

066701820

SENATE BILL NO. 333

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 17.1-503 of the Code of Virginia and to amend the Code of Virginia by adding in Title 58.1 a subtitle numbered V, consisting of a chapter numbered 41, consisting of sections numbered 58.1-5000 through 58.1-5003; a chapter numbered 42, consisting of sections numbered 58.1-5010 through 58.1-5015; and a chapter numbered 43, consisting of sections numbered 58.1-5020 through 58.1-5024, relating to circuit court rules and procedures in certain tax cases.

 Patron—Obenshain

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 17.1-503 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 58.1 a subtitle numbered V, consisting of a chapter numbered 41, consisting of sections numbered 58.1-5000 through 58.1-5003; a chapter numbered 42, consisting of sections numbered 58.1-5010 through 58.1-5015; and a chapter numbered 43, consisting of sections numbered 58.1-5020 through 58.1-5024, as follows:

§ 17.1-503. Rules of practice and procedure; rules not to preclude judges from hearing certain cases.

A. The Supreme Court may formulate rules of practice and procedure for the circuit courts following consultation with the chairmen of the House and Senate Courts of Justice Committees and the executive committee of the Judicial Conference of Virginia for courts of record. Such rules, subject to the strict construction of the provisions of § 8.01-4, which shall be the only rules of practice and procedure in the circuit courts of the Commonwealth, *except for those in Subtitle V (§ 58.1-5000 et. seq.) of Title 58.1*, shall be included in the Code of Virginia as provided in § 8.01-3, subject to revision by the General Assembly.

B. No rule shall hereafter be promulgated under the limitations of § 8.01-4, or otherwise which would avoid or preclude the judge before whom an accused is arraigned in criminal cases from hearing all aspects of the case on its merits, or to avoid or preclude any judge in any case who has heard any part of the case on its merits, from hearing the case to its conclusion. However, another judge may hear portions of a case where a judge is required to disqualify himself, in cases in which a mistrial is declared, or in cases which have been reversed on appeal, or in the event of sickness, disability or vacation of the judge. The parties to any suit, action, cause or prosecution may waive the provisions of this section. Such waiver shall be entered of record.

C. In its rules of practice and procedure for the circuit courts, the Supreme Court shall include rules relating to court decisions on any order of quarantine or isolation issued by the State Health Commissioner pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1 that shall ensure, to the extent possible, that such hearings are held in a manner that will protect the health and safety of individuals subject to any such order of quarantine or isolation, court personnel, counsels, witnesses, and the general public. The rules shall also provide for expedited reviews by the Supreme Court of decisions by any circuit court relating to appeals of any order of quarantine or isolation.

SUBTITLE V.***Procedures of the Circuit Court for Cases Involving Taxation.*****CHAPTER 41.****GENERAL PROVISIONS.****§ 58.1-5000. Purpose.**

The purpose of these statutes is to provide the public with a clear, uniform, rapid, inexpensive and just system of resolving controversies with taxing authorities. These statutes shall afford the public both due process of law and the legal tools necessary to facilitate the rapid resolution of controversies, while at the same time avoiding undue formality and complexity.

§ 58.1-5001. Scope.

A. *The statutes contained in this subtitle govern the practice and procedure in all cases and proceedings in the Commonwealth brought under § 58.1-1825 or § 58.1-3984. Where in any instance there is no applicable statute or procedure under this subtitle, the court or the judge before whom the matter is pending shall abide by the rule of practice and procedure promulgated under the authority of § 17.1-503.*

B. *These statutes shall be construed to secure the just, speedy, and inexpensive determination of*

INTRODUCED

SB333

59 every case.

60 § 58.1-5002. *Effective date.*

61 This subtitle, except as otherwise provided, shall become effective on July 1, 2006. This subtitle shall
62 govern all applicable proceedings and cases commenced after July 1, 2006, and also all further
63 applicable proceedings in cases then pending, except to the extent that in the opinion of the court, their
64 application in a particular case pending when this subtitle takes effect are feasible or would work an
65 injustice, in which event the former procedure shall apply.

66 § 58.1-5003. *Reserved.*

67 CHAPTER 42.

68 PROCEDURES FOR DISCOVERY AND TRIAL.

69 § 58.1-5010. *General discovery provisions; methods and limitations of discovery.*

70 A. All methods of discovery allowable under the rules of court promulgated under the authority of
71 § 17.1-503 shall be available in the cases subject to this subtitle, except that depositions are only
72 allowed to the extent authorized under §§ 58.1-5012 and 58.1-5013.

