

To: Bench and Bar of Virginia

From: Advisory Committee on Rules

Date: September 22, 2009

NOTICE

Attached are Preliminary Draft revisions for Rules of Court that may be necessary in order to accommodate the electronic filing of pleadings and other papers in proceedings in the Circuit Courts of Virginia, when and if such a system is inaugurated. Several other court systems have developed such systems, and an Electronic Filing Committee appointed by the Chief Justice has been studying and working on these issues for three years. A subcommittee of that body has examined the applicable Rules of Court and proposed the attached Preliminary Draft amendments. The Advisory Committee on Rules of Court has preliminarily reviewed these proposals and resolved to have them published in order to obtain comments on the proposals prior to formal consideration.

These Preliminary Draft amendments, which include a revised version of existing Rule 1:17 governing electronic filing, and other amendments to several Parts of the Rules of Court in Virginia to tailor the proceedings to the possibility of transition to an electronic filing regime, have not been approved by the Advisory Committee on Rules of Court, by the Judicial Council, or the Supreme Court of Virginia. However, comments are solicited by the Advisory Committee on this early draft of electronic filing-related amendments to assist the drafting and revision process by identifying aspects of the procedure that need particular attention in planning and shaping Rules of Court for the possibility of implementation of a system of electronic filing of papers in circuit court in the future.

Comments on the attached Preliminary Draft revisions should be sent by April 15, 2010 to:

Advisory Committee on Rules of Court
c/o Steven Dalle Mura, Director of Research
Office of the Executive Secretary
Supreme Court of Virginia
100 North Ninth St.
Richmond, VA 23219

PRELIMINARY DRAFT – September 2009
E-Filing Recommendations for Revision of Rule 1:17

Rule 1:17. Electronic Filing and Service.

(a) *Scope of Electronic Filing Rules.* Pursuant to § 8.01-270 and Article 4.1 (§ 17.1-258.2 et seq.) of Chapter 2 of Title 17.1 of the Code of Virginia, this Rule shall be applicable in any court that has established an electronic filing system under the standards and procedures set forth in subdivision (c) of this Rule, and applies in civil cases in circuit court as provided in Rule 3:3, in criminal cases in circuit court as provided in Rule 3A:23, in general district court proceedings as provided in Rule 7A:7(c), and in juvenile and domestic relations court proceedings as provided in Rule 8:8(d).

(b) *Definitions.*

(1) "Electronic Document" means any defined set of textual matter, graphic content or other encoded information in an approved format, that can be read, printed, and stored or retained as electrical, magnetic or optically encoded signals in some medium and that can be transmitted by a data-link.

(2) "Data-link" refers to any means of electronic transmission of a document in a coded form such that the document can be received, read, printed, and stored by the recipient.

(3) "E-Filing Portal" means the electronic web site maintained by the Supreme Court of Virginia and designated as the facility for electronically filing documents.

(4) "Electronic filing" means the official filing of an electronic document in the court's docket and case files in electronic form by transmission over a data-link.

(5) "Electronically Filed Case" means a case in which pleadings, motions, notices and other filings are made electronically in accordance with these rules.

(6) "Hyperlink" means an electronic connection or reference to another place in the document, such that when the hyperlink is selected the user is taken to the portion of the document to which the link refers. It is not in itself a part of the document.

(c) *System Operational Standards.* In addition to the obligations and procedures set forth in subdivision (d) of this Rule, electronic filing systems under this Rule shall meet these requirements:

(1) Electronic documents must be stored without loss of content or material alteration of appearance.

(2) Files capable of carrying viruses into court computers must be scanned for viruses prior to being written to disk in the clerk's office.

(3) The electronic filing system must be capable of securing the document upon receipt so that it protected from alteration.

(4) The electronic filing system must be capable of establishing the identity of a sender of a document by means of a registered user identity and password, or by digitally encrypted electronic signatures, or by any other means reasonably calculated to ensure identification to a high degree of certainty.

(5) Remote electronic access to documents submitted in an electronically filed case and stored electronically shall be limited to judges, court personnel, any persons assisting such persons in the administration of the electronic filing system, and to counsel of record, including parties appearing pro se, who have complied with the registration requirements to use the electronic filing system.

(6) If the court accepts payment of fees by credit card, debit card, debit account, or electronic funds transfer, registration for the user identity shall include submission of all information required to effect the payment of fees.

COMMITTEE NOTES

← *The Code sections listed will be amended as enabling provisions for E-filing rules changes. References to the specific "Parts" of the Rules for the separate courts is intended to accommodate the prospect that e-filing could be phased in differently in each of the courts. There are phase-in dates in the rules cited, and some specific exemptions will be set forth there as well.*

← *This phrasing has been streamlined from prior Rule 1:17. The printability of the electronic file is added expressly.*

Capitalized defined terms are used because some of these words also have a common meaning, but in the Rules the defined sense applies.

The subcommittee consensus was not to allow local rules varying e-filing principles. Hence "these rules" govern.

← *The concept here is to place in (c) the clerk-focused duties, but to note that there are other duties that are directly involved in the processes that lawyers and parties see. Hence this section on "System Operational Standards" is mainly addressed to the setup but the procedures of (d) below also impose duties on the clerk.*

The subparagraphs in (c) have been edited slightly, but track fairly closely the language in the former version of 1:17.

← *This provision limiting remote access was part of the pilot-party-election system that gave rise to prior Rule 1:17.*

Electronic submission of this information shall be deemed a signature by the cardholder sender, authorizing the payment of document filing fees. This information shall be kept confidential. There shall be an electronic confirmation from the clerk of any charge to or the debit from the user's account.

(7) No unauthorized person shall be permitted access to other court networks, data or applications unrelated to electronic filing. Administrative access to computer equipment and networks handling electronic filing will be restricted to designated court employees or authorized maintenance personnel.

(8) Electronic filing systems must reasonably protect filed documents against system and security failures and must provide, at a minimum, for daily backup, periodic off-site backup storage if feasible, and prudent disaster recovery mechanisms.

(d) *Electronic Service and Filing Practice and Procedures.*

(1) In an Electronically Filed Case, all pleadings, motions, notices and other material filed with the court shall be in the form of Electronic Documents except where otherwise expressly provided by statute or the Rules of Court, or where the court orders otherwise in an individual case for good cause shown.

(2) Each attorney admitted to practice in the Commonwealth shall be entitled to a registered User ID and password issued by the clerk, or access using any comparable identification system approved by the Supreme Court, for the electronic filing and retrieval of documents.

(3) The clerk shall provide a means, in the courthouse or other designated location, for the parties, counsel and the public to review and copy electronic records from the electronic file during normal business hours.

(4) The format for electronically filed material shall be the Portable Document Format (PDF). Notice will be provided if any other format is approved.

