

Corrected Copy

Friday

30th

April, 2010.

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 July 1, 2010.

Amend Part Five, The Supreme Court, to read as follows:

**PART FIVE  
THE SUPREME COURT**

**A. General.**

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

- (a) *Scope of Rules.* Part Five governs all proceedings in the Supreme Court of Virginia.
- (b) *Citation.* These Rules may be cited generally as the “Rules of the Supreme Court of Virginia” and specifically as “Rule 5:\_\_\_.”
- (c) *Definitions.*
- (1) "clerk" means clerk of the court or commission from which an appeal is taken unless some other clerk is specified and, unless the context otherwise requires, includes a deputy clerk;
  - (2) "clerk of this Court" includes a deputy clerk;
  - (3) "counsel" has the definition given in Rule 1:5 and in this Part Five includes a party not represented by counsel;
  - (4) "counsel for the appellant" means one of the attorneys representing each appellant represented by an attorney and each appellant not represented by an attorney;
  - (5) "counsel for the appellee" means one of the attorneys representing each appellee represented by an attorney and each appellee not represented by an attorney. In an appeal from the State Corporation Commission, "counsel for the appellee" shall also include counsel for the Commission and, unless the Commonwealth is the appellant, the Attorney General;
  - (6) "Court of Appeals" means the Court of Appeals of Virginia;
  - (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 the judge of the trial court is not available, any judge authorized to act under Rule 5:12;
  - (9) "judgment" includes an order or decree from which an appeal is taken;
  - (10) "trial court" means the circuit court from which an appeal is taken;
  - (11) 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.

(d) *Service*. Unless service or notice is otherwise specified in a given Rule, any paper or object filed with this Court must have included within it or appended to it a certificate of service or acceptance of service showing that a copy has been transmitted to all counsel and showing the date and manner of transmittal. If a word count is used, the certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

(e) *Notice of Change of Address and Other Contact Information*. If an attorney has a change in mailing address, telephone number, facsimile number, or e-mail address any time after the filing of the notice of appeal, the attorney must immediately notify the clerk of this Court and all other counsel of record in writing. The notice must reference the style and record number of all cases pending before this Court.

(f) *Citing Unpublished Judicial Dispositions*. The citation of judicial opinions, orders, judgments, or other written dispositions that are not officially reported, whether designated as “unpublished,” “not for publication,” “non precedential,” or the like, is permitted as informative, but shall not be received as binding authority. If the cited disposition is not available in a publicly accessible electronic database, a copy of that disposition must be filed with the brief or other paper in which it is cited.

### **Rule 5:1A. Penalties for Non-compliance; Show Cause; Dismissal.**

(a) *Penalties; Show Cause; Dismissal*. This Court may dismiss an appeal or impose such other penalty as it deems appropriate for non-compliance with these Rules. Except as provided in Rule 5:17(c) regarding assignments of error, prior to the dismissal of an appeal for any defect in the filings related to formatting, curable failure to comply with other requirements, or the failure to meet non-mandatory filing deadlines, this Court may issue a show cause order to counsel or a party not represented by an attorney, prescribing a time in which to cure such defect or to otherwise show cause why the appeal should not be dismissed or other penalty imposed.

(b) *Report to Virginia State Bar*. If an attorney's failure to comply with these Rules results in the dismissal of an appeal, this Court may report the attorney to the Virginia State Bar in accordance with Rule 8.3 of the Virginia Rules of Professional Conduct.

### **Rule 5:2. Sessions and Divisions.**

Except as provided in Code § 17.1-304, sessions and divisions of this Court will be held at Richmond, or at such other locations as this Court may designate consistent with applicable law, and will continue for such length of time as this Court may determine.

### **Rule 5:3. Convening of Court - When En Banc - When in Division.**

(a) This Court will sit en banc or in divisions.

(b) Whenever four or more of the Justices are convened, this Court shall be deemed to be sitting en banc and vested with all of the powers of this Court. Whenever three of the Justices are convened, this Court shall be deemed to be sitting as a division, and vested with all of the powers of a division of this Court.

(c) If the Justices composing any division shall differ as to the judgment to be rendered in any case, or if, within ten days after the decision is rendered by the division any Justice of such division shall file in the office of the clerk of this Court a certificate that, in the opinion of the Justice, such decision is in conflict with a prior decision of this Court or of one of the divisions thereof, or if this Court shall so determine, the case shall be reheard and decided by this Court sitting en banc.

#### **Rule 5:4. Motions and Responses; Orders.**

(a) *Motions and Responses.*

(1) *Motions.* All motions, except motions for the qualification of attorneys at law to practice in this Court, shall be in writing and filed with the clerk of this Court. All motions shall contain a statement by the movant that the other parties to the appeal have been informed of the intended filing of the motion. For all motions in cases in which all parties are represented by counsel – except motions to dismiss petitions for a writ of habeas corpus – the statement by the movant shall also indicate whether the other parties consent to the granting of the motion, or intend to file responses in opposition.

(2) *Responses.* Opposing counsel may have 10 days after such motion is filed to file with such clerk a response to such motion, but this Court may act before the 10 days expire, if necessary.

(3) *Number of Copies.* An original and three copies of all motions or responses must be filed.

(4) *Oral Argument.* No motion shall be argued orally except by leave of this Court.

(b) *Orders.* Promptly after this Court has entered an order, the clerk of this Court shall send a copy of the order to all counsel.

#### ADVISORY NOTE

This rule is not intended to limit the scope of motions that may be filed in the Supreme Court. Such motions may be filed in any pending or contemplated appeal, and may request from the Court any form of relief that is available to the movant. The practitioner should consult individual rules relating to the filing of motions in particular matters; for example, Rule 5:12 (trial judge authorized to act on matters pertaining to record); Rule 5:30(a)(3) (motion for leave to file brief amicus curiae). Rehearings are not within the scope of this rule, but are governed by Rules 5:20, 5:20A, and 5:37.

#### **Rule 5:5. Filing Deadlines; Post Trial Proceedings Below; Timely Filing by Mail; Inmate Filing; Extension of Time.**

(a) *Filing Deadlines.* The times prescribed for filing the notice of appeal (Rules 5:9(a), 5:14(a) and 5:21(c)), a petition for appeal (Rules 5:17(a) and 5:21(g)) and a petition for rehearing (Rules 5:20 and 5:37), are mandatory. A single extension not to exceed thirty days may be granted if at least two Justices of the Supreme Court of Virginia concur in a finding that an extension for papers to be filed is warranted by a showing of good cause sufficient to excuse the delay.

(b) *Post-Trial Proceedings Below and Their Effect on the Notice of Appeal.* The time period for filing the notice of appeal is not extended by the filing of a motion for a new trial, a petition for rehearing, or a like pleading unless the final judgment is modified, vacated, or suspended by the trial court pursuant to Rule 1:1 or a timely petition for rehearing is filed in the Court of Appeals. In any

such case, the time for filing the notice of appeal shall be computed from the date of final judgment entered following such modification, vacation, or suspension, or from the date the Court of Appeals refuses a timely petition for rehearing or enters final judgment following the granting of such a petition.

(c) *How to File by Mail in a Timely Manner.* Any document required to be filed with the clerk of this Court shall be deemed to be timely filed if (1) it is transmitted expense pre-paid to the clerk of this Court by priority, express, registered, or certified mail via the United States Postal Service, or by a third-party commercial carrier for next-day delivery, and (2) if the official receipt therefor be exhibited upon demand of the clerk of this Court or any party and it shows such transmission or mailing within the prescribed time limits. This rule does not apply to documents to be filed in the office of the clerk of the trial court or clerk of the Virginia Workers' Compensation Commission or clerk of the State Corporation Commission.

(d) *Inmate Filing.* A paper filed by an inmate confined in an institution is timely filed if deposited in the institution's internal mail system with first-class postage prepaid on or before the last day for filing. Timely filing of a paper by an inmate confined in an institution may be established by (1) an official stamp of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing, (2) an official postmark dated on or before the last day for filing, or (3) a notarized statement signed by an official of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing.

(e) *Extensions Generally.* Except as provided in paragraph (a) of this Rule, a motion for an extension of time is timely if filed either within the original filing deadline or within any extension period specified by the governing rule. Filing the motion within the original filing deadline or within the specified extension period does not toll the original filing deadline or further extend the period of extension.

## **Rule 5:6. Forms of Briefs and Other Papers.**

### *(a) Paper Size, Line Spacing, Font, and Margins.*

(1) *General Rules.* Briefs, appendices, motions, petitions, and other papers may be printed by any process that yields a clear black image on white paper and must be on 8-1/2 x 11 inch paper. Margins must be at least one inch on all four sides of each page.

(2) *Specific Rules for Motions, Petitions, and Briefs.* Except by leave of Court, all motions, petitions, and briefs, including footnotes, must be in at least 14-point font, must use either Courier, Arial, or Verdana font, and must be printed on only one side of the page. Text shall not be reduced and must be double spaced except for headings, assignments of error, quotations, and footnotes, which must be single spaced. Page numbers are required and may appear in either the top or bottom margin, but no text, including footnotes, is permitted in the one inch margins. Page or word limits for motions, petitions, and briefs do not include the cover page, table of contents, table of authorities, or certificate.

(3) *Specific Rules for the Appendix.* The appendix may be printed using both sides of the page. Any transcript, including a deposition transcript, that is made a part of the appendix shall be in 12-point type or larger. Any transcript contained in the appendix that fails to conform to the 12-point type requirement may be returned to counsel, and counsel shall be required to promptly comply with this requirement in accordance with the instruction of this Court. The use

of condensed or multi-page transcripts is prohibited. Page numbers are required and may appear in either the top or bottom margin.

(b) *Binding and Cover.* All briefs and appendices shall be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco fasteners, and the like are not acceptable. The style of the case (with the name of the appellant stated first) and the record number of the case shall be stated on the front cover of all briefs and appendices and, in addition, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel submitting the brief shall be placed on the front cover of all briefs.

(c) *Effect of Non-compliance.* No appeal shall be dismissed for failure to comply with the provisions of this Rule; the clerk of this Court may, however, require that a document be redone in compliance with this Rule.

## **B. Original Jurisdiction.**

### **Rule 5:7. Petitions for Writs of Habeas Corpus, Mandamus, and Prohibition.**

(a) *Petition for Writ of Habeas Corpus.* An application to this Court for a writ of habeas corpus under its original jurisdiction shall be by petition filed in the office of the clerk of this Court.

