



**Monica T. Monday**

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October 16, 2025

*Via Email:*

*senatorsurovell@senate.virginia.gov*  
The Honorable Scott A. Surovell  
Chair, Senate Committee for Courts of  
Justice  
P.O. Box 289  
Mount Vernon, VA 22121

*Via Email: delphope@delegate.virginia.gov*

The Honorable Patrick A. Hope  
Chair, House Courts of Justice Committee  
P.O. Box 3148  
Arlington, VA 22203

Re: Senate Bill 1010 (Subpoenas duces tecum; financial records of nonparty)

Dear Senator Surovell and Delegate Hope:

On behalf of the Boyd-Graves Conference, I am writing in connection with Senate Bill 1010. The third enactment clause of Senate Bill 1010 directed as follows:

That the Boyd-Graves Conference shall conduct a study on whether the Code of Virginia should be further amended to allow a nonparty to file a motion to quash or modify a subpoena duces tecum for other types of records that may be sought by a party in a civil proceeding. The Boyd-Graves Conference shall report any findings of such study to the Chairmen of the Senate and House Committees for Courts of Justice by October 1, 2025.

As directed by the third enactment clause, the Conference studied Senate Bill 1010, and its written report is enclosed. Additionally, the Conference also studied whether Virginia Rule 4:9A should align with Federal Rule of Civil Procedure 45 as to who has the burden for filing a motion to quash. The Conference reviewed this written report at its Conference on October 3-4, 2025. Due to the timing of our Conference, which is scheduled one-year in advance, we were not able to provide this report to you before October 1, 2025.

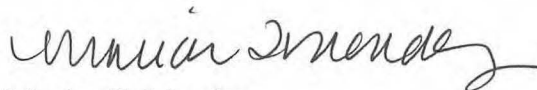
The Boyd-Graves Conference appreciates the opportunity to be of service to the Commonwealth. The Conference is an all-volunteer group of Virginia attorneys and judges focused on improving

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the quality of civil justice in Virginia. As the enclosed Mission Statement and History more fully explain, the Conference takes pride in its independence and the experience and expertise of its members. Although it has no dedicated staff or budget, the Conference is pleased to be responsive to the General Assembly within its resources and time.

Sincerely,

A handwritten signature in black ink, appearing to read "Monica T. Monday", with a stylized flourish at the end.

Monica T. Monday  
Chair, Boyd-Graves Conference

MTM:rcf

Enclosures

cc: C. J. Steuart Thomas, III, Esq., Chair of Boyd-Graves study committee on  
Senate Bill 1010 (sthomas@timberlakesmith.com)



## **Boyd-Graves Conference Report**

**DATE:** September 2, 2025

**STUDY TOPIC:**

Whether the Code of Virginia should be amended to allow a non-party to file a motion to quash or modify a subpoena duces tecum for records not currently specified in Va. Code § 8.01-420.9. In addition, whether Rule 4:9A should align with FRCP 45 as to who has the burden for filing a Motion to Quash.

**STUDY GROUP CHAIR:**

C.J. Steuart Thomas, III

**STUDY GROUP MEMBERS:**

The study group consisted of the Hon. Gordon F. Willis, John E. Lichtenstein, Esq., Sona Rewari, Esq., and Derrick L. Walker, Esq.

**EXECUTIVE SUMMARY (including background, scope of review, and statement of the question):**

Virginia Rule 4:9A states regarding objections to subpoenas and procedures, that “the court, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (1) quash or modify the subpoena ...” This year,

effective July 1, 2025, the General Assembly enacted Va. Code Section 8.01-420.9 to confer standing on a non-party to move to quash or modify a subpoena duces tecum for the production of the non-party's financial records or records protected by the attorney-client privilege. The bill changes the result in Dinarany v. Dannenbaum, 24 Va. Cir. LEXIS 130 at \*8 (Fairfax August 19, 2024) (Friedan, J.). In that case, the trial judge held that standing to quash or modify a subpoena for financial records is granted only to the person to whom the subpoena is directed or a party to the litigation in which the subpoena is issued. Not only does § 8.01-420.9 change the result, but Rule 4:9A has also been amended. See Rule 4:9A(c)(3).