(5) (i) Subject to the provisions of subsections (d)(6) and (7) of this Rule, an electronic document shall be filed by using the E-Filing Portal web site in accord with procedures implemented on that site, and shall be deemed filed on the date that it is received in the E-Filing Portal. Filings will be accepted during normal business hours and until 11:59:59 p.m. on any day the clerk's office is open.

(ii) Upon electronic filing of a document, an electronic confirmation will be transmitted to the filing party indicating that the document has been successfully filed through the E-Filing Portal. In addition, the court to which the document is directed will promptly transmit an electronic acknowledgement of its receipt of the electronically filed document, specifying the identity of the receiving court, the date the document was received by the court, and a court-assigned document reference or docketing number.

(6) A person who files a document electronically shall have the same responsibility as a person filing a document in paper form to ensure that the document is properly filed, complete, and readable. However,

(i) if technical problems at the E-Filing Portal result in a failure to timely file the electronic document, counsel shall provide to the clerk of the court on the next business day all documentation which exists demonstrating the attempt to file the document through the E-Filing Portal, any delivery failure notice received in response to the attempt, and a copy of the document, and

(ii) in the event that the E-Filing Portal was not available due to technical problems during the last filing hours of a business day, the office of the clerk of the court to which the document is directed shall be deemed to have been closed on that day solely with respect to that attempted filing and the provisions of Virginia Code § 1-210(B) and (C) shall apply to that particular attempted filing for purposes of computing the last day for performing any act in a judicial proceeding or the filing of any legal action.

No material change has been made in these provisions.

← *Periodic off-site backup storage is added as a needed safety precaution.*

← *The main concept here is to start with the premise that all filings will be electronic subject to LISTED exceptions in the specific rules for each court, or provisions in case-specific orders (not categories by local rule, but individual case orders).*

← *These provisions are intended to set up a logical sequence, from what's filed, to who files, timing, format, confirmation, rejection, and the problem of bulky exhibits.*

← *The Subcommittee concluded that there is an overwhelming importance in having a bright-line filing event, because of deadlines, statutes of limitations and other case-dispositive consequences from any ambiguity in achieving filing status.*

This provision makes filing complete when the document is successfully lodged with the E-Filing Portal, and is confirmed immediately to the filing party. While the clerk of court sends another form of acknowledgement to the filing party, the filing has previously been accomplished and the clerk's notice provides confirmation of the court involved, and any document reference number assigned to this filing.

← *the Subcommittee strives here to protect against possible service outages, and uses some concepts presently found in the Rules of the appellate courts in Virginia.*

(7) (i) If the clerk of court determines that an electronically filed document is defective because of an incorrect or missing filing fee or missing signature or required verification, notice shall be sent electronically to the filing party, who shall have a period of five business days after such notice is transmitted in which to cure the defect. A copy of this notice will be retained in the permanent electronic case file maintained by the court. The document remains validly filed during the period afforded for curing such defects and until an order of the court provides otherwise.

(ii) If the defect in an electronically filed document set forth in a notice transmitted pursuant to subsection (d)(7)(i) is not cured within the permitted period, or if any other defect considered grounds for rejection or striking of a filed document are identified by the clerk, the clerk shall prepare and transmit electronically to all parties a praecipe giving notice that the defect will be presented to a judge of the court at a specified date and time for consideration of an order striking the document from the court records or directing other action. The hearing date specified in the praecipe under this subsection shall be at least 10 calendar days after transmission of the praecipe for that hearing.

(8) The clerk's office must accommodate the submission of non-electronic documents in an Electronically Filed Case if filing in electronic form cannot, as a practical matter, be achieved. Such documents shall be imaged to facilitate the creation of a single electronic case file to the extent reasonably possible. An oversized document that is capable of being imaged shall be retained in the form submitted.

(9) When a judge enters an order, the judge or clerk will update the electronic record to indicate the identity of the judge entering the order and the date it was entered, and shall send a notification to counsel of record that the order has been entered, along with a copy of the order or an electronic link providing access to such order. If the entry of an order is done on a paper copy of the order, a digital image of such order shall be made a part of the electronic record, and the endorsed original paper shall be retained for the record.

(10) Hyperlinks between two portions of a filed document or between two or more documents filed in the same case, are permissible, but hyperlinks to other documents, or to external websites, are prohibited. A hyperlink is not itself a part of the official filed document and each hyperlink must contain a text reference to the target of the link.

(e) *Application of, and Compliance with, Other Rules.* In an Electronically Filed Case:

(1) Unless otherwise agreed by all parties, or ordered by the court in an individual case for good cause shown, all documents required to be served – after the initial service of process – may be served by electronic transmission, or by delivering, dispatching by commercial delivery service, transmitting by facsimile, or mailing, a copy to each counsel of record on or before the day of filing. Such service shall be effective as provided in Rule 1:12.

(2) Annotation by the clerk as provided in Rule 1:4(h) is not required to be made physically upon the face of the pleading and – if it is made by a separate document – it shall specify the pleading to which such annotation pertains.

(3) An e-mail address of the counsel of record shall be included in the electronic documents filed as required by Rule 1:4(l).

(4) The approved electronic identification accompanying the document when filed shall constitute that person's signature on the document for purposes of Rules 1:5 and Virginia Code §8.01-271.1.

← Various subcommittees have discussed possibly fatal or curable defects with documents filed electronically. The Subcommittee resolved that a cure provision should be used for issues that can be corrected, and that a simple mechanism for court ruling on any other "striking" or related relief should be provided for.

← The Subcommittee discussed the problems that might arise if a document is directed by counsel to the wrong court. It is the intention that the provision in subsection (ii) for "any other defect" would apply. The Rule itself takes no position on any statute of limitations consequence for the party if the attorney has directed the pleading to the wrong trial court. The Subcommittee did pass along through staff a recommendation that the E-Portal design team consider what options needed to be built in for either a re-filing or a re-direction of a pleading in such cases.

← Since it costs nothing, the rule revision includes a requirement that a copy of the order be included in the notice sent to the parties.

← Present rules allow service of papers by e-mail delivery only upon consent of all parties, and only in circuit court. This language of draft Rule 1:17 makes the freedom to serve electronically a part of all Electronically Filed Cases unless the parties agree otherwise, or the court in an individual case orders a different service routine.

(5) The provisions of Article 4.1 (§ 17.1-258.2 et seq.) of Chapter 2 of Title 17.1 of the Code of Virginia shall be applicable where a document is to be notarized, sworn, attested, verified, or otherwise certified, or if any sworn signatures, stamps, seals or other authentications relating to the document are required by any statute or Rule, and an electronic or digitally imaged document with such accompanying entries shall be filed in the clerk's office. Electronic notarization in compliance with the Virginia Notary Act (§ 47.1-1 et seq.) may also be employed with the filing.

(6) An acceptance of service or a certificate of counsel that electronic copies were served as this Rule requires, showing the date of delivery, shall electronically accompany the served papers and shall satisfy Rule 1:12.