73 B. The parties shall attain the objectives of discovery through informal consultation or
74 communication before utilizing the discovery procedures provided in this subtitle.

75 § 58.1-5011. *Expert interrogatories.*

76 By means of written interrogatories, a party may require any other party (i) to identify each person
77 whom the other party expects to call as an expert witness at the trial of the case, giving the witness's
78 name, address, vocation or occupation, and a statement of the witness's qualifications; (ii) to state the
79 subject matter and the substance of the facts and opinions to which the expert is expected to testify; and
80 (iii) to give a summary of the grounds for each such opinion, or, in lieu of such statement, to furnish a
81 copy of a report of such expert presenting the foregoing information.

82 § 58.1-5012. *Depositions for discovery purposes; upon consent of parties.*

83 A. Depositions in pending cases. Upon consent of all the parties to a case, a deposition for discovery
84 purposes may be taken of either a party or a nonparty witness. Such consent shall be set forth in a
85 stipulation filed in duplicate with the court, which shall contain the information required in this subtitle
86 and which otherwise shall be subject to the procedure provided in this subtitle. Unless the court shall
87 determine otherwise for good cause shown, the taking of such a deposition shall not be regarded as
88 sufficient grounds for granting a continuance from a date or place of trial theretofore set.

89 B. Notice to nonparty witness. A notice of deposition shall be served on a nonparty witness. The
90 notice shall state that the deposition is to be taken under § 58.1-5012 and shall set forth the name of
91 the party or parties seeking the deposition, the time and place proposed for the deposition, and the
92 name of the officer before whom the deposition is to be taken. If the deposition is to be taken on written
93 questions, then a copy of the written questions shall be annexed to the notice. With respect to the
94 deposition of an organization, the notice shall also set forth the information required under this subtitle,
95 and the organization shall make the designation required by this subtitle.

96 C. Objection by nonparty witness. Within 15 days after service of the notice of deposition, a
97 nonparty witness shall serve on the parties seeking the deposition any objections to the deposition. The
98 burden shall be upon a party seeking the deposition to move for an order with respect to such objection
99 or other failure of the nonparty witness, and such party shall annex to any such motion the notice of
100 deposition with proof of service thereof, together with a copy of the response and objections, if any.

101 D. Transcript. A transcript shall be made of every deposition taken, but the transcript and exhibits
102 introduced in connection with the deposition shall not be filed with the court.

103 E. Depositions upon written questions. Depositions may be taken upon written questions rather than
104 upon oral examination if found by the court to be appropriate. There shall be an opportunity for
105 cross-examination and redirect questions to the same extent and within the same time periods as
106 provided in the rules of court provided that such time periods shall commence with service of the notice
107 of deposition rather than service of an application. With respect to taking the deposition, the procedure
108 under the rules of court shall apply.

109 F. Other applicable rules. Depositions for discovery purposes shall be governed by the rules of
110 court.

111 § 58.1-5013. *Deposition for discovery purposes; without consent of parties in certain cases.*

112 A. When depositions may be taken. After a notice of trial has been issued or after a case has been
113 assigned to a judge, and within the time for completion of discovery, any party may, upon an order of
114 the court, take a deposition for discovery purposes of a nonparty witness in the circumstances described
115 in subsection B of this section. Unless the court shall determine otherwise for good cause shown, the
116 taking of such a deposition shall not be regarded as sufficient grounds for granting a continuance from
117 a date or place of trial theretofore set.

118 B. Availability. The taking of a deposition of a nonparty witness under this section is an
119 extraordinary method of discovery and may be used only upon an order of the court where a nonparty
120 witness can give testimony or possesses documents or things that are discoverable within the meaning of

121 this subtitle and where such testimony, documents, or things practicably cannot be obtained through
122 informal consultation or communication or by a deposition taken with consent of the parties. If such
123 requirements are satisfied, then a deposition may be taken under this section; for example, where a
124 party is a member of a partnership and an issue in the case involves an adjustment with respect to such
125 partnership, or a party is a shareholder of an electing small business corporation and an issue in the
126 case involves an adjustment with respect to such corporation.

