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THE RULES OF COURT FOR THE GENERAL DISTRICT COURTS OF VIRGINIA

*J. R. Zepkin**

In the spring of 1986, a proposal was made to the Advisory Committee on the Rules of Court to the Judicial Council of Virginia (the "Advisory Committee") for a reorganization and review of the Rules of Court for the general district courts. The Advisory Committee authorized the creation of a subcommittee. The charge to the subcommittee included the following goals:

1. Promote uniformity of procedure among the general district courts of Virginia;

2. Provide ease of location by having all of the rules that apply to the general district court grouped in one location;

3. Eliminate questions of whether existing rules applied to the general district courts; and

4. Simplify practice in the general district courts for attorneys and *pro se* litigants.

Since many of the subjects for possible rule adoption would be seen differently by the various users of the general district courts, a broad based working committee was formed. The following persons served:

Hon. Robert N. Baldwin: Executive Secretary of the Supreme Court of Virginia and State Court Administrator for Virginia.

Archibald C. Berkley, Jr., Esq.: Practicing attorney in the Richmond area with a large portion of his work involving civil litigation in the general district courts.

Professor W. Hamilton Bryson: Professor of Law, T.C. Williams

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* General District Court Judge, Ninth Judicial District; Lecturer in Law, Marshall-Wythe School of Law, College of William and Mary.

I am indebted to the members of the drafting committee for their hard work, enthusiasm and sensitivity to the competing perspectives. Also, I thank them for reviewing this article and for offering their helpful comments. Bert Nance, Commonwealth's Attorney for Henrico County, died shortly after the committee finished its work. He was a dedicated public service, faithful in representing the views of the prosecutor in the committee's work.

School of Law, University of Richmond. Professor Bryson teaches Virginia Civil Procedure and is the author of several books on the topic.

Hon. Stewart P. Davis: Judge of the Fairfax County General District Court; Judge Davis sits on one of the busiest general district courts in the Commonwealth.

Hon. J. Frank Greenwalt, Jr.: Judge of the Martinsville and Patrick Counties General District Courts; Judge Greenwalt brought the perspectives of both city and county courts as well as that of the western part of the Commonwealth to the committee.

Hon. R. Stanley Hudgins: Judge of the Virginia Beach General District Court; Judge Hudgins represented a large volume court in the eastern part of the Commonwealth.

Warren W. McLain, Esq.: Practicing attorney from Northern Virginia with an active criminal defense practice. He is past Chairman of the Criminal Law Section of the Virginia State Bar.

Kenneth Montero, Esq.: Director of Legal Research, Supreme Court of Virginia. He has extensive experience in rule drafting.

Hon. H. Albert Nance, Jr.: Commonwealth's Attorney for Henrico County and past President of the Commonwealth Attorney's Association.

Franklin A. Swartz, Esq.: Practicing attorney from Norfolk specializing in criminal defense work and past Chairman of the Criminal Law Section of the Virginia State Bar.

Hon. E. L. Turlington, Jr.: Judge of the Richmond General District Court; Judge Turlington sits in the civil division of this metropolitan court.

Robert P. Vines, Esq.: General practitioner from the Pittsylvania County, Chatham and Danville areas. He represented the viewpoint of the attorney from both a city and rural area. Mr. Vines was a member of the Civil Litigation Section of the Virginia State Bar.

The goal was to join the collective experiences of the bench and bar from urban and rural areas. The members of the Committee were diverse, yielding strongly competing views on many of the proposed topics.

To gain an understanding of the views of members of the bench and bar, announcements along with invitations to comment were

mailed to the bench and to the major bar organizations in the state.[1] Releases were published in the *Virginia Bar News* and *The Virginia Lawyers Weekly*. Members of the committee and all general district court judges were encouraged to ask their local bar associations for suggestions. Responses were invited on the need for rules in general and in specific matters that may require addressing. A number of replies were received.

After months of discussions, debate and drafting, a proposed set of rules was complete. The draft then underwent the most exhaustive exposure to the bar and bench of any pending rule adoption or change in the past. Copies were mailed to all general district court judges. A complete set was published in *The Virginia Law Weekly* which, as part of a promotion and public service announcement, sent a copy of the edition to *every* licensed attorney in Virginia. Invitations for comment were included with all distributions. A program was held on the proposed rules at one of the district court judges conferences. The Boyd-Graves Conference[2] considered and recommended the rules. The Judicial Conference of Virginia for District Courts[3] passed a resolution supporting the adoption of a separate section of the Rules of Court for the General District Courts.

Following this exposure, the Advisory Committee on Rules of Court considered the proposal. The committee recommended the rules for adoption and referred them to the Judicial Council of Virginia. This body approved the rules and sent them to the Supreme Court of Virginia with a recommendation for adoption.

In the fall of 1988, the Supreme Court of Virginia adopted the rules, effective July 1, 1989. It was a long journey, but the extra effort produced a result that will better serve our lay citizens and members of the bar who use the general district courts. While no set of rules will please everyone, it is important to remember that these were born of a process of negotiation and compromise. Since

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1. Announcements with invitations for comments and suggestions were sent to: Virginia State Bar and its sections, Old Dominion Bar Association, The Virginia Bar Association, Virginia Association of Defense Attorneys, Virginia Trial Lawyers Association and the Virginia Women Attorneys Association.

2. An adjunct of the Virginia Bar Association comprised of representatives of the plaintiffs' and defense civil litigation bars. The group meets annually to discuss needed rules and legislative changes and to serve as an open forum for debate over differing perspectives on current issues in civil litigation.

3. *See* VA. CODE ANN. §§ 16.1-218 to -221 (Repl. Vol. 1988).

the drafting committee had a broad cross section of experience, the rules should be balanced.

A portion of the new rules are a duplication of existing rules without changes or with relatively minor changes in order to make them more applicable in the general district court. Some individuals will criticize the changes. It is important to remember that one of the primary goals of the Advisory Committee was to compile all of the rules that apply to the general district courts in one location. An additional objective was to eliminate questions concerning which rules were applicable to the general district courts.

Other rules address procedural differences that existed among the general district courts which made it more difficult to litigate in these courts. For matters that were insignificant, the committee concluded that a new rule was not necessary. It was very important to protect the independence of the judges in making substantive decisions. Only procedural matters are addressed by the rules.

A review of the rules follows. For those that are simply a duplication or relocation of existing ones, little comment is made. For the new rules, information on the history, reasons, and where applicable, compromises is offered.

The rules are divided into three sub-parts: (1) *In general*, applying to all cases in the general district court; (2) *Civil*, applying only to civil cases in the general district court; and (3) *Criminal*, applying only to criminal cases in the general district court.

RULE 7A:1. SCOPE.

