DOWNLOAD PDF NOTES ON VIRGINIA CIVIL PROCEDURE

Chapter 1 : Virginia Discovery Law â€“ Evidence

Abstract. This book is an outline of the introductory course on Virginia civil procedure which the author teaches at University of Richmond. The purpose of this publication is to give the students an introduction to the subject which can be read prior to the classroom discussion.

A subpoena commanding attendance at a deposition must state the method for recording the testimony. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced. D Command to Produce; Included Obligations. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials. A subpoena must issue from the court where the action is pending. The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena if the attorney is authorized to practice in the issuing court. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party. Any person who is at least 18 years old and not a party may serve a subpoena. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies. A subpoena may be served at any place within the United States. Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server. A subpoena may command a person to attend a trial, hearing, or deposition only as follows: A subpoena may command: A production of documents, electronically stored information, or tangible things at a place within miles of where the person resides, is employed, or regularly transacts business in person; and B inspection of premises at the premises to be inspected. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. A Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premisesâ€”or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply: On timely motion, the court for the district where compliance is required must quash or modify a subpoena that: To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires: C Specifying Conditions as an Alternative. In the circumstances described in Rule 45 d 3 B , the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party: These procedures apply to producing documents or electronically stored information: A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. The person responding need not produce the same electronically stored information in more than one form. D Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the

person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26 b 2 C. The court may specify conditions for the discovery. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must: If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved. When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances. Then, if the attorney for a person subject to a subpoena is authorized to practice in the court where the motion was made, the attorney may file papers and appear on the motion as an officer of the issuing court. To enforce its order, the issuing court may transfer the order to the court where the motion was made. The court for the district where compliance is required â€" and also, after a motion is transferred, the issuing court â€" may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it. Notes As amended Dec. July 1, ; Apr. Notes of Advisory Committee on Rulesâ€" This rule applies to subpoenas ad testificandum and duces tecum issued by the district courts for attendance at a hearing or a trial, or to take depositions. It does not apply to the enforcement of subpoenas issued by administrative officers and commissions pursuant to statutory authority. The enforcement of such subpoenas by the district courts is regulated by appropriate statutes. Many of these statutes do not place any territorial limits on the validity of subpoenas so issued, but provide that they may be served anywhere within the United States. Among such statutes are the following: These simplify the form of subpoena as provided in U. With the provision for relief from an oppressive or unreasonable subpoena duces tecum, compare N. Note to Subdivision c. This provides for the simple and convenient method of service permitted under many state codes; e. For statutes governing fees and mileage of witnesses see: The method provided in paragraph 1 for the authorization of the issuance of subpoenas has been employed in some districts. The requirement of an order for the issuance of a subpoena duces tecum is in accordance with U. The provisions of paragraph 2 are in accordance with common practice. Note to Subdivision e. The first paragraph continues the substance of U. For examples of statutes which allow the court, upon proper application and cause shown, to authorize the clerk of the court to issue a subpoena for a witness who lives in another district and at a greater distance than miles from the place of the hearing or trial, see: The second paragraph continues the present procedure applicable to certain witnesses who are in foreign countries. Note to Subdivision f. The added last sentence of amended subdivision d 1 properly gives the subpoena for documents or tangible things the same scope as provided in Rule 26 b , thus promoting uniformity. The requirement in the last sentence of original Rule 45 d 1 â€"to the effect that leave of court should be obtained for the issuance of such a subpoenaâ€"has been omitted. This requirement is unnecessary and oppressive on both counsel and court, and it has been criticized by district judges. There is no satisfactory reason for a differentiation between a subpoena for the production of documentary evidence by a witness at a trial Rule 45 a and for the production of the same evidence at the taking of a deposition. Under this amendment, the person subpoenaed may obtain the protection afforded by any of the orders permitted under Rule 30 b or Rule 45 b. See Application of Zenith Radio Corp. The changes in subdivision d 2 give the court the same power in the case of residents of the district as is conferred in the case of non-residents, and permit the court to fix a place for attendance which may be more convenient and accessible for the parties than that specified in the rule. Notes of Advisory Committee on Rulesâ€" Amendment The amendment substitutes the present statutory reference. Notes of Advisory Committee on Rulesâ€" Amendment At present, when a subpoena duces tecum is issued to a deponent, he is required to produce the listed materials at the deposition,