(1) *When Petition Must be Filed.* The petition for a writ of habeas corpus challenging a criminal conviction or sentence, except as provided in Rule 5:7A for cases in which the death penalty has been imposed, shall be filed within two years from the date of the final judgment in the trial court or within one year from either final disposition of the direct appeal in state court or the time for filing such appeal has expired, whichever is later. All other petitions for a writ of habeas corpus must be filed within one year after the cause of action accrues.

(2) *What the Petition Must Contain.* The petition must be notarized and must state whether the petitioner believes that the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing relevant authorities must accompany each petition. All petitions must comply with the requirements of Code § 8.01-655.

(3) *Service of Petitions.* Except as provided herein, service of process must be accomplished in accordance with Chapter 8 of Title 8.01.

(i) *Non-Public Officials.* A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent.

(ii) *Public Officials.* When habeas corpus is directed to a public official, service shall be made on the respondent and shall also be made on or accepted by the Attorney General or an Assistant Attorney General. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent.

(iii) *Prisoners Pro Se.* In cases brought by prisoners pro se, a copy of the petition shall be forwarded to the respondent by first class mail, and the application shall contain a certificate at the end stating as follows:

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, I mailed a copy of the foregoing application to the respondent(s), \_\_\_\_\_, by first class mail.

Petitioner

(4) When to Respond to a Petition. No responsive pleading to a petition filed by a prisoner acting pro se shall be required except as ordered by this Court. For all other petitions, a responsive pleading must be filed with the clerk of this Court within forty days after service of the petition.

(5) Contents of the Response. In one responsive pleading, the respondent may move to dismiss on any appropriate ground, including the failure to state facts upon which relief should be granted, and, in the alternative, may set forth grounds of defense as in an action at law. The answer shall state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities shall accompany each responsive pleading.

(6) Length. Except by permission of a Justice of this Court, no petition, including the accompanying memorandum of law, or a response thereto, including its accompanying memorandum of law, shall exceed 50 printed pages or 8,750 words. Page and word limits do not include appendices, exhibits, cover page, table of contents, table of authorities, and certificate.

(7) Number of Copies. Ten copies of the petition, responsive pleading, memoranda of law, and motions shall be filed in the office of the clerk of this Court. Prisoners filing pro se shall only be required to file three copies.

(8) Calling up the Record. If this Court determines that any portion of the underlying trial or appellate record is necessary for a proper determination of the merits of the petition, the clerk of this Court is authorized to request the record and the clerk of the trial court, commission, or the Court of Appeals, as appropriate shall transmit it forthwith upon request without the necessity of an order.

(b) *Petitions for Writs of Mandamus and Prohibition.* An application for a writ of mandamus or a writ of prohibition under the original jurisdiction of this Court shall be by petition filed in the office of the clerk of this Court.

(1) What the Petition Must Contain. The petition must be notarized and must state whether the petitioner believes that the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing relevant authorities must accompany each petition.

(2) Service of Petitions.

(i) Generally. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent. Except in cases brought by prisoners acting pro se, service of process must be accomplished in accordance with Chapter 8 of Title 8.01.

(ii) Prisoners Pro Se. In cases brought by prisoners pro se, a copy of the petition shall be forwarded to the respondent by first class mail, and the application shall contain a certificate at the end stating as follows:

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I mailed a copy of the foregoing application to the respondent(s), \_\_\_\_\_, by first class mail.

Petitioner

(3) Limitations for Petitions for Mandamus. A petition for writ of mandamus filed by or on behalf of a person confined in a state correctional facility must be brought within one year after the cause of action accrues.

(4) Petitions for Mandamus or Prohibition Against a Judge. A petition for writ of mandamus or writ of prohibition against a judge shall not bear the name of the judge but shall be entitled, "In re , Petitioner." When the Attorney General determines, with the concurrence of the judge, that it is impracticable or unnecessary for the Attorney General to represent the judge, the judge may be represented pro forma by counsel for the party opposing the relief, who shall appear in the name of the party and not that of the judge. Or, in the alternative, the Attorney General may provide for the appointment of special counsel to represent the judge, in accordance with the provisions of Code §§ 2.2-507 or 2.2-510.

(5) When to Respond to a Petition. No responsive pleading shall be required for a petition filed by a prisoner acting pro se except as ordered by this Court. For all other petitions, a responsive pleading must be filed with the clerk of this Court within 21 days after service of the petition or the filing thereof, whichever date is later.

(6) Contents of the Response. In one responsive pleading, the respondent may move to dismiss on any appropriate ground, including the failure to state facts upon which relief should be granted, and, in the alternative, may set forth an answer as in an action at law. The answer shall state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities should accompany each responsive pleading.

(7) Length. Except by permission of a Justice of this Court, no petition, including the accompanying memorandum of law, or a response thereto, including its accompanying memorandum of law, shall exceed 50 printed pages or 8,750 words. This page or word limit does not include appendices, exhibits, cover page, table of contents, table of authorities, and certificate.

(8) Number of Copies. Ten copies of the petition, responsive pleading, memoranda of law, and motions shall be filed in the office of the clerk of this Court. Prisoners filing pro se shall only be required to file three copies.

(c) *When this Court May Act on a Petition.* This Court may act on any petition for a writ of habeas corpus, mandamus, or prohibition before a responsive pleading is filed. This Court may by order shorten the period within which a responsive pleading must be filed.

(d) *Further Proceedings on Petitions.* Further proceedings shall be in accordance with the orders of this Court or a Justice thereof to whom this Court may delegate authority to determine all procedural matters. If this Court or the designated Justice determines that evidence is desirable, depositions shall be taken according to a schedule agreed upon by counsel and filed in the office of the clerk of this Court or, in the absence of agreement, according to a schedule determined by this Court or the designated Justice.

**Rule 5:7A. Petitions for Writs of Habeas Corpus in Cases in Which the Sentence of Death Has Been Imposed.**

In cases in which the sentence of death has been imposed:

(a) *Petition for the Writ.* A petition for a writ of habeas corpus shall be filed in the office of the clerk of this Court within 60 days after the earliest of: (i) the denial by the Supreme Court of the United States of a petition for a writ of certiorari to the judgment of this Court on direct appeal, (ii) an order of the Supreme Court of the United States affirming imposition of the sentence of death in a case in which that Court granted a writ of certiorari to review the judgment of this Court on direct appeal, or (iii) the expiration of the period for filing a petition for a writ of certiorari in the Supreme Court of the United States without such a petition being filed.

(b) *Contents of Petition for Writ.* Each petition for a writ of habeas corpus shall be verified and shall include an enumerated list of the grounds asserted for relief together with all supporting facts upon which the petitioner relies. The petition shall contain citation to the relevant legal authorities and an enumeration of all previous petitions and their disposition. The petition shall state whether, in the opinion of the petitioner, the taking of evidence is necessary for the proper disposition of the petition. The petition shall be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof upon the Attorney General of Virginia or by an acceptance of service signed by the Attorney General or an Assistant Attorney General.

(c) *Response.* Within 30 days after service of the petition, the Attorney General shall file with the clerk of this Court a responsive pleading, which may include a motion to dismiss. The response shall include citation to the relevant legal authorities and shall state whether, in the opinion of the Attorney General, the taking of evidence is necessary for the proper disposition of the petition.

(d) *Reply.* Within 20 days after the Attorney General's responsive pleading is filed pursuant to subparagraph (c), the petitioner may file a reply.

(e) *Copies to be Filed.* Ten copies of the petition, the Attorney General's responsive pleading, and the petitioner's reply shall be filed in the office of the clerk of this Court.

(f) *Motions.* Upon the filing of any motion other than a motion to dismiss included in a responsive pleading filed pursuant to subparagraph (c) of this Rule, or upon the filing of an objection pursuant to Code § 8.01-654(C)(3), the opposing party may file a response within ten days of the filing of the motion or objection, or within such time as this Court may order.

(g) *Length.* Except by permission of a justice of this Court, no petition for a writ of habeas corpus or a response thereto shall exceed 100 pages or 17,500 words, and no reply to a response shall exceed 50 pages or 8,750 words. Page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. All petitions, responses, replies, motions, and other papers filed pursuant to this Rule shall conform to the provisions of Rule 5:6(a). If counsel wishes to file a petition or response in excess of the page or word limit prescribed in this paragraph, a motion to exceed the page or word limit must be filed with the clerk of this Court at least 10 days before the due date for the petition or response. If the motion is denied, or if no timely motion to exceed the page or word limit is filed, any pages in the petition or response that exceed the page or word limit, except the signature and certificate of service, shall be stricken and not considered by this Court.

(h) *Further Proceedings by Order of this Court.* Further proceedings shall be conducted in accordance with the orders of this Court. If it is determined that an evidentiary hearing is necessary



for the proper disposition of the petition, this Court shall enter an order directing the circuit court that entered the judgment imposing the sentence of death to conduct such a hearing in accordance with the provisions of Code § 8.01-654(C)(1), (2), and (3).

(i) *Amendment of Petition.* If the statute of limitations has not expired, a petitioner may move – at any time before a ruling is rendered on the merits of the petition as initially filed – for leave of this Court to substitute an amended petition. This amendment can include additional claims not presented in the petition as initially filed. Any such motion shall attach a copy of the proposed amended petition.

### **Rule 5:7B. Petition for a Writ of Actual Innocence.**

(a) *Who may File a Petition.* A petition for a writ of actual innocence based upon previously unknown or untested human biological evidence may be filed by any person who has been convicted of a felony upon a plea of not guilty, or by any person, regardless of plea, who has been sentenced to death, or convicted of a class 1 felony, a class 2 felony or any felony for which the maximum penalty is imprisonment for life.

(b) *Time for Filing.* A petition under this Rule shall be filed in the office of the Clerk of this Court within 60 days after the date upon which exculpatory test results are obtained by the petitioner or his counsel of record from the Department of Forensic Science for any tests conducted on human biological evidence pursuant to Code § 19.2-327.1.