> Part Seven-A of the Rules shall apply to all proceedings in the general district courts.[4]

This Rule establishes that the rules contained within *Part 7-A* will apply to all proceedings in the general district courts.

RULE 7A:2. COMPUTATION OF TIME.

> Whenever a party is required or permitted under these Rules to do an act within a prescribed time after receipt or delivery of a paper and the paper is sent by mail, three days shall be added to the prescribed period.

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4. All quoted Rules are taken from the Rules of the Supreme Court of Virginia. Any reference to a specific Rule is to the most current versions of that Rule unless otherwise indicated.

This essentially duplicates present Rule 1:7 except that it is slightly broader. Rule 1:7 applies when the time period is keyed to "service" of a paper and the paper is served by mail. Rule 7A:2 uses receipt or delivery as the criteria; Rule 7A:2 should function just as existing Rule 1:7.

RULE 7A:3. COUNSEL.

When used in these Rules, the word "counsel" or "attorney" includes a partnership, a professional corporation or an association of members of the Virginia State Bar practicing under a firm name.

"Counsel of record" in any case includes an attorney who has signed a pleading in the case or who has notified the clerk or judge that the attorney appears in the case and shall also include a party who appears in court pro se. Except as provided in Section 16.1-69.32:1 of the Code of Virginia,[5] counsel of record shall not withdraw from a case except by leave of court with such notice as the court may require to the client of the time and place of a motion for leave to withdraw.

Former Rule 3D:2[6] was relocated to the general section to make it applicable to all cases. Former Part 3D of the rules applied only in civil cases in the general district courts. The rule differs slightly from Rule 1:5, which applies in the circuit courts. In the general district court, notice of appearance can be given to the judge or clerk and does not have to be in writing.

RULE 7A:4. REPORTERS AND TRANSCRIPTS OF PROCEEDINGS IN COURT.

Reporters, when present, shall be first duly sworn to take down and transcribe the proceedings faithfully and accurately to the best of their ability and shall be subject to the control and discipline of the judge.

When a reporter is present and takes down any proceeding in a court, any person interested shall be entitled to obtain a transcript of the proceedings or any part thereof upon terms and conditions to be fixed in each case by the judge.

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5. VA. CODE ANN. § 16.1-69.32:1 (Repl. Vol. 1988).
6. *See* VA. SUP. CT. R. 3D:2 (1988).

> The proceedings may be taken down by means of any recording device approved by the judge.

This duplicates Rule 1:3. Section 16.1-69.35:2 of the Code of Virginia,[7] which applies only to the general district courts, permits any party, or counsel for any party, to tape record the proceedings. No court approval is necessary.

RULE 7A:5. DISCRETION OF COURT.

> All steps and procedures in the clerk's office touching the filing of pleadings and the maturing of suits or actions may be reviewed and corrected by the court.
>
> The time allowed for filing pleadings may be extended by the court in its discretion and such extension may be granted although the time fixed already has expired.

Rule 1:9 is replicated except for omitting the second part of the last sentence which has no application to the general district courts.

RULE 7A:6. REGULATION OF CONDUCT IN THE COURTROOM.

> Except as may be authorized by statute, and by Rule 1:14, a court shall not permit the taking of photographs in the courtroom during the progress of judicial proceedings or the broadcasting of judicial proceedings by radio or television but may authorize the use of electronic or photographic means for the preservation of the record or parts thereof.

This is existing Rule 1:14 with the addition of "except as authorized by statute and by Rule 1:14."[8] The present experimentation with broadcasting trials and the expectation that there will be more changes in the statutes and/or Rule 1:14 made this exception necessary.

RULE 7A:7. SIZE OF PAPER.

> (a) All pleadings, motions, briefs and all other documents filed in any clerk's office in any proceeding pursuant to the Rules or Stat-

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7. VA. CODE ANN. § 16.1-69.35 (Repl. Vol. 1988).
8. VA. SUP. CT. R. 7A:6.

utes shall be 8-½ by 11 inches in size. All typed material shall be double spaced except for quotations.

(b) This Rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.

(c) No paper shall be refused for failure to comply with the provisions of this Rule, but the clerk or judge may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel shall certify that the substituted paper is identical in content to the paper initially filed.

This is a duplication of Rule 1:16.

RULE 7A:8. GENERAL PROVISIONS AS TO PLEADINGS.

(a) Counsel of Record tendering a pleading gives assurances that it is filed in good faith and not for delay.

(b) A pleading that is sworn to is an affidavit for all purposes for which an affidavit is required or permitted.

(c) Counsel of Record who files a pleading shall sign it and state counsel's address and phone number.

(d) The mention in a pleading of an accompanying exhibit shall, of itself and without more, make such exhibit a part of the pleading.

This Rule is an extraction of those parts of present Rule 1:4 that were needed for the general district courts. The term "counsel of record" was used in paragraph (c) instead of "counsel or an unrepresented party" of Rule 1:4(c) since "counsel of record" as defined in Rule 7A:3 includes an unrepresented party. It may be that with the adoption of section 8.01-271.1 of the Code of Virginia,[9] paragraph (a) of Rule 7A:8 is no longer needed.

RULE 7A:9. AMENDMENTS.

No amendment shall be made to any pleading after it is filed with the clerk, except by leave of court. Leave to amend shall be liberally granted in furtherance of the ends of justice.

In granting leave to amend, the court may make such provision

9. This section imposes certain duties on counsel or a party filing a pleading or making a motion. Sanctions are required for violations. VA. CODE ANN. § 8.01-271.1 (Cum. Supp. 1989).

for notice thereof and opportunity to make response as the court may deem reasonable and proper.

This is virtually identical to Rule 1:8 with the exception of a few grammatical changes. There was no intent to alter the meaning.

RULE 7A:10. COPIES OF PLEADINGS AND REQUESTS FOR SUBPOENAS DUCES TECUM TO BE FURNISHED.

All pleadings not otherwise required to be served and requests for subpoenas duces tecum shall be served on each counsel of record by delivering or mailing a copy to each on or before the day of filing.

At the foot of such pleadings and requests shall be appended either acceptance of service or a certificate of counsel that copies were served as this rule requires, showing the date of delivery or mailing.

This is Rule 1:12, slightly edited to delete any reference to the gender of counsel of record. Sections 16.1-89 and 16.1-131 of the Code of Virginia[10] authorize the issuance of subpoenas duces tecum in civil and criminal cases in the general district courts. Both sections incorporate certain Rules of Court[11] which contain requirements for the issuance of the subpoena. These sections do not conflict with Rule 7A:10.

RULE 7A:11. ENDORSEMENTS.

Drafts of orders shall be endorsed by counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served by delivering or mailing to all counsel of record who have not endorsed them. Compliance with this rule and with Rule 7A:10 may be modified or dispensed with by the court in its discretion.