(7) In compliance with Rule 1:13, drafts of orders, decrees and notices shall be served on each counsel of record. Such service may be by electronic transmission and shall make provision for electronic endorsement by multiple parties where applicable. Objections or other notations by the parties shall be entered upon the drafts so circulated, or appended to such drafts by specific cross-reference or other unambiguous association. Endorsed drafts shall be submitted electronically whenever possible, and shall be accompanied by proof of service or acceptance of service when required by the rules of court. If there is no practical means of submitting an electronic or digitally imaged endorsed draft, the original endorsed document shall be filed in the clerk's office. The clerk shall accommodate the imaging of the document into electronic form and shall retain the original endorsed document.

← *Proposals for amendment of the cited Code sections to accommodate these matters will accompany and enable any approved changes to the Rules of Court in this regard.*

PRELIMINARY DRAFT

E-Filing Revisions Recommended

*** * TRIAL-LEVEL RULES OF COURT * ***

Parts One through Four & Parts Seven-A through Eight

Revision of September 22, 2009

RULE	NOTES	Recommended Revisions for Implementation of E-Filing
<p>Rule 1:1. Finality of Judgments, Orders and Decrees. All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer. But notwithstanding the finality of the judgment, in a criminal case the trial court may postpone execution of the sentence in order to give the accused an opportunity to apply for a writ of error and supersedeas; such postponement, however, shall not extend the time limits hereinafter prescribed for applying for a writ of error. The date of entry of any final judgment, order, or decree shall be the date the judgment, order, or decree is signed by the judge.</p>	<p><i>The Rules of Court Subcommittee recommends caution in dealing with Rule 1:1 because it has many different implications in Virginia practice.</i></p> <p><i>If it is going to be permissible for the Judge to enter electronic orders using the appropriate form of digital signature, a revision of the nature shown here will be needed because of the case law on <u>manual signing</u> being the "entry" moment for orders.</i></p>	<p>Rule 1:1. Finality of Judgments, Orders and Decrees. All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer. But notwithstanding the finality of the judgment, in a criminal case the trial court may postpone execution of the sentence in order to give the accused an opportunity to apply for a writ of error and supersedeas; such postponement, however, shall not extend the time limits hereinafter prescribed for applying for a writ of error. The date of entry of any final judgment, order, or decree shall be the date <u>it the judgment, order, or decree is signed by the judge either by hand or by electronic means in accord with Rule 1:17.</u></p>
<p>Rule 1:4. General Provisions as to Pleadings. * * * * (h) The clerk shall note and attest the filing date on every pleading. (i) The mention in a pleading of an accompanying exhibit shall, of itself and without more, make such exhibit a part of the pleading.</p>	<p><i>We need to advert to the fact that this notation will not be a date stamp. . .</i></p>	<p>Rule 1:4. General Provisions as to Pleadings. * * * * (h) The clerk shall note and attest the filing date on every pleading. <u>In an Electronically Filed Case, the procedures of Rule 1:17 shall be applicable to the notation by the clerk of the date of filing.</u> (i) The mention in a pleading of an accompanying exhibit shall, of itself and without more, make such exhibit a part of the pleading. <u>Filing of such exhibits shall be governed by Rule 3:4.</u></p>

<p>Rule 1:5. Counsel. * * * *</p> <p>When such firm name is signed to a pleading, notice or brief, the name of at least one individual member or associate of such firm must be signed to it. Signatures to briefs and petitions for rehearing may be printed or typed and need not be in handwriting. * * * *</p>	<p><i>Rule 1:17 has elaborate provisions concerning how a digital signature is accomplished.</i></p>	<p>Rule 1:5. Counsel. * * * *</p> <p>When such firm name is signed to a pleading, notice or brief, the name of at least one individual member or associate of such firm must be signed to it. <u>Papers filed electronically may be signed electronically or by inclusion of a digital image of the signature, as provided in Rule 1:17.</u> Signatures to briefs and petitions for rehearing may be printed or typed and need not be in handwriting</p>
<p>Rule 1:10. Verification.</p> <p>If a statute requires a pleading to be sworn to, and it is not, or requires a pleading to be accompanied by an affidavit, and it is not, but contains all the allegations required, objection on either ground must be made within seven days after the pleading is filed by a motion to strike; otherwise the objection is waived. At any time before the court passes on the motion or within such time thereafter as the court may prescribe, the pleading may be sworn to or the affidavit filed.</p>	<p><i>Rule 1:17 deals with verification procedures.</i></p>	<p>Rule 1:10. Verification.</p> <p>If a statute requires a pleading to be sworn to, and it is not, or requires a pleading to be accompanied by an affidavit, and it is not, but contains all the allegations required, objection on either ground must be made within seven days after the pleading is filed by a motion to strike; otherwise the objection is waived. At any time before the court passes on the motion or within such time thereafter as the court may prescribe, the pleading may be sworn to or the affidavit filed. <u>In an Electronically Filed Case, verification shall be subject to the provisions of Rule 1:17.</u></p>
<p>Rule 1:13. Endorsements.</p> <p>Drafts of orders and decrees shall be endorsed by counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served pursuant to Rule 1:12 upon all counsel of record who have not endorsed them. Compliance with this Rule and with Rule 1:12 may be modified or dispensed with by the court in its discretion.</p>	<p><i>This Rule and the fundamental practice it represents, needs attention, in part because preserving error today sometimes turns on handwritten statements of objections on draft orders..</i></p>	<p>Rule 1:13. Endorsements.</p> <p>Drafts of orders and decrees shall be endorsed by counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served pursuant to Rule 1:12 upon all counsel of record who have not endorsed them. Compliance with this Rule and with Rule 1:12 may be modified or dispensed with by the court in its discretion. <u>In an Electronically Filed Case, endorsement and specification of any objections to the draft order shall be accomplished as provided in Rule 1:17</u></p>

