

# Advisory Committee on Rules of Court

April 2009

## **Discovery pending Demurrer, Plea or Dispositive Motion**

The Advisory Committee shares the broad consensus of the Bar in Virginia, as is also reflected in most trial court decisions, that Rule 4:1 should be clarified that the filing of a demurrer, plea or dispositive motion will not stop discovery in the action unless the trial judge orders a halt for such preparations on some or all issues. The Boyd-Graves Conference approved such a rule revision, and the Advisory Committee has crafted the following language to achieve that result through an amendment to Rule 4:1 governing discovery practice:

(d) *Sequence and Timing of Discovery.* Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

Discovery shall continue after a demurrer, plea or dispositive motion addressing one or more claims or counter-claims in the action has been filed and while such application is pending decision – unless the court orders that discovery on some or all issues in the action should be suspended.

Comments on this proposed Rule, which has been tentatively approved by the Advisory Committee on Rules of Court and has not been presented to or considered by the Judicial Council of Virginia or the Supreme Court of Virginia, should be submitted to Steven Dalle Mura, Office of the Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, Richmond, VA 23219. The deadline for such comments is September 1, 2009.