

Proposed Amendments to Rules 1:8 and 3:16

June 2010

Draft Rule Published for Comment

Set forth below is a draft rule change proposed by the Boyd-Graves Conference. The draft revision below has been approved by the Advisory Committee. This draft has not been submitted to, considered, or approved by the Judicial Council of Virginia or the Supreme Court of Virginia. Comments are solicited on this draft revision.

Background: At its May 2010 meeting the Advisory Committee approved the following recommended rule changes proposed by the Boyd-Graves Conference.

The proposed changes to Rule 1:8, governing amendments to pleadings, seek to conform Rule 1:8 to Rule 3:16, governing addition of parties. The reasoning behind the proposal is three-fold. First, conforming the two rules will address the situation in which a party seeks leave to amend a complaint but fails to file an accompanying proposed amended complaint. Second, conforming the two rules will make for a consistency of procedure that renders the rules more intuitive and less likely to result in procedural traps for the unwary. Finally, adding an express provision to Rule 1:8 requiring that a proposed amended pleading be filed when the motion for leave to amend is filed will result in greater efficiency without placing an undue burden on any party.

An additional proposed amendment to both Rule 1:8 and Rule 3:16 provides that a proposed pleading shall be accepted as filed upon the granting of the motion to amend. This amendment seeks to clarify how an amended pleading is filed once a motion to amend is granted.

Finally, the new language below includes a provision at the end of Rule 3:16 which acknowledges that the court has discretion to alter the necessity of filing responsive pleadings to an amended pleading.

The new language is underscored:

Suggested amendment to Rule 1:8:

No amendments shall be made to any pleading after it is filed save by leave of court. Leave to amend shall be liberally granted in furtherance of the ends of justice. Unless otherwise provided by order of the court in a particular case, any written motion for leave to file an amended pleading shall be accompanied by a properly executed proposed amended pleading, in a form suitable for filing. If the motion is granted, the amended pleading accompanying the motion shall be deemed filed in the clerk's office as of the date of the court's order permitting such amendment. If the motion is granted in part, the court may provide for filing an amended pleading as the court may deem reasonable and proper. Where leave to amend is granted other than upon a written motion, whether on demurrer or oral motion or otherwise, the amended pleading shall be filed within 21 days after leave to amend

is granted or in such time as the court may prescribe. In granting leave to amend, the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper.

Suggested amendment to Rule 3:16:

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

The goal of these amendments is to amend Rules 1:8 and 3:16 in reference to proposed amendments to pleadings to conform these two rules as to amendments to add new parties. Also, there is a proposal to clarify the filing of an amended pleading once the court has granted leave to do so.

Comments on the above draft revision should be sent by August 20, 2010 to:

Advisory Committee on Rules of Court
c/o Steven Dalle Mura
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Supreme Court of Virginia
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