

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 25<sup>th</sup> day of January, 2018.*

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective April 1, 2018.

Amend Rule 4:12 to read as follows:

**Rule 4:12. Failure to Make Discovery; Sanctions.**

\* \* \*

(d) *Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Requests for Production or Inspection.* — If a party or an officer, director, or managing agent of a party or a person designated under Rule 4:5(b) (6) or 4:6(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 4:8, after proper service of the interrogatories, or (3) to serve a written response to a request for production or inspection submitted under Rule 4:9, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may – without prior entry of a Rule 4:12(b) order to compel regarding this failure – impose any of the sanctions listed in paragraphs (A), (B), and (C) of subdivision (b)(2) of this Rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 4:1(c).

A motion under subdivision (d) of this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

A Copy,

Teste:



Clerk