but is under no clear compulsion to permit their inspection and copying. This results in confusion and uncertainty before the time the deposition is taken, with no mechanism provided whereby the court can resolve the matter. Rule 45 d 1 , as revised, makes clear that the subpoena authorizes inspection and copying of the materials produced. The deponent is afforded full protection since he can object, thereby forcing the party serving the subpoena to obtain a court order if he wishes to inspect and copy. The procedure is thus analogous to that provided in Rule The changed references to other rules conform to changes made in those rules. The deletion of words in the clause describing the proper scope of the subpoena conforms to a change made in the language of Rule The reference to Rule 26 b is unchanged but encompasses new matter in that subdivision. The changes make it clear that the scope of discovery through a subpoena is the same as that applicable to Rule 34 and the other discovery rules. For want of a definition, the district court clerks have been obliged to fashion their own, with results that vary from district to district. All that seems required is a simple certification on a copy of the notice to take a deposition that the notice has been served on every other party to the action. The amendment makes the reach of a subpoena of a district court at least as extensive as that of the state courts of general jurisdiction in the state in which the district court is held. Under the present rule the reach of a district court subpoena is often greater, since it extends throughout the district. No reason appears why it should be less, as it sometimes is because of the accident of district lines. Restrictions upon the reach of subpoenas are imposed to prevent undue inconvenience to witnesses. State statutes and rules of court are quite likely to reflect the varying degrees of difficulty and expense attendant upon local travel. Notes of Advisory Committee on Rulesâ€" Amendment Present Rule 45 d 2 has two sentences setting forth the territorial scope of deposition subpoenas. The first sentence is directed to depositions taken in the judicial district in which the deponent resides; the second sentence addresses situations in which the deponent is not a resident of the district in which the deposition is to take place. The Rule, as currently constituted, creates anomalous situations that often cause logistical problems in conducting litigation. The first sentence of the present Rule states that a deponent may be required to attend only in the county wherein that person resides or is employed or transacts business in person, that is, where the person lives or works. The second sentence of the Rule is somewhat more flexible, stating that someone who does not reside in the district in which the deposition is to be taken can be required to attend in the county where the person is served with the subpoena, or within 40 miles from the place of service. The mile radius has been increased to miles. No substantive change is intended. The purposes of this revision are 1 to clarify and enlarge the protections afforded persons who are required to assist the court by giving information or evidence; 2 to facilitate access outside the deposition procedure provided by Rule 30 to documents and other information in the possession of persons who are not parties; 3 to facilitate service of subpoenas for depositions or productions of evidence at places distant from the district in which an action is proceeding; 4 to enable the court to compel a witness found within the state in which the court sits to attend trial; 5 to clarify the organization of the text of the rule. This subdivision is amended in seven significant respects. First, Paragraph a 3 modifies the requirement that a subpoena be issued by the clerk of court.

DOWNLOAD PDF NOTES ON VIRGINIA CIVIL PROCEDURE

Chapter 2 : Civil Procedure Outlines | Oxbridge Notes United States

*Notes on Virginia civil procedure [William Hamilton Bryson] on calendrierdelascience.com *FREE* shipping on qualifying offers. Book by Bryson, William Hamilton.*

Pretrial Conferences; Scheduling; Management Rule In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as: Except in categories of actions exempted by local rule, the district judgeâ€”or a magistrate judge when authorized by local ruleâ€”must issue a scheduling order: The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared. The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions. The scheduling order may: A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement. At any pretrial conference, the court may consider and take appropriate action on the following matters: After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it. The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37 b 2 A ii â€” vii , if a party or its attorney: A fails to appear at a scheduling or other pretrial conference; B is substantially unprepared to participateâ€”or does not participate in good faithâ€”in the conference; or C fails to obey a scheduling or other pretrial order. Notes As amended Apr. Notes of Advisory Committee on Rulesâ€” 1. Similar rules of pre-trial procedure are now in force in Boston, Cleveland, Detroit, and Los Angeles, and a rule substantially like this one has been proposed for the urban centers of New York state. For a discussion of the successful operation of pre-trial procedure in relieving the congested condition of trial calendars of the courts in such cities and for the proposed New York plan, see A Proposal for Minimizing Calendar Delay in Jury Cases Dec. Supreme Court Rules, 2 N. Rule 12 g Consolidation of Motions , by requiring to some extent the consolidation of motions dealing with matters preliminary to trial, is a step in the same direction. In many respects, the rule has been a success. For example, there is evidence that pretrial conferences may improve the quality of justice rendered in the federal courts by sharpening the preparation and presentation of cases, tending to eliminate trial surprise, and improving, as well as facilitating, the settlement process. However, in other respects particularly with regard to case management, the rule has not always been as helpful as it might have been. Thus there has been a widespread feeling that amendment is necessary to encourage pretrial management that meets the needs of modern litigation. Major criticism of Rule 16 has centered on the fact that its application can result in over-regulation of some cases and under-regulation of others. In simple, run-of-the-mill cases, attorneys have found pretrial requirements burdensome. This is especially likely to be true when pretrial proceedings occur long before trial. At the other end of the spectrum, the discretionary character of Rule 16 and its orientation toward a single conference late in the pretrial process has led to under-administration of complex or protracted cases. Without judicial guidance beginning shortly after institution, these cases often become mired in discovery. Four sources of criticism of pretrial have been identified. First, conferences often are seen as a mere exchange of legalistic contentions without any real analysis of the particular case. Second, the result frequently is nothing but a formal agreement on minutiae. Third, the conferences are seen as unnecessary and time-consuming in cases that will be settled before trial. Fourth, the meetings can be ceremonial and ritualistic, having little effect on the trial and being of minimal value, particularly when the attorneys attending the sessions are not the ones who will try the case or lack authority to enter into binding stipulations. See