Rule 7A:11 is a duplication of Rule 1:13.

RULE 7A:12. REQUESTS FOR SUBPOENAS FOR WITNESSES AND RECORDS.

(a) *Subpoenas for Witnesses:*

(1) Requests for subpoenas for witnesses should be filed at least

10. VA. CODE ANN. § 16.1-89, -131 (Repl. Vol. 1988).

11. In civil cases, the requirements of Rule 4:9 must be followed. VA. SUP. CT. R. 4:9. In criminal cases, the requirements of Rule 3A:12 must be met. *Id.* 3A:12.

ten days prior to trial.

(2) Requests for subpoenas for witnesses not timely filed should not be honored except when authorized by the court for good cause.
(b) *Subpoenas Duces Tecum:*

(1) Requests for subpoenas duces tecum should be filed at least 15 days prior to trial.

(2) Requests for subpoenas duces tecum not timely filed should not be honored except when authorized by a judge for good cause.
(c) *Meaning of Filed:*

The term filed as used in this Rule means received in the appropriate clerk's office or by an appropriate magistrate.

This is a new rule which is the result of much discussion and negotiation. Rule 7A:12 marks the first instance that a time limit has been placed on requests for witness subpoenas or subpoenas duces tecum. The General Assembly of Virginia is on record urging that witnesses be given appropriate consideration including prompt advance notification of proceedings.[12] The Judicial Council of Virginia has adopted the goal that "all witnesses should be provided timely notice of hearings, continuances and delays."[13]

The committee considered experiences of witnesses subpoenaed to appear in court on short notice, sometimes as late as the night before the court date, even when the case had been pending for some time. Initially, it was suggested that a rule be recommended establishing a mandatory time period for filing requests for subpoenas. In the debate over this point, it was strongly argued that an obligatory rule would cause hardships in cases where for good reasons, a trial date was set very soon after the case was filed. Issues and concerns were raised with respect to enforcement and whether the rights of litigants to a full and fair hearing might be prejudiced by being forced to go to trial without important witnesses because an attorney did not file a witness request in a timely fashion.

The rule in its present form was finally agreed upon. The use of the word "should" was intended, as opposed to "shall" or "must."

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12. H.R. J. Res. No. 105, 1984 VA. ACTS 2232-33 (agreed to by the House of Delegates, February 13, 1984, and agreed to by the Senate, March 6, 1984).

13. *A Statement of Principles and Recommended Judicial Practices*, adopted by the Judicial Council of Virginia. *Report to the General Assembly and Supreme Court of Virginia*, The Judicial Council of Virginia 27 (1986).

Such wording will continue to send a firm message to the bench and bar that timeliness is a goal that should be achieved. The Rule will also furnish additional authority to those general district court judges who wish to insist on specific time limitations. The committee believed the concern of judges and lawyers over the convenience of witnesses, combined with the Rule will provide the necessary changes in practice without a mandatory requirement.

The meaning of "file" in Rule 7A:12 is significant. Time periods are measured from the date of receipt in the clerk's office, not from the date of mailing. The time periods are minimum, not maximum, days before trial that the requests should be delivered to the clerk.

RULE 7A:13. WHAT CONSTITUTES NOTING AN APPEAL.

> All appeals shall be noted in writing. An appeal is noted only upon timely receipt in the clerk's office of the writing. An appeal may be noted by a party or by the attorney for such party. In addition, in civil cases, an appeal may be noted by a party's regular and bona fide employee or by a person entitled to ask for judgment under any statute.

This is a new Rule, which is necessary because of the varying procedures that exist among the general district courts. There were reported instances of disputes between litigants or their counsel, and the judge or the clerk's office staff over whether an appeal had been noted.

Thus, by requiring a writing to complete the noting of an appeal, such disputes may be eliminated. There are pre-printed forms for this purpose[14] which are available in each clerk's office; however, the rule does not require that these particular forms be used.

In order for the notice of appeal to be effective, it must be received by the clerk's office within the statutory time period.[15]

RULE 7A:14. CONTINUANCES.

> (a) *Continuances Granted for Good Cause.* Continuances should not be granted except by, and at the discretion of, a judge for good cause shown, or unless otherwise provided by law. The judge may, by order, delegate to the clerk the power to grant continuances con-

14. District Court Forms, DC-370, DC-475 (criminal and civil respectively).
15. *See* VA. CODE ANN. §§ 16.1-106, -132 (Repl. Vol. 1988).

sented to by all parties under such circumstances as are set forth in the order. Such an order of delegation should be reasonably disseminated and posted so as to inform the bar and the general public.

(b) *All Parties Agree to Continuance.* If all parties to a proceeding agree to seek a continuance, the request may be made orally by one party as long as that party certifies to the judge that all other parties know of the request and concur. Such a request should be made as far in advance of the scheduled hearing or trial as is practicable. If granted, the moving party shall be responsible for assuring that notice of the continuance is given to all subpoenaed witnesses and that they are provided with the new court date. This obligation may be met by (i) an agreement between the parties that each side will notify its own witnesses; or (ii) any other arrangement that is reasonably calculated to get prompt notice to all witnesses.

(c) *All Parties Do Not Agree to Continuance.* If a request for continuance is not agreed to by all parties, such request should be made to the court prior to the time originally scheduled for the hearing or trial. If the court determines that a hearing on the request should be conducted prior to the time originally scheduled for the trial, all parties shall be given notice of such hearing by the requesting party.

(d) *Continuances Requested At the Time of Hearing.* Where a request for a continuance has not been made prior to the hearing or trial and other parties or witnesses are present and prepared for trial, a continuance should be granted only upon a showing that to proceed with the trial would not be in the best interest of justice.

(e) *Parties.* For purposes of this Rule, the term "parties" shall mean all plaintiffs, defendants and third party defendants in a civil case and the prosecution and the defendant in a criminal or traffic infraction case.

No area of procedure generates more discussion than continuances. This Rule was the subject of much comment and negotiation. Courts are under increasing pressure to manage their dockets and to insist that cases, when filed, be brought to a timely conclusion. Some members of the bar argued that when all the parties to a dispute agree to continue a matter, absent extraordinary circumstances, the court should not interfere by denying the continuance. Others believed that there are times when the litigants may not wish their case to be continued, and that the sole reason for a motion to continue may stem from the desires of the attorney[s], and not from the wishes of the client or even a bona fide emergency situation.

Former Rule 3D:7[16] had been in effect since February 17, 1982, providing the framework for continuance motions in civil cases. Previously, there had not been an equivalent rule which would apply in criminal cases. Permissible methods for seeking continuances in criminal cases varied sharply among the general district courts.

The committee was concerned over whether witnesses would be timely notified if a case was continued. There were instances of cases being continued when neither the plaintiff nor the defendant appeared, yet witnesses appeared because no one advised them of the continuance.

