

VIRGINIA CIVIL DISCOVERY

PREFACE TO THE 2026-2027 EDITION

This book is intended to provide lawyers and judges with a comprehensive explanation of civil discovery in the Virginia courts. It presents a thorough discussion of the Virginia Rules of Civil Procedure relating to discovery. In addition to a discussion of the discovery rules, material has been included on obtaining evidence in foreign countries, electronic discovery, ethics and professionalism, spoliation, and compensating witnesses.

To facilitate use, the book is organized by rule. The text of each rule is included. Each rule relating to discovery has been thoroughly analyzed with an explanation of the requirements of the rule as well as a discussion as to how the rule operates. The analysis in the text is supported by extensive footnotes, citing and discussing cases and other authority construing these rules. Numerous practice tips and checklists have been included.

Noteworthy changes in the 2026-2027 edition include:

- Case law update.
- Amendment to Rule 4:1 (Chapter 2)
- New section on sequence and timing of discovery (§ 2:63)
- Amendment to Rule 4:7(a)(7) (Chapter 9)
- Amendment to Rule 4:9A(c)(3) (Chapter 13)
- Expanded discussion on reducing problems of communicating with email (§ 21:47)
- New section on identity verification (§ 21:65)
- Expanded discussion of forensic examination of opposing party's electronics (§ 21:100)
- New chapter on artificial intelligence (Chapter 23)

Virginia case law addressing civil discovery is quite sparse. Virginia courts often use federal cases construing the Federal Rules of Civil Procedure to construe Virginia's discovery rules.¹ Accordingly, this book refers to federal case law for guidance on

¹ See *The Staples Corp. v. Washington Hall Corp.*, 44 Va. Cir. 372, 1998 WL 972092 (1998) (finding federal case law to be instructive where Virginia rules are modeled closely after federal rules and where the Virginia Supreme Court has not yet addressed a particular issue); *TransiLift Equipment, Ltd. v. Cunningham*, 234 Va. 84, 90, 360 S.E.2d 183, 187 (1987) (because Virginia Rule 4:11 is "virtually identical" to Fed. R. Civ. P. 36, federal case law is informative); *Rakes v. Fulcher*, 210 Va. 542, 545, 172 S.E.2d 751, 755 (1970) (interpreting Virginia Rule 4:9 in accordance with Fed. R. Civ. P. 34); *General Acc. Fire & Life Assur. Corp. v. Cohen*, 203 Va. 810, 813, 127 S.E.2d 399, 401 (1962) (finding that the Virginia legislature is "presumed to have adopted the construction of the

discovery issues where Virginia case law is lacking or limited.

In using this book, it should always be kept in mind that each rule should be read with the objective of a “just, speedy and inexpensive determination.” These rules should be construed so as to do substantial justice.

Many thanks to Bradley Machov, our editor, for his expert editorial assistance.

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June 2026

statute placed upon the verbatim language of Fed. R. Civ. P. 36 by the federal court”).