<p>Rule 1:16. Size of Paper.</p> <p>(a) All pleadings, motions, briefs, depositions, requests for discovery and responses thereto, and all other documents filed in any clerk's office in any proceeding pursuant to these Rules shall be produced on pages 8 1/2 by 11 inches in size and all typed material shall be double spaced except for quotations.</p> <p>(b) This Rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.</p> <p>(c) No paper shall be refused for failure to comply with the provisions of this Rule, but the clerk may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel shall certify that the substituted paper is identical in content to the paper initially filed.</p> <p>* * * *</p>	<p><i>Ultimately the "paper format" provisions will grow obsolete, but as a matter of the initial accommodations for e-filing, a cross-reference to Electronically Filed Cases as provided in Rule 1:17 and the phase-in provisions of Rules 3:3, 3A:23, 7A:7(c), and 8:8(d) will be satisfactory.</i></p>	<p>Rule 1:16. <u>Filing Format and Procedure</u> Size of Paper.</p> <p>(a) <u>Except as provided in Rules 1:17, 3:3, 3A:23, 7A:7(c), and 8:8(d) pertaining to Electronically Filed Cases,</u></p> <p><u>(1)</u> All pleadings, motions, briefs, depositions, requests for discovery and responses thereto, and all other documents filed in any clerk's office in any proceeding pursuant to these Rules shall be produced on pages 8 1/2 by 11 inches in size and all typed material shall be double spaced except for quotations.</p> <p><u>(2)</u> (b) <u>Subdivision (a)(1) of t</u>This Rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.</p> <p><u>(b)</u> (c) No paper shall be refused for failure to comply with the provisions of this Rule, but the clerk may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel shall certify that the substituted paper is identical in content to the paper initially filed.</p>
<p>Rule 1:17. Electronic Filing and Service.</p> <p>* * * *</p>	<p><i>A separate version is provided with a proposed rewriting of Rule 1:17.</i></p>	<p>SEE SEPARATE FILE With DRAFT of RULE 1:17</p>
<p><i>Appendix of Forms</i></p> <p>2. Instructions (Rule 1:15(c)).</p> <p>Counsel for all parties, unless compliance is waived by the court, shall, two days before a civil jury trial date, submit to the court a copy of all instructions such counsel proposes to request, noting thereon the authority or authorities relied upon for such instructions. Counsel may be required to exchange copies of proposed instructions. This rule shall not preclude the offering of additional instructions at the trial.</p>	<p><i>There could be advantages in having paper copies of jury instructions so this revision leaves the matter in the discretion of the trial judge.</i></p>	<p><i>Appendix of Forms</i></p> <p>2. Instructions (Rule 1:15(c)).</p> <p>Counsel for all parties, unless compliance is waived by the court, shall, two days before a civil jury trial date, submit to the court a copy of all instructions such counsel proposes to request <u>– in electronic or paper form as directed by the court – and</u> noting thereon the authority or authorities relied upon for such instructions. Counsel may be required to exchange copies of proposed instructions. This rule shall not preclude the offering of additional instructions at the trial.</p>

<p><i>Part One-A Foreign Attorneys</i> <i>Form 1. Application to Appear Pro Hac Vice</i> <i>Before A Virginia Tribunal.</i> <i>* * * *</i></p>	<p><i>The Subcommittee concluded that a provision is needed alerting counsel that this form will be filed, signed and notarized electronically.</i></p>	<p>[Note: the following form shall may be submitted electronically pursuant to Rule 1:17 and related provisions of Virginia law.]</p>
<p>Rule 2A:3. Record on Appeal.</p> <p>(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.</p> <p>(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 shall, as soon as it has been certified by him, 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 mailed by such clerk to the proper clerk's office.</p> <p>(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.</p>	<p><i>The Subcommittee was advised of the progress of the task force working on standards for digital records for appeal, and has included this recommended language to alert parties to the duty to comply with the new standards as and when they become effective.</i></p>	<p>(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.</p> <p><u>(d) Upon the adoption of standards for the preparation of electronic or digital records for use in appeals, records under this Rule shall comply with such standards.</u></p>

<p>Rule 2A:4. Petition for Appeal.</p> <p>(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.</p>	<p><i>A provision is added stating that all petitions for appeal shall be filed electronically, in digitally searchable format, by cross-reference to Rule 1:17.</i></p>	<p>(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. <u>The petition shall be filed electronically as provided under Rule 1:17.</u></p>
<p>Rule 3:3. Filing of Pleadings; Return of Certain Writs.</p> <p>(a) <i>Filing.</i> 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.</p> <p>(b) <i>Return of writs.</i> No writ shall be returnable more than 90 days after its date unless a longer period is provided by statute.</p>	<p><i>We need to cross-reference the mechanisms for achieving this "note and attest" requirement.</i></p>	<p>Rule 3:3. Filing of Pleadings; Return of Certain Writs.</p> <p>(a) <i>Filing Generally.</i> 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. <u>In an Electronically Filed Case, the procedures of Rule 1:17 shall be applicable to the notation by the clerk of the date of filing.</u> Any controversy over whether a party who has filed a pleading has a right to file it shall be decided by the court.</p> <p>(b) <i>Electronic Filing.</i> <u>In any circuit court which has established an electronic filing system pursuant to Rule 1:17:</u></p> <p>(1) <u>Any civil proceeding commenced on or after July 1, 2010 may be designated as an Electronically Filed Case upon consent of all parties in the case.</u></p> <p>(2) <u>Any civil proceeding commenced on or after July 1, 2011 shall be designated as an Electronically Filed Case unless an individual case is exempted by order of the court for good cause shown.</u></p> <p>(3) <u>Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other filings in an Electronically Filed Case shall be formatted, served and filed electronically as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party shall notify the clerk of court that the original document must be retained.</u></p> <p>(i) <u>Any pleading or affidavit required by</u></p>

		<p><u>statute or rule to be sworn, verified or certified as provided in Rule 1:17(d)(5).</u></p> <p><u>(ii). Any last will and testament or other testamentary document, whether or not it is holographic.</u></p> <p><u>(iii) Any contract or deed.</u></p> <p><u>(iv) Any prenuptial agreement or property settlement agreement.</u></p> <p><u>(v) Any check or other negotiable instrument.</u></p> <p><u>(vi). Any handwritten statement, waiver, or consent by a defendant or witness in a criminal proceeding.</u></p> <p><u>(vii) Any form signed by a defendant in a criminal proceeding, including any typed statements or a guilty plea form.</u></p> <p><u>(viii) Any document that cannot be converted into an electronic document in such a way as to produce a clear and readable image.</u></p> <p><u>(c)(b) Return of writs.</u> No writ shall be returnable more than 90 days after its date unless a longer period is provided by statute.</p>
<p>Rule 3:4. Copies of Complaint.</p> <p>(a) Copies for Service. Except in cases where service is waived pursuant to <u>Code § 8.01-286.1</u>, 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.</p> <p>(b) Exhibits. It is not required that copies of exhibits filed with the complaint be furnished or served.</p> <p>(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.</p>	<p><i>This proposed revision to subsection (b) of Rule 3:4 will facilitate use of the exhibits to a pleading, and ease problems that have arisen for decades in Virginia of not requiring service upon adversaries of copies of exhibits that have been made part of a pleading.</i></p>	<p>Rule 3:4. Copies of Complaint.</p> <p>(a) Copies for Service. Except in cases where service is waived pursuant to <u>Code § 8.01-286.1</u>, the plaintiff shall furnish the clerk when the complaint is filed with as many <u>paper</u> copies thereof as there are defendants upon whom it is to be served.</p> <p>(b) Exhibits. It is not required that <u>physical</u> copies of exhibits filed with the complaint be furnished or served. <u>Unless an individual case is exempted by order of the court for good cause shown, an electronic or digitally imaged copy of all exhibits that are incorporated by reference in the pleading shall be filed with the complaint. Upon the adoption of standards for the preparation of electronic or digital records for use in appeals, exhibits under this Rule shall comply with such standards.</u></p> <p>* * *</p>

