

Monday

1st

June, 2009.

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, 2009.

Amend Rule 4:5 to read as follows:

**Rule 4:5. Depositions Upon Oral Examination.**

\* \* \*

(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.

\* \* \*

Amend portions of Rule 4:9 to read as follows:

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

\* \* \*

(b) Procedure.

\* \* \*

(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.

\* \* \*

Amend portions of Rule 5:7B to read as follows:

**Rule 5:7B. Petition for a Writ of Actual Innocence.**

(a) *Who may File a Petition.* A petition for a writ of actual innocence based upon previously unknown or untested human biological evidence may be filed by any person who has been convicted of a felony upon a plea of not guilty, or by any person, regardless of plea, who has been sentenced to death, or convicted of a class 1 felony, a class 2 felony or any felony for which the maximum penalty is imprisonment for life.

\* \* \*

(c) *Contents of the Petition.* Each petition for a writ of actual innocence shall be filed on a form provided by this Court and shall be verified under oath. The petition must state categorically and with specificity: (i) the offense or offenses for which petitioner was convicted, including all previous records, applications, petitions, and appeals relating to these convictions, and their dispositions; (ii) that the petitioner is actually innocent of the crime or crimes for which he was convicted; (iii) an exact description of the human biological evidence and the scientific testing supporting the allegation of innocence, attaching a copy of the test results; (iv) that the human biological evidence was not known or available to the petitioner or his attorney at trial, or if it was known, why it was not subject to scientific testing; (v) the earliest date the test results described in the petition became known to the petitioner or any attorney of record; (vi) that the petitioner or his attorney has filed the petition within 60 days of obtaining the test results; (vii) an explanation of the reason or reasons the evidence will prove that no rational trier of fact could have found the petitioner guilty beyond a reasonable doubt of the offense or offenses for which the petitioner was convicted; and (viii) if the conviction became final in the circuit court after June 30, 1996, that the evidence was not available for testing under Code § 9.1-121.

\* \* \*

Amend portions of Rule 8:3 to read as follows:

**Rule 8:3. Contents of Petitions in Certain Proceedings.**

\* \* \*

(c) *Proceedings for Support.* Except for temporary child support orders issued pursuant to Va. Code § 16.1-279.1, when a

petition is filed seeking a court order for support of a spouse or child, the petition shall contain:

\* \* \*

(9) A statement whether either or both parents hold a license, certificate, registration, or other authorization to engage in a profession, trade, business, occupation or recreational activity issued by the Commonwealth and, if so, the type of authorization held.

\* \* \*

A Copy,

Teste:

Clerk