Rule 7A:14 balances these concerns while allowing a court to exercise discretion in reviewing the particular circumstances of each situation in deciding whether to grant a continuance. This rule applies in both criminal and civil cases.

Each court is permitted to establish methods, and limitations granting continuances in cases where there is agreement among the parties. When the motion to continue is opposed, the rule requires, where possible, advance notice of the request so that a hearing on the motion can be arranged prior to scheduled trial date. If the request is made at the last minute and everyone is present in court, the rule allows for continuances only in those situations where the court is satisfied that justice would not be served.

With any continuance, by agreement or otherwise, clearly the burden is on the moving party to be certain that all witnesses are notified. Since each side often prefers to notify its own witnesses, the rule permits this preference to be exercised.

Priority is generally given to early requests and the burden is greater when the moving party makes a late request. The effect should be to reduce the number of untimely motions for continuances.

RULE 7A:15. GENERAL INFORMATION RELATING TO EACH COURT.

> The chief judges of the general district courts shall on or before December 31 of each year furnish the executive secretary of the Supreme Court, on forms provided by him, current general information

16. *See* VA. SUP. CT. R. 3D:7 (1988).

relating to the management of the courts within each district. This information shall be assembled and published on or before July 1 of each year.

This extracts from Rule 1:15 the relevant material that applies to general district courts, furthering the goal of compiling all of the rules that apply to general district courts in one location.

RULE 7B:1. SCOPE.

These Rules apply to all civil cases in the General District Courts.

All civil actions, not just suits in debt, are covered by this Part of the Rules.

RULE 7B:2. SPECIFIC RULE FOR PLEADINGS IN GENERAL DISTRICT COURTS.

The judge of any General District Court may require the plaintiff to file and serve a written bill of particulars and the defendant to file and serve a written grounds of defense within the periods of time specified in the order so requiring; the failure of either party to comply may be grounds for awarding summary judgment in favor of the adverse party. Upon trial, the judge may exclude evidence as to matters not described in any such pleading.

This repeats former Rule 3D:4 with the exception of a change from the word "shall" to "may" regarding failure to comply as grounds for awarding summary judgment.[17] The substitution will permit greater latitude on the part of the judge in dealing with a failure to comply. Many litigants in the general district courts are unrepresented and unsophisticated in court procedures and terminology. A mandatory sanction could force an unfair and harsh result.

RULE 7B:3. GENERAL PROVISIONS AS TO PLEADINGS.

(a) A party asserting either a claim, counterclaim, cross-claim or a defense may plead alternative facts and theories of recovery against alternative parties, provided that such claims, defenses, or demands

17. *See* VA. CODE ANN. § 16.1-69.25:1 (authorizing a district court judge to order the filing of a bill of particulars).

for relief so joined arise out of the same transaction or occurrence. Subject to the jurisdictional limits of the General District Court, a party may also state separate related claims or defenses regardless of consistency and whether based on legal or equitable grounds.

(b) The warrant, summons or motion for judgment or an attachment thereto shall contain a statement, approved by the Committee on District Courts, explaining how a defendant may object to venue.

(c) The warrant, summons or motion for judgment, or an attachment thereto shall contain a statement, approved by the Committee on District Courts, explaining that if the case is contested, how a trial date will be set.

(d) All civil warrants and motions for judgment shall contain on their face language in substantially the following form: "The defendant is not required to appear pursuant to this document, but if the defendant does not appear, judgment may be granted in favor of the plaintiff."

The committee desired to comprise in one rule, several provisions regarding pleadings in the general district courts. Paragraph (a) reflects the law in Virginia as to pleadings. A litigant may adopt alternative positions and theories of action or defenses so long as they are related. The second sentence of paragraph (a) must be read in light of the cases construing section 8.01-422 of the Code of Virginia.[18] The general district court is not vested with jurisdiction to grant affirmative, equitable relief such as injunctions or reformation of an instrument.[19]

Methods for challenging venue varied widely in the general district courts. There needed to be a uniform method that litigants and members of the bar appearing in different courts could rely on as being universally acceptable. The Committee on District Courts[20] has the statutory authority to establish the forms to be

18. VA. CODE ANN. § 8.01-422 (Repl. Vol. 1984). For a discussion involving cases in which a special plea was not available as a defense when the equitable grounds relied on required a recision of the contract and a reinvestment of the vendor with the title, see Mundy Ex'rs v. Garland, 116 Va. 922, 83 S.E. 491 (1914); Tyson v. Williamson, 96 Va. 636, 32 S.E. 42 (1899); Mangus v. McClelland, 93 Va. 786, 22 S.E. 364 (1895); Watkins v. West Wytheville Land & Imp. Co., 92 Va. 1, 22 S.E. 554 (1895) (only claim of damage was an offset for the difference and not recision of the contract).

19. For civil jurisdictional limits of the general district court see VA. CODE ANN. § 16.1-77 to -78 (Repl. Vol. 1988).

20. *See id.* § 16.1-69.33 (creating the Committee on district courts which is granted broad powers over the administration of the district courts, including the authority to prescribe forms for use in these courts).

used in the general district courts. It was appropriate to charge this body with establishing the procedure for how a litigant may challenge venue.[21] The language established by the committee would appear on the civil warrants printed by the state and distributed to the courts.[22]

There was a wide range of approaches by the general district courts for setting contested civil cases for trial. It was clear that many of the judges felt strongly that their method was best suited for their area. One group of courts assumed generally that a contested case will not be heard on the return date.[23] These courts use the return date to set a trial date, order any pleadings deemed appropriate and usually urged the parties to discuss the case, outside the presence of the court, to see if the dispute can be settled. A surprising number of cases are resolved this way.

The other approach is to assume that all contested cases will be heard on the return date unless there is a valid reason why they should not be heard. These courts argue that they are able to try most contested cases on the return date and avoid the parties having to come back a second time. They also ask the parties to first step outside to see if the dispute can be resolved.

These competing views could not be reconciled, and therefore, the committee concluded that the prior practice of letting each court decide how it would schedule contested cases for trial should be continued. To avoid surprise when appearing in a new court, or entering a court for the first time, it was recommended that the existing provisions in the rules[24] be retained. The warrant or motion for judgment must advise on its face whether contested cases

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21. *Id.* §§ 8.01-264,-276 (Repl. Vol. 1984 & Cum. Supp. 1989). The moving party must state why venue is not proper and where, if there be any such forum, that venue would be proper. Arguably, the motion to transfer in the General District Court may be oral because of the language "may be in writing" in section 8.01-264. This suggests it does not have to be in writing. *Id.*

22. The Committee on District Courts has one general district court judge as a voting member and an advisory committee whose membership contains a general district court judge and several clerks of court from general district courts. There is also a forms advisory committee with bench and clerk representation. All of this should bring a wide range of experience and perspectives to the process of establishing the language to be used and required.