<p>Rule 3:18. General Provisions as to Pleadings. (a) <i>Pleadings.</i> All motions in writing, including a motion for a bill of particulars and a motion to dismiss, are pleadings. * * * *</p> <p>(e) <i>Separate or combined papers.</i> Answers, counterclaims, cross-claims, pleas, demurrers, affirmative defenses and motions may all be included in the same paper if they are separately identified.</p>	<p><i>These technical amendments do not change the categories of filings that are "pleadings" but accommodate the different forms that may be used for those same filings.</i></p>	<p>Rule 3:18. General Provisions as to Pleadings. (a) <i>Pleadings.</i> All motions in writing, including a motion for a bill of particulars and a motion to dismiss, <u>whether filed in paper document format or as electronic or digitally imaged filings</u>, are pleadings. * * * *</p> <p>(e) <i>Separate or combined papers filings.</i> Answers, counterclaims, cross-claims, pleas, demurrers, affirmative defenses and motions may all be included in the same <u>filing paper</u> if they are separately identified <u>in both the caption and the body of the filing</u>.</p>
<p>Rule 3:21. Jury Trial of Right. * * * *</p> <p>(b) <i>Demand.</i> 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 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. 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.</p>	<p><i>A paper copy of the pleading was the premise of the "endorsed" language previously in the Rules of Court. The Subcommittee concluded that this important filing can be accomplished electronically as well, as suggested in the proposed revision shown here.>>>>.</i></p>	<p>Rule 3:21. Jury Trial of Right. * * * *</p> <p>(b) <i>Demand.</i> 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 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. <u>In an Electronically Filed Case, endorsement of such demand may be made as provided in Rule 1:17.</u> 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.</p>
<p>Rule 3:23. Use of and Proceedings Before a Commissioner in Chancery. * * * *</p> <p>(d) The commissioner shall prepare a report stating his 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, 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</p>	<p><i>A paper copy of the Report of the Commissioner is clearly anticipated by the existing rule, in order to be sent to the parties. The</i></p>	<p>Rule 3:23. Use of and Proceedings Before a Commissioner in Chancery. * * * *</p> <p>(d) The commissioner shall prepare a report stating his 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, with the clerk of the court. <u>In an Electronically Filed Case, filing as required in this Rule shall be in accord with the requirements of Rule 1:17.</u> The commissioner shall mail or</p>

<p>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.</p>	<p><i>Subcommittee concluded that In these circumstances provision should be made for the Report, transcript and exhibits (which often are obscure land records) to be subject to electronic filing.</i></p>	<p>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</p>
<p>Rule 3A:2. Purpose and Interpretation; Definitions.</p> <p>(a) <i>Purpose and Interpretation.</i> These Rules are intended to provide for the just determination of criminal proceedings. They shall be interpreted so as to promote uniformity and simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. Errors, defects, irregularities or variances that do not affect substantive rights shall not constitute reversible error.</p> <p>(b) Definitions. Except as otherwise expressly provided in this Part Three A or unless the context otherwise requires:</p> <p>* * * *</p> <p>(6) "Recognizance" means an undertaking, with or without surety or other security, made before a magistrate to perform one or more acts -- for example, to appear in court. A recognizance may be written or oral but, if oral, shall be evidenced by a memorandum signed by the magistrate.</p>	<p><i>This proposed addition does not mandate use of electronic instruments but validates such use whenever it can be accomplished.</i></p>	<p>Rule 3A:2. Purpose and Interpretation; Definitions.</p> <p>* * * *</p> <p><u>(7) Writings or memoranda under these Rules, and any required signatures or sworn verifications, shall be valid in the form of electronic files or digital images as provided in Rule 1:17.</u></p>
<p>Rule 3A:9. Pleadings and Motions for Trial; Defenses and Objections.</p> <p>(a) Pleadings and Motions. Pleadings in a criminal proceeding shall be the indictment, information, warrant or summons on which the accused is to be tried and the plea of not guilty, guilty or nolo contendere. Defenses and objections made before trial that heretofore could have been made by other pleas or by demurrers and motions to quash shall be made only by motion to dismiss or to grant appropriate relief, as provided in these Rules.</p> <p>(b) <i>The Motion Raising Defenses and Objections.</i> * * * *</p>	<p><i>The Subcommittee believes that the definition paragraph (7) above explaining that items "in writing" can be accomplished</i></p>	<p>Rule 3A:9. Pleadings and Motions for Trial; Defenses and Objections.</p> <p>* * * *</p>

<p>(3) Form of Motion. Any motion made before trial shall be in writing if made in a circuit court, unless the court for good cause shown permits an oral motion. A motion shall state with particularity the grounds or grounds on which it is based.</p> <p>(c) <i>Time of Filing Notice or Making Motion.</i> A motion referred to in subparagraph (b) (1) shall be filed or made before a plea is entered and, in a circuit court, at least 7 days before the day fixed for trial, or, if the motion raises speedy trial or Double Jeopardy grounds as specified in <u>Code § 19.2-266.2 A (ii)</u>, at such time prior to trial as the grounds for the motion or objection shall arise, whichever occurs last. A copy of such motion shall, at the time of filing, be mailed to the judge of the circuit court who will hear the case, if known.</p> <p>* * * *</p>	<p><i>electronically will be sufficient under subsection (3).</i></p> <p><i>The "shall be mailed to the judge" needs to be changed to "be submitted to the judge" to cover electronic or digital submission.</i></p>	<p>(c) <i>Time of Filing Notice or Making Motion.</i> A motion referred to in subparagraph (b) (1) shall be filed or made before a plea is entered and, in a circuit court, at least 7 days before the day fixed for trial, or, if the motion raises speedy trial or Double Jeopardy grounds as specified in <u>Code § 19.2-266.2 A (ii)</u>, at such time prior to trial as the grounds for the motion or objection shall arise, whichever occurs last. A copy of such motion shall, at the time of filing, be <u>submitted</u> to the judge of the circuit court who will hear the case, if known.</p>
<p>Rule 3A:21. Service and Filing of Papers.</p> <p>(a) <i>Copies of Written Motions to Be Furnished.</i> All written motions and notices not required to be served shall be served otherwise on each counsel of record by delivering or mailing a copy to him on or before the day of filing. At the foot of such motions and notices 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 or mailing.</p> <p>(b) Filing. Papers required to be served shall be filed with the clerk.</p>	<p><i>This provision applies to instruments that are not required by law to be served as process.</i></p>	<p>Rule 3A:21. Service and Filing of Papers.</p> <p>(a) <i>Copies of Written Motions to Be Furnished.</i> All written motions and notices not required to be served <u>as process</u> shall be served otherwise on each counsel of record by delivering or mailing a copy to him on or before the day of filing. <u>In any case where electronic service and filing is permitted under Rule 1:17, delivery of an electronic copy or digital image of a document shall satisfy this requirement.</u> At the foot of such motions and notices 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 or mailing.</p> <p>(b) Filing. <u>Papers Motions, notices and other items</u> required to be served shall be filed with the clerk.</p>
<p>Rule 3A:23. Effective Date.</p> <p>The Rules set forth in this Part Three A shall be effective July 1, 1984. They shall govern all out-of-court criminal proceedings on or after that day, all criminal proceedings brought before courts on or after that day and, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, all criminal proceedings pending before courts on that day.</p>	<p><i><<<< This Rule – as presently written – is no longer needed. It could be replaced with a PHASE-IN provision such as the one shown at the right. >>>>></i></p>	<p>Rule 3A:23. Electronic Filing</p> <p><u>In any circuit court which has established an electronic filing system pursuant to Rule 1:17:</u></p> <p><u>(a) Any criminal proceeding commenced on or after July 1, 2010 may be designated as an Electronically Filed Case upon consent of the Commonwealth and all defendants in the case.</u></p> <p><u>(b) Any criminal proceeding commenced on or after July 1, 2011 shall be designated as an Electronically Filed Case unless an individual case is exempted by order of the court for good cause</u></p>

