

Monday

29th

August, 2005.

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 immediately.

Amend Rule 3A:9 to read as follows:

**Rule 3A:9. Pleadings and Motions for Trial; Defenses and Objections.**

\* \* \*

*(b) The Motion Raising Defenses and Objections. –*

(1) Defenses and Objections That Must Be Raised Before Trial. Defenses and objections based on defects in the institution of the prosecution or in the written charge upon which the accused is to be tried, other than that it fails to show jurisdiction in the court or to charge an offense, must be raised by motion made within the time prescribed by paragraph (c) of this Rule. The motion shall include all such defenses and objections then available to the accused. Failure to present any such defense or objection as herein provided shall constitute a waiver thereof. Lack of jurisdiction or the failure of the written charge upon which the accused is to be tried to state an offense shall be noticed by the court at any time during the pendency of the proceeding.

\* \* \*

*(c) Time of Filing Notice or Making Motion. –* 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 Code §19.2-266.2(ii), 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.

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Amend Rule 4:4 to read as follows:

**Rule 4:4. Stipulations Regarding Discovery.**

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions and (2) modify the procedures provided by these Rules for other methods of discovery. Stipulations may include agreements with non-party witnesses, consistent with Code § 8.01-420.4. Such stipulations shall be filed with the deposition or other discovery completed pursuant thereto.

Amend Rule 4:5 to read as follows:

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

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(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.

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Amend Rule 2:18 to read as follows:

**Rule 2:18. Use of and Proceedings Before a Commissioner in Chancery. (Expires December 31, 2005.)**

(a) Commissioners in chancery may be appointed in cases in circuit court, including uncontested divorce cases, only when (1) there is agreement by the parties with concurrence of the court or (2) upon motion of a party or the court on its own motion with a finding of good cause shown in each individual case.

(b) Upon entry of a decree by the court referring any matter to a commissioner in chancery, the clerk shall mail or deliver to the commissioner a copy of the decree of reference. Unless the decree prescribes otherwise, the commissioner shall promptly set a time and place for the first meeting of the parties or their attorneys, and shall notify the parties or their attorneys of the time and place so set. It shall be the duty of the commissioner to proceed with all reasonable diligence to execute the decree of reference.

(c) A commissioner may require the production of evidence upon all matters embraced in the decree of reference including the production of all books, papers, vouchers, documents and writings applicable thereto. The commissioner shall have the authority to call witnesses or the parties to the action to testify and may examine them upon oath. The commissioner may rule upon the admissibility of evidence unless otherwise directed by the decree of reference; but when a party so requests, the commissioner shall cause a record to be made of all proffered evidence which is excluded by the commissioner as inadmissible.

(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 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.

A Copy,

Teste:

Clerk