23. The return date is the date that a civil warrant or motion for judgment in the general district court first comes before the court. It is stated in the initial pleading. It is the "day named in a writ or process, upon which the officer is required to return it." BLACK'S LAW DICTIONARY 1184 (5th ed. 1979) (defining "return day").

24. *See* VA. SUP. CT. R. 3D:3(b) (1988).

will be heard on the return date. This should prevent a party from bringing witnesses to court on the return date when the court does not hear contested matters at that time. Some courts that set contested cases for a later date have a mechanism where the cases can be set for trial without the parties actually coming to court on the return date.

Paragraph (d) is a continuation of the former Rule.[25] Many persons when sued, believe there will be punitive sanctions for not coming to court, even though they do not dispute the plaintiff's claim. People will take off work or suffer other inconveniences in order to appear, for fear of arrest if they do not. The language was intended to advise the defendant that it was not necessary to come to court as long as it was understood that a default judgment would probably be entered. The language should be reworked to make it easier to understand and to avoid the use of "legalese."

RULE 7B:4. TRIAL OF ACTION.

(a) *Method of bringing action.* A civil action in a general district court may be brought by warrant, summons or motion for judgment directed to the sheriff or to any other person authorized to serve process, requiring such individual to summon the person against whom the claim is asserted to appear before the court on a certain day to answer the complaint of the plaintiff set out in the warrant, summons or motion for judgment.

(b) *When action heard.* If all parties appear and are ready for trial on the return date of the warrant, summons or motion for judgment, the court may proceed with the trial of the case.

This is identical to former Rule 3D:3.[26] This Rule reaffirms the right of litigants to bring an action using a motion for judgment. Where a court takes the position that contested cases are not heard on the return date, it may hear the matter then if everyone is prepared and present.

RULE 7B:5. PRODUCTION OF WRITTEN AGREEMENT.

When a suit is brought on a written contract, note or other instrument, the original document shall be tendered to the court for entry of judgment thereon unless the production of the original is excused by the court for good cause or by statute.

25. *See id.* 3D:6 (1988).
26. *See id.* 3D:3 (1988).

Former Rule 3D:8 is continued.[27] The purpose of the rule is to get the original document being sued on before the court so that it can be stamped with a record of the judgment. This prevents a subsequent suit on the same instrument. Sometimes documents are lost and the court is permitted to excuse the production. When this is done, the plaintiff is required to protect the defendant against any loss from the failure to produce the original instrument.[28]

RULE 7B:6. VERIFICATION.

> If a statute requires a pleading to be sworn to, and it is not, or requires a pleading to be accompanied by an affidavit, and it is not, but contains all the allegations required, objection on either ground must be made within seven days after the pleading is filed by a motion to strike; otherwise the objection is waived. At any time before the court passes on the motion or within such time thereafter as the court may prescribe, the pleading may be sworn to or the affidavit filed.

This is a duplication of present Rule 1:10. Responsive pleadings are not required in the general district courts unless specifically ordered.[29] There will probably be little application of this rule. However, the principle behind it and the various Code of Virginia sections that require responses to be under oath,[30] if a responsive pleading is to be filed, is sound. It was appropriate to include this provision in the general district court rules.

RULE 7B:7. APPEARANCE BY PLAINTIFF.

> Except as may be permitted by statute, no judgment for plaintiff shall be granted in any case except on request made in person in court by the plaintiff, plaintiff's attorney, or plaintiff's regular and bona fide employee.

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27. *See id.* 3D:8 (1988)

28. VA. CODE ANN. § 8.01-32 (Repl. Vol. 1984) (requiring a plaintiff to enter into a bond in favor of the defendant and file such bond with the court); *see also id.* § 16.1-94 (requiring the court to note the judgment on the papers except for leases, unless the court deems it necessary).

29. VA. SUP. CT. R. 7B:2.

30. *See, e.g.*, VA. CODE ANN. §§ 8.01-28, -279 (Repl. Vol. 1984).

This is identical to former Rule 3D:5.[31] There were general district courts permitting plaintiffs to obtain a judgment without appearing in court. When a defendant did not appear, judgment would be granted for plaintiffs, usually local merchants, without anyone coming to court to request such a judgment. Occasionally, judgments were improperly entered. Someone on behalf of the plaintiff should face the judge and confirm that a debt is outstanding and indicate the amount due.[32] Since so many plaintiffs in the general district court are not represented by counsel, it was important to define who could appear and ask for judgment. There was also concern that a rule of court not be construed to permit the unauthorized practice of law. A bona fide regular employee, as opposed to one who is hired for the purpose of coming to court, is permitted to appear and ask for judgment. There are statutory provisions permitting certain persons to appear on behalf of another to seek judgment.[33]

RULE 7B:8. FAILURE OF PLAINTIFF TO APPEAR.

(a) If neither the plaintiff nor the defendant appears, the Court shall dismiss the action without prejudice to the right of the plaintiff to refile.

(b) If the defendant, but not the plaintiff appears and:

(1) The defendant admits owing all or some portion of the claim, the Court shall dismiss the action without prejudice to the right of the plaintiff to refile; or if

(2) The case is before the Court for trial and the defendant denies under oath owing anything to the plaintiff, the Court shall enter judgment for the defendant with prejudice to the right of the plaintiff to refile.

Dealing with the non-appearing plaintiff caused much discussion and disagreement. Even though a plaintiff does not appear, a defendant, when asked if the debt is owed, will often respond in the

31. *See* VA. SUP. CT. R. 3D:5 (1988).

32. There was discussion whether this rule should require judgment creditors to appear on the return date of a garnishment. Some general district courts require this. These courts experience an unusually large percentage of contested garnishments. Since most jurisdictions have very few contested garnishments, these matters should not be subject to a mandatory appearance rule. Those courts that wish to impose this requirement because of an unusual experience may continue to do so.

33. *See* VA. CODE ANN. §§ 55-246.1, 40.1-49.4(E) (Repl. Vol. 1984).

affirmative. At other times the debt will be denied. Courts did not uniformly deal with these situations. Dispositions ranged from dismissal with prejudice to dismissal without prejudice — arguably a voluntary nonsuit without the plaintiff making a motion for one. Procedures would differ among courts depending on whether a court set contested matters for a later date. The situation in which neither side appeared was also a concern.

It is improper to dismiss a case with prejudice for failure of the plaintiff to appear when the defendant appears and admits owing some portion or all of the plaintiff's claim. While some may assert that this should be the plaintiff's problem, in considering all the interests involved, the case should be dismissed without prejudice.

