

# IN BRIEF

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## An Insurance Industry Newsletter of Recent Issues and Opinions in Virginia Law By

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ATTORNEYS AT LAW

### **Amend..(mo)ment**

The moment has come... as of May 3, 2010, Rules 1 and 4 of the Rules of the Supreme Court of Virginia have been amended; and as of July 1, 2010, Rules 5 and 5A will be amended. The amendments relate to the procedures used in Court proceedings and, thus, it is important to be aware of the changes. The following article briefly outlines the changes. If you would like to view the rule changes in their entirety, please go online to [www.courts.state.va.us](http://www.courts.state.va.us) then click on Virginia's Court System on the left, Supreme Court of Virginia in the drop down box, and Rules of the Supreme Court of Virginia in the final drop down box.

#### **Rule Changes as of May 3, 2010:**

PART ONE: RULES APPLICABLE TO ALL PROCEEDINGS, APPENDIX: Uniform Pretrial Scheduling Order (Rule 1:18B). The changes appear in section XI, Deposition Transcripts to be Used at Trial. The changes establish that designations of portions of *non-party* depositions be exchanged no later than fifteen days prior to trial. This exchange does not include deposition portions used for rebuttal or impeachment. Portions of depositions can be designated after the fifteen day deadline if counsel agrees or for good cause shown. Any objections to said deposition portions or and counter-designations must then be made at least 5 days prior to trial.

PART FOUR: RULES OF THE SUPREME COURT OF VIRGINIA; PRETRIAL PROCEDURES, DEPOSITION AND PRODUCTION AT TRIAL: Rule 4:1, General Provisions Governing Discovery. Revisions to this rule appear in section (d) *Sequence and Timing of Discovery*; after an initial statement in (1) that discovery may be conducted in any order and that discovery of one party should not delay the discovery process of any other party, section (2) states that, unless the court orders suspension on one or more issues, discovery should proceed even when dispositive motions, demurrers, or pleas have been filed and are pending before the court.

### **Rule Changes as of July 1, 2010:**

#### **RULE FIVE: THE SUPREME COURT and RULE 5A: THE COURT OF APPEALS**

The changes to these rules are extensive; some are organizational merely re-arranging information to make it more accessible and more easily and clearly cited; other changes are more significant. The purpose of this Newsletter is to make you aware that changes have been made. To cite one example, the following sections have been added to Section 1 of Rule 5:

“(d) *Service*. Unless service or notice is otherwise specified in a given Rule, any paper or object filed with this Court must have included within it or appended to it a certificate of service or acceptance of service showing that a copy has been transmitted to all counsel and showing the date and manner of transmittal. If a word count is used, the certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

(e) *Notice of Change of Address and Other Contact Information*. If an attorney has a change in mailing address, telephone number, facsimile number, or e-mail address any time after the filing of the notice of appeal, the attorney must immediately notify the clerk of this Court and all other counsel of record in writing. The notice must reference the style and record number of all cases pending before this Court.

(f) *Citing Unpublished Judicial Dispositions*. The citation of judicial opinions, orders, judgments, or other written dispositions that are not officially reported, whether designated as “unpublished,” “not for publication,” “non precedential,” or the like, is permitted as informative, but shall not be received as binding authority. If the cited disposition is not available in a publicly accessible electronic database, a copy of that disposition must be filed with the brief or other paper in which it is cited. “

Following these additional sections, the Court has added penalties for parties who do not comply with the Rules:

#### **“Rule 5:1A. Penalties for Non-compliance; Show Cause; Dismissal.**

(a) *Penalties; Show Cause; Dismissal*. This Court may dismiss an appeal or impose such other penalty as it deems appropriate for non-compliance with these Rules. Except as provided in Rule 5:17(c) regarding assignments of error, prior to the dismissal of an appeal for any defect in the filings related to formatting, curable failure to comply with

other requirements, or the failure to meet non-mandatory filing deadlines, this Court may issue a show cause order to counsel or a party not represented by an attorney, prescribing a time in which to cure such defect or to otherwise show cause why the appeal should not be dismissed or other penalty imposed.

(b) *Report to Virginia State Bar.* If an attorney's failure to comply with these Rules results in the dismissal of an appeal, this Court may report the attorney to the Virginia State Bar in accordance with Rule 8.3 of the Virginia Rules of Professional Conduct. “

Because lack of compliance can lead to dismissal of a case, it is extremely important that we do not rely on our presumed knowledge of the Rules, but that we begin anew by consistently consulting the Rules as amended, whenever a case leads to the Supreme Court or Court of Appeals.

**DECISIONS BY THE SUPREME COURT OF VIRGINIA  
REGARDING INSURANCE INDUSTRY ISSUES  
June 11, 2010 SESSION**

The case summaries that follow involve insurance litigation issues. We have downloaded these summaries directly from the Virginia Supreme Court website. We offer them to you without further legal analysis. However, if you would like a brief legal analysis or the full text of any of these cases, please make your request by return e-mail. If you would like to discuss the ramifications of any of the decisions, please call (804) 378-7600: ext. 3304 for Ray; 3305 for Kevin or 3316 for Mark.

[091469](#) **Evans v. Evans** 06/10/2010 In a personal injury suit by a minor child against a parent for negligence in failing to secure her in a proper child restraint device when traveling in a motor vehicle on the highways of Virginia, the provisions of Code § 46.2-1095(C) and Code § 46.2-1098 precluding claims of negligence per se in failure to comply with child seat restraint laws while transporting a minor in a vehicle, do not abrogate a common law action for negligence. The judgment granting a demurrer and dismissing the child's common law negligence case, which was not pled under the statutes, is reversed and the case is remanded.

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