		<p><u>shown.</u></p> <p><u>(c) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other instruments in an Electronically Filed Case shall be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party shall notify the clerk of court that the original document must be retained.</u></p> <p><u>(i) Any pleading or affidavit required by statute or rule to be sworn, verified or certified as provided in Rule 1:17(d)(5).</u></p> <p><u>(ii) Any check or other negotiable instrument.</u></p> <p><u>(iii). Any handwritten statement, waiver, or consent by a defendant or witness in a criminal proceeding.</u></p> <p><u>(iv) Any form signed by a defendant in a criminal proceeding, including any typed statements or a guilty plea form.</u></p> <p><u>(v) Any document that cannot be converted into an electronic document in such a way as to produce a clear and readable image.</u></p>
<p>Rule 4:5. Depositions Upon Oral Examination.</p> <p><i>(e) Submission to Witness; Changes; Signing.</i> When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination * * * *</p> <p><i>(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.</i></p> <p>(1) The officer 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, he shall then promptly file the deposition in the office of the clerk, notifying all other parties of such action. In all other cases, he shall then lodge it 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</p>	<p><i>These revisions provide for use of electronic copies of deposition transcripts.</i></p>	<p><i>(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.</i></p> <p>(1) The officer shall <u>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</u> 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, he <u>the officer</u> shall then promptly file <u>the electronic or digitally imaged</u> deposition in the office of the clerk, notifying all other parties of such action. In all other cases, he <u>the officer</u> shall then lodge it <u>the deposition</u> with the attorney for the party who initiated the taking of the deposition,</p>

<p>upon the request of any party prior to or during the trial. 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.</p>	<p><i>The trial court has discretion under this language to require paper transcripts.</i></p>	<p>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. <u>Any such filing shall be made electronically unless otherwise ordered by the judge.</u> 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.</p>
<p>Rule 4:6. Depositions Upon Written Questions. * * * * (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 or mail the deposition, attaching thereto the copy of the notice and the questions received by him. (c) Notice of Filing. When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.</p>	<p><i>Given the rare nature of this process, is it necessary to attempt to make it work out for electronic filing?</i></p>	<p>(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 <u>the electronic or digitally imaged deposition or lodge mail the deposition with the attorney for the party who initiated the taking of the deposition,</u> attaching thereto the copy of the notice and the questions received by him.</p>

<p>Rule 4:7. Use of Depositions in Court Proceedings.</p> <p>(a) <i>Use of Depositions.</i> 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: * * * *</p> <p>(b) <i>Form of Presentation; Objections to Admissibility.</i> 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 in nonstenographic form, the offering party shall also provide the court with a transcript of the portions so offered. * * * *</p> <p>(f) <i>Record.</i> Depositions shall become a part of the record only to the extent that they are offered in evidence.</p>	<p><i>Is it necessary to work on "nonstenographic form" or is that adequate to allow electronic or digitally imaged deposition testimony to be used?</i></p>	<p>Rule 4:7. Use of Depositions in Court Proceedings.</p> <p>* * * *</p> <p>(b) <i>Form of Presentation; Objections to Admissibility.</i> 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 in nonstenographic form, the offering party shall also provide the court with a transcript of the portions so offered <u>in either printed form or in electronic or digitally imaged form.</u></p> <p>* * * *</p>
<p>Rule 4:8. Interrogatories to Parties. * * * *</p> <p>(c) <i>Filing.</i> The interrogatories and answers and objections thereto shall not be filed in the office of the clerk unless the court directs their filing on its own initiative or upon the request of any party prior to or during the trial. For the purpose of any consideration of the sufficiency of any answer or any other question concerning the interrogatories, answers or objections, copies of those documents shall be made available to the court by counsel.</p>		<p>Rule 4:8. Interrogatories to Parties. * * * *</p> <p>(c) <i>Filing.</i></p> <p>(1) <u>The</u> interrogatories and answers or and objections thereto shall not be filed in the office of the clerk unless the court directs their <u>such</u> filing on its own initiative or upon the request of any party prior to or during the trial.</p> <p>(2) <u>When</u> For the purpose of any consideration of the propriety or sufficiency of any interrogatory, answer or objection, or the service thereof, is challenged, or any other question <u>issue concerning such discovery is presented to the court for decision, concerning the interrogatories, answers or objections,</u> copies of <u>the relevant items, including any applicable certificates of service,</u> those documents shall be made available to the court by counsel.</p> <p>(3) <u>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.</u></p>

<p>Rule 4:10. Physical and Mental Examination of Persons. * * * *</p> <p>(c) <i>Report of Examiner.</i> (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. (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. * * * *</p>	<p><i>This technical addition simply alerts practitioners to the application of e-filing procedures for the reports generated in a physical or mental examination pursuant to Rule 4:10.</i></p>	<p>Rule 4:10. Physical and Mental Examination of Persons. * * * *</p> <p>(c) <i>Report of Examiner.</i> (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. <u>In an Electronically Filed Case, the report of examination shall be filed in electronic or digital image form as provided in Rule 1:17.</u> (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. * * * *</p>
<p>Rule 4:11. Requests for Admission. * * * *</p> <p>(c) <i>Filing.</i> Requests for admissions and answers or objections shall be served and filed as provided in Rule 4:8. (d) <i>Part of Record.</i> Only such requests for admissions and the answers thereto as are offered in evidence shall become a part of the record.</p>	<p><i>This change is simply a technical cross-reference.</i></p>	<p>Rule 4:11. Requests for Admission. * * * *</p> <p>(c) <i>Filing.</i> <u>Except as provided in Rules 3:3 and 1:17, r</u>Requests for admissions and answers or objections shall be served and filed as provided in Rule 4:8. (d) <i>Part of Record.</i> Only such requests for admissions and the answers thereto as are offered in evidence shall become a part of the record.</p>
<p>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;</p>	<p><i><<<<<This rule was just amended, effective January 2009 to take cognizance of the</i></p>	<p>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: * * * *</p>