The application of paragraph (b)(2) requires that inquiry first be made of whether the court tries contested matters on the return date. If it does not, having adopted the posture of setting contested matters at a later date, and indicating this information on the civil warrant or motion for judgment,[34] the court should "keep its word." If the defendant appears and denies the debt and the plaintiff does not appear, the case should be set for trial at a date convenient for the defendant. The plaintiff takes the risk that the date set will not be convenient.

If the date on which the plaintiff fails to appear is the contested trial date, or if the court adopts the position that contested cases will be heard on the return date, and the defendant is present and ready for trial on that date and denies the debt under oath,[35] judgment is entered for the defendant and this results in a decision on the merits. This would leave the plaintiff with no right to refile.

There will be criticism of this rule;[36] however, it offers the best solution considering the number of competing interests. This rule affords equal treatment for the non-appearing defendant under

34. *See* VA. SUP. CT. R. 7B:3(c).

35. The requirement of the denial being under oath resulted from discussions and negotiations over this rule. There was concern over the court dismissing the case with prejudice when the defendant just appears and denies the debt. A denial under oath, may justifiably be given more weight, making the dismissal with prejudice an appropriate result.

36. It was argued to the committee that the first duty of the judge is to complete the case. A mandatory dismissal deprives the judge of the discretion to inquire into the reason for the plaintiff's failure to appear. There may be cases where the defendant does not want the case dismissed and then have to worry about a later motion to rehear; instead, the defendant would prefer for the court to keep the matter open until the reason for the plaintiff's non appearance is determined. The committee concluded it was preferable to put both the defendant and plaintiff on the same footing when a party fails to appear on a trial date.

Rule 7B:9.[37] An unsuccessful plaintiff may still petition to have the matter reopened and heard.[38]

RULE 7B:9. FAILURE OF DEFENDANT TO APPEAR.

Except as may be provided by statute, a defendant who fails to appear in person or by counsel is in default and

(a) Waives all objections to the admissibility of evidence; and

(b) Is not entitled to notice of any further proceeding in the case, except that when service is by posting pursuant to § 8.01-296(2)(b), the ten day notice required by that section shall be complied with; and

(c) On request made in person in court by the plaintiff, plaintiff's attorney, plaintiff's regular and bona fide employee, or any other person authorized by law, judgment shall be entered for the amount appearing to the judge to be due. If the relief demanded is unliquidated damages, the court shall hear evidence and fix the amount thereof.

This is almost identical to former Rule 3D:6[39] with the last paragraph being moved to Rule 7B:3(d).[40] Rule 3D:6 worked well, with no problems reported.[41]

RULE 7B:10. THIRD-PARTY PRACTICE AND CONSOLIDATION OF ACTIONS.

(a) *When Defendant May Bring in Third Party:* Whenever a party is served with a warrant, summons, motion for judgment, counterclaim or cross-claim, such party may within 10 days after service or up to the trial date, whichever is sooner, file a third-party civil warrant or motion for judgment on a person not a party to the action who is or may be liable to the party for all or part of the claim being asserted against such party. After such time period, such third-party claim may be asserted only with leave of court.

Any party may move to strike the third-party warrant or motion for judgment, or move for its severance for a separate trial. A third-

37. VA. SUP. CT. R. 7B:9.

38. VA. CODE ANN. § 16.1-97.1 (Repl. Vol. 1988).

39. *See* VA. SUP. CT. R. 3D:6 (1988).

40. *Id.* 7B:3(d).

41. VA. CODE ANN. § 16.1-97.1 (Repl. Vol. 1988) (permits a nonappearing defendant who has suffered a judgment by default to petition the court to have the matter reopened and heard).

party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(b) *Consolidation of Actions:* The Court may, in its discretion, consolidate for trial separate suits which could be treated as counterclaims, cross-claims, and third-party claims. The judge may enter such orders as may be appropriate to effect a prompt and fair disposition of such cases.

Some general district courts permit a party being sued to file a third-party claim against a new party, though there was no statutory or rule authority for it. Other courts require a separate action to be filed and on request, the courts will try everything together. It is logical to permit third-party claims to be joined in one action. It eliminates the need for additional filing fees and binds all parties to the dispute to the result.[42]

Because of the desire to keep procedure as simple as possible in the general district courts, paragraph (b) permits the court simply to consolidate all pending actions that could have been brought as counterclaims, cross-claims and third-party claims. A true consolidation in effect merges all the pending suits so that all litigants are party to the same suit with the normal rights of appeal, standing to object and the other entitlements afforded to parties during litigation. This is easier on the parties and as with paragraph (a) permits a decision that would bind all of the parties.[43]

RULE 7B:11. MOTIONS TO TRANSFER.

(a) When a written motion to transfer objecting to venue is filed by a defendant, the defendant shall mail a copy of such motion to all counsel of record. Failure to comply with this requirement shall not be a ground for denying the motion, but the court may grant a

42. If a court requires the defendant to file a separate suit against the third party and then hears both matters together, in effect there are two distinct actions. Virginia still requires mutuality for collateral estoppel or res judicata to apply. *See* Selected Risks Ins. Co. v. Dean, 233 Va. 260, 355 S.E.2d 579 (1987); Green v. Warrenton Credit Ass'n, 223 Va. 462, 291 S.E.2d 209 (1982); Nero v. Ferris, 222 Va. 807, 284 S.E.2d 828 (1981). The decision would not be binding between the original plaintiff and the defendant in the second suit since they were not parties to the same action.

43. To the extent that the number of parties to the proceeding is increased, the potential for problems regarding removal and appeal increases. There is no clear guidance on what happens if one of multiple defendants wishes to remove an action or if one of multiple losing parties wishes to appeal.

> deferral of any hearing on the motion to transfer if it finds that the interest of justice would be served by such deferral.
>
> (b) If a defendant who has filed a motion to transfer objecting to venue is not present when the court rules on such motion:
>
> (1) If the motion is granted, the court shall direct the Clerk to transmit the papers in accordance with such order after the appeal period has run and to send a copy of the letter of transmittal or order of transfer to all parties along with information as to any costs awarded under § 8.01-266; or
>
> (2) If the motion is denied, the court shall set a date for the trial of the case and the Clerk shall notify the defendant by first class mail of such date and of any costs awarded the plaintiff under § 8.01-266.

Paragraph (a) of this Rule is intended to avoid a plaintiff coming to court on the return date and learning that the defendant has filed a motion to transfer. The plaintiff will often be unprepared to respond or will want to consult with counsel before the court hears the motion. The rule balances the handling of these motions.

If the case is transferred and the defendant did not appear, the court requires the clerk to mail a copy of the letter of transmittal or order of transfer to all parties. Most transfers under prior practice were already accompanied by a letter of transmittal.

A defendant in the general district court is permitted to mail in a motion to transfer, even in letter form, to the judge.[44] It was necessary to adopt a procedure that makes the statutory provision meaningful when the defendant does not appear at the hearing.