(c) *Contents of the Petition.* Each petition for a writ of actual innocence shall be filed on a form provided by this Court and shall be verified under oath. The petition must state categorically and with specificity: (i) the offense or offenses for which petitioner was convicted, including all previous records, applications, petitions, and appeals relating to these convictions, and their dispositions; (ii) that the petitioner is actually innocent of the crime or crimes for which he was convicted; (iii) an exact description of the human biological evidence and the scientific testing supporting the allegation of innocence, attaching a copy of the test results; (iv) that the human biological evidence was not known or available to the petitioner or his attorney at trial, or if it was known, why it was not subject to scientific testing; (v) the earliest date the test results described in the petition became known to the petitioner or any attorney of record; (vi) that the petitioner or his attorney has filed the petition within 60 days of obtaining the test results; (vii) an explanation of the reason or reasons the evidence will prove that no rational trier of fact could have found the petitioner guilty beyond a reasonable doubt of the offense or offenses for which the petitioner was convicted; and (viii) if the conviction became final in the circuit court after June 30, 1996, that the evidence was not available for testing under Code § 9.1-121.

(d) *Service of the Petition and Return of Service.* Prior to filing a petition, the petitioner shall serve the petition, along with all attachments, on the Attorney General and on the Commonwealth's Attorney for the jurisdiction where the conviction occurred. When represented by counsel, the petitioner shall file with the petition either (i) a duly executed return of service in the form of a verification that a copy of the petition and all attachments have been served, or (ii) an acceptance of service signed by either or both of the parties to be served, or (iii) a combination of the two. When not represented by counsel, the petitioner shall file with the petition a certificate that a copy of the petition and all attachments have been sent, by certified mail, to the Attorney General and the Commonwealth's Attorney for the jurisdiction where the conviction occurred.

(e) *Filing Fee.* The petition must be accompanied by either (i) a check or money order for the filing fee required by statute, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee.

(f) *Response.* The Attorney General shall respond to the petition as follows:

(1) Within 30 days after service of the petition, the Attorney General shall file with the clerk of this Court a pleading in the form of a declaration stating, in the opinion of the Attorney General, with an explanation of the reasons therefor, whether the record of any trial or appellate proceedings involving the conviction or convictions, or of any proceedings under Code § 19.2-327.1, is necessary for preparation of a response to the petition. If the Attorney General asserts that the record, or any part thereof, of any trial or appellate court proceedings is necessary, the Attorney General shall request the production of such record by this Court, and shall describe with specificity, including the court, docket number and date of judgment, each and every record or part thereof which is requested.

(2) If the Attorney General asserts in the declaration required by subparagraph (f)(1) of this Rule that no trial or appellate court record, or any part thereof, is necessary for the preparation of a responsive pleading to the petition, the Attorney General shall file with the clerk of this Court within 30 days thereafter a pleading in response to the petition. Any pleading in response filed by the Attorney General may include a motion to dismiss. The response shall include citation to any relevant legal authorities, and may contain a proffer of any evidence pertaining to the guilt of the petitioner that is not included in the record of the case, including any evidence that was suppressed at trial.

(3) If the Attorney General asserts in the declaration required by subparagraph (f)(1) of this Rule that a trial or appellate court record, or any part thereof, is necessary for the preparation of a response to the petition, the court shall issue the writ of certiorari described in Code § 19.2-327.3(D) to the clerk of the respective court below for the production of the record forthwith to the clerk of this Court. Upon receipt of the record by the clerk of this Court, the clerk shall immediately notify in writing the petitioner, any attorney for the petitioner, the Attorney General, and the attorney for the Commonwealth of the jurisdiction where the conviction or convictions occurred, of the date of receipt of the record. Within 30 days after receipt of the record by the clerk of this Court, the Attorney General shall file the responsive pleading described in subparagraph (f)(2) of this Rule.

(g) *Reply.* Within 20 days after the Attorney General's responsive pleading is filed pursuant to subparagraph (f) of this Rule, the petitioner may file a reply.

(h) *Copies to be Filed.* Ten copies of the petition, and the Attorney General's responsive pleading, and the petitioner's reply, if any, shall be filed in the office of the clerk of this Court.

(i) *Further Proceedings by Order of this Court.* Further proceedings shall be conducted in accordance with the orders of this Court. If this Court determines that an evidentiary hearing is necessary for the proper disposition of the petition, this Court may order that the circuit court conduct a hearing within 90 days after the order has been issued to certify findings of fact with respect to such issues as this Court shall direct. The record and certified findings of fact of the circuit court shall be filed with the clerk of this Court within 30 days after the hearing is concluded.

(j) *Appointment of Counsel.* In any petition filed pursuant to and in compliance with this Rule, petitioner shall be entitled to the appointment of counsel subject to the provisions of Code § 19.2-157 et seq. Any request for counsel in this Court must be made on the form provided by this Court, entitled REQUEST FOR COUNSEL – PETITION FOR A WRIT OF ACTUAL INNOCENCE, and

must include: (i) all the information required by the in forma pauperis affidavit attached to the request for appointment of counsel, and (ii) an attested copy of the order of the circuit court ordering that testing of human biological evidence on the petitioner's behalf be conducted by the Department of Forensic Science pursuant to Code § 19.2-327.1.

(k) *Duty of Counsel.* Any attorney(s) appointed to represent a petitioner pursuant to Code § 19.2-327.1 shall be deemed to be counsel of record for petitioner for all purposes and proceedings under this Rule until a final order of this Court is issued pursuant to Code § 19.2-327.5, or until counsel is relieved or replaced by other counsel by leave of this Court.

## **C. Procedure for Filing an Appeal From a Trial Court.**

### **Rule 5:8. Applicability.**

This Section C applies only to cases in which direct appeal to this Court from a trial court is authorized by law.

### **Rule 5:8A. Appeal From Partial Final Judgment in Multi-Party Cases.**

(a) *When Available.* When claims for relief are presented in a civil action against multiple parties – whether in a complaint, counterclaim, cross-claim, or third-party claim – the trial court may enter final judgment as to one or more but fewer than all of the parties only by entering an order expressly labeled "Partial Final Judgment" which contains express findings that (i) the interests of such parties, and the grounds on which judgment is entered as to them, are separate and distinct from those raised by the issues in the claims against remaining parties, and (ii) the results of any appeal from the partial final judgment cannot affect decision of the claims against the remaining parties, and (iii) decision of the claims remaining in the trial court cannot affect the disposition of claims against the parties subject to the Partial Final Judgment if those parties are later restored to the case by reversal of the Partial Final Judgment on appeal.

(b) *Time to Appeal.* Entry of an order of Partial Final Judgment as provided in subparagraph (a) of this Rule commences the period for filing a notice of appeal from such Partial Final Judgment under Rule 5:9 and a petition for appeal under Rule 5:17, subject to the provisions of Rule 1:1 and these Rules.

(c) *Refusal of Partial Final Judgment.* No appeal shall lie from a refusal by the trial court to enter a Partial Final Judgment under this Rule.

(d) *Other Dispositions Adjudicating Claims Against Fewer than All Parties.* In the absence of the entry of a Partial Final Judgment order as provided in subparagraph (a) of this Rule, any order which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties in the action is not a final judgment.

### **Rule 5:9. Notice of Appeal.**

(a) *Filing Deadline; Where to File.* No appeal shall be allowed unless, within 30 days after the entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court pursuant to Rule 5:5(a), counsel for the appellant files with the clerk of the trial court a notice of appeal and at the same time mails or delivers a copy of such notice to all opposing

counsel. A notice of appeal filed after the court announces a decision or ruling – but before the entry of such judgment or order – is treated as filed on the date of and after the entry.

(b) *Content.* The notice of appeal shall contain a statement whether any transcript or statement of facts, testimony and other incidents of the case will be filed. In the event a transcript is to be filed, the notice of appeal shall certify that a copy of the transcript has been ordered from the court reporter who reported the case.

(c) *Separate Cases.* Whenever two or more cases were tried together in the trial court, one notice of appeal and one record may be used to bring all of such cases before this Court even though such cases were not consolidated by formal order.

(d) *Special Provision for Cases Involving a Guardian Ad Litem.* No appeal shall be dismissed because the notice of appeal fails to identify a guardian ad litem or to provide notice to a guardian ad litem. Upon motion for good cause shown or by sua sponte order of this Court, the notice of appeal may be amended to identify the guardian ad litem and to provide notice to such guardian.

### **Rule 5:10. Record on Appeal: Contents.**

(a) *Contents.* The following constitute the record on appeal from the trial court:

(1) the original papers and exhibits filed or lodged in the office of the clerk of the trial court, including any report of a commissioner in chancery and the accompanying depositions and other papers;

(2) each instruction marked "given" or "refused" and initialed by the judge;

(3) each exhibit offered in evidence, whether admitted or not, and initialed by the trial judge (or any photograph thereof as authorized by § 19.2-270.4 (A) and (C)). (All non-documentary exhibits shall be tagged or labeled in the trial court and the tag or label initialed by the judge.);

(4) the original draft or a copy of each order entered by the trial court;

(5) any opinion or memorandum decision rendered by the judge of the trial court;

(6) any deposition and any discovery material encompassed within Part Four offered in evidence (whether admitted or rejected) at any proceeding; and

(7) the transcript of any proceeding or a written statement of facts, testimony, and other incidents of the case when made a part of the record as provided in Rule 5:11, or the official videotape recording of any proceeding in those circuit courts authorized by this Court to use videotape recordings. This Court may require that any videotape proceedings be transcribed, in whole or in part, and made a part of the record as provided in Rule 5:11, except that the transcript shall be filed within 60 days after the entry of the order requiring such transcript; and

(8) the notice of appeal.

(b) *Disagreement on Contents.* If disagreement arises as to the contents of any part of the record, the matter shall, in the first instance, be submitted to and decided by the trial court.

### **Rule 5:11. Record on Appeal: Transcript or Written Statement.**

(a) *Effect of Non-compliance.*

(1) *Obligation of the Petitioner/Appellant.* It is the obligation of the petitioner/appellant to ensure that the record is sufficient to enable the Court to evaluate and resolve the assignments of error. When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues related to the assignments of error, any assignments of error affected by the omission shall not be considered.

(2) *Obligation of the Respondent/Appellee.* It is the obligation of the respondent/appellee to ensure that the record is sufficient to enable the Court to evaluate and resolve any assignments of cross-error. When the respondent/appellee who assigns cross-error fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues related to the assignments of cross-error, any assignments of cross-error affected by the omission shall not be considered.

(b) *Transcript.* The transcript of any proceeding in the case that is necessary for the appeal shall be filed in the office of the clerk of the trial court within 60 days after entry of judgment.

(c) *Notice of Filing Transcript.*

(1) Within 10 days after the transcript is filed or, if the transcript is filed prior to the filing of the notice of appeal, within 10 days after the notice of appeal is filed, counsel for appellant shall (i) give written notice to all other counsel of the date on which the transcript was filed, and (ii) file a copy of the notice with the clerk of the trial court. There shall be appended to the notice either a certificate of counsel for appellant that a copy of the notice has been mailed to all other counsel or an acceptance of service of such notice by all other counsel.

