

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 31st day of May, 2017.

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 August 1, 2017.

Amend Rule 1:18 to read as follows:

Rule 1:18. Pretrial Scheduling Order.

* * *

C. With the exception of domestic relations and eminent domain cases, a court may not enter a scheduling order which deviates from the terms of the Uniform Pretrial Scheduling Order unless either (1) counsel of record for all parties agree to different provisions, or (2) the court, after providing an opportunity for counsel of record to be heard, makes a finding that the scheduling order contained in the Appendix is not consistent with the efficient and orderly administration of justice under the specific circumstances of that case.

Add Form 3-A to the Appendix of Forms for Part One to read as follows:

RULES OF SUPREME COURT OF VIRGINIA

PART ONE

GENERAL RULES APPLICABLE TO ALL PROCEEDINGS

APPENDIX OF FORMS.

* * *

3-A. Alternate Uniform Pretrial Scheduling Order For Use in Eminent Domain Proceedings (Rule 1:18B).

I. Trial

The trial date is scheduled for _____, commencing at _____ a.m., before _____ a freeholder jury, _____ panel of commissioners or _____ bench trial (select applicable option). The estimated length of trial is _____ days. If the case is set before a panel of commissioners, each party shall submit nominations of at least six (6) qualified persons on or before _____ so that at least nine (9) commissioners and two (2) alternates can be summoned for trial. Counsel for petitioner shall prepare and submit a sketch order for the court's use in appointing and summoning commissioners for trial.

II. Discovery

The parties shall complete discovery, including depositions, by 30 days before trial; however, depositions taken in lieu of live testimony at trial will be permitted until 15 days before trial. "Complete" means that all interrogatories, requests for production, requests for admissions and other discovery must be served sufficiently in advance of trial to allow a timely response at least 30 days before trial. Depositions may be taken after the specified time period by agreement of counsel of record or for good cause shown, provided however, that the taking of a deposition after the deadline established herein shall not provide a basis for continuance of the trial date or the scheduling of motions inconsistent with the normal procedures of the court. The parties have a duty to seasonably supplement and amend discovery responses pursuant to Rule 4:1(e) of the Rules of Supreme Court of Virginia. Seasonably means as soon as practical. No provision of this Order supersedes the Rules of Supreme Court of Virginia governing discovery. Any discovery motion filed shall contain a certification that counsel has made a good faith effort to resolve the matters set forth in the motion with opposing counsel.

III. Designation of Experts

If requested in discovery, petitioner's experts shall be identified on or before 120 days before trial. If requested in discovery, defendant's and all other opposing experts shall be identified on or before 90 days before trial. If requested in discovery, experts or opinions responsive to new matters raised in the opposing parties' identification of experts shall be designated no later than 60 days before trial. If requested, all information discoverable under Rule 4:1(b)(4)(A)(i) of the Rules of Supreme Court of Virginia shall be provided. An expert will not ordinarily be

permitted to express any nondisclosed opinions at trial. The foregoing deadlines shall not relieve a party of the obligation to respond to discovery requests within the time periods set forth in the Rules of Supreme Court of Virginia, including, in particular, the duty to supplement or amend prior responses pursuant to Rule 4:1(e).

IV. Dispositive Motions

All dispositive motions shall be presented to the court for hearing as far in advance of the trial date as practical. All counsel of record are encouraged to bring on for hearing all demurrers, special pleas, motions for summary judgment or other dispositive motions not more than 60 days after being filed.

V. Exhibit and Witness List

Counsel of record shall exchange 15 days before trial a list specifically identifying each exhibit to be introduced at trial, copies of any exhibits not previously supplied in discovery, and a list of witnesses proposed to be introduced at trial. The lists of exhibits and witnesses shall be filed with the Clerk of the Court simultaneously therewith but the exhibits shall not then be filed. Any exhibit or witness not so identified and filed will not be received in evidence, except in rebuttal or for impeachment or unless the admission of such exhibit or testimony of the witness would cause no surprise or prejudice to the opposing party and the failure to list the exhibit or witness was through inadvertence. Any objections to exhibits or witnesses shall state the legal reasons therefor except on relevancy grounds, and shall be filed with the Clerk of the Court and a copy delivered to opposing counsel at least five days before trial or the objections will be deemed waived absent leave of court for good cause shown.

VI. Pretrial Conferences

Pursuant to Rule 4:13 of the Rules of Supreme Court of Virginia, when requested by any party or upon its own motion, the court may order a pretrial conference wherein motions in limine, settlement discussions or other pretrial motions which may aid in the disposition of this action can be heard.

VII. Motions in Limine

Absent leave of court, any motion in limine which requires argument exceeding five minutes shall be duly noticed and heard before the day of trial.

VIII. Witness Subpoenas

Early filing of a request for witness subpoenas is encouraged so that such subpoenas may be served at least 10 days before trial.

IX. Continuances

Continuances will only be granted by the court for good cause shown.

X. Instructions

Counsel of record shall, two business days before trial, exchange proposed instructions. Any instructions from VMJI may be identified by instruction number. Counsel for petitioner shall prepare and have available at the commencement of trial the originals of all agreed upon instructions. Each party may also submit originals and copies of all contested instructions with appropriate citations. This requirement shall not preclude the offering of additional instructions at the trial.

XI. Deposition Transcripts to be Used at Trial

Counsel of record shall confer and attempt to identify and resolve all issues regarding the use of depositions at trial. It is the obligation of the proponent of any deposition of any non-party witness who will not appear at trial to advise opposing counsel of record of counsel's intent to use all or a portion of the deposition at trial at the earliest reasonable opportunity. Other than trial depositions taken after completion of discovery under Paragraph II, designations of portions of non-party depositions, other than for rebuttal or impeachment, shall be exchanged no later than 15 days before trial, except for good cause shown or by agreement of counsel. It becomes the obligation of the opponent of any such deposition to bring any objection or other unresolved issues to the court for hearing before the day of trial, and to counter-designate any additional portions of designated depositions at least 5 days before such hearing.

XII. Transportation Arrangements

Counsel for petitioner shall be responsible for contacting the Sheriff's Department in advance of trial to assure that arrangements are in place to transport the commissioners/jury to and from the subject property.

XIII. Waiver or Modification of Terms of Order

Upon motion, the time limits and prohibitions contained in this order may be waived or modified by leave of court for good cause shown.

Amend Rule 4:5 to read as follows:

Rule 4:5. Depositions Upon Oral Examination.

* * *

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. —

(1) Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. If requested by one of the parties, the testimony shall be transcribed.

(2) An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objections. Any objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege or protection for attorney work-product pursuant to Rule 4:1(b)(3), to enforce a limitation ordered by the court, or to present a motion under subsection (d).

(3) In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

* * *

A Copy,

Teste:



Clerk