The intent of the statute is to permit a person to put the issue of venue before the court without having to appear personally. To permit a court to deny the motion and then immediately try the case would render it impossible, if not foolish, for a defendant to fail to come to court. Paragraph (b)(2) gives faith to the statute and provides for setting the case for trial when the motion is denied and for notice to the defendant that did not appear.[45] As with many of these rules, the recommendation resulted from an attempt to balance the competing interests. Any conflict between a rule of

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44. VA. CODE ANN. § 8.01-264 (Repl. Vol. 1984).

45. The problem of frivolous motions to transfer made for purposes of delay can be addressed by statutory sanctions. *See* VA. CODE ANN. §§ 8.01-266, -271.1 (Repl. Vol. 1984 & Cum. Supp. 1989).

court and a statute is resolved by giving effect to the legislative enactment.[46]

RULE NOT RECOMMENDED

A proposed rule was discussed at length that would have permitted limited use of part four of the Rules of Court in civil cases. The proposal allowed for the use of the various pre-trial discovery procedures in a particular case when specifically ordered by the judge. Part four is limited in its application to civil proceedings in the circuit courts.[47] The drafting committee concluded that if the claim was for less than $1,000, it was not economically feasible to put the parties to the expense of pre-trial procedures. If the claim was for more than $1,000, the defendant could remove it, if there was a bona fide defense[48] and the defendant wanted to use part four procedures. If the amount was for more than $1,000 and the plaintiff wanted to use part four procedures, the suit could be initially filed in the circuit court.[49]

The only methods of pretrial "discovery" available in civil cases in the general district courts will continue to be a subpoena duces tecum,[50] bill of particulars[51] and grounds of defense.[52]

RULE 7C:1. SCOPE.

> These rules shall apply to all criminal and traffic cases [infractions and others] in the General District Courts.

Part 7C applies to all criminal and traffic infraction[53] cases.

RULE 7C:2. VENUE.

> Questions of venue must be raised before a finding of guilty or venue shall be deemed waived.

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46. *Id.* § 8.01-3(D).
47. VA. SUP. CT. R. 4:0.
48. VA. CODE ANN. § 16.1-92 (Repl. Vol. 1988) (this section provides for pre-trial removal of civil actions pending in the general district court if certain conditions are met).
49. *Id.* § 16.1-77(1).
50. *See* VA. CODE ANN. § 16.1-89 (Repl. Vol. 1988); VA. SUP. CT. R. 7A:12.
51. *See* VA. CODE ANN. § 16.1-69.25:1 (Repl. Vol. 1988); VA. SUP. CT. R. 7B:2.
52. *See* VA. SUP. CT. R. 7B:2.
53. *See* VA. CODE ANN. §§ 46.1-1(40), 18.2-8, 19.2-258.1 (Repl. Vol. 1988 & Cum. Supp. 1989).

This is patterned after the rule for criminal trials in the circuit court.[54] Questions of venue must be raised prior to a finding of guilt.

RULE 7C:3. THE COMPLAINT, WARRANT, SUMMONS AND CAPIAS.

(a) The complaint shall consist of sworn statements of a person or persons of facts relating to the commission of an alleged offense. The statements shall be made upon oath before a judicial officer empowered to issue arrest warrants. The judicial officer may require the sworn statements to be reduced to writing.

(b) More than one warrant, summons or capias may issue on the same complaint. A warrant may be issued by a judicial officer if the accused fails to appear in response to a summons.

(c) A separate warrant, summons or capias shall be issued for each charge.

(d) A summons, whether issued by a judicial officer or a law enforcement officer, shall command the accused to appear at a stated time and place before a court of appropriate jurisdiction.[55] It shall (i) state the name of the accused or, if his name is unknown, set forth a description by which he can be identified with reasonable certainty, (ii) describe the offense charged and state whether the offense is a violation of state, county, city or town law, and (iii) be signed by the magistrate or the law-enforcement officer, as the case may be.

(e) If the warrant has been issued but the officer does not have the warrant in his possession at the time of the arrest, he shall (i) inform the accused of the offense charged and that a warrant has been issued, and (ii) deliver a copy of the warrant to the accused as soon thereafter as practicable.

Paragraph (a) is Rule 3A:3 copied with the substitution of the term "judicial officer" for that of "magistrate." Paragraph (b) is from Rule 3A:4(a) with no changes.

Paragraph (c) is new. It has been the custom in some areas for law enforcement departments and magistrates to combine multiple charges on one summons or warrant. While appreciating the economy of this procedure, the drafting committee thought the poten-

54. VA. SUP. CT. R. 1:2.

55. This reflects the amendment effective January 1, 1990, which deleted "in the county, city or town in which the summons is issued."

tial for problems outweighed the savings in paper and employee time. Paper handling problems are created if any number of multiple charges is appealed, or where one charge is disposed of and another carried over to a later date. As Virginia's court system becomes fully automated, the computer system requires that only one charge be entered for each summons or other charging document.

Paragraphs (d) and (e) are from Rule 3A:(b) and (c) with the only change being the substitution of the term "judicial officer" for that of "magistrate."

RULE 7C:4. TRIAL TOGETHER OF MORE THAN ONE ACCUSED OR MORE THAN ONE OFFENSE.

(a) *More Than One Accused.* — Two or more accused may be tried together if they consent thereto and if the offense or offenses with which they are charged are based on the same act or transaction, or on two or more acts or transactions that are connected or constitute parts of a common scheme or plan.

(b) *An Accused Charged With More Than One Offense.* — The Court may direct that an accused be tried at one time for all offenses then pending against him, if justice does not require separate trials and (a) the offenses are based on the same act or transaction, or on two or more acts or transactions that are connected or constitute parts of a common scheme or plan, or (b) the accused and the Commonwealth's Attorney consent thereto.

Present Rule 3A:10 and Rule 3A:6(b) were duplicated in Rule 7C:4 with some reorganization. The principle set forth in Rules 3A:10 and 3A:6(b) are sound and should apply in the general district courts. Case law construing the "same act or transaction" requirement will be helpful in applying this rule.[56]

RULE 7C:5. DISCOVERY.

(a) *Application of Rule.* — This Rule applies only to the prosecution for a misdemeanor which may be punished by confinement in jail and to a preliminary hearing for a felony.

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56. *See* Spain v. Commonwealth, 7 Va. App. 385, 373 S.E.2d 728 (1988); Cook v. Commonwealth, 7 Va. App. 225, 372 S.E.2d 780 (1988); Foster v. Commonwealth, 6 Va. App. 313, 369 S.E.2d 688 (1988); Godwin v. Commonwealth, 6 Va. App. 118, 367 S.E.2d 520 (1988); Clark v. Commonwealth, 4 Va. App. 3, 353 S.E.2d 790 (1987).