(2) When multiple transcripts are filed, the 10 day period for filing the notice required by this Rule shall be calculated from the date on which the last transcript is filed, or from the date on which the notice of appeal is filed, whichever is later. The notice of filing transcripts shall identify all transcripts filed and the date upon which the last transcript was filed. If the notice of appeal states that no additional transcripts will be filed and identifies the transcripts that have been filed, if any, then no additional written notice of filing of transcripts is required and the notice of appeal will serve as the notice of filing transcripts for purposes of this Rule.

(3) Any failure to file the notice required by this Rule that materially prejudices an appellee will result in the affected transcripts being stricken from the record on appeal. For purposes of this Rule, material prejudice includes preventing the appellee from raising legitimate objections to the contents of the transcript or misleading the appellee about the contents of the record. The appellee shall have the burden of establishing such prejudice in the brief in opposition or, if no brief in opposition is filed, in a written statement filed with the clerk of this Court within the time fixed by these Rules for the filing of a brief in opposition.

(d) *Supplementation, Correction, or Modification of Transcript.* If anything material to any party is omitted from or misstated in the transcript, or if the transcript or any portion thereof is untimely filed, by omission, clerical error, or accident, the filing may be supplemented, corrected, or modified at any time within 70 days from the entry of judgment appealed from. Notice as provided in paragraph (c) of this Rule must be given for any such supplementation, correction, or modification. Thereafter, such supplementation, correction, or modification may be made, by order of this Court sua sponte or upon motion of any party, if at least two Justices of this Court concur in a finding that any such supplementation, correction, or modification is warranted by a showing of good cause sufficient to excuse the deficiency.

(e) *Written Statement in Lieu of Transcript.* A written statement of facts, testimony, and other incidents of the case, which may include or consist of a portion of the transcript, becomes a part of the record when:

(1) within 55 days after entry of judgment a copy of such statement is filed in the office of the clerk of the trial court. A copy must be mailed or delivered to opposing counsel on the same day that it is filed in the office of the clerk of the trial court, accompanied by notice that such statement will be presented to the trial judge no earlier than 15 days nor later than 20 days after such filing; and

(2) the statement is signed by the trial judge and filed in the office of the clerk of the trial court. The judge may sign the statement forthwith upon its presentation to him if it is signed by counsel for all parties, but if objection is made to the accuracy or completeness of the statement, it shall be signed in accordance with paragraph (g) of this Rule.

(f) The term “other incidents of the case” in subsection (e) includes motions, proffers, objections, and rulings of the trial court regarding any issue that a party intends to assign as error or otherwise address on appeal.

(g) *Objections.* Any party may object to a transcript or written statement on the ground that it is erroneous or incomplete. Notice of such objection specifying the errors alleged or deficiencies asserted shall be filed with the clerk of the trial court within 15 days after the date the notice of filing the transcript (paragraph (c) of this Rule) or within 15 days after the date the notice of filing the written statement (paragraph (e) of this Rule) is filed in the office of the clerk of the trial court or, if the transcript or written statement is filed before the notice of appeal is filed, within 10 days after the notice of appeal has been filed with the clerk of the trial court. Counsel for the objecting party shall give the trial judge prompt notice of the filing of such objections. Within 10 days after the notice of objection is filed with the clerk of the trial court, the trial judge shall:

- (1) overrule the objections; or
- (2) make any corrections that the trial judge deems necessary; or
- (3) include any accurate additions to make the record complete; or
- (4) certify the manner in which the record is incomplete; and
- (5) sign the transcript or written statement.

At any time while the record remains in the office of the clerk of the trial court, the trial judge may, after notice to counsel and hearing, correct the transcript or written statement.

The judge's signature on a transcript or written statement, without more, shall constitute certification that the procedural requirements of this Rule have been satisfied.

### **Rule 5:12. Judge Authorized to Act.**

The judge authorized to act in all matters relating to the record on appeal shall be any judge having authority to enter orders in the case or in the court in which the case was heard or, in a case heard by three judges, any one of them.

**Rule 5:13. Record on Appeal: Preparation and Transmission.**

(a) *Preparation.* The clerk of the trial court shall prepare the record as soon as possible after notice of appeal is filed. In the event of multiple appeals in the same case, or in cases tried together, only one record need be prepared and transmitted.

(b) *Form of the Record.*

(1) The record shall be compiled in the following order:

- (i) a front cover setting forth the name of the court and the short style of the case;
- (ii) a table of contents listing each paper included in the record and the page on which it begins;
- (iii) each paper constituting a part of the record in chronological order; and
- (iv) the certificate of the clerk of the trial court that the foregoing constitutes the true and complete record, except omitted exhibits as hereinafter provided.

(2) Each page of the record shall be numbered at the bottom.

(3) Transcripts, depositions, and reports of commissioners may be included in separate volumes identified by the clerk of the trial court if referred to in the table of contents and at the appropriate place in the record.

(4) Exhibits, other than those filed with pleadings, may be included in a separate volume or envelope certified by the clerk of the trial court, except that any exhibit that cannot be conveniently placed in a volume or envelope shall be identified by a tag. Each such volume or envelope shall include, on its cover or inside, a descriptive list of exhibits contained therein. Reference shall be made to exhibits in the table of contents and at the appropriate place in the record referred to in paragraph (b)(1) of this Rule. The clerk of the trial court shall not transmit the following types of exhibits, unless requested to do so by the clerk of this Court: drugs, guns and other weapons, ammunition, blood vials and other bio-hazard type materials, money, jewelry, articles of clothing, and bulky items such as large graphs and maps. The omission of any such exhibit shall be noted on the descriptive list of exhibits. Upon motion by counsel, this Court may order the trial court to transmit any of these prohibited exhibits.

(5) Any transcript or statement of facts that the clerk of the trial court deems not a part of the record because of untimely filing shall be certified as such and transmitted with the record.

(c) *Transmission.* The clerk of the trial court shall retain the record for 21 days after the notice of appeal has been filed with him pursuant to Rule 5:9. If the notice of appeal states that a transcript or statement will thereafter be filed, the clerk of the trial court shall retain the record for 21 days after the filing in his office of such transcript or statement or, if objection is made to the transcript or statement pursuant to Rule 5:11(g), the clerk of the trial court shall retain the record for 5 days after the objection is acted upon by the trial judge. The clerk of the trial court shall then forthwith transmit the record to the clerk of this Court; provided, however, that, notwithstanding that the foregoing periods of retention may not have expired, the clerk of the trial court shall transmit the record sooner if requested in writing by counsel for all parties to the appeal and shall, whether or not so requested, transmit the record in time for delivery to the clerk of this Court within three months after entry of the judgment appealed from. The failure of the clerk of the trial court to transmit the record as herein provided shall not be a ground for dismissal of the appeal by this Court.

(d) *Record Returned to Trial Court.* When the mandate is issued by this Court, the clerk of this Court shall return the record to the clerk of the trial court, disciplinary board, or commission in which the proceeding originated. The record shall be returned by that clerk upon the request of the clerk of this Court.

## **D. Procedure for Filing an Appeal From the Court of Appeals.**

### **Rule 5:14. Notice of Appeal; Certification.**

(a) *Notice of Appeal.* No appeal from a judgment of the Court of Appeals which is subject to appeal to this Court shall be allowed unless, within 30 days after entry of final judgment or order denying a timely petition for rehearing, counsel file with the clerk of the Court of Appeals a notice of appeal.

(b) *Notice of Certification.* Whenever this Court shall certify a case pending in the Court of Appeals for review by this Court, notice of certification shall be given by the clerk of this Court to all counsel and to the clerk of the Court of Appeals. A case certified for review by this Court shall proceed as if a petition for appeal had been granted by this Court on the date of the certification for review, except as otherwise ordered.

(c) *Bail Pending Appeal in Criminal Cases.* In criminal cases, either party may appeal an order of the Court of Appeals affirming, reversing, or modifying a circuit court order regarding bail pending appeal as provided by this Rule, Rule 5:15 and Rule 5:17.

### **Rule 5:15. Record on Appeal From Court of Appeals or Certification for Review.**

(a) *Generally.* In cases on appeal from the Court of Appeals and those certified for review, the record in this Court shall consist of the record as filed in the office of the clerk of the Court of Appeals and, in addition, all other papers relating to the case which have been filed in the office of the clerk of the Court of Appeals, including any opinion or memorandum decision in cases decided by the Court of Appeals. The clerk of the Court of Appeals shall transmit all such documents to the clerk of this Court within 10 days after the filing of the notice of appeal to this Court or the issuance of the certification for review. The clerk of the Court of Appeals shall certify that the papers so transmitted constitute the record in the Court of Appeals.

(b) *Bail Pending Appeal in Criminal Cases.* In criminal cases on appeal from a Court of Appeals' order affirming a trial court's order setting or denying bail pending appeal, the record shall consist of: (1) the sentencing order entered by the trial court; (2) a pre-sentence report when available; (3) the trial court's order denying or setting bail; (4) the transcript of the bail hearing or a stipulation of facts between the parties regarding what evidence was introduced at the hearing and the reason(s) the trial judge gave for the bail decision; (5) appellant's motion for review in the Court of Appeals; and (6) the order of the Court of Appeals on the motion for review.

### **Rule 5:16. Disposition of Record.**

When there can be no further proceedings in this Court, the clerk of this Court shall return the record to the clerk of the trial court or commission in which the case originated. The record shall be returned by that clerk upon the request of the clerk of this Court.



## **E. Perfecting the Appeal.**

### **Rule 5:17. Petition for Appeal.**

(a) *When the Petition Must be Filed.* Unless otherwise provided by rule or statute, in every case in which the appellate jurisdiction of this Court is invoked, a petition for appeal must be filed with the clerk of this Court within the following time periods:

(1) in the case of an appeal direct from a trial court, not more than three months after entry of the order appealed from; or

(2) in the case of an appeal from the Court of Appeals, within 30 days after entry of the judgment appealed from or a denial of a timely petition for rehearing.

(b) *Who Must Receive a Copy of the Petition.* When the petition for appeal is filed with the clerk of this Court, a copy of the petition shall be served on opposing counsel.