generally McCargo v. There also have been difficulties with the pretrial orders that issue following Rule 16 conferences. When an order is entered far in advance of trial, some issues may not be properly formulated. Counsel naturally are cautious and often try to preserve as many options as possible. If the judge who tries the case did not conduct the conference, he could find it difficult to determine exactly what was agreed to at the conference. But any insistence on a detailed order may be too burdensome, depending on the nature or posture of the case. Given the significant changes in federal civil litigation since that are not reflected in Rule 16, it has been extensively rewritten and expanded to meet the challenges of modern litigation. Empirical studies reveal that when a trial judge intervenes personally at an early stage to assume judicial control over a case and to schedule dates for completion by the parties of the principal pretrial steps, the case is disposed of by settlement or trial more efficiently and with less cost and delay than when the parties are left to their own devices. Thus, the rule mandates a pretrial scheduling order. However, although scheduling and pretrial conferences are encouraged in appropriate cases, they are not mandated. Discussion Subdivision a ; Pretrial Conferences; Objectives. The amended rule makes scheduling and case management an express goal of pretrial procedure. This is done in Rule 16 a by shifting the emphasis away from a conference focused solely on the trial and toward a process of judicial management that embraces the entire pretrial phase, especially motions and discovery. In addition, the amendment explicitly recognizes some of the objectives of pretrial conferences and the powers that many courts already have assumed. Rule 16 thus will be a more accurate reflection of actual practice. Subdivision b ; Scheduling and Planning. The most significant change in Rule 16 is the mandatory scheduling order described in Rule 16 b , which is based in part on Wisconsin Civil Procedure Rule The idea of scheduling orders is not new. It has been used by many federal courts. Although a mandatory scheduling order encourages the court to become involved in case management early in the litigation, it represents a degree of judicial involvement that is not warranted in many cases. Thus, subdivision b permits each district court to promulgate a local rule under Rule 83 exempting certain categories of cases in which the burdens of scheduling orders exceed the administrative efficiencies that would be gained. Logical candidates for this treatment include social security disability matters, habeas corpus petitions, forfeitures, and reviews of certain administrative actions. A scheduling conference may be requested either by the judge, a magistrate when authorized by district court rule, or a party within days after the summons and complaint are filed. If a scheduling conference is not arranged within that time and the case is not exempted by local rule, a scheduling order must be issued under Rule 16 b , after some communication with the parties, which may be by telephone or mail rather than in person. While personal supervision by the trial judge is preferred, the rule, in recognition of the impracticality or difficulty of complying with such a requirement in some districts, authorizes a district by local rule to delegate the duties to a magistrate. In order to formulate a practicable scheduling order, the judge, or a magistrate when authorized by district court rule, and attorneys are required to develop a timetable for the matters listed in Rule 16 b 1 â€” 3. As indicated in Rule 16 b 4 â€” 5 , the order may also deal with a wide range of other matters. The rule is phrased permissively as to clauses 4 and 5 , however, because scheduling these items at an early point may not be feasible or appropriate. Even though subdivision b relates only to scheduling, there is no reason why some of the procedural matters listed in Rule 16 c cannot be addressed at the same time, at least when a scheduling conference is held. Item 1 assures that at some point both the parties and the pleadings will be fixed, by setting a time within which joinder of parties shall be completed and the pleadings amended. Item 2 requires setting time limits for interposing various motions that otherwise might be used as stalling techniques. Item 3 deals with the problem of procrastination and delay by attorneys in a context in which scheduling is especially importantâ€”discovery. Scheduling the completion of discovery can serve some of the same functions as the conference described in Rule 26 f. Item 4 refers to setting dates for conferences and for trial. Scheduling multiple pretrial conferences may well be desirable if the case is complex and the court believes that a more elaborate pretrial structure, such as that described in the Manual for Complex Litigation, should be employed. On the other hand, only one pretrial conference may be necessary in an uncomplicated case. As long as the case is not exempted by local rule, the court must issue a written scheduling order even if no scheduling conference is called. After consultation with the attorneys for the parties and any unrepresented partiesâ€”a formal motion is not necessaryâ€”the court may

modify the schedule on a showing of good cause if it cannot reasonably be met despite the diligence of the party seeking the extension. Otherwise, a fear that extensions will not be granted may encourage counsel to request the longest possible periods for completing pleading, joinder, and discovery. The district courts undoubtedly will develop several prototype scheduling orders for different types of cases. In addition, when no formal conference is held, the court may obtain scheduling information by telephone, mail, or otherwise. In many instances this will result in a scheduling order better suited to the individual case than a standard order, without taking the time that would be required by a formal conference. Rule 16 b assures that the judge will take some early control over the litigation, even when its character does not warrant holding a scheduling conference. Despite the fact that the process of preparing a scheduling order does not always bring the attorneys and judge together, the fixing of time limits serves to stimulate litigants to narrow the areas of inquiry and advocacy to those they believe are truly relevant and material. Time limits not only compress the amount of time for litigation, they should also reduce the amount of resources invested in litigation. Litigants are forced to establish discovery priorities and thus to do the most important work first. Thus, except in exempted cases, the judge or a magistrate when authorized by district court rule will have taken some action in every case within days after the complaint is filed that notifies the attorneys that the case will be moving toward trial. Subdivision b is reenforced by subdivision f , which makes it clear that the sanctions for violating a scheduling order are the same as those for violating a pretrial order. Subdivision c ; Subjects to be Discussed at Pretrial Conferences. This subdivision expands upon the list of things that may be discussed at a pretrial conference that appeared in original Rule The intention is to encourage better planning and management of litigation. Increased judicial control during the pretrial process accelerates the processing and termination of cases. It has been added in the hope of promoting efficiency and conserving judicial resources by identifying the real issues prior to trial, thereby saving time and expense for everyone. See generally Meadow Gold Prods. The notion is emphasized by expressly authorizing the elimination of frivolous claims or defenses at a pretrial conference. There is no reason to require that this await a formal motion for summary judgment. Nor is there any reason for the court to wait for the parties to initiate the process called for in Rule 16 c 1. The timing of any attempt at issue formulation is a matter of judicial discretion. In relatively simple cases it may not be necessary or may take the form of a stipulation between counsel or a request by the court that counsel work together to draft a proposed order. Counsel bear a substantial responsibility for assisting the court in identifying the factual issues worthy of trial. If counsel fail to identify an issue for the court, the right to have the issue tried is waived. Although an order specifying the issues is intended to be binding, it may be amended at trial to avoid manifest injustice. See Rule 16 e.

