

Rule 1:18 Revision Proposal Published for Comment

The Advisory Committee on Rules of Court of the Judicial Council of Virginia has published draft revisions to the Pretrial Scheduling Order provisions of Rule 1:18, set forth below, with a request for comments from the public, the bench and the Bar.

In any civil case counsel for the parties may agree on the schedule for preparing a case for trial, and submit an agreed pretrial scheduling order for approval and entry by the circuit court. This fundamental provision is retained in the revised language under consideration, along with the existing requirement that if the court determines that the submitted order is not consistent with the efficient and orderly administration of justice, then the court must notify counsel and provide an opportunity for them to be heard on the scheduling issues.

Where an agreed pretrial scheduling order has not been submitted, and the case has not otherwise been calendared on the basis of the circuit's standing practices, the trial judge has long had the power to create such an order *sua sponte*. Under the terms of current Rule 1:18, a trial court must, if it is to enter a Uniform Pretrial Scheduling Order in its own discretion, afford counsel at least 14 days advance notice prior to entry of the order. The pending proposal would replace that requirement with a provision allowing the trial court to create the scheduling order at any time, subject to a requirement that the court must hold a hearing upon any objections or requests for modification of the court's order made by any party. As noted above, the proposed revisions to the Rule preserve the right of counsel to submit an agreed order in lieu of the Uniform Order.

The proposed changes are the product of the Rule 1:18 Study Group of the Boyd-Graves Conference. The rationale behind the proposed change is to remove the awkward and time-consuming procedure currently in place for entering a Uniform Pretrial Scheduling Order while still preserving the rights of the parties to object or to submit an agreed to Scheduling Order. Thus – under the proposed re-writing of Rule 1:18 – a hearing must be held if the court issues an order *sua sponte* and either party objects to its terms.

The proposal below has been reviewed by the Advisory Committee, which is soliciting comments before final approval and recommendation to the Judicial Council and the Supreme Court for adoption. These amendments are not currently in effect, and have not been formally recommended to, or reviewed by, the Supreme Court of Virginia.

Comments on these proposed draft rules should be sent by July 30, 2013 to:

Advisory Committee on Rules of Court
c/o Steven Dalle Mura
Office of the Executive Secretary
Supreme Court of Virginia
100 North Ninth St.
Richmond, VA 23219

OR via email with the subject line: "comment on proposed revision of Rule 1:18" to:

proposedrules@courts.state.va.us

Rule 1:18. Pretrial Scheduling Order.

A. In any civil case the parties, by counsel of record, may agree and submit for approval and entry by the court a pretrial scheduling order. If the court determines that the submitted order is not consistent with the efficient and orderly administration of justice, then the court shall notify counsel and provide an opportunity to be heard.

B. In any civil case ~~where~~ in which a pretrial scheduling order ~~is~~ has not otherwise been entered pursuant to ~~paragraph A of this Rule~~ the court's normal scheduling procedure, the court may, upon request of counsel of record for any party, or in its own discretion, enter the pretrial scheduling order contained in Section 3 of the Appendix of Forms at the end of Part I of these Rules (Uniform Pretrial Scheduling Order). The court shall cause copies of the order so entered to forthwith be transmitted to counsel for all parties. If any party objects to or requests modification of that order, the court shall (a) hold a hearing to rule upon the objection or request or (b) with the consent of all parties and the approval of the court, enter an amended pretrial scheduling order. ~~No court shall enter the Uniform Pretrial Scheduling Order unless notice has been provided to all counsel of record at least 14 days prior to entry of the order. Upon motion by any party objecting to entry of the Uniform Pretrial Scheduling Order, the court shall hold a hearing prior to entry of the order.~~

C. With the exception of domestic relations cases, a court may not enter a scheduling order which deviates from the terms of the Uniform Pretrial Scheduling Order unless either (1) counsel of record for all parties agree to different provisions, or (2) the court, after providing an opportunity for counsel of record to be heard, makes a finding that the scheduling order contained in the Appendix is not consistent with the efficient and orderly administration of justice under the specific circumstances of that case.