The second enactment clause of Senate Bill 1010 which became § 8.01-420.9, called upon the Supreme Court to amend Rules 4:1 and 4:9A to conform to the new statute. The third enactment clause asked the Boyd-Graves Conference to conduct a study “on whether the Code of Virginia should be further amended to allow a non-party to file a motion to quash or modify a subpoena duces tecum.”

The committee studied § 8.01-420.9, Rule 4:9A, and FRCP 45(d)(3)(B) to determine if any further changes need to be made to § 8.01-420.9 and Rule 4:9A. This study committee determined that at this time there is no need for any further changes.

#### **ANALYSIS:**

The study committee met multiple times to discuss the issues, review the relevant statutes and rules, and search for evidence of any further problems that need to be fixed. Other than the Dinarany case cited above, the study committee was unable to identify any other issues requiring a rule or statutory change. The members of the study committee had never encountered any such issue themselves. Because the committee was unfamiliar with this issue arising in any case other than Dinarany, it undertook to seek input from the Virginia Association of Defense Attorneys and the Virginia Trial Lawyers Association. In addition, the members of the committee were assigned to contact additional individuals to seek their opinions. No specific problems or issues were identified by any of the groups or individuals we spoke with. There was sympathy for the hypothetical third party who might have a privilege or privacy interest at stake. However, the study group did not learn of any specific issues that had come up in litigation. In short, it felt it was trying to come up with a solution in search of a problem.

The study committee discussed the fact that production of school records is guided by the federal Family Educational Rights and Privacy Act (FERPA) and medical records through HIPAA and Va. Code Section 32.1-127.1:03. Rule 4:9A(e) already provides that patient health records are protected by the privacy statute and may be disclosed only in accordance with the provisions and procedures prescribed by that statute.

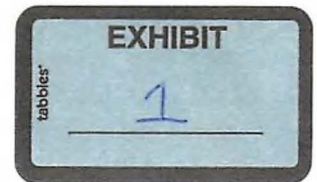
There is nothing in Rule 4:9A about the production of school records. However, because of the federal statute, production of these records by schools requires notice to the student and an opportunity to seek protective action. While other such examples may exist or can be imagined, the committee could not find any specific instances where records for which a non-party had a privilege or privacy interest were produced over objection by that party.

The study committee also discussed the procedure under Rule 4:9A(c)(3). In Virginia, the burden to file a motion to quash or modify is placed on the person required to produce or the party against whom such production is sought. However, there is no prohibition to an objection being filed by an interested third party. FRCP 45(d)(2) and (3), allow objections to be made by a person subject to or affected by a subpoena in some instances but place the burden on the party serving the subpoena to move to compel production. The federal rule arguably makes it easier for a third party affected by the subpoena to object or move to quash.

The study committee discussed that there is certainly litigation over Rule 45 and its procedures, and that no changes to Rule 4:9A will solve all potential procedural issues for parties affected by subpoenas. Judge Willis stated his belief that when an affected party files a timely objection in Virginia, it is likely to be either heard by the Circuit Court Judge or at least dealt with by the parties in the case. Judge Willis is afraid that trying to expand Va. Code Section 8.01-420.9 and change the procedures in Rule 4:9A will lead to more uncertainty and more litigation of discovery matters in the Circuit Courts. For all of the above reasons, the study committee does not recommend any changes or additions to § 8.01-420.9 or Rule 4:9A at this time.

#### **RECOMMENDATION TO CARRY-OVER FOR FURTHER STUDY:**

The study committee does not recommend that these issues be carried over for further study. However, the study committee recognizes that it was not able to poll everyone, and there may be others in the Conference who are aware of specific issues the study committee failed to identify. If it is the desire of the Conference to carry this matter over, the study committee is happy to look at this further, particularly if the Conference wants it to look at specific instances where production of records for which a third party has a privilege or privacy interest has been compelled over objection by the third party.