Chapter 3 : Virginia Civil Procedure - Kent Sinclair, Leigh B. Middleditch Jr. - Google Books

Virginia Law & Procedure. Professor Wood. Spring (Virginia Civil Procedure Outline) Washington and Lee University. School of Law. Lexington, Virginia

This summary is not intended to be an all inclusive summary of discovery law in Virginia, but does include basic and other information. A procedure designed to allow disclosure of information between Plaintiffs and Defendants. Written questions, oral questioning, document production and admissions requests are generally allowed. Discovery was designed to to prevent trial by ambush. Written questions from Plaintiff to Defendant, or from Defendant to Plaintiff. The questions are mailed to the Plaintiff, Defendant or the attorney for response in writing. The answers or responses are usually due between days. A procedure where verbal questions are asked a Plaintiff or Defendant for immediate response. Depositions are usually recorded by a court reporter, who swears the person to tell the truth before questioning begins. The method of obtaining documents from the other party relevant to the case such as all documents a party intends to introduce at trial. Written questions where you request the other party to admit or deny some relevant fact. Objections may be made to all discovery questions if the questions are not relevant, or likely to lead to the discovery of relevant evidence. Virtually all states have adopted a version of civil procedure rules which include rules dealing with discovery. These rules apply in civil cases in both actions at law and in suits of equity before the circuit court. The discovery rules also apply in divorce actions. Parties may obtain discovery by one or more of the followings methods: Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. A party may through interrogatories require another party to identify each person whom the other party expects to call as an expert witness at trial. Unless the court orders otherwise, methods of discovery may be used in any sequence. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to information acquired, except as follows: A party is also under a duty to amend a prior response if the party knows the response was incorrect when made or he knows the response though correct when made is no longer true. Within this Commonwealth depositions may be taken before any person authorized by law to administer oaths. Unless the court orders otherwise, the parties may by written stipulation provide that depositions be taken at any time, any place, and upon any notice. Each interrogatory shall be answered fully in writing and under oath. Unless ordered by the court, a party may serve no more than a total of thirty interrogatories. If a party refuses to allow inspection or fails to answer a question propounded or submitted under Rule 30 or 31, the discovering party may move for an order compelling an answer. It may also be necessary to enter an order granting the extension to protect your rights. Discovery questions are limited in number so select the most important questions to ask the other side. Related Virginia Legal Forms.

Chapter 4 : Bryson on Virginia Civil Procedure | UVA Library | Virgo

Civil Procedure, the Michie Company, , as "little more than an out- line," he has in fact made a significant contribution to practical jurisprud- ence in his handbook on Virginia civil procedure.

BALANCE 1 Private interest that will be affected by the official action 2 Risk of an erroneous deprivation of such interest through the procedures at issue AND the probable value, if any, of additional or substitute procedural safeguards -possible safeguards: AND the ancillary interest of the government fiscal and administrative burdens that additional or substitute procedural requirements would entail -there must be some government involvement -sometimes pre-hearing deprivations needed since def may get rid of assets to avoid judgment -"exigent circumstances" required for pre-judgment seizure of property Doehr -Hamdi v Rumsfeld: Citizen "enemy combatant" entitled to notice of facts, fair opportunity to rebut them before neutral tribunal, right to counsel. To protect gov interests, can use hearsay, can shift burden of proof to defendant. Attachment significantly harms def. All factors were against Matthews. Pre-hearing discontinuation of SSA benefits does not violate due process. Service complete upon transmission, unless serving party learns that it did not reach the person to be served. Plf sends def request to waive, request has many requirements, like formal summons. If defendant fails without good cause, to sign and return a waiver, the court must impose expenses incurred in making service -Waiver does not mean that jurisdictional objections have been waived. Is there a federal statute involved here with its own service provisions for establishing PJ? Plf who brings suit in-state cannot challenge jurisdiction over claims asserted against them within that action. High burden of proof to show this. Burnham does not apply to corporations Scalia "tradition" plurality: Goodyear 1 Place of incorporation OR 2 Principal place of business -"principal place of business"? Not clear from Goodyear. Insufficient contacts can be compensated for by a stronger showing of reasonableness, and vice versa. Asahi appeared to take this approach, analyzing reasonableness despite no min. NY car dealer had not sold cars in OK, advertised there, or deliberately focused on or sought to benefit from OK in any way. Subject to suit for legal malpractice from business activity there. This is also considered "purposeful availment" -Consider the place of negotiation, execution, and performance of contract. Is mere act of selling goods outside forum state that will likely be imported into the forum state sufficient to support jurisdiction? Def sought to serve US market: Regular distribution of substantial amount of goods may be enough, even if goods are directed initially to a distributor in a different state. Key is still purposeful availment, try to analyze same way, regardless of medium by which contracts transmitted. Broadly based on nature and quality of commercial activity conducted over internet Cybersell. Mere fact that it can be viewed by forum state residents is not enough. Contacts mediated through internet must have been specifically directed to the forum state? Fuji Fire Website is vehicle thru which def markets and delivers products or services to forum state, such activity contributes to finding of purposeful availment. Narrowly applied -Artful Pleading Doctrine: Or creatively include a federal claim. Plf may avoid it, they are master of complaint. Narrowly applied -Complete-Preemption Doctrine: Or is there some federal element that must be proven to establish their state law claim? Federal issue must be necessary to prove the claim. Satisfied if the claim created by or brought pursuant to federal law. If yes, then it contains an essential federal element such that it arises under federal law. Express cause of action: Federal statute creates a federal right, and plf is bringing suit under this federal right. Plf can sue because federal statute creates a right to relief. Plf relies directly on federal law as the source of a substantive right he seeks to enforce, and it is clear that federal law expressly creates a cause of action. Implied Cause of Action? Vindication of state law right necessarily turns on a federal issue 2 the federal interest must be substantial 1 whether case includes a federal agency decision binding on agency? Affect ability to act? Once established, burden shifts to challenger. If there is evidence that a party was joined solely for diversity, their citizenship is ignored in the analysis. Aggregation allowed if -mult claims by one plf against one def -Multiple parties can be aggregated if they are suing jointly on an undivided interest, or are being sued jointly. Domicile does not change when you move, even if you never intend to return, if you do not intend to remain at new location indefinitely. Perry -Permanent resident aliens are citizens of state domiciled in Mas v Perry -Corporations: Friend -Insurers are