(c) *What the Petition Must Contain.* A petition for appeal must contain the following:

(1) *Assignments of Error.* Under a heading entitled “Assignments of Error,” the petition shall list, clearly and concisely and without extraneous argument, the specific errors in the rulings below upon which the party intends to rely. An exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken shall be included with each assignment of error.

(i) *Effect of Failure to Assign Error or Use Separate Heading.* Only assignments of error assigned in the petition for appeal will be noticed by this Court. If the petition for appeal does not contain assignments of error, or if the assignments of error are not set forth under a separate heading as provided in subparagraph (c)(1) of this Rule, the petition shall be dismissed.

(ii) *Nature of Assignments of Error in Appeals from the Court of Appeals.* When appeal is taken from a judgment of the Court of Appeals, only assignments of error relating to assignments of error presented in, and to actions taken by, the Court of Appeals may be included in the petition for appeal to this Court.

(iii) *Insufficient Assignments of Error.* An assignment of error that does not address the findings or rulings in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. If the assignments of error are insufficient, the petition for appeal shall be dismissed.

(2) *Required Statements When the Appeal is from the Court of Appeals.*

When appeal is taken from a judgment of the Court of Appeals in a case in which judgment is made final under Code § 17.1-410, the petition for appeal shall contain a statement setting forth in what respect the decision of the Court of Appeals involves the following:

(i) a substantial constitutional question as a determinative issue, or

(ii) matters of significant precedential value.

If the petition for appeal does not contain such a statement, the appeal will be dismissed.

(3) *Table of Contents and Table of Authorities.* A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities shall include the year thereof.

(4) Nature of the Case and Material Proceedings Below. A brief statement of the nature of the case and of the material proceedings in the trial court or commission in which the case originated. This statement shall omit references to any paper filed or action taken that does not relate to the assignments of error.

(5) Statement of Facts. A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the record, transcript, or written statement of facts. Any quotation from the record should be brief. When the facts are in dispute, the petition shall so state. 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 appellant's version of the facts.

(6) Authorities and Argument. With respect to each assignment of error, the standard of review and the argument – including principles of law and the authorities – shall be stated in one place and not scattered through the petition. At the option of counsel, the argument may be preceded by a short summary.

(7) Conclusion. A short conclusion stating the precise relief sought.

(d) *Filing Fee Required With the Petition.* When it is filed, the petition for appeal must be accompanied by a check or money order payable to the "Clerk of the Supreme Court of Virginia" for the amount required by statute. The clerk of this Court may file a petition for appeal that is not accompanied by such fee if the fee is received by the clerk within 10 days of the date the petition for appeal is filed. If the fee is not received within such time, the petition for appeal shall be dismissed.

(e) *Number of Copies to File.* Seven copies of the petition shall be filed with the clerk of this Court.

(f) *Length.* Except by leave of a Justice of this Court, a petition shall not exceed 35 pages or 6,125 words. The page or word limit does not include the cover page, table of contents, table of authorities, and certificate.

(g) *Use of a Single Petition in Separate Cases.* Whenever two or more cases were tried together in the court or commission below, one petition for appeal may be used to bring all such cases before this Court even though the cases were not consolidated below by formal order.

(h) *Procedure for an Anders appeal.* If counsel for appellant finds appellant's appeal to be without merit, counsel must comply with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *Brown v. Warden of Virginia State Penitentiary*, 238 Va. 551, 385 S.E.2d 587 (1989). In compliance therewith, counsel is required to file (1) a petition for appeal which refers to anything in the record which might arguably support the appeal and which demonstrates to this Court counsel's conscientious examination of the merits of the appeal; (2) a motion for leave to withdraw as counsel; and (3) a motion for an extension of time to allow the appellant to file a supplemental petition for appeal. The petition for appeal and the motion for leave to withdraw as counsel should specifically cite to *Anders*. All three pleadings must be served on opposing counsel and upon the client and must contain a certificate providing evidence of such service. This Court will rule upon the motion for extension of time upon its receipt, but will not rule on the motion to withdraw until this Court considers the case in its entirety, including any supplemental petition for appeal that may be filed.

(i) *What the Certificate Must Contain.* The appellant shall include within the petition for appeal a certificate stating:

(1) the names of all appellants and appellees, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and

e-mail address (if any) of counsel for each party, and the mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of any party not represented by counsel;

(2) that a copy of the petition for appeal has been mailed or delivered on the date stated therein to all opposing counsel and all parties not represented by counsel;

(3) if a word count is used, the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count);

(4) in a criminal case or habeas corpus appeal, a statement whether counsel for defendant has been appointed or privately retained; and

(5) whether the appellant desires to state orally to a panel of this Court the reasons why the petition for appeal should be granted, and, if so, whether in person or by conference telephone call.

(j) *Oral Argument.*

(1) Right to Oral Argument. The appellant shall be entitled to state orally, in person or by telephone conference call, to a panel of this Court the reasons why the petition for appeal should be granted. The appellee shall not be entitled to oral argument, whether in person or by telephone conference call. Any lawyer not licensed in Virginia who seeks to appear pro hac vice to present oral argument to the Court must comply with the requirements of Rule 1A:4.

(2) Waiver of Right to Oral Argument. The appellant may waive the right to oral argument on the petition for appeal before a panel by notifying the clerk of this Court and opposing counsel in writing, or by filing a reply brief.

(3) No Oral Argument on Pro Se Inmate's Petition. If an appellant is not represented by counsel and is incarcerated, the petition for appeal may be considered by this Court without oral argument.

(4) Notice of Oral Argument. If the appellant has requested oral argument, notice of the date and time of such argument shall be provided to counsel for the appellant or to any pro se appellant. If requested in writing, notice of the oral argument shall also be provided to counsel for the appellee or any pro se appellee.

**Rule 5:17A. Petition for Review Pursuant to Code § 8.01-626; Injunctions.**

(a) *Time for Filing.* In every case in which the jurisdiction of this Court is invoked pursuant to Code § 8.01-626, a petition for review must be filed with the clerk of this Court within 15 days of the order sought to be reviewed.

(b) *Copy to Opposing Counsel.* At the time the petition for review is filed, a copy of the petition shall be served on counsel for the respondent.

(c) *Length and What the Petition for Review Must Contain.* Except by permission of a Justice of this Court, a petition for review shall not exceed 15 pages or 2,625 words. The petition for review must otherwise comply with the requirements for a petition for appeal in Rule 5:17(c).

(d) *Number of Copies to File.* Four copies shall be filed.

(e) *Filing Fee*. The petition must be accompanied by a check or money order payable to the clerk of this Court for the amount required by statute. The statutory fee shall be collected at the time such petition is presented and the clerk of this Court shall not file a petition that is not accompanied by such fee.

(f) *Scope*. Final judgments within the meaning of Code § 8.01-670 are not reviewable by a Justice of this Court under Code § 8.01-626. *See Omega Corp. v. Cobb*, 222 Va. 875, 292 S.E.2d 44 (1981).

(g) *Rehearing*. The provisions of Rules 5:20, 5:20A, and 5:37 do not apply to proceedings under Code § 8.01-626.

### **Rule 5:18. Brief in Opposition.**

(a) *Filing Time*. A brief in opposition to granting the appeal may be filed with the clerk of this Court by the appellee within 21 days after petition for appeal is served on counsel for the appellee. Within the same time the counsel for appellee shall mail or deliver a copy to counsel for appellant. Seven copies shall be filed.

(b) *Form and Content*. The brief in opposition shall conform in all respects to the content requirements for the brief of appellee in Rule 5:28. *However, the brief in opposition need not be bound or have a blue cover*. Except by leave of a Justice of this Court, the brief shall not exceed 25 pages or 4,375 words. If the brief exceeds 10 pages or 1,750 words, it shall contain a table of contents and table of authorities with cases alphabetically arranged.

(c) *Assignments of cross-error*. The brief in opposition may include assignments of cross-error. If the brief in opposition contains an assignment or assignments of cross-error, the cover of the brief must so indicate by being styled, "Brief in Opposition and Assignment of Cross-Error."

(1) A cross-error must be assigned in the brief in opposition in order to be noticed by this Court.

(2) The provisions of Rule 5:25 shall apply to limit the assignments of cross-error which will be heard on the appeal.

(3) A brief in opposition containing assignments of cross-error shall conform to the form, content, and maximum word requirements of paragraph (b) of this Rule.

(4) When an appellee assigns cross-error in the brief in opposition:

(i) this Court will not grant any assignment of cross-error unless it first decides to grant some or all of the assignments of error contained in the appellant's petition for appeal.

(ii) the appellee shall not be permitted to present oral argument to a writ panel.

(iii) if the appellant withdraws the petition for appeal, the appeal will be dismissed without consideration of the cross-error assigned by an appellee.

(d) *Expedited Review*. When it clearly appears that an appeal ought to be granted without further delay, an appeal may be granted before the filing of the brief in opposition.

### **Rule 5:19. Reply Brief.**

(a) When a brief in opposition to the petition for appeal has been filed, the appellant may, within 7 days thereafter, in lieu of oral argument, file with the clerk of this Court a reply brief not to exceed 15 pages or 2,625 words in length. Seven copies shall be filed.

(b) When cross-error is assigned in a brief in opposition, the appellant may, without waiving oral argument, file with the clerk of this Court within the said 7-day period a reply brief not in excess of 10 pages or 1,750 words which addresses only the cross-error. Seven copies shall be filed.

### **Rule 5:20. Petition for Rehearing After Refusal of Petition for Appeal or Disposition of an Original Jurisdiction Petition.**

(a) *Petition for Appeal.* When a petition for appeal is either refused or dismissed, the clerk of this Court shall mail a copy of the order denying the appeal to counsel for the appellant and counsel for the appellee. Counsel for the appellant may, within 14 days after the date of this notice, file in the office of the clerk of this Court a petition for rehearing. Oral argument on the petition for rehearing will not be allowed. No responsive brief shall be filed unless requested by this Court. The clerk of this Court shall notify counsel for the appellant and counsel for the appellee of the action taken by this Court on the petition for rehearing.

(b) *Original Jurisdiction Petition.* When a petition filed pursuant to this Court's original jurisdiction (habeas corpus, mandamus, prohibition, or actual innocence) is decided, the clerk of this Court shall mail a copy of the order to counsel for the petitioner and counsel for the respondent. Counsel for either party may, within 30 days after the date of this order, file in the office of the clerk of this Court a petition for rehearing. Oral argument on the petition for rehearing will not be allowed. No responsive brief shall be filed unless requested by this Court. The clerk of this Court shall notify counsel for the petitioner and counsel for the respondent of the action taken by this Court on the petition for rehearing.