**CHAPTER 300**

*An Act to amend the Code of Virginia by adding in Article 9 of Chapter 14 of Title 8.01 a section numbered 8.01-420.9, relating to subpoenas duces tecum; financial records of nonparty.*

[S 1010]

Approved March 21, 2025

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Article 9 of Chapter 14 of Title 8.01 a section numbered 8.01-420.9 as follows:**

***§ 8.01-420.9. Subpoena duces tecum; financial records of nonparty.***

*A. Notwithstanding any other provision of law, when any party in a civil action issues a subpoena duces tecum for the production of (i) records subject to attorney-client privilege or (ii) the financial records of a nonparty account holder, such attorney holding privileged records or nonparty account holder may file a motion to quash or modify such subpoena.*

*B. Upon receiving a valid subpoena duces tecum for financial records, no commercial business providing credit history or credit reports, issuer as defined in § 6.2-424, financial institution as defined in § 6.2-604, or money transmitter as defined in § 6.2-1900 shall condition compliance with such subpoena upon the payment of any fees for the costs of producing such records, but such commercial business, issuer, financial institution, or money transmitter may impose reasonable charges not to exceed the actual costs incurred in accessing, duplicating, supplying, or searching for the requested records. Nothing in this section shall be construed to create a cause of action against such commercial business, issuer, financial institution, or money transmitter that complies with a subpoena duces tecum.*

**2. That the Supreme Court of Virginia shall revise the relevant provisions of Rules 4:1 and 4:9A of the Rules of the Supreme Court of Virginia to be consistent with the provisions of this act.**

**3. That the Boyd-Graves Conference shall conduct a study on whether the Code of Virginia should be further amended to allow a nonparty to file a motion to quash or modify a subpoena duces tecum for other types of records that may be sought by a party in a civil proceeding. The Boyd-Graves Conference shall report any findings of such study to the Chairmen of the Senate and House Committees for Courts of Justice by November 1, 2025.**



## [Va. Code Ann. § 8.01-420.9](#)

Current through 2025 Regular Session

*Code of Virginia 1950* > *Title 8.01. Civil Remedies and Procedure. (Chs. 1 — 27)*  
> *Chapter 14. Evidence. (Arts. 1 — 9)* > *Article 9. Miscellaneous Provisions. (§§ 8.01-417 — 8.01-420.9)*

### **§ 8.01-420.9. Subpoena duces tecum; financial records of nonparty.**

**A.** Notwithstanding any other provision of law, when any party in a civil action issues a subpoena duces tecum for the production of (i) records subject to attorney-client privilege or (ii) the financial records of a nonparty account holder, such attorney holding privileged records or nonparty account holder may file a motion to quash or modify such subpoena.

**B.** Upon receiving a valid subpoena duces tecum for financial records, no commercial business providing credit history or credit reports, issuer as defined in [§ 6.2-424](#), financial institution as defined in [§ 6.2-604](#), or money transmitter as defined in [§ 6.2-1900](#) shall condition compliance with such subpoena upon the payment of any fees for the costs of producing such records, but such commercial business, issuer, financial institution, or money transmitter may impose reasonable charges not to exceed the actual costs incurred in accessing, duplicating, supplying, or searching for the requested records. Nothing in this section shall be construed to create a cause of action against such commercial business, issuer, financial institution, or money transmitter that complies with a subpoena duces tecum.

### **History**

[2025, cc. 300, 287.](#)

Annotations

### **Research References & Practice Aids**

#### **Hierarchy Notes:**

[Va. Code Ann. Title 8.01, Ch. 14](#)

Code of Virginia 1950  
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## Va. Sup. Ct. R. 4:9A

Current with changes received by the publisher through August 15, 2025

VA - Virginia State & Federal Court Rules > Rules of Supreme Court of Virginia  
> Part Four. Pretrial Procedures, Depositions and Production at Trial

### **Rule 4:9A. Production from Non-Parties of Documents, Electronically Stored Information, and Things and Entry on Land for Inspection and Other Purposes; Production at Trial.**

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**(a) Issuance of a Subpoena Duces Tecum.** — Except as provided in paragraph (d) of this Rule, a subpoena duces tecum may be issued:

**(1) By the clerk of court.** — Upon written request therefor filed with the clerk of the court in which the action or suit is pending by counsel of record for any party or by a party having no counsel in any pending case, with a certificate that a copy thereof has been served pursuant to Rule 1:12 upon counsel of record and to parties having no counsel, the clerk must issue to a person not a party therein a subpoena duces tecum subject to this Rule.