also citizens of the state of their insuree. Citizenship in every state where a partner or a member is a citizen. Foreign Sovereign Immunities Act requires some action made by them in US 2 Diversity -Adverse parties citizens of different states -Adverse parties state citizens vs. Tashire -Judicial Panel on Mutlidistrict Litigation JPML -Civil actions involving one or more common question of fact that are pending in different districts may be transferred to any district for coordinated or consolidated pretrial proceedings. JMPL makes the transfer based on convenience and efficiency. Related Civil Procedure Samples:

Chapter 5 : Virginia Rules of Civil Procedure, Process Serving Rules - calendrierdelascience.com

Note: Citations are based on reference standards. However, formatting rules can vary widely between applications and fields of interest or study. The specific requirements or preferences of your reviewing publisher, classroom teacher, institution or organization should be applied.

Pretrial motions Application of rules These rules apply to all civil cases in the magistrate courts of the State of West Virginia. These rules supplement, and in designated instances supersede, the statutory procedures set forth in Chapter 50 of the West Virginia Code. The purpose of the rules is to help resolve cases in a just, speedy, and inexpensive manner. Complaint A civil action is commenced by filing a complaint with the magistrate assistant, magistrate clerk, or magistrate deputy clerk. A complaint shall contain: A short and plain statement of the claim showing that the plaintiff is entitled to relief; and A demand for judgment for the relief the plaintiff seeks. Service of process The summons and complaint in civil actions shall be served upon the defendant in the same manner as is provided by Rule 4 of the Rules of Civil Procedure for Trial Courts of Record. Answer Filing and service. The defendant shall serve a copy of the answer upon the plaintiff in the manner set forth in Rule 8. Within 20 days after service of the summons and complaint; or If service of the summons and complaint is made upon an agent or attorney in fact authorized to accept service upon the defendant, within 30 days after service; or Not later than the date specified in an order of publication; or In cases of unlawful entry and detainer and wrongful occupation of residential rental property, within 5 days after service of the summons and complaint. The motion shall be ruled on promptly by the magistrate. Upon request by any party, the magistrate may schedule a pretrial hearing on the motion in accordance with Rule Failure to state defense. Amended by order dated June 26, , effective July 1, ; and by order entered July 1, , effective August 1, Counterclaim and cross-claim Counterclaim. A reply to a counterclaim shall not be required. Failure to file counterclaim. An answer to a cross-claim shall not be required. Third-party complaint If the defendant alleges that another person, who is not named as a party in the case, is wholly or partially responsible for the damages set forth in the complaint, the defendant may file a third-party complaint against such person. No filing fee shall be required. A third-party summons and complaint shall be served upon the third-party defendant in the same manner as an initial summons and complaint. A third-party complaint shall be answered in the same manner as is provided by Rule 4. Election of jury trial Right to elect. All parties to such cases shall be notified in writing of the right to election. Assertion of the right. When the right to a jury trial is asserted in a case involving an expedited proceeding, the trial shall be scheduled as soon as a jury panel can be assembled. Failure to elect within the relevant time limit constitutes a waiver of the right to trial by jury. Adopted by order entered June 30, , effective July 1, Amended and supplemental pleadings Upon request by any party, the magistrate may permit the filing of an amended pleading, or amendment by interlineation, at any stage of the proceeding and upon such terms as may be just. Upon request, the magistrate may also permit the filing of supplemental pleadings asserting claims or defenses which have arisen since the date of the pleading to be supplemented. Permission to file an amended or supplemental pleading shall be freely given, and may be done with or without a hearing. Continuances to meet new matter asserted by way of amended or supplemental pleadings shall be granted if necessary to avoid surprise or other prejudice to the opposing party. Amended by order entered July 1, , effective August 1, Service of pleadings, motions and other papers When service is required. How service is made. Service upon the attorney or upon a party shall be made by delivering a copy, by mailing a copy to the last-known address, or by facsimile transmission to his or her office or usual place of abode. Delivery of a copy means: Service by mail is complete upon mailing. Amended by order entered July 10, , effective September 1, Filing of pleadings, motions and other papers When filing is required. Default judgment A magistrate shall enter judgment by default against a defendant when it appears from the record that the defendant has been served with the summons and complaint in accordance with these rules and has failed to appear or to answer within the time provided in Rule 4, and the plaintiff submits either an affidavit or sworn testimony stating: That the defendant has failed to appear or to answer the complaint or notify the court of intent to contest the case; and The relief the plaintiff requests from

