

Friday

25th

June, 2004.

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 September 1, 2004.

Amend Rule 5A:1 to read as follows:

**Rule 5A:1. Scope, Applicability and General Provisions.**

(a) *Scope of Rules.* -- Part Five A governs all proceedings in the Court of Appeals of Virginia.

(b) *Definitions.* -- (1) "Appeal," "appellant," and "appellee" include "writ of error," "plaintiff in error," and "defendant in error," respectively.

(2) "Clerk of the trial court" means clerk of the trial court from which an appeal is taken to the Court of Appeals, and shall include a deputy clerk and the clerk of the Virginia Workers' Compensation Commission where the context requires.

(3) "Clerk of the Court of Appeals" includes a deputy clerk.

(4) "Counsel" has the definition given in Rule 1:5 for Counsel of Record and in this Part Five A includes a party not represented by counsel and any attorney appointed as a Guardian Ad Litem.

(5) "Counsel for appellant" means one of the attorneys representing each appellant represented by an attorney, and each appellant not represented by an attorney.

(6) "Counsel for appellee" means one of the attorneys representing each appellee represented by an attorney, and each appellee not represented by an attorney and shall include a Guardian Ad Litem, unless the Guardian Ad Litem is the appellant.

(7) "Opposing counsel" means, depending on the context, "counsel for the appellant" or "counsel for the appellee."

(8) "Judge" means judge of the trial court, unless the context otherwise requires, or if he be not available, any judge authorized to act under Rule 5A:9.

(9) "Judgment" includes an order or decree from which an appeal is taken.

(10) "File with the clerk" or "files with the clerk" or "filed with the clerk" means deliver to the clerk specified a paper, a copy of which has been mailed or delivered to opposing counsel, and appended to which is either acceptance of service or a certificate showing the date of mailing or delivery. "File in the office of the clerk" or "files in the office of the clerk" or "filed in the office of the clerk" means, on the other hand, deliver a paper to the clerk specified.

(11) "Trial court" means the circuit court from which an appeal is taken to the Court of Appeals.

(12) The "date of entry" of any final judgment or other appealable order or decree shall be the date the judgment, order, or decree is signed by the judge.

Amend Rule 5A:19 to read as follows:

**Rule 5A:19. Briefs.**

(a) *Length.* -- Except by permission of a judge of the Court of Appeals, neither the opening brief of appellant, nor the brief of appellee, nor a brief amicus curiae shall exceed 35 typed or 25 printed pages. No reply brief shall exceed 10 typed or 7 printed pages. Page limits under this Rule do not include appendices.

(b) *Filing Time: Appeal as a Matter of Right.* -- In cases where appeal lies as a matter of right to the Court of Appeals, briefs shall be filed as follows:

(1) The appellant shall file the opening brief in the office of the clerk of the Court of Appeals within 40 days after the date of the filing of the record in such office.

(2) The brief of appellee shall be filed in the office of the clerk of the Court of Appeals within 25 days after filing of the opening brief.

(3) The appellant may file a reply brief in the office of the clerk of the Court of Appeals within 14 days after filing of the brief of appellee or Guardian Ad Litem.

(c) *Filing Time: Grant of Petition for Appeal.* -- In cases where a petition for appeal has been granted by the Court of Appeals, briefs shall be filed as follows:

(1) The appellant shall file the opening brief in the office of the clerk of the Court of Appeals within 40 days after the date of the certificate of appeal issued by the clerk of the Court of Appeals pursuant to Rule 5A:16 (b).

(2) The brief of appellee shall be filed in the office of the clerk of the Court of Appeals within 25 days after filing of the opening brief.

(3) The appellant may file a reply brief in the office of the clerk of the Court of Appeals within 14 days after filing of the brief of appellee.

(d) If a Guardian Ad Litem joins with either appellant or appellee, the Guardian Ad Litem must notify the Clerk's Office, in writing, which side it joins. Thereafter, the Guardian Ad Litem may rely on the brief of that party and is entitled to oral argument under Rule 5A:26.