(c) *When Electronic Filing is Required.* Except for petitions for rehearing filed by pro se prisoners or with leave of this Court, a petition for rehearing shall be filed as an Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail in compliance with Rule 5:20A. Petitions filed by pro se prisoners or with leave of this Court shall be filed in compliance with this Rule.

(d) *Length and Number of Copies.* The petition for rehearing shall not exceed 15 pages or 2,625 words in length. The petition shall state that a copy has been mailed or delivered to counsel for the appellee. Ten copies shall be filed.

(e) *Attorney's Fees.* Upon denial of a petition for appeal and any petition for rehearing, any appellee who has received attorney's fees and costs in the circuit court may make application in the circuit court for additional fees and costs incurred on appeal pursuant to Rule 1:1A.

### **Rule 5:20A. Denial of Appeal; Petition for Rehearing.**

(a) Except for petitions for rehearing filed by pro se prisoners, or with leave of this Court, the petition shall be filed as an Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail addressed to [scvpfr@courts.state.va.us](mailto:scvpfr@courts.state.va.us) and will be timely filed if received by the clerk's office on or before 11:59 p.m. on the date due.

(b) The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 14-point font or larger, must be double-spaced, must comply with Rule 5:6, and must not exceed 10 pages or a word count of 1,750 words. The petition must include a certificate of service to counsel for the appellee and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by [scvpfr@courts.state.va.us](mailto:scvpfr@courts.state.va.us). If the petition does not meet the requirements of this rule as to format, the clerk shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Supreme Court result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

(c) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Supreme Court record number. The e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Supreme Court record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If opposing counsel has an e-mail address, that address shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will automatically be forwarded to counsel seeking the rehearing.

(d) The clerk of this Court shall notify counsel for both parties of the action taken by this Court on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

## **F. Special Rules.**

### **Rule 5:21. Special Rules Applicable to Certain Appeals of Right.**

#### *(a) Appeals from the State Corporation Commission.*

(1) Applicability. Paragraph (a) of this Rule applies to all appeals from the State Corporation Commission and supersedes all other Rules except as otherwise specified herein.

(2) Party. For the purposes of this Rule, the Commission, the Attorney General, the applicant or petitioner, and every person who made an appearance in person in a capacity other than as a witness or by counsel at any hearing in any proceeding before the Commission shall be the parties to such proceeding. Upon the request of any party, the clerk of the Commission shall prepare and certify a list of all parties (including their addresses and the names and addresses of their counsel) to a proceeding before the Commission. Initially, the parties to an appeal from an order in a proceeding shall be the parties to that proceeding, but the number of parties to an appeal may thereafter be limited as hereinafter provided. Service upon a party represented by counsel shall be made upon his counsel.

(3) Notice of Appeal. No appeal from an order of the Commission shall be allowed unless, within 30 days after entry of the order appealed from, counsel files in the office of the clerk of the Commission a notice of appeal. A copy of the notice of appeal shall be mailed or delivered to each party to the appeal, including the Attorney General of Virginia, and an acceptance of such service or a certificate showing the date of delivery or mailing shall be appended thereto. All petitions for appeal from the same order shall be deemed to be a consolidated case for the purpose of oral argument in this Court unless this Court shall order a severance for convenience of hearing.

(4) Record. The clerk of the Commission shall prepare and certify the record as soon as possible after the notice of appeal is filed and shall, as soon as it has been certified by him, transmit it to the clerk of this Court within 4 months after entry of the order appealed from. In the event of multiple appeals in the same case or in cases tried together below, only one record need be prepared and transmitted.

(5) Contents of Record. The record on appeal from the Commission shall consist of all notices of appeal, any application or petition, all orders entered in the case by the Commission, the opinions, the transcript of any testimony received, and all exhibits accepted or rejected, together with such other material as may be certified by the clerk of the Commission to be a part of the record. The record shall conform as nearly as practicable to the requirements of Rule 5:10.

(6) Alignment of Parties. Within 21 days after the notice of appeal shall have been filed in the office of the clerk of the Commission, each party who has not filed a notice of appeal and who intends to participate in the appeal shall file in the office of the clerk of the Commission and shall mail to every other party a notice that he intends to participate as an appellant or as an appellee. Every party who seeks reversal or modification of the order appealed from shall be deemed an appellant, and every party who seeks affirmance of the order appealed from shall be deemed an appellee. Every party who does not file such a notice and every party who, having filed such a notice as an appellant, does not thereafter file a petition for appeal shall be deemed no longer to be a party to the appeal, and no further papers need be served on him. Notwithstanding the foregoing provisions, (i) a necessary party who does not file such a notice or petition for appeal shall be deemed an appellee, and (ii) the Commission need not file such a notice and shall be deemed an appellee.

(7) Petition for Appeal. The petition(s) for appeal, accompanied by the prescribed filing fee, shall be filed in the office of the clerk of this Court within 4 months after entry of the final order, judgment or finding by the Commission. Each party deemed to be an appellant shall file a petition for appeal, as limited hereafter, and shall, before the petition is filed, mail or deliver a copy to every other party to the appeal. Except as provided herein, the provisions of Rule 5:17 do not apply to a petition filed pursuant to this paragraph. The petition for appeal need only identify the order appealed from, with its date, contain a prayer that the appeal be granted, and include the certificate required by Rule 5:17(i). Oral argument on the petition shall not be allowed nor will a brief in opposition be received. If the petition prays for a suspension of the effectiveness of the order appealed from, it shall contain such statements of the facts and argument as shall be necessary for an understanding of the assignments of error. In that event, a brief in opposition will be received and oral argument may be granted.

(8) Award of Appeal. When the notice of appeal, the record, and the petition(s) for appeal appear to have been filed in the manner provided herein and within the time provided herein and by law, the clerk of this Court shall forthwith enter an order docketing the appeal, requiring such bond as the clerk shall deem proper. The clerk's action shall be subject to review by this Court.

(9) Assignments of Error. Within 10 days after the issuance by the clerk of this Court of the certificate pursuant to Rule 5:23, each party appellant shall file assignments of error in the office of the clerk of this Court and mail a copy thereof to every other party to the appeal. A clear and exact reference to the pages of the transcript, written statement of facts, or record where the alleged error has been preserved shall be included with each assignment of error. Only errors so assigned will be noticed by this Court and no error not so assigned will be considered as grounds for reversal of the decision below. Error will not be sustained to any ruling by the Commission unless the objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice. An assignment of error which merely states that the judgment is contrary to the law and the evidence is not sufficient.

(10) Further Proceedings. Further proceedings in this Court shall conform to Rules 5:23 through 5:38 provided that (i) the time within which the appellee may file with the clerk of this Court a designation of the additional parts of the record that the appellee wishes included in the appendix (Rule 5:32(b)) shall be extended to 30 days after the date of the certificate of the clerk of this Court pursuant to Rule 5:23 an appeal has been awarded; and (ii) the time within which the opening brief of the appellant shall be filed in the office of the clerk of this Court shall be extended to 50 days after such date.

(11) Additional Brief. An appellant who seeks relief different from that sought by another appellant may file an answering brief at the time prescribed for filing the brief of appellee.

*(b) Appeals from the Virginia State Bar Disciplinary Board or a Three-Judge Circuit Court Determination.*

(1) Applicability. Paragraph (b) of this Rule applies to appeals from the Virginia State Bar Disciplinary Board, pursuant to Part 6, § IV, Paragraph 13.J of the Rules of the Supreme Court of Virginia, and to appeals from the decisions of a three-judge circuit court pursuant to Code § 54.1-3935. As used in this paragraph, “Respondent” is defined as the attorney who is appealing the decision of the disciplinary proceeding.

(2) Perfecting the Appeal.

(i) Provisions for Appeals from the Virginia State Bar Disciplinary Board. No appeal shall be allowed under this paragraph unless the Respondent files a notice of appeal and assignments of error with the clerk of the Disciplinary System within 30 days after the Memorandum Order is served on the attorney by certified mail, return receipt requested, at the attorney’s last address on record for membership purposes with the Virginia State Bar. At the same time the Respondent files a notice of appeal and assignments of error, a copy of the notice of appeal and assignments of error must be sent to the counsel for the Bar and the Attorney General of Virginia. The Respondent is responsible for filing a transcript in compliance with Rule 5:11. The date of the Memorandum Order shall be the date from which the time limits contained in Rule 5:11 shall run. This action within the time prescribed is mandatory. Upon timely compliance with these rules, the Clerk of the Supreme Court shall docket the appeal as provided in Rule 5:23.

(ii) Provisions for Appeals from a Three-Judge Circuit Court. No appeal shall be allowed under this paragraph unless the Respondent files a notice of appeal and assignments of error with the clerk of the three-judge circuit court within 30 days after the entry of the final judgment and, at the same time, mails a copy of the notice of appeal and assignments of error to counsel for the Bar and the Attorney General of Virginia. The Respondent is responsible for filing a transcript in compliance with Rule 5:11. The date of the judgment



shall be the date from which the time limits contained in Rule 5:11 shall run. This action within the time prescribed is mandatory. Upon timely compliance with these rules, the Clerk of the Supreme Court shall docket the appeal as provided in Rule 5:23.

(3) Record on Appeal. The clerk of the Disciplinary System or the clerk of the three-judge circuit court shall compile and transmit the record as set out in Rules 5:10, 5:11, and 5:13. The clerk shall immediately notify by certified mail the Respondent, and the Respondent's counsel, if any, and the Attorney General of the date the record is filed with the clerk of this Court. At the time the record is filed, the clerk shall also notify the clerk of this Court and the Respondent whether the Attorney General or Bar Counsel will represent the interests of the Commonwealth as appellee.

(4) Time for Filing Briefs and Appendix. The parties shall designate the contents of the appendix pursuant to the requirements of Rule 5:32 and the Respondent shall be responsible for filing the appendix pursuant to that Rule. The Respondent shall file the opening brief in the office of the clerk of this Court within 40 days after the date the record is filed. The opening brief shall contain assignments of error and references to the pages of the appendix, transcript, written statement, or record where each assignment of error was preserved. The brief of the appellee shall be filed in the office of the clerk of this Court within 25 days after the filing of the Respondent's opening brief. The Respondent may file a reply brief within 14 days after the filing of the appellee's brief. All briefs and the appendix shall conform to the provisions of Rules 5:26 through 5:32.