**(2) By an attorney.** — In a pending civil proceeding, a subpoena duces tecum may be issued by an attorney-at-law as an officer of the court if he or she is an active member of the Virginia State Bar at the time of issuance. An attorney may not issue a subpoena duces tecum in those civil proceedings excluded in [Virginia Code § 8.01-407](#). An attorney-issued subpoena duces tecum must be signed as if a pleading and must contain the attorney's address, telephone number and Virginia State Bar identification number. A copy of any attorney-issued subpoena duces tecum must be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance with a certificate that a copy thereof has been served pursuant to Rule 1:12 upon counsel of record and to parties having no counsel. If time for compliance with an attorney-issued subpoena duces tecum is less than fourteen (14) days after service of the subpoena, the person to whom the subpoena is directed may serve on the party issuing the subpoena a written objection setting forth any grounds upon which such production, inspection, copying, sampling or testing should not be had. If an objection is made, the party issuing the subpoena is not entitled to the requested production, inspection, copying, sampling or testing, except pursuant to an order of the court in which the civil proceeding is pending. If an objection is made, the party issuing the subpoena may, upon notice to the person to whom the subpoena is directed, move for an order to compel the production, inspection, copying, sampling or testing. Upon a timely motion, the court may quash, modify or sustain the subpoena as provided above in subsection (c) of this Rule.

**(b) Content of Subpoena Duces Tecum; Objections.** — Subject to paragraph (d) of this Rule, a subpoena duces tecum will command the person to whom it is directed, or someone acting on his behalf, to produce the documents, electronically stored information, or designated tangible things (including writings, drawings, graphs, charts, photographs, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form) designated and described in said request, and to permit the party filing such request, or someone acting in his behalf, to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 4:1(b) which are in the possession, custody or control of such person to whom the subpoena is directed, at a time and place and for the period specified in the subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

**(c) Responding to a Subpoena; Objections; Production of Documents and Electronically Stored Information.**

**(1) Production of Documents.** — A person responding to a subpoena to produce documents must produce them as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand.

**(2) Electronically Stored Information.**

**(A)** A person responding to a subpoena need not provide discovery of electronically stored information from sources the responder identifies as not reasonably accessible because of undue burden or cost. On motion to compel production or to quash a subpoena, the person from whom production is sought under the subpoena must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order production of responsive material from such sources if the subpoenaing party shows good cause, considering the limitations of Rule 4:1(b)(1). The court may specify conditions for the production of such information, including allocation of the reasonable costs thereof.

**(B)** If a subpoena does not specify the form or forms for producing electronically stored information, a person responding thereto must produce the information as it is ordinarily maintained if it is reasonably usable in such form or forms, or must produce the information in another form or forms in which it is reasonably usable. A person responding to a subpoena need not produce the same electronically stored information in more than one form.

**(3) Objections and Procedures.** — The court, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (1) quash or modify the subpoena, or the method or form for production of electronically stored information, if the subpoena would otherwise be unduly burdensome or expensive, (2) condition denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of some or all of the reasonable cost of producing the documents, electronically stored information, and tangible things so designated and described or (3) direct that the documents and tangible things subpoenaed, including electronically stored information (unless another location for production is agreed upon by the requesting and producing parties), be returned only to the office of the clerk of the court through which such documents and tangible things are subpoenaed in which event, upon request of any party in interest, or his attorney, the clerk of such court must permit the withdrawal of such documents and tangible things by such party or his attorney for such reasonable period of time as will permit his inspection, photographing, or copying thereof. If the subpoena duces tecum seeks a nonparty's financial records or a nonparty's records protected by the attorney-client privilege, such nonparty may move to quash or modify the subpoena, and for such other relief permitted by this subsection, in accordance with *Code* § 8.01-420.9.