the court and whether it is for a sum certain or for a sum which can by computation be made certain. A default judgment may be obtained in a similar manner against any party that has been served, in accordance with these rules, with a copy of a counterclaim, cross-claim, or third-party complaint, and has failed to appear or otherwise defend as required by these rules. No default judgment may be entered against a party who is an infant, an incompetent, or an incarcerated convict unless such person is represented by a guardian, committee resident, or guardian ad litem. A default judgment may be set aside in accordance with Rule 17 and Rule 20 c. Amended by order entered December 15, , effective January 1, ; and by order entered July 1, , effective August 1, Notice of trial and pretrial hearings Notice of trial. Unless otherwise provided by statute or rule, all parties shall be notified by the court by first-class mail not less than 21 days before such date of trial. All such notices shall contain: The date, place and time of trial; The name of the magistrate scheduled to hear the case; A statement of the time periods in which pretrial motions must be filed, in accordance with Rule 12; A statement of the manner in which pretrial motions may be filed; A statement of the restrictions upon continuances as set forth in Rule 12; and A statement of the manner by which motions for disqualification may be filed as set forth in Rule 1B of the Administrative Rules for Magistrate Courts. Notice of pretrial hearing. Notice of such pretrial hearing shall be in accordance with the requirements for notice of trial as set forth in section a. Amended by order entered July 1, , effective August 1, ; by order entered June 30, , effective July 1, ; and by order entered January 30, , effective March 1, Pretrial motions Time periods. Removal to circuit court; Motion and affidavit for transfer to another magistrate; Motion for continuance; and Any other motion which, if granted, would require rescheduling of the hearing or trial. The clerk, deputy clerk, or magistrate assistant shall provide appropriate forms on which such pretrial motions may be made. All other pretrial motions may be made at any time in writing prior to trial, or may be made orally or in writing at time of trial. The time periods set forth in this subsection shall not apply to summary proceedings for wrongful occupation of residential rental property or to proceedings for domestic violence protective orders. Compliance with the requirements set forth in section a of this rule; A showing of good cause; and A reasonable effort by the magistrate to notify all parties and provide them with an opportunity to respond to the motion. Amended by order entered December 15, , effective January 1, ; by order entered June 30, , effective July 1, ; and by order entered January 30, , effective March 1,

Chapter 6 : Rule Subpoena | Federal Rules of Civil Procedure | LII / Legal Information Institute

Civil Procedure outlines created by brilliant United States grads. We also stock other Law Notes, including Civil Procedure, Remedies, and Agency and Other Unincorporated Businesses.

Definition of certain terms Definition of certain terms for purposes of this chapter; process, return, statutory agent. For the purposes of this chapter: How process to be served. Upon commencement of an action, process shall be served in the manner set forth in this chapter and by the Rules of the Supreme Court. Process received in time good though neither served nor accepted. Process received in time good though neither served nor accepted Except for process commencing actions for divorce or annulment of marriage or other actions wherein service of process is specifically prescribed by statute, process which has reached the person to whom it is directed within the time prescribed by law, if any, shall be sufficient although not served or accepted as provided in this chapter. No service of process on Sunday; exceptions. No civil process shall be served on Sunday, except in cases of persons escaping out of custody, or where it is otherwise expressly provided by law. Plaintiffs required to furnish full name and last known address of defendants, etc. Upon the commencement of every action, the plaintiff shall furnish in writing to the clerk or other issuing officer the full name and last known address of each defendant and if unable to furnish such name and address, he shall furnish such salient facts as are calculated to identify with reasonable certainty such defendant. The clerk or other official whose function it is to issue any such process shall note in the record or in the papers the address or other identifying facts furnished. Failure to comply with the requirements of this section shall not affect the validity of any judgment. Copies to be made. The clerk issuing any such process unless otherwise directed shall deliver or transmit therewith as many copies thereof as there are persons named therein on whom it is to be served. To whom process directed and where executed. Process from any court, whether original, mesne, or final, may be directed to the sheriff of, and may be executed in, any county, city, or town in the Commonwealth. Who to serve process. The following persons are authorized to serve process: In such case, the return is due on the next day following such Saturday, Sunday, or legal holiday. Territorial limits within which sheriff may serve process in his official capacity; Territorial limits within which sheriff may serve process in his official capacity; process appearing to be duly served. The sheriff may execute such process throughout the political subdivision in which he serves and in any contiguous county or city. If the process appears to be duly served, and is good in other respects, it shall be deemed valid although not directed to an officer, or if directed to any officer, though executed by some other person. This section shall not be construed to require the sheriff to serve such process in any jurisdiction other than in his own. Manner of serving process upon natural persons. In any action at law or in equity or any other civil proceeding in any court, process, for which no particular mode of service is prescribed, may be served upon natural persons as follows: By delivering a copy thereof in writing to the party in person; or By substituted service in the following manner: If the party to be served is not found at his usual place of abode, by delivering a copy of such process and giving information of its purport to any person found there, who is a member of his family, other than a temporary sojourner or guest, and who is of the age of sixteen years or older; or If such service cannot be effected under subdivision 2 a, then by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such place of abode, provided that not less than ten days before judgment by default may be entered, the party causing service or his attorney or agent mails to the party served a copy of such process and thereafter files in the office of the clerk of the court a certificate of such mailing. In any civil action brought in a general district court, the mailing of the application for a warrant in debt or affidavit for summons in unlawful detainer or other civil pleading or a copy of such pleading, whether yet issued by the court or not, which contains the date, time and place of the return, prior to or after filing such pleading in the general district court, shall satisfy the mailing requirements of this section. In any civil action brought in a circuit court, the mailing of a copy of the pleadings with a notice that the proceedings are pending in the court indicated and that upon the expiration of ten days after the giving of the notice and the expiration of the statutory period within which to respond, without further notice, the entry of a judgment by default as prayed