(5) Stay Pending Appeal. The Respondent may file a motion with the clerk of this Court requesting a stay pending appeal of an order suspending the Respondent's license. The Respondent must file four copies of the motion for stay along with a copy of the order imposing the suspension and a copy of the Respondent's notice of appeal, which must contain the date stamp of the clerk showing the date the notice of appeal was filed.

(6) Procedure on Appeal. Except as provided in this paragraph, further proceedings shall be as provided in this Court's procedure following the perfection of an appeal set out in Rules 5:23, 5:25, and Rules 5:33 through 5:38.

### **Rule 5:22. Special Rule for Appeals in Death Penalty Cases.**

(a) *Notice of Receipt of Record.* Upon receipt of a record pursuant to § 17.1-313 B, the clerk of this Court shall notify in writing counsel for the accused in the circuit court (who shall be deemed to be counsel for the appellant), the Attorney General (who shall be deemed to be counsel for the appellee), and the Director of the Department of Corrections of the date of its receipt. The date of the receipt of the record is the Filing Date and the case shall thereupon stand matured as if an appeal had been awarded to review the conviction and the sentence of death.

(b) *Stay of Sentence of Death.* Upon the Filing Date, the notice issued by the clerk of this Court shall be deemed to be the certificate of the clerk of this Court pursuant to Rule 5:23 that an appeal has been awarded, and the enforcement of the sentence of death shall thereby be stayed pending the final determination of the case by this Court.

(c) *Filing of Assignments of Error and of the Appendix.* Within 30 days after the Filing Date, counsel for the appellant shall file with the clerk of this Court assignments of error upon which the appellant intends to rely for reversal of the conviction or review of the sentence of death. Counsel for the appellant shall accompany the assignments of error with a designation of the parts of the record

relevant to the review and to the assignments of error. Not more than 10 days after such assignments of error and designation are filed, counsel for the appellee may file with the clerk of this Court a designation of the additional parts of the record that he wishes included as germane to the review or to any assignments of error. Counsel for the appellant shall include in the appendix the parts so designated. The provisions of Rules 5:31 and 5:32 (except Rule 5:32(b)(1) and (b)(3)) shall apply to the appendix.

(d) *Assigning Error to the Sentence of Death.* With respect to the sentence of death, it shall be a sufficient assignment of error to state that the sentence was imposed under the influence of passion, prejudice, or other arbitrary factor or that the sentence is excessive or disproportionate to the penalty imposed in similar cases.

(e) *Requirements for Briefs.*

(1) Brief of Appellant. The appellant shall file the opening brief, which shall not exceed 100 pages or 17,500 words, in the office of the clerk of this Court within 60 days after the Filing Date.

(2) Brief of the Appellee. The appellee shall file its brief, which shall not exceed 100 pages or 17,500 words, in the office of the clerk of this Court within 120 days after the Filing Date.

(3) Reply Brief of the Appellant. The appellant shall file the reply brief, which shall not exceed 50 pages or 8,750 words, in the office of the clerk of this Court within 140 days after the Filing Date.

The page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. There shall be no exception to these limits except by permission of this Court on motion for extension of the limits.

(f) *Compliance with Rules for Perfected Appeals.* Except to the extent that a conflict with this Rule may arise, in which case this Rule shall then be controlling, further proceedings in the case shall conform to the Rules relating to cases in which an appeal has been perfected.

(g) *Varying Procedure to Attain the Ends of Justice.* This Court may, on motion in a particular case, vary the procedure prescribed by this Rule in order to attain the ends of justice and the purpose of § 17.1-313.

## **G. Procedure Following Perfection of Appeal.**

### **Rule 5:23. Perfection of Appeal; Docketing.**

(a) *Grant of Petition for Appeal.* Promptly after a petition for appeal has been granted, the clerk of this Court shall certify this action to counsel for the appellant, counsel for the appellee, and the tribunal from which the appeal is taken. The case shall be considered mature for purposes of further proceedings from the date of such certificate.

(b) *Docketing.* Cases shall be placed on the docket when they mature. Precedence shall be given to the following cases:

- (1) review of sentences of death;
- (2) criminal cases;

- (3) cases from the State Corporation Commission;
- (4) cases of original jurisdiction;
- (5) cases to be reheard; and
- (6) any other cases required by statute to be given precedence.

This Court may, however, for good cause shown or for reasons appearing sufficient to the Court, give preference to other cases.

### **Rule 5:24. Security for Appeal.**

(a) *Compliance With Forms.* All security for appeal required under Code § 8.01-676.1 shall substantially conform to the forms set forth in the Appendix to this Part Five.

(b) *Procedure Concerning Defects.* No appeal shall be dismissed because of a defect in any bond or irrevocable letter of credit unless an appellee, within 21 days after the issuance of the certificate pursuant to Rule 5:23, files with the clerk of this Court a statement in writing of the defects in the bond or irrevocable letter of credit, and unless the appellant fails to correct such defects, if any, within 21 days after such statement is filed. If the appellant fails to correct such defects within such period of 21 days, an appellee may move that the appeal be dismissed and it shall be dismissed unless the appellant satisfies this Court that the bond or irrevocable letter of credit, either as originally given or as amended, has been filed in the required form.

### **Rule 5:25. Preservation of Issues for Appellate Review.**

No ruling of the trial court, disciplinary board, or commission before which the case was initially heard will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice. A mere statement that the judgment or award is contrary to the law and the evidence is not sufficient to preserve the issue for appellate review.

### **Rule 5:26. General Requirements for All Briefs.**

(a) *Applicability.* This Rule, along with Rule 5:6, sets forth the general requirements for all briefs filed in this Court. Rule 5:22 sets forth the special rule for appeals in death penalty cases.

(b) *Length.* Except by permission of a Justice of this Court, neither the opening brief of appellant, nor the brief of appellee, nor a brief amicus curiae shall exceed 50 pages or 8,750 words. No reply brief shall exceed 15 pages or 2,625 words. The page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. There shall be no exception to these limits except by permission of this Court on motion for extension of the limits.

(c) *Filing Time.* In cases in which a petition for appeal has been granted by this Court, briefs shall be filed subject to the provisions of Rule 5:1(d), as follows:

- (1) The appellant shall file the opening brief in the office of the clerk of this Court within 40 days after the date of the certificate of appeal issued by the clerk of this Court pursuant to Rule 5:23.

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

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

(d) *Extension of Time.* Upon motion and with permission of a Justice of this Court, the time for filing any brief in this Court may be altered.

(e) *Copies for Filing.* One electronic version, in Adobe Acrobat Portable Document Format (PDF) format, must be filed with the clerk of this Court and served on opposing counsel, unless excused by this Court for good cause shown. The electronic version may be filed on CD-ROM or emailed to scvbriefs@courts.state.va.us. In addition, fifteen printed copies of each brief (including a brief amicus curiae) shall be filed in the office of the clerk of this Court and three copies shall be mailed or delivered to opposing counsel on or before the day on which the brief is filed. Three copies of a brief amicus curiae shall be mailed or delivered to counsel for all parties and to any other counsel amicus curiae. All briefs shall contain a certificate evidencing such mailing or delivery and the method of transmission to the clerk for filing.

(f) *Reference to Parties.* In their briefs, counsel should avoid reference to parties by such designations as “appellant” and “appellee.” Clarity is promoted by the use of the names of the parties or descriptive terms such as “the employee,” “the injured person,” “the driver,” “the wife,” or the designations used in the lower court or commission.

(g) *Arguments Made by Reference.* Attempts to incorporate arguments made below by reference to pleadings, motions, memorandum, or other filings are prohibited.

(h) *Signature and Certificate.* All briefs shall contain the signature, which need not be in handwriting, of at least one counsel of record, counsel’s Virginia State Bar number, address, telephone number, facsimile number (if any), and email address (if any), and a certificate that there has been compliance with this Rule. If a word count is used, the certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

(i) *Failure to File Complying Brief.* Any party who fails to file a brief in compliance with these Rules or otherwise fails to file a required brief will not be heard orally, except for good cause shown.

### **Rule 5:27. Requirements for Opening Brief of Appellant.**

The opening brief of the appellant shall comply with the requirements of Rules 5:6 and 5:26, and must contain the following:

(a) A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities shall include the year thereof.

(b) A statement of the case containing the material proceedings below and the facts, with references to the appendix.

(c) The assignments of error, with a clear and exact reference to the pages of the appendix where the alleged error has been preserved.

(d) The standard of review, the argument, and the authorities relating to each assignment of error. With respect to each assignment of error, the standard of review and the argument – including

principles of law 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 short summary.

(e) A short conclusion stating the precise relief sought.

### **Rule 5:28. Requirements for Brief of Appellee.**

The brief of appellee shall comply with Rules 5:6 and 5:26, and must contain the following:

(a) A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities shall include the year thereof.

(b) A statement of the case if the appellee disagrees with the statement presented by the appellant. In an appeal of right to this Court from an order disciplining, suspending, or disbaring an attorney-at-law, the Virginia State Bar may include assignments of cross-error. In such cases, no cross-error not then assigned will be noticed by this 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 appendix. Any quotation from the record should be brief. 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 standard of review, the argument, and the authorities relating to each assignment of error. With respect to each assignment of error, the standard of review and the argument – including principles of law 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 short summary.

(e) With respect to the assignments of cross-error, if any:

(1) A statement of the assignment of cross-error, with a clear and exact reference to the pages of the appendix where the alleged cross-error has been preserved.

(2) The standard of review, the argument, and the authorities relating to each assignment of cross-error. With respect to each such assignment of cross-error, the standard of review and the argument – including principles of law and the authorities – shall be stated in one place and not scattered through the brief.

(3) A statement of the precise relief sought.

### **Rule 5:29. Requirements for Reply Brief.**

The reply brief, if any, shall comply with the requirements of Rules 5:6 and 5:26 and shall contain only argument in reply to contentions made in the brief of appellee. No reply brief is necessary if the contentions have been adequately answered in the opening brief of appellant.

### **Rule 5:30. Briefs Amicus Curiae.**

(a) *Stage of appellate proceedings.* Subject to the requirements outlined in this Rule, a brief amicus curiae may be filed during the petition, perfected appeal or rehearing stages of the appellate proceedings in this Court.

(b) *Who May File a Brief Amicus Curiae Without Leave of Court.*

- (1) The United States or the Commonwealth of Virginia; and
- (2) Any other person whose filing is accompanied by the written consent of all counsel; and
- (3) Any person requested by the Court to file a brief amicus curiae pursuant to paragraph (f) of this Rule.