127 C. Notice. Upon the court's granting of an order, a party desiring to take a deposition under this
128 section shall give notice in writing to every other party to the case and to the nonparty witness to be
129 deposed. The notice shall state that the deposition is to be taken under § 58.1-5013 and shall set forth
130 the name of the party seeking the deposition, the name and address of the person to be deposed, the
131 time and place proposed for the deposition, and the officer before whom the deposition is to be taken. If
132 the deposition is to be taken on written questions, a copy of the questions shall be annexed to the
133 notice.

134 D. Objections. Within 15 days after service of the notice of deposition, a party or a nonparty witness
135 shall serve on the party seeking the deposition any objections to the deposition. The burden shall be
136 upon the party seeking the deposition to move for an order with respect to any such objections or any
137 failure of the nonparty witness, and such party shall annex to any such motion the notice of deposition
138 with proof of service thereof, together with a copy of any responses and objections. Prior to a motion
139 for such an order, neither the notice nor the responses shall be filed with the court.

140 E. Other applicable rules. Depositions for discovery purposes shall be governed by the rules of
141 court.

142 § 58.1-5014. Stipulations for trial.

143 A. Stipulations required.

144 1. General. The parties are required to stipulate, to the fullest extent to which complete or qualified
145 agreement can or fairly should be reached, all matters not privileged that are relevant to the pending
146 case regardless of whether such matters involve fact or opinion or the application of law to fact.
147 Included in matters required to be stipulated are all facts, all documents and papers or contents or
148 aspects thereof, and all evidence that fairly should not be in dispute. Where the truth or authenticity of
149 facts or evidence claimed to be relevant by one party is not disputed, an objection on the grounds of
150 materiality or relevance may be noted by any other party but is not to be regarded as just cause for
151 refusal to stipulate. The requirement of stipulation applies without regard to where the burden of proof
152 may lie with respect to the matters involved. Documents or papers or other exhibits annexed to or filed
153 with the stipulation shall be considered to be part of the stipulation.

154 2. Stipulations to be comprehensive. The fact that any matter may have been obtained through
155 discovery or requests for admission or through any other authorized procedure is not grounds for
156 omitting such matter from the stipulation. Such other procedures shall be regarded as aids to
157 stipulation, and matter obtained through them that is within the scope of subsection A1 must be set forth
158 comprehensively in the stipulation, in logical order in the context of all other provisions of the
159 stipulation.

160 B. Form. Stipulations shall be in writing, signed by the parties thereto or by their counsel, and shall
161 observe the requirements of the rules of court as to form and style of papers, except that the stipulation
162 shall be filed with the court in duplicate and only one set of exhibits shall be required. Documents or
163 other papers, which are the subject of stipulation in any respect and which the parties intend to place
164 before the court, shall be annexed to or filed with the stipulation. The stipulation shall be clear and
165 concise. Separate items shall be stated in separate paragraphs, and shall be appropriately lettered or
166 numbered. Exhibits attached to a stipulation shall be numbered serially, beginning with the number one.
167 The exhibit number shall be followed by "P" if offered by the petitioner, "R" if offered by the
168 respondent, or "J" if joint.

169 C. Filing. Executed stipulations prepared pursuant to this section, and related exhibits, shall be filed
170 by the parties at or before commencement of the trial of the case, unless the court in the particular case
171 shall otherwise specify. A stipulation when filed need not be offered formally to be considered in
172 evidence.

173 D. Objections. Any objection to all or any part of a stipulation should be noted in the stipulation,
174 but the court shall consider any objection to a stipulated matter made at the commencement of the trial
175 or for good cause shown made during the trial.

176 E. Binding effect. A stipulation shall be treated, to the extent of its terms, as a conclusive admission
177 by the parties to the stipulation, unless otherwise permitted by the court or agreed upon by such parties.
178 The court shall not permit a party to a stipulation to qualify, change, or contradict a stipulation in
179 whole or in part, except that it may do so where justice requires. A stipulation and the admissions
180 therein shall be binding and have effect only in the pending case and not for any other purpose, and
181 shall not be used against any of the parties thereto in any other case or proceeding.