for in the pleadings may be requested, shall satisfy the mailing requirements of this section and any notice requirement of the Rules of Court. Any judgment by default entered after July 1, , upon posted service in which proceedings a copy of the pleadings was mailed as provided for in this section prior to July 1, , is validated. Process on convict defendant. Such service may be effected by delivery to the officer in charge of such jail or institution whose duty it shall be to deliver forthwith such process to the convict. How process served on domestic corporations generally. How process served on municipal and county governments How process served on municipal and county governments and on quasi-governmental entities. Service under this section may be made by leaving a copy with the person in charge of the office of any officer designated in subdivisions 1 through 4. How process served on foreign corporations generally. Service of process on a foreign corporation may be effected in the following manner: Service of certain process on foreign or domestic corporations. In addition to other provisions of this chapter for service on corporations, process in attachment or garnishment proceedings, and notice by a creditor of judgment obtained and execution thereon issued in his favor, may be served on any agent of a foreign or domestic corporation wherever such agent may be found within the Commonwealth. On whom process served when corporation operated by trustee or receiver. When any corporation is operated by a trustee or by a receiver appointed by any court, in any action against such corporation, process may be served on its trustee or receiver; and if there be more than one such trustee or receiver, then service may be on any one of them. In the event that no service of process may be had on any such trustee or receiver, then process may be served by any other mode of service upon corporations authorized by this chapter. How process served on copartner or partnership. Process against a copartner or partnership may be served upon a general partner, and it shall be deemed service upon the partnership and upon each partner individually named in the action, provided the person served is not a plaintiff in the suit and provided the matter in suit is a partnership matter. Process against unincorporated associations or orders, or unincorporated common carriers. Process against an unincorporated i association, ii order, or iii common carrier, may be served on any officer, trustee, director, staff member or other agent. Process against unincorporated associations or orders, or unincorporated common carriers; principal office outside Virginia and business transactions in Virginia. Service, when duly made, shall constitute sufficient foundation for a personal judgment against such association, order or carrier. Service on Commissioner of the Department of Motor Vehicles as agent for nonresident motor vehicle operator. Service on Secretary of Commonwealth as agent of nonresident operator or owner of aircraft. Any nonresident owner or operator of any aircraft that is operated over and above the land and waters of the Commonwealth or uses aviation facilities within the Commonwealth, shall by such operation and use appoint the Secretary of the Commonwealth as his statutory agent for the service of process in any action against him growing out of any accident or collision occurring within or above the Commonwealth in which such aircraft is involved. How service made on Commissioner and Secretary; appointment binding. All fees collected by the Commissioner pursuant to the provisions of this section shall be paid into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department of Motor Vehicles. Continuance of action where service made on Commissioner or Secretary. Effect of service on statutory agent; duties of such agent. Service of process on the statutory agent shall have the same legal force and validity as if served within the Commonwealth personally upon the person for whom it is intended. Provided that such agent shall forthwith send by registered or certified mail, with return receipt requested, a copy of the process to the person named therein and for whom the statutory agent is receiving the process. Provided further that the statutory agent shall file an affidavit of compliance with this section with the papers in the action; this filing shall be made in the office of the clerk of the court in which the action is pending. Specific addresses for mailing by statutory agent. However, upon the filing of an affidavit by the plaintiff that he does not know and is unable with due diligence to ascertain any post-office address of such nonresident, service of process on the statutory agent shall be sufficient without the mailing otherwise required by this section. Service on attorney after entry of general appearance by such attorney. When an attorney authorized to practice law in this Commonwealth has entered a general appearance for any party, any process, order or other legal papers to be used in the proceeding may be served on such attorney of record. Such service shall have the same effect as if service had been made upon such party personally;

