rule 2A:3. Record on Appeal.

(a) If a formal hearing was held before the agency, the appellant shall deliver to the agency secretary with his notice of appeal, or within 30 days thereafter, a transcript of the testimony if it was taken down in writing, or if it was not taken down in writing, a statement of the testimony in narrative form. If the agency secretary deems the statement inaccurate, he may append a further statement specifying the inaccuracies.

(b) The agency secretary shall prepare and certify the record as soon as possible after the notice of appeal and transcript or statement of testimony is filed and served. Once the court has entered an order overruling any motions, demurrers and other pleas filed by the agency, or if none have been filed within the time provided by Rule 3:8 for the filing of a response to the process served under Rule 2A:4, the agency secretary shall, as soon as practicable or within such time as the court may order, transmit the record to the clerk of the court named in the notice of appeal. In the event of multiple appeals in the same proceeding, only one record need be prepared and it shall be transmitted to the clerk of the court named in the first notice of appeal filed. If there are multiple appeals to different courts from the same regulation or case decision, all such appeals shall be transferred to and heard by the court having jurisdiction that is named in the notice of appeal that is the first to be filed. The agency secretary shall notify all parties in writing when the record is transmitted, naming the court to which it is transmitted. Papers filed in any other clerk's office shall be forwarded by such clerk to the proper

clerk's office.

(c) The record on appeal from an agency proceeding shall consist of all notices of appeal, any application or petition, all orders or regulations promulgated in the proceeding by the agency, the opinions, the transcript or statement of the testimony filed by appellant, and all exhibits accepted or rejected, together with such other material as may be certified by the agency secretary to be a part of the record.

(d) In the event the agency secretary determines that the record is so voluminous that its certification and filing pursuant to part (b) of this Rule would be unduly burdensome upon the agency or upon the clerk of the court, the agency may, prior to and in lieu of filing the entire record, move the court for leave to file an index to such record. A party shall have the opportunity to respond to the agency's motion within 10 days of filing the motion. Thereafter, if the court grants the agency's motion, the record, or such parts thereof as the parties may agree upon or as the court may determine, shall be filed in the form of a joint appendix or in such other form as the court may direct. The agency shall nevertheless retain the entire record and make it available to the parties on reasonable request during the pendency of the appeal.

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 a petition for appeal with the clerk of the circuit court named in the first notice of appeal

to be filed. Such filing shall include within such 30-day period both the payment of all fees and the taking of all steps provided in Rule 3:2, 3:3 and 3:4 to cause a copy of the petition for appeal to be served (as in a civil action) on the agency secretary and on every other party.

(b) The petition for appeal shall designate the regulation or case decision appealed from, specify the errors assigned, state the reasons why the regulation or case decision is deemed to be unlawful and conclude with a specific statement of the relief requested.

Amend Rule 2A:5 to read as follows:

Rule 2A:5. Further Proceedings.

Further proceedings in an appeal under this Part Two-A shall be governed by the rules contained in Part Three, where not in conflict with the Code of Virginia or this part, subject to the following:

(1) No appeal or issue under this Part Two-A shall be referred to a commissioner in chancery.

(2) Except for Rule 4:15 where applicable under this Rule, the provisions of Part Four shall not apply to appeals under this part and, unless ordered by the court, depositions shall not be taken.

(3) Once any motions, demurrers or other pleas filed by the agency have been overruled, or if none have been filed within the time provided by Rule 3:8 for the filing of a response to the process served under Rule 2A:4, the appeal shall be deemed submitted and no answer or further pleadings shall be required except as provided herein or by order of the court.

(4) When the case is submitted and the record has been filed as provided in Rule 2A:3, the court shall establish by order a schedule for briefing and argument of the issues raised in the petition for appeal.

(5) The court shall dispose of the appeal by an order consistent with its authority set forth in §§ 2.2-4029 and 2.2-4030 of the Code of Virginia.

Add Rule 2A:6 to read as follows:

Rule 2A:6. Small Business Challenges.

(a) In addition to the other remedies established in this Part Two-A, as provided by § 2.2-4027 of the Code of Virginia, a "small business" as defined in § 2.2-4007.1(A) of the Code of Virginia that is adversely affected or aggrieved by final agency regulatory action as described therein may seek judicial review for the limited purpose of appealing the issue of compliance with the requirements of §§ 2.2-4007.04 and 2.2-4007.1. Such appeal shall be initiated by filing a notice of appeal as described in Rule 2A:2 within one year of the date of such final agency action.

(b) In all other respects, the provisions of this Part Two-A shall apply to such appeals.

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Amend Rule 4:1 to read as follows:

Rule 4:1. General Provisions Governing Discovery.

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(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.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By:

Deputy Clerk