

Wednesday 9th April, 2008.

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 July 1, 2008.

Amend Rule 3:9 to read as follows:

Rule 3:9. Counterclaims.

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

(b) *Time for initiation.* --

(i) A counterclaim shall, subject to the provisions of Rule 1:9, be filed within 21 days after service of the summons and complaint upon the defendant asserting the counterclaim, or if service of the summons has been timely waived on request under Code §8.01-286.1, within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the Commonwealth.

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

prescribe.

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

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

Amend Rule 3:21 to read as follows:

Rule 3:21. Jury Trial of Right.

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

(b) *Demand.* -- Any party may demand a trial by jury of any issue triable of right by a jury in the complaint or by (1) serving upon other parties a demand therefor 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. Leave to file amended pleadings shall not extend the time for serving and filing a jury demand unless the order granting leave to amend expressly so states.

(c) *Specification of Issues.* -- In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only

some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

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

Amend portions of Rule 3A:12 to read as follows:

Rule 3A:12. Subpoena.

(a) *For Attendance of Witnesses.* -- A subpoena for the attendance of a witness to testify before a court not of record shall be issued by the judge, clerk, magistrate, Commonwealth's Attorney or by the attorney for the defendant. A subpoena for the attendance of a witness to testify before a circuit court or a grand jury shall be issued by the clerk or Commonwealth's Attorney and, for the attendance of a witness to testify before a circuit court, by the attorney for the defendant as well. The subpoena shall (i) be directed to an appropriate officer or officers, (ii) name the witness to be summoned, (iii) state the name of the court and the title, if any, of the proceeding, (iv) command the officer to summon the witness to appear at the time and place specified in the subpoena for the purpose of giving testimony, and (v) state on whose application the subpoena was issued.

* * *

Amend portions of Rule 3A:17.1 to read as follows:

Rule 3A:17.1. Proceedings in Bifurcated Jury Trials of Non-Capital Felonies and Class 1 misdemeanors.

* * *

(e) *Presentation of Evidence at Penalty Phase.* -- If the jury convicts the defendant of one or more non-capital felony offenses, or a Class 1 misdemeanor the penalty phase shall proceed in the following order:

(1) The Commonwealth may present any victim impact testimony pursuant to § 19.2-295.3 and shall present the defendant's prior criminal history, including prior convictions and the punishments imposed, by certified, attested, or exemplified copies of the final order(s) as provided by law. As a prerequisite to the introduction of such evidence, the Commonwealth shall have advised the defense, in accord with the requirements of law, of its intention to introduce such evidence.

* * *

Amend portions of 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.

(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.

* * *

Amend portions of Rule 7B:3 to read as follows:

Rule 7B:3. General Provisions as to Pleadings.

* * *

(b) The warrant, summons or complaint or an attachment thereto shall contain a statement, approved by the Committee on District Courts, explaining how any party may object to venue.

* * *

Amend Rule 7B:11 to read as follows:

Rule 7B:11. Motions to Transfer.

(a) When a written motion to transfer objecting to venue is filed by any party, the party objecting shall mail a copy of such motion to all counsel of record. Failure to comply with this requirement shall not be a ground for denying the motion, but the court may grant a deferral of any hearing on the motion to transfer if it finds that the interest of justice would be served by such deferral.

(b) If any party who has filed a motion to transfer objecting to venue is not present when the court rules on such motion:

(1) If the motion is granted, the Clerk shall transmit the papers in accordance with such order and shall send a copy of the letter of transmittal or order of transfer to all parties along with information as to any costs awarded under § 8.01-266; or

(2) If the motion is denied, the court shall set a date for the trial of the case and the Clerk shall notify the absent objecting party by first class mail of such date and of any costs awarded any other party under § 8.01-266.

Add Rule 7C:7 to read as follows:

Rule 7C:7. Service and Filing of Papers.

(a) *Copies of Written Motions to be Furnished.* -- All written motions and notices not required to be served otherwise shall be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile, or mailing, a copy to him on or before the day of filing.

Service pursuant to this Rule shall be effective upon such

delivery, dispatch, transmission or mailing, except that papers served by facsimile transmission completed after 5:00 p.m. shall be deemed served on the next day that is not a Saturday, Sunday, or legal holiday.

At the foot of such pleadings and requests shall be appended either acceptance of service or a certificate of counsel that copies were served as this Rule requires, showing the date of delivery and method of service, dispatching, transmitting, or mailing.

(b) *Filing*. -- Papers required to be served shall be filed with the clerk.

A Copy,

Teste:

Clerk