(b) *Prosecuting Attorney Defined.* — For purposes of this Rule, the prosecuting attorney is the attorney for the Commonwealth or the city attorney, county attorney, or town attorney, who is responsible for prosecuting the case.

(c) *Discovery by the Accused.* — Upon motion of an accused, the court shall order the prosecuting attorney to permit the accused to hear, inspect and copy or photograph the following information or material when the existence of such is known or becomes known to the prosecuting attorney and such material or information is to be offered in evidence against the accused in a General District Court:

(1) any relevant written or recorded statements, any confessions made by the accused, or copies thereof and the substance of any oral statements and confession made by the accused to any law enforcement officer; and

(2) any criminal record of the accused.

(d) *Time of Motion.* — A motion by the accused under this Rule shall be made in writing and filed with the Court at least 10 days before the day fixed for trial or preliminary hearing. The motion shall include the specific information or material sought under this Rule.

(e) *Time, Place and Manner of Discovery and Inspection.* — An order granting relief under this Rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(f) *Failure to Comply.* — If at any time during the course of the proceedings, it is brought to the attention of the Court that the prosecuting attorney has failed to comply with this Rule or with an order issued pursuant to this Rule, the Court shall order the prosecuting attorney to permit the discovery or inspection of the material not previously disclosed, and may grant such continuance to the accused as it deems appropriate.

This rule wins the award for generating the most discussion and disagreement. When the topic first surfaced, the commonwealth attorneys generally opposed any discovery in the general district court. The criminal defense bar sought complete and unlimited discovery. Arguments of delay, increased workload, lack of evidentiary knowledge, principles of fairness and other legitimate concerns were vigorously articulated.

The only way to approach the matter was to try to negotiate a rule that was balanced and would permit both perspectives to ac-

cept it with minimum discomfort. Two members of the committee, one a criminal defense attorney and the other a prosecutor, were charged with attempting to arrive at a compromise. Through their hard work and some committee modifications, Rule 7C:5 was recommended.

A person charged with offenses that could result in incarceration should have access to any statement made by the defendant, and to any criminal history of the defendant *if* the prosecution intends to offer the material against the defendant at the trial or preliminary hearing. The rule applies only to misdemeanor trials that can result in incarceration, and to felony preliminary hearings.

The prosecutor in the general district court often does not know of the existence of discoverable information until moments before the trial. The rule was designed to accommodate this.[57] The sanction of dismissal for failure to comply was omitted because the larger volume of criminal trials in the general district court as compared to the circuit court creates a greater risk of difficulty in complying with the rule.

It will take time to see how the rule works. Advice given the committee predicted that the rule would encourage prosecutors to voluntarily furnish information to defense counsel before trial in order to avoid having to deal with the rule. It was further suggested that this rule would increase pleas or stipulations in many cases, when experienced defense counsel recognized the evidence against the defendant and accurately assessed the risks involved.

A legitimate question was raised: why a defendant would not be aware of any statements given and any criminal history. The criminal defense attorneys on the drafting committee advised that, in practice, defense counsel frequently does not get accurate information. Sometimes defense counsel is not told the entire truth by the client about statements given or prior record. Other times, the defendant does not correctly remember this information. In both situations, lack of this knowledge by defense counsel can materially affect the attorney's ability to defend the case properly.

The rule will help eliminate defense counsel being blind sided by a surprise statement at trial or a long criminal history at sentenc-

57. Arguably, it was unwise to recommend a rule that facilitates this lack of preparation. The drafting committee believed there were many factors affecting this, such as lack of staffing, part time prosecutors and lack of proper communications between law enforcement departments and prosecutors.

ing. This information is available in the circuit court in a felony trial.[58] It is neither fair nor logical to deny this information to a defendant facing six or twelve months in jail and to provide it for one facing twelve months and a day.

The committee was urged to include *Brady*[59] type exculpatory evidence in the scope of the rule. It decided against this because the obligation of the government to disclose this type of evidence is constitutional in nature and involves a large body of existing and changing case law. The duty of the government to disclose exculpatory information applies to all criminal cases, not just those where the permitted punishment includes incarceration.

A general district court judge in a criminal case may order the prosecution to file a bill of particulars.[60] Subpoenas duces tecum may also be issued in criminal cases in the general district court.[61]

RULE 7C:6. PLEAS.

> A corporation, acting by counsel or through an agent, may enter the same pleas as an individual.

This is extracted from Rule 3A:8(a).

OTHER CHANCES MADE NECESSARY BY THE ADOPTION OF PART SEVEN

In order to adjust the other parts of the Rules of Court to the adoption of Part 7, some alterations had to be made. No major substantive changes were required. Cross references were added to better tie everything together, and to assist the reader in picking up the appropriate sections. In other parts of the rules, references to the general district courts were deleted. Part 3-D was repealed.

CONCLUSION

The committee spent many hours trying to improve the quality of the experience of litigating in the general district courts. This court has two competing pressures on it which made the task of

58. VA. SUP. CT. R. 3A:11.
59. Brady v. Maryland, 373 U.S. 83 (1963).
60. VA. CODE ANN. § 16.1-69.25:1 (Repl. Vol. 1988).
61. *See id.* § 16.1-131; VA. SUP. CT. R. 7A:12.

rule drafting more difficult.

Over the last fifteen years, the dollar jurisdiction[62] of the general district court has been increased as its subject matter jurisdiction has been broadened. The general district court can now hear certain interpleader actions as well as partition proceedings involving personalty when the dollar amount in controversy does not exceed the court's jurisdictional limits.[63] The judges participate in mandatory annual training, and funds are available to attend national educational programs. All district court judges in Virginia are full time. All of this has encouraged a higher sophistication of process and trials.

This court is as close as Virginia comes to providing a small claims court. There has been increasing pressure on the general district courts to be able to handle "small claims" appropriately where neither side or only one side is represented by counsel.[64] Many litigants in criminal, traffic and civil cases are not represented by counsel.

The obligation to be all things to all people makes it difficult to suggest needed rules. It is hoped that the drafting committee was sufficiently sensitive to the various, and sometimes conflicting, perspectives. One thing is certain, the bench, bar and public will let us know if the task was not well done.

62. VA. CODE ANN. § 16.1-77 (Repl. Vol. 1988).

63. *Id.* §§ 16.1-77(6), -77(2).

64. Effective October 1, 1988, legislation establishing small claims courts was adopted. While facially it would appear to apply to many general district courts, the statutory language practically limits its application to Fairfax County and its General District Court. This legislation was enacted as an experiment to get some feel as to how a true small claims court would operate. The laws have no effect after October 1, 1990, unless reenacted by another session of the General Assembly before that date. VA. CODE ANN. § 16.1-122.1 (Repl. Vol. 1988).