**(4) Pre-Motion Negotiation.** — A motion under 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.

**(d) Certain Officials.** — No request to produce made pursuant to paragraph (b) above may be served, and no subpoena provided for in paragraph (c) above may issue, until prior order of the court is obtained when the party upon whom the request is to be served or the person to whom the subpoena is to be directed is the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof; the President or Vice President of the United States; any member of the President's Cabinet; any Ambassador or Consul; or any Military Officer on active duty holding the rank of Admiral or General.

**(e) Certain Health Records.** — Patient health records protected by the privacy provisions of [Code Section 32.1-127.1:03](#) may be disclosed only in accordance with the provisions and procedures prescribed by that statute.

**(f) Copies of Documents and Other Subpoenaed Information.**

**(1) Documents.** — When one party to a civil proceeding subpoenas documents, the subpoenaing party, upon receipt of the subpoenaed documents, must, if requested, provide true and full copies of the same to any party or to the attorney for any other party in accordance with [Code § 8.01-417\(B\)](#).

**(2) Electronically stored information.** — When one party to a civil proceeding subpoenas and obtains electronically stored information, the subpoenaing party must, if requested, provide true and full copies of the same to any party or that party's attorney, in the form the subpoenaing party received the information, upon reimbursement of the proportionate cost of obtaining such materials.

**(g) Proceedings on Failure or Refusal to Comply.** — If a non-party, after being served with a subpoena issued under the provisions of this Rule, fails or refuses to comply therewith, he may be proceeded against as for contempt of court as provided in § 18.2-456.

Annotations

## Notes

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**Effective date.** — This rule, adopted October 31, 2008, became effective January 1, 2009.

**The amendment, effective March 1, 2021,** promulgated November 23, 2020, clarified the meaning of the word "shall" formerly appearing in the rule.

**The amendment effective July 1, 2025,** promulgated June 18, 2025, added the last sentence in subdivision (c)(3).

## CIRCUIT COURT OPINIONS

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**Notice.** — Upon issuing the subpoenas duces tecum, the ex-wife's counsel was obligated to mail or deliver them to the Clerk's Office and serve them on counsel for defendants but there was no obligation to notify the ex-husband or his counsel, neither of whom were counsel of record in the legal malpractice case or a party to it. Because the ex-husband had no liberty or property interest in the documents responsive to the subpoenas, the holding allowing his bank records did not violate his Due Process rights. [Dinarany v. Dannenbaum, 114 Va. Cir. 1, 2024 Va. Cir. LEXIS 130 \(Fairfax County Aug. 19, 2024\)](#).

## Research References & Practice Aids

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**Michie's Jurisprudence.**

For related discussion, see [6A M.J. Discovery, § 2](#); [6B M.J. Election of Remedies, § 7](#).

**Hierarchy Notes:**

[Va. Sup. Ct. R.](#)

[Va. Sup. Ct. R., Pt. Four Pretrial Procedures, Depositions and Production at Trial](#)

Virginia State & Federal Court Rules  
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## **MISSION STATEMENT**

The Boyd-Graves Conference seeks to improve the quality of civil justice in Virginia. It does so through scholarly study and discussion among experienced civil trial lawyers, judges, legislators, and educators, leading to recommendations for changes to the rules and statutes governing the civil justice system in Virginia.

The credibility of the Boyd-Graves Conference is maintained by reporting only on areas in which its members have expertise. Invitations to participate in the Conference are issued based upon demonstrated competence in civil litigation, with a view to fostering balance and diversity in practice areas, in gender and ethnic backgrounds, in geographic dispersion throughout Virginia, and in representation of various firm sizes and practice groups.

The Boyd-Graves Conference does not represent or advocate the interests of any group or constituency. The independence of the Conference depends on the good faith of the members' voting their conscience. Members must sometimes subordinate the private interests of the groups to which they belong, or even their own practice area, to the greater good. By accepting an invitation to participate in the Boyd-Graves Conference, each member pledges to uphold these principles.