<p>(4) The necessity or desirability of amendments to the pleadings;</p> <p>(5) The possibility of obtaining admissions of fact and admissions regarding documents and information obtained through electronic discovery;</p> <p>(6) The limitation of the number of expert witnesses;</p> <p>(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;</p> <p>(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 to undue burden or cost;</p> <p>(9) provisions for disclosure or discovery of electronically stored information;</p> <p>(10) any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production;</p> <p>(11) Such other matters as may aid in the disposition of the action.</p> <p>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.</p>	<p><i>need to plan for disclosure of electronically stored information. The Subcommittee on Rules of Court recommends adding another provision, (11) on the right, to focus attention on the use of electronic documents at trial.</i></p>	<p>(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 to undue burden or cost;</p> <p>(9) provisions for disclosure or discovery of electronically stored information;</p> <p>(10) any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production;</p> <p><u>(11) any provisions that will aid in the use of electronically stored or digitally imaged documents in the trial of the action; and</u></p> <p>(12) Such other matters as may aid in the disposition of the action.</p> <p>* * * *</p>
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Rule 4:15. Motions Practice.

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

(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.

(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. * * * *

(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.

This rule needs substantial attention under the e-filing approach. At a minimum the cross-reference provision suggested on the right will be needed, and the Advisory Committee on Rules of Court may elect to take further action to provide a more detailed roadmap for motion practice in the e-filing world. .

Rule 4:15. Motions Practice.

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

(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 (b) 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. * * * *

Rule 7A:7. Size of Paper.

(a) All pleadings, motions, briefs and all other documents filed in any clerk's office in any proceeding pursuant to the Rules or Statutes shall be 8-1/2 by 11 inches in size. All typed material shall be double spaced except for quotations.

(b) This Rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.

(c) No paper shall be refused for failure to comply with the provisions of this Rule, but the clerk or judge may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel shall certify that the substituted paper is identical in content to the paper initially filed.

The provisions recommended here are General District Court rules adaptation of similar cross-references and phase-in provisions used in the circuit court rules revisions recommended above.

Rule 7A:7. Size of Paper-Filing Format and Procedure

(a) Except as provided in subdivision (c) of this Rule and in Rule 1:17 pertaining to Electronically Filed Cases,

(1) All pleadings, motions, briefs and all other documents filed in any clerk's office in any proceeding pursuant to the Rules or statutes shall be 8-1/2 by 11 inches in size. All typed material shall be double spaced except for quotations.

(2) ~~(b)~~ Subdivision (a)(1) of tThis Rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.

(b)~~(c)~~ No paper shall be refused for failure to comply with the provisions of this Rule, but the clerk or judge may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel shall certify that the substituted paper is identical in content to the paper initially filed.

(c) Electronic Filing. In any general district court which has established an electronic filing system pursuant to Rule 1:17:

(1) Any proceeding commenced on or after July 1, 2010 may be designated as an Electronically Filed Case upon consent of all parties in the case.

(2) Any proceeding commenced on or after July 1, 2011 shall be designated as an Electronically Filed Case unless an individual case is exempted by order of the court for good cause shown.

(3) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other instruments in an Electronically Filed Case shall be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party shall notify the clerk of court that the original document must be retained.

(i) Any pleading or affidavit required by statute or rule to be sworn, verified or certified as provided in Rule 1:17(d)(5).

(ii) Any contract or deed.

(iii) Any prenuptial agreement or property settlement agreement.

		<p><u>(iv) Any check or other negotiable instrument.</u></p> <p><u>(v) Any handwritten statement, waiver, or consent by a defendant or witness in a criminal proceeding.</u></p> <p><u>(vi) Any form signed by a defendant in a criminal proceeding, including any typed statements or a guilty plea form.</u></p> <p><u>(vii) Any document that cannot be converted into an electronic document in such a way as to produce a clear and readable image.</u></p>
<p>Rule 7A:11. Endorsements.</p> <p>Drafts of orders shall be endorsed by counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing to all counsel of record who have not endorsed them. Compliance with this rule and with Rule 7A:10 may be modified or dispensed with by the court in its discretion.</p>	<p><i>This provision should be handled in whatever fashion is decided for Rule 1:13, on which it is based.</i></p>	<p>Rule 7A:11. Endorsements.</p> <p>Drafts of orders shall be endorsed by counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing to all counsel of record who have not endorsed them. Compliance with this rule and with Rule 7A:10 may be modified or dispensed with by the court in its discretion. <u>In an Electronically Filed Case, endorsement and specification of any objections to the draft order shall be accomplished as provided in Rule 1:17.</u></p>
<p>Rule 7B:6. Verification.</p> <p>If a statute requires a pleading to be sworn to, and it is not, or requires a pleading to be accompanied by an affidavit, and it is not, but contains all the allegations required, objection on either ground must be made within seven days after the pleading is filed by a motion to strike; otherwise the objection is waived. At any time before the court passes on the motion or within such time thereafter as the court may prescribe, the pleading may be sworn to or the affidavit filed.</p>	<p><i>A simple cross-reference is added>>></i></p>	<p>Rule 7B:6. Verification.</p> <p>If a statute requires a pleading to be sworn to, and it is not, or requires a pleading to be accompanied by an affidavit, and it is not, but contains all the allegations required, objection on either ground must be made within seven days after the pleading is filed by a motion to strike; otherwise the objection is waived. At any time before the court passes on the motion or within such time thereafter as the court may prescribe, the pleading may be sworn to or the affidavit filed. <u>In an Electronically Filed Case, verification shall be subject to the provisions of Rule 1:17.</u></p>

