



SUPREME COURT OF VIRGINIA

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Supreme Court of Virginia

Call for Comments

Contact: Muriel-Theresa Pitney, Clerk

Release Date: March 13, 2024

THE SUPREME COURT OF VIRGINIA REQUESTS PUBLIC COMMENT ON DRAFT RULE 3:26

RICHMOND – The Supreme Court of Virginia is considering proposed amendments to the Rules of Court, Draft Rule 3:26. Comments on the draft rule must be **received** by May 1, 2024, and must be addressed to:

Muriel-Theresa Pitney, Clerk
Supreme Court of Virginia

Via email (scvclerk@vacourts.gov) with the subject line “Draft Rule 3:26”

In the alternative, comments may be mailed to the Clerk’s office at:

Clerk, Supreme Court of Virginia
100 N 9th Street
5th Floor
Richmond, VA 23219

PART THREE

PRACTICE AND PROCEDURE IN CIVIL ACTIONS

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Rule 3:26. — Preliminary Injunctions.

(a) *Application.* — This rule applies only in cases in which a statute does not specify different criteria for issuing a preliminary injunction. As used in this rule, the term preliminary injunction is interchangeable with temporary injunction, interim injunction, and interlocutory injunction.

(b) *Temporary Restraining Orders.* — A court may issue a temporary restraining order of brief duration for the limited purpose of preserving the status quo between the parties pending a hearing on a motion for a preliminary injunction. A temporary restraining order may be issued without written or oral notice to the adverse party or its attorney only if:

i. specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable harm will result to the movant before the adverse party can be heard in opposition; and

ii. the movant or the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(c) *Threshold Requirement.* — A court may issue a preliminary injunction only if it first determines that the movant will more likely than not suffer irreparable harm without the preliminary injunction.

(d) *Discretionary Factors.* — If the irreparable-harm threshold has been met, the court must determine whether the following factors support the issuance of a preliminary injunction:

i. whether the movant has asserted a legally viable claim based on credible facts (not mere allegations) demonstrating that the underlying claim will more likely than not succeed on the merits;

ii. whether the balance of hardships—that is, the harm to the movant without the preliminary injunction compared with the harm to the nonmovant with the preliminary injunction—favors granting the preliminary injunction; and

iii. whether the public interest, if any, supports the issuance of a preliminary injunction.

A preliminary injunction may be issued only if it is supported by factors (i) and (ii), and it is not contrary to the public interest in factor (iii).

(e) *Exceptional Cases.* — Notwithstanding subsection (d)(i), in rare cases in which the likely irreparable harm to the movant is severe and any corresponding harm to the nonmovant is slight, a preliminary injunction may be issued upon a clear showing that the underlying claim has substantial merit warranting interim relief, even if the court cannot determine at the time that the movant will likely succeed on the merits.

(f) *Injunction bond.* — This rule does not affect the requirements for an injunction bond. See Code §§ 8.01-630 through 8.01-633.