(e) *Extension of Time.* -- By agreement of all counsel and with permission of a judge of the Court of Appeals, the time for filing any brief in the Court of Appeals may be altered.

(f) *Copies.* -- Seven copies of each brief shall be filed and one copy shall be mailed or delivered to opposing counsel on or before the date of filing.

Amend Rule 5A:21 to read as follows:

**Rule 5A:21. Brief of Appellee or Guardian Ad Litem.**

The brief of appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases shall be to the

Virginia Reports and the Southeastern Reporter. Citations of all authorities shall include the year thereof.

(b) A statement of the case and of the questions presented if the appellee disagrees with the statement or questions presented by the appellant, and a statement of any additional questions the appellee wishes to present with a clear and exact reference to the page(s) of the transcript, written statement, record, or appendix where each additional question was preserved in the trial court.

(c) A statement of the facts necessary to correct or amplify the statement in the brief of appellant with appropriate references to the pages of the transcript, written statement, record, or appendix. The testimony of individual witnesses should not be summarized seriatim unless the facts are in dispute and such a summary is necessary to support the appellee's version of the facts.

(d) The principles of law, the argument, and the authorities relating to each question presented. For any additional question presented by appellee which was not preserved in the trial court, counsel shall state why the good cause and/or ends of justice exceptions to Rule 5A:18 are applicable. With respect to each question, the principles, the argument, and the authorities shall be stated in one place and not scattered through the brief. At the option of counsel, the argument may be preceded by a brief summary.

(e) A statement of the precise relief sought, if any.

(f) The signature (which need not be in handwriting) of at least one counsel and his address.

(g) A certificate (which need not be signed in handwriting) stating (1) that Rule 5A:19(e) has been complied with, and (2) whether counsel desires to waive oral argument. Additionally, any party may waive oral argument without leave of court by written notification to the clerk of this court within 21 days after the date on which the appellee's brief is due to be filed or has been filed.

Amend Rule 5A:24 to read as follows:

**Rule 5A:24. Covers of Documents.**

(a) To facilitate identification, documents shall bear covers colored as follows:

<i>Document</i>	<i>Color of Cover</i>
Appendix	Red
Brief of the Appellant	White
Brief of the Appellee	Blue
Brief of Guardian Ad Litem (if separate from appellant and appellee)	Brown
Reply Brief of the Appellant	Green
Brief Amicus Curiae	Gray
Petition for Rehearing	Yellow
Petition for Rehearing En Banc	Yellow

(b) No appeal shall be dismissed for failure to comply with the provisions of this rule; however, the clerk of the Court of Appeals may require that a document be redone in compliance with this Rule.

Amend Rule 5A:28 to read as follows:

**Rule 5A:28. Oral Argument.**

(a) *Notice.* -- Whenever appeal lies as a matter of right or a petition for appeal has been granted, oral argument shall be permitted except in those cases disposed of pursuant to Rule 5A:27. The Clerk of the Court of Appeals, except in extraordinary circumstances, shall give at least 15 days advance notice to counsel of the date, time, and place for oral argument.

(b) *Length.* -- Except as otherwise directed by the Court of Appeals, argument for a party shall not exceed 30 minutes in length. Such time may be apportioned among counsel for the same side at their discretion, except that only one counsel may present the opening argument for the appellant. If a Guardian Ad Litem joins with either appellant or appellee, the Guardian Ad Litem shall share the time for oral argument with the party. If a Guardian Ad Litem

wants additional time to argue, the Guardian Ad Litem must state that request in its brief, subject to approval of the court.

(c) *Amicus Curiae*. -- No oral argument is permitted by amicus curiae except by leave of the Court of Appeals.

(d) *Waiver*. -- Any party may waive oral argument. See Rules 5A:20(h) and 5A:21(g).

A Copy,

Teste:

Clerk