<p>Rule 7B:11. Motions to Transfer. * * *</p> <p>(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 * * * *</p>	<p><i>This minor edit is intended to provide flexibility.</i></p>	<p>Rule 7B:11. Motions to Transfer. * * *</p> <p>(1) If the motion is granted, the Clerk shall transmit the <u>files papers</u> 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 * * * *</p>
<p>Rule 7C:7. Service and Filing of Papers. * * * *</p> <p>(b) Filing. Papers required to be served shall be filed with the clerk.</p>	<p><i>The provisions recommended here are General District Court rules adaptation of similar cross-references and phase-in provisions used in the circuit court rules revisions recommended above.</i></p>	<p>Rule 7C:7. Service and Filing of Papers. * * * *</p> <p>(b) Filing. <u>Pleadings, motions, notices, and other materials</u> Papers required to be served shall be filed with the clerk. <u>In an Electronically Filed Case, the provisions of Rule 1:17 shall be applicable.</u></p>
<p>Rule 8:7. Size of Paper.</p> <p>(a) All pleadings, motions, briefs and all other documents filed in any clerk's office in any proceeding pursuant to the Rules or statutes shall be 8-1/2 by 11 inches in size. All typed material shall be double spaced except for quotations.</p> <p>(b) This Rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.</p> <p>(c) No paper shall be refused for failure to comply with the provisions of this Rule, but the clerk or judge may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel shall certify that the substituted paper is identical in content to the paper initially filed.</p>	<p><i>The provisions recommended here are General District Court rules adaptation of similar cross-references and phase-in provisions used in the circuit court rules revisions recommended above.</i></p>	<p>Rule 8:7. Size of Paper-Format for Filing</p> <p>(a) <u>Except as provided in Rule 8:8(f) and Rule 1:17 pertaining to Electronically Filed Cases,</u></p> <p>(1) All pleadings, motions, briefs and all other documents filed in any clerk's office in any proceeding pursuant to the Rules or statutes shall be 8-1/2 by 11 inches in size. All typed material shall be double spaced except for quotations.</p> <p>(2) (b) <u>Subdivision (a)(1) of t</u>This Rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.</p> <p>(b)(c) No paper shall be refused for failure to comply with the provisions of this Rule, but the clerk or judge may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel shall certify that the substituted paper is identical in content to the paper initially filed.</p>

Rule 8:8. Pleadings.

(a) *General.* Counsel of record tendering a pleading gives assurances that it is filed in good faith and not for delay, and counsel of record who files a pleading shall sign it and state counsel's address and telephone number. A pleading that is sworn to is an affidavit for all purposes for which an affidavit is required or permitted. The mention in a pleading of an accompanying exhibit shall, of itself and without more, make such an exhibit a part of the pleading.

* * * *

(e) *Copies of Pleadings to be Furnished.* All pleadings not otherwise required to be served shall be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing a copy to each on or before the day of filing. At the foot of such pleadings shall be appended either acceptances of service or a certificate that copies were served as this Rule requires, showing the date of delivery, dispatching, transmitting or mailing.

This Rule blends together several provisions set up separately in other Parts of the Rules.

Notice that in the J&DR court, no e-service is presently authorized.

The revisions proposed provide a cross-reference to Rule 1:17 in a new subsection (f) to accommodate e-filing?

Rule 8:8. Pleadings and Filing.

* * * *

(e) *Copies of Pleadings to be Furnished.* Except as provided in subdivision (f) of this Rule, aAll pleadings not otherwise required to be served shall be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing a copy to each on or before the day of filing. At the foot of such pleadings shall be appended either acceptances of service or a certificate that copies were served as this Rule requires, showing the date of delivery, dispatching, transmitting or mailing.

(f) *Electronic Filing.* In any juvenile and domestic relations general district court which has established an electronic filing system pursuant to Rule 1:17:

(a) Any proceeding commenced on or after July 1, 2010 may be designated as an Electronically Filed Case upon consent of all parties in the case.

(b) Any proceeding commenced on or after July 1, 2011 shall be designated as an Electronically Filed Case unless an individual case is exempted by order of the court for good cause shown.

(c) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other instruments in an Electronically Filed Case shall be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party shall notify the clerk of court that the original document must be retained.

(i) Any pleading or affidavit required by statute or rule to be sworn, verified or certified as provided in Rule 1:17(d)(5).

(ii) Any contract or deed.

		<p><u>(iii) Any prenuptial agreement or property settlement agreement.</u></p> <p><u>(iv) Any check or other negotiable instrument.</u></p> <p><u>(v) Any handwritten statement, waiver, or consent by a defendant or witness in a criminal proceeding.</u></p> <p><u>(vi) Any form signed by a defendant in a criminal proceeding, including any typed statements or a guilty plea form.</u></p> <p><u>(vii) Any document that cannot be converted into an electronic document in such a way as to produce a clear and readable image.</u></p>
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<p>Rule 8:19. Endorsements of Orders. Drafts of orders prepared by counsel of record shall be endorsed by all counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing to all counsel of record who have not endorsed them. Compliance with this Rule may be modified or dispensed with by the court in its discretion.</p>	<p><i>This provision should be handled in whatever fashion is decided for Rule 1:13, on which it is based.</i></p>	<p>Rule 8:19. Endorsements of Orders. Drafts of orders prepared by counsel of record shall be endorsed by all counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing to all counsel of record who have not endorsed them. Compliance with this Rule may be modified or dispensed with by the court in its discretion. <u>In an Electronically Filed Case, endorsement and specification of any objections to the draft order shall be accomplished as provided in Rule 1:17.</u></p>
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There follows a list of Other Rules the Subcommittee Considered but as to which it did not seem necessary to recommend any changes at this time.

**OTHER RULES STUDIED BY THE SUBCOMMITTEE
FOR WHICH NO REVISIONS ARE RECOMMENDED AT THIS TIME**

RULES APPLYING TO ALL PROCEEDINGS

Rule 1:7. Computation of Time.

Rule 1:12. Service of Papers after the Initial Process.

Rule 1:14. Preservation of the Record.

ADMISSION TO PRACTICE

Rule 1A:1. Foreign Attorneys -- When Admitted to Practice in This State Without Examination.

Rule 1A:5. Virginia Corporate Counsel & Corporate Counsel Registrants.

ADMINISTRATIVE PROCEEDINGS

Rule 2A:2. Notice of Appeal.

CIVIL ACTIONS IN CIRCUIT COURT

Rule 3:6. Proof of Service.

CRIMINAL PROCEEDINGS IN CIRCUIT COURT

Rule 3A:3. The Complaint.

Rule 3A:4. Arrest Warrant or Summons.

Rule 3A:5. The Grand Jury.

Rule 3A:6. The Indictment and the Information.

Rule 3A:7. Capias or Summons Upon Indictment or Information.

Rule 3A:8. Pleas.

Rule 3A:11. Discovery and Inspection.

Rule 3A:12. Subpoena.

Rule 3A:16. Instructions.

Rule 3A:17. Jury Verdicts.

Rule 3A:25. Special Rule Applicable to Post-Conviction Proceedings: Inmate Filings in the Trial Courts Under Code § 8.01-654.

Form 2. Statement of Witness for Arrest Warrant (Rule 3A:3).

DISCOVERY IN CIVIL ACTIONS IN CIRCUIT COURT

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

Rule 4:7A. Audio-Visual Depositions.

Rule 4:8. Interrogatories to Parties.

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

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.

Rule 4:14. Disposition of Discovery Material.

Forms 1 through 11 (Bonds and Letters of Credit)

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Form 12. Petition for a Writ of Actual Innocence Based on Nonbiological Evidence.

GENERAL DISTRICT COURT PROCEEDINGS

Rule 7B:5. Production of Written Agreement.

Rule 8:5. Court-Ordered Reports.

Rule 8:17. Notification and Waiver of Trial Rights of Parties.