## **HISTORY**

More than three decades ago, Thomas V. Monahan, past-president of both the Virginia Bar Association and the Virginia Trial Lawyers Association, invited a small group of experienced civil trial lawyers to a meeting at the Tides Inn in Irvington to discuss potential changes in the rules and procedures applicable to the trial of civil cases in Virginia state courts. Those invited to attend the initial meeting included lawyers from across Virginia who practiced in both large and small firms. A deliberate effort was made to secure a balance between those who primarily represented plaintiffs in civil trials and those who typically represented defendants. From the outset, the focus of the Conference was the identification and discussion of problems encountered in State court civil litigation, with the objective of reaching a consensus concerning needed changes in either the Rules of Court or the Code of Virginia. Whenever a consensus was reached, the resulting recommendation was made directly to the Supreme Court or to the General Assembly. The Conference, which initially took its name from the site of the meetings, came to be known as the Tides Inn Conference.

In its formative years, the Conference worked closely with T. Munford Boyd, Edward S. Graves, and Leigh B. Middleditch, Jr., who had served as advisors to the Virginia Code Commission during the 1977 transition of the Code of Civil Procedure from Title 8 to Title 8.01. Because of their significant contribution to the success of the Conference, the name was changed to the Boyd-Graves Conference.

The Conference soon outgrew the Tides Inn, and for many years its annual meetings have been rotated to locations throughout the Commonwealth. What began as informal face-to-face meetings on the sofas of a small lounge at the Tides Inn is now a

Carefully planned event attended by more than 100 lawyers, judges, professors, and legislators. The Conference is governed by a Steering Committee and a Chair, who generally serves for two years. The Conference has a familial relationship with the Virginia Bar Association, which serves as the repository of the Conference's records and financial resources and provides invaluable administrative support.

Membership in the Conference continues to be by invitation only. We endeavor to facilitate a full and open discussion of issues by maintaining a roundtable configuration and by limiting the number of participants. Larger numbers tend to constrain the individual participation that has been so vital to the work of the Conference. There are no term limits, but neither are there permanent members. Even those who are most active are regularly rotated off the membership rolls to make room for new participants. The Membership Committee attempts to maintain a balance of representation from the various civil litigation practice disciplines, selecting individuals with experience, reputation, and demonstrated ability to contribute to the work of the Conference, as well as a willingness to put aside what benefits his or her particular practice in favor of a solution in the best interests of all involved in civil litigation in Virginia.

Although the Boyd-Graves Conference has become larger and more structured, it has remained true to its heritage. At each meeting, the members are invited to suggest topics for future consideration. Other study requests have come from judges, from lawyers who are not currently members of the Conference, and from legislators or legislative committees. The Boyd-Graves Conference feels a particular affinity for the Civil Litigation Section of the Virginia Bar Association, with which it shares members and many common professional interests; members of the Civil Litigation Section are invited to suggest potential topics for study.

The Steering Committee evaluates each suggested topic and decides which should be approved for consideration at the next meeting of the Conference. The Conference Chair has the responsibility of appointing a committee to study each of the approved topics. Committee members frequently include lawyers who are not members of the Conference but who are willing to contribute their expertise to its work. Each committee is expected to complete its work and to submit a report of its findings and recommendations to the Conference Chair in advance of the annual meeting. These reports are published in the form of an agenda booklet that is distributed to each member of the Conference in advance of the annual meeting. The agenda booklet was once distributed in paper form. Beginning in 2014, the Conference has distributed the booklet in electronic form only.

Each report is presented to the Conference by the committee chair and, after discussion and possible modification of the committee's recommendations, the Conference votes to approve or disapprove those recommendations. The Conference will make a recommendation for a statutory or rule change only if there is a consensus. A simple majority is not sufficient.

Although the question of whether there is a consensus is left to the discretion of the Conference Chair, the overwhelming majority of the participants (at least two-thirds) must agree before a recommendation for change will be made.