provided, however, that in any proceeding in which a final decree or order has been entered, service on an attorney as provided herein shall not be sufficient to constitute personal jurisdiction over a party in any proceeding citing that party for contempt, either civil or criminal, unless personal service is also made on the party. Provided, further, that if such attorney objects by motion within five days after such legal paper has been so served upon him, the court shall enter an order in the proceeding directing the manner of service of such legal paper. Notice to be mailed defendant when service accepted by another. No judgment shall be rendered upon, or by virtue of, any instrument in writing authorizing the acceptance of service of process by another on behalf of any person who is obligated upon such instrument, when such service is accepted as therein authorized, unless the person accepting service shall have made and filed with the court an affidavit showing that he mailed or caused to be mailed to the defendant at his last known post-office address at least ten days before such judgment is to be rendered a notice stating the time when and place where the entry of such judgment would be requested. Service by publication; when available. Except in condemnation actions, an order of publication may be entered against a defendant in the following manner: An affidavit by a party seeking service stating one or more of the following grounds: Under subdivisions 1 and 2 of this section, the order of publication may be entered by the clerk of the court. Under this subdivision such order may be entered only by the court. Every affidavit for an order of publication shall state the last known post office address of the party against whom publication is asked, or if such address is unknown, the affidavit shall state that fact. What order of publication to state; how published; when publication in newspaper dispensed with. Except in condemnation actions, every order of publication shall give the abbreviated style of the suit, state briefly its object, and require the defendants, or unknown parties, against whom it is entered to appear and protect their interests on or before the date stated in the order which shall be no sooner than fifty days after entry of the order of publication. The clerk shall cause copies of the order to be so posted, mailed, and transmitted to the designated newspaper within twenty days after the entry of the order of publication. Upon completion of such publication, the clerk shall file a certificate in the papers of the case that the requirements of this section have been complied with. Provided, the court may, in any case where deemed proper dispense with such publication in a newspaper. The cost of such publication shall be paid by the petitioner or applicant. Within what time after publication case tried or heard; no subsequent publication required. If after an order of publication has been executed, the defendants or unknown parties against whom it is entered shall not appear on or before the date specified in such order, the case may be tried or heard as to them. Publication of interim notice. In any case in which a nonresident party or party originally served by publication has been served as provided by law, and notice of further proceedings in the case is required but no method of service thereof is prescribed either by statute or by order or rule of court, such notice may be served by publication thereof once each week for two successive weeks in a newspaper published or circulated in the city or county in which the original proceedings are pending. If the original proceedings were instituted by order of publication, then the publication of such notice of additional or further proceedings shall be made in the same newspaper. A party, who appears pro se in an action, shall file with the clerk of the court in which the action is pending a written statement of his place of residence and mailing address, and shall inform the clerk in writing of any changes of residence and mailing address during the pendency of the action. The clerk and all parties to the action may rely on the last written statement filed as aforesaid. The court in which the action is pending may dispense with such notice for failure of the party to file the statement herein provided for or may require notice to be given in such manner as the court may determine. Notwithstanding any provision to the contrary in paragraph A hereof, depositions may be taken, testimony heard and orders and decrees entered without an order of publication, when the defendant has been legally served with or has accepted service of process to commence a suit for divorce or for annulling or affirming a marriage, and he or she or the plaintiff: Shall thereafter become a nonresident; or Shall remove from the county or city in which the suit is pending, if a resident thereof, or in which he or she resided at the time of the institution of the suit, or was served with process, without having filed with the clerk of the court where the suit is pending a written statement of his or her intended future place of residence, and a like statement of subsequent changes of residence; or When after such written statement has been filed with the clerk, notice shall have been served upon him or her at the last

place of residence given in the written statement as provided by law; or Could not be found by the sheriff of the county or city for the service of the notice, and the party sending the service makes affidavit that he has used due diligence to find the adverse party without success. This section shall not apply to orders of publication in condemnation actions. Personal service outside of Virginia. Personal service of a process on a nonresident person outside the Commonwealth may be made by: The person so served shall be in default upon his failure to file a pleading in response to original process within twenty-one days after such service. If no responsive pleading is filed within the time allowed by law, the case may proceed without service of any additional pleadings, including the notice of the taking of depositions. Any personal service of process outside of this Commonwealth executed in such manner as is provided for in this section prior or subsequent to October 1, , in a divorce or annulment action is hereby validated. Personal service of process outside this Commonwealth in a divorce or annulment action may be executed as provided in this section. Within what time case reheard on petition of party served by publication, and any injustice corrected. If a party against whom service by publication is had under this chapter did not appear before the date of judgment against him, then such party or his representative may petition to have the case reheard, may plead or answer, and may have any injustice in the proceeding corrected within the following time and not after: Within two years after the rendition of such judgment, decree or order; but If the party has been served with a copy of such judgment, decree, or order more than a year before the end of such two-year period, then within one year of such service. For the purpose of subdivision 2 of this section, service may be made in any manner provided in this chapter except by order of publication, but including personal or substituted service on the party to be served, and personal service out of the Commonwealth by any person of eighteen years or older and who is not a party or otherwise interested in the subject matter in controversy.

Chapter 7 : Rules of Civil Procedure for the Magistrate Courts | Rules - West Virginia Judiciary

Format Book Published Newark, NJ: LexisNexis/Matthew Bender, c Edition 4th ed Language English Variant Title Virginia civil procedure ISBN (hardbound).

Chapter 8 : William Hamilton Bryson (Author of Bryson on Virginia Civil Procedure)

Virginia Civil Procedure, Fifth Edition covers all the rules for every level of the Virginia court system, from the General District Courts to the Supreme Court of Virginia. Turn to it every time you have a question or need a refresher on any aspect of Virginia civil process.

Chapter 9 : "Notes on Virginia Civil Procedure" by William Hamilton Bryson

Rules of Supreme Court of Virginia. Practice and Procedures in Civil Actions. The clerk shall note and attest the filing date on every pleading. In an.