F. Noncompliance by a party:

1. Motion to compel stipulation. If, after the date of issuance of trial notice in a case, a party has refused or failed to confer with an adversary with respect to entering into a stipulation in accordance with the section, or a party has refused or failed to make such a stipulation of any matter within the terms of the section, the party proposing to stipulate may, at a time not later than 45 days prior to the date set for the case on a trial calendar, file a motion with the court for an order directing the delinquent party to show cause why the matters covered in the motion should not be deemed admitted for the purposes of the case. The motion shall (i) show with particularity and by separately numbered paragraphs each matter that is claimed for stipulation; (ii) set forth in express language the specific stipulation that the moving party proposes with respect to each such matter and annex thereto or make available to the court and the other parties each document or other paper as to which the moving party desires a stipulation; (iii) set forth the sources, reason, and basis for claiming, with respect to each such matter, that it should be stipulated; (iv) show that opposing counsel or the other parties have had reasonable access to those sources or basis for stipulation and have been informed of the reasons for stipulation; and (v) show proof of service of a copy of the motion on opposing counsel or the other parties.

2. Procedure. Upon the filing of such a motion, an order to show cause as moved shall be issued forthwith, unless the court shall direct otherwise. The order to show cause shall be served with a copy thereof sent to the moving party. Within 20 days of the service of the order to show cause, the party to whom the order is directed shall file a response with the court, with proof of service of a copy thereof on opposing counsel or the other parties, showing why the matters set forth in the motion papers should not be deemed admitted for purposes of the pending case. The response shall list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. Where a matter is disputed only in part, the response shall show the part admitted and the part disputed. Where the responding party is willing to stipulate in whole or in part with respect to any matter in the motion by varying or qualifying a matter in the proposed stipulation, the response shall set forth the variance or qualification and the admission that the responding party is willing to make. Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall show the sources, reasons, and basis on which the responding party relies for that purpose. The court, where it finds appropriate, may set the order to show cause for a hearing or conference at such time as the court shall determine.

3. Failure of response. If no response is filed within the period specified with respect to any matter or portion thereof, or if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof shall be deemed stipulated for purposes of the pending case, and an order will be issued accordingly.

4. Matters considered. Opposing claims of evidence shall not be weighed unless such evidence is patently incredible. Nor shall a genuinely controverted or doubtful issue of fact be determined in advance of trial. The court shall determine whether a genuine dispute exists, or whether in the interests of justice a matter should not be deemed stipulated.

§ 58.1-5015. Bifurcation of issues.

In the interest of providing an efficient resolution to any case under the authority of this subtitle, the court may bifurcate any issue in the dispute for resolution prior to the commencement of trial. The trial, if necessary, may commence only after the resolution of such bifurcated issue. Such a bifurcation of issues may occur upon a motion of the parties or an order of the court.

CHAPTER 43.

SMALL TAX CASES.

§ 58.1-5020. General.

This chapter may be referred to as the "Small Tax Case Rule" and sets forth the special provisions that are to be applied to small tax cases. The term "small tax case" means a case in which the amount in dispute is \$50,000 or less and the court has concurred in the petitioner's election. Except as otherwise provided in this chapter, the other rules of practice of the court are applicable to such cases.

§ 58.1-5021. Election of small tax case procedure.

With respect to classification of a case as a small tax case, the following shall apply:

1. A petitioner who wishes to have the proceedings in the case conducted as a small tax case may so request at the time the petition is filed.

2. A petitioner may, at any time after the petition is filed and before trial, request that the proceedings be conducted as a small tax case.

If such request is made in accordance with the provisions of this section, then the case shall be docketed as a small tax case. The court, on its own motion or on the motion of a party to the case, may, at any time before the trial commences, issue an order directing that the small tax case designation be removed and that the proceedings not be conducted under this chapter. If no such order

is issued, then the petitioner will be considered to have exercised the petitioner's option and the court shall be deemed to have concurred therein, at the commencement of the trial.

§ 58.1-5022. Representation.

A petitioner in a small tax case may be represented by any person admitted to practice before the court.

§ 58.1-5023. Pleadings.

The petition in a small tax case shall be in accordance with the rules of court. No answer is required to be filed in a small tax case, except where there is an issue on which the respondent bears the burden of proof or where the court otherwise directs. Where an answer is filed, the provisions of the rules of court shall apply. In a case where no answer is filed, the allegations of error and facts relating thereto set forth in the petition shall be deemed denied. A reply to the answer shall not be filed unless the court otherwise directs. Any reply shall conform to the requirements of the rules of the court. In the absence of a requirement of a reply, the affirmative allegations of the answer shall be deemed denied.

§ 58.1-5024. Trial.

Trials of small tax cases shall be conducted as informally as possible consistent with orderly procedure, and any evidence deemed by the court to have probative value shall be admissible. Neither briefs nor oral arguments will be required in small tax cases unless the court otherwise directs.