(c) *Who Needs Leave of Court to File a Brief Amicus Curiae.* Any person or entity other than those described in paragraph (b) of this Rule.

(d) *When a Brief Amicus Curiae Must Be Filed.* A brief amicus curiae will be accepted only if filed on or before the date on which the brief of the party supported is required to be filed. A brief amicus curiae may be filed at the time of filing of the reply brief of the appellant only if an opening brief amicus curiae has been filed.

(e) *What a Brief Amicus Curiae Must Contain.* A brief amicus curiae shall comply with the rules applicable to the brief of the party supported.

(f) *This Court's Authority to Request a Brief Amicus Curiae.* Notwithstanding the provisions of this Rule, this Court may request that a brief amicus curiae be filed at any time.

### **Rule 5:31. Covers of Documents.**

(a) *What Covers Must Be Used on Papers Filed with this Court.* To facilitate identification, documents shall bear covers colored as follows:

<b>Document</b>	<b>Color of Cover</b>
Appendix	Red
Brief of the Appellant	White
Brief of the Appellee	Blue
Reply Brief of the Appellant	Green
Brief Amicus Curiae	Gray
Petition for Rehearing	Yellow

(b) *Effect of failure to comply.* No appeal shall be dismissed for failure to comply with the provisions of this Rule.

### **Rule 5:32. Appendix.**

(a) *Responsibility of the Appellant.*

(1) Contents of the Appendix. The appellant must prepare and file an appendix. The appendix shall contain:

(i) the initial pleading (as finally amended), unless other versions are necessary to consider the assignments of error;

(ii) final judgments of all tribunals that have considered the case, including the judgment appealed from, and any opinion relating to such judgments;

(iii) testimony and other incidents of the case germane to the assignments of error;

- (iv) exhibits necessary for an understanding of the case that can reasonably be reproduced;
- (v) the granted assignments of error and cross-error;
- (vi) other parts of the record to which the parties wish to direct this Court's attention; and
- (vii) a table of contents as described in paragraph (d) below.

(2) Assumptions and Excluded Material. It will be assumed that the appendix contains everything germane to the granted assignments of error and, if any, assignments of cross-error. Memoranda of law in the trial court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by this Court or the parties even though not included in the appendix.

(3) Time to File; Number of Copies.

(i) Generally. The appellant must file 15 copies of the appendix with the appellant's brief, and must serve two copies on counsel for each party separately represented. This Court may by order require the filing or service of a different number.

(ii) Special Rule for Electronic Filing of the Appendix. In lieu of the 15 tangible copies required by paragraph (a)(3)(i) of this Rule, the appellant may file 10 tangible copies of the appendix and 10 electronic copies of the appendix as an Adobe Acrobat Portable Document Format (PDF) document on CD-ROMs. If the appellant files 10 electronic copies with this Court, then it must also serve one electronic copy on counsel for each party separately represented in addition to the one tangible copy required by paragraph (a)(3)(i) of this Rule.

(b) *Responsibility of All Parties.*

(1) Determining the Contents of the Appendix. The parties are encouraged to agree on the contents of the appendix. Within 15 days after the date of the certificate of the clerk of this Court issued pursuant to Rule 5:23, counsel for appellant shall file in the office of the clerk of this Court a written statement signed by all counsel setting forth an agreed designation of the parts of the record on appeal to be included in the appendix. In the absence of an agreement, the appellant must, within 15 days after the date of the certificate of appeal issued by the clerk of this Court pursuant to Rule 5:23, file with the clerk of this Court and serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix. The appellee may, within 15 days after receiving the designation, file with the clerk of this Court and serve on the appellant a designation of additional parts of the record the appellee deems germane. The appellant must include the parts designated by the appellee in the appendix. The parties must not engage in an unnecessary designation of parts of the record, because the entire record is available to the Court.

(2) Sealed Materials in the Appendix. Appendices filed with this Court are a matter of public record. If counsel concludes it is necessary to include sealed material in the appendix, then, in order to maintain the confidentiality of the materials, counsel must designate the sealed material for inclusion in a supplemental appendix to be filed separately from the regular appendix, and must file a specific motion asking this Court to seal the supplemental appendix within the time stated for the designation of the appendix in paragraph (b)(1) of this Rule.

(3) Costs of Appendix. Unless the parties agree otherwise, the appellant must initially pay the cost of the appendix, but if the appellant in good faith considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the assignments

of error, the appellant initially preparing the appendix may so advise the clerk of this Court and the appellee, and the appellee who designated the challenged material shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case, but if any party shall cause unnecessary material to be included in the appendix this Court sua sponte or upon motion may impose the cost of including such parts upon that party.

(c) *Appeal on the Original Record Without an Appendix.* This Court may, sua sponte or on motion, enter an order dispensing with the appendix and permitting an appeal to proceed on the original record with any copies of the record, or relevant parts, that the Court may order the parties to file. A motion may be made under this rule within 10 days of the issuance of a writ. The making of a motion under this paragraph does not excuse the filing of the proposed contents of an appendix under paragraph (b)(1).

(d) *Table of Contents and Form of Presentation.* The appendix must begin with a table of contents identifying the page at which each part begins. When the testimony of witnesses is included, the name of each witness who is testifying must be in the table of contents with a page number at which each portion of the testimony begins (direct, cross, redirect, etc.). Parts of the record should be in the appendix in chronological order. Omissions in the text of papers or of the transcript must be indicated by asterisks. The index for exhibits should include a description of the exhibit sufficient to inform this Court of its nature rather than merely an exhibit number.

(e) *Effect of Non-Compliance with this Rule.* An appeal will not be dismissed for failure to file an appendix in compliance with this Rule. If an appendix is not filed within the time prescribed, or on its face fails to comply with this Rule, this Court may direct the filing of a proper appendix within a specific time and may require a non-complying attorney or unrepresented party to advance all or part of the cost of printing the appendix. This Court may dismiss an appeal for non-compliance with an order entered under this paragraph.

### **Rule 5:33. Oral Argument.**

(a) *Notice.* Whenever an appeal lies as a matter of right or a petition for appeal has been granted, the clerk of this Court, except in extraordinary circumstances, shall give at least 15 days notice to counsel of the date, approximate time, and location for oral argument.

(b) *Length.* Except as otherwise directed by this Court, argument for a party shall not exceed 15 minutes in length. Such time may be apportioned among counsel for the same side at their discretion.

(c) *Appearance Pro Hac Vice.* Any lawyer not licensed in Virginia who seeks to appear pro hac vice to present oral argument to the Court must comply with the requirements of Rule 1A:4.

(d) *Amicus Curiae.* No oral argument by amicus curiae is permitted except by leave of this Court. Leave may be granted upon the joint written request of amicus curiae and the party whose position amicus curiae supports. The request shall specify the amount of its allotted time the supported party is willing to yield to amicus curiae.

(e) *Waiver.* During oral argument, it shall not be necessary for any party to expressly reserve any argument made on brief, and the failure to raise any such argument shall not constitute a waiver. Any party may, without waiving the arguments made on brief, waive oral argument.



## **H. Decision, Costs, and Mandate.**

### **Rule 5:34. Notice of Decision.**

Promptly after this Court has decided a case, the clerk of this Court shall send a copy of the decision to all counsel of record and to the court or commission from which the appeal proceeded.

### **Rule 5:35. Attorney's Fees, Costs, and Notarized Bill of Costs.**

(a) *To Whom Allowed.* Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by this Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs shall be allowed as ordered by this Court.

(b) *Attorney's Fees.* Upon refusal or dismissal of a petition for appeal and any petition for rehearing, any appellee who has received attorney's fees and costs in the circuit court may make application in the circuit court for additional fees and costs incurred on appeal pursuant to Rule 1:1A.

(c) *Taxable Costs.* Costs, including the filing fee and costs incurred in the printing or producing of necessary copies of briefs, appendices, and petitions for rehearing, shall be taxable in this Court.

(d) *Notarized Bill of Costs.* Counsel for a party who desires costs to be taxed shall itemize them in a notarized bill of costs, which shall be filed with the clerk of this Court within 14 days after the date of the decision in the case. Objections to the bill of costs must be filed with the clerk of this Court within 10 days after the date of filing the bill of costs.

(e) *Award.* The clerk of this Court shall prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate on request by the clerk of this Court to the clerk of the tribunal in which the case originated.

### **Rule 5:36. Mandate.**

(a) *Time.* When there can be no further proceedings in this Court, the clerk of this Court shall forward its mandate promptly to the clerk of the circuit court or commission in which the case originated and to the clerk of the Court of Appeals if the case has been heard by that court.

(b) *Opinions.* If the judgment or order is supported by an opinion, a certified copy of the opinion shall accompany the mandate.

### **Rule 5:37. Petition for Rehearing After Consideration by the Full Court.**

(a) *Scope.* This Rule does not apply to the refusal or dismissal of a petition for appeal, or the refusal or dismissal of an original jurisdiction petition. See Rules 5:20 and 5:20A.

(b) *Notice of Intent.* A party intending to apply for a rehearing shall file written notice with the clerk of this Court within 10 days after the date of the order or opinion of this Court deciding the

case. If such notice is given, the clerk of this Court shall withhold certification of the mandate until time for filing the petition for rehearing has expired and, if the petition is filed, until it is disposed of.

(c) *Requirements for Pro Se Prisoners or By Leave of Court.* Unless the rehearing is abandoned, 20 copies of a petition for rehearing not to exceed 10 pages or 1,750 words in length shall be thereafter filed in the office of the clerk of this Court and 3 copies delivered or mailed to opposing counsel within 30 days after the date of the order of this Court deciding the case.

(d) *Requirements for All Others.*

(1) Except for petitions filed by pro se prisoners, or with leave of this Court, the petition for rehearing shall be filed as an Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail addressed to [scvpfr@courts.state.va.us](mailto:scvpfr@courts.state.va.us) and will be timely filed if received by the clerk's office on or before 11:59 p.m. within 30 days after the date of the order or opinion of this Court deciding the case. The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 14-point font or larger, must be double-spaced, and must not exceed 10 pages or 1,750 words. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by [scvpfr@courts.state.va.us](mailto:scvpfr@courts.state.va.us). If the petition does not meet the requirements of this rule as to format, the clerk shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at this Court result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to email the petition, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

(2) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Supreme Court record number. The e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Supreme Court record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will automatically be sent to counsel seeking the rehearing.

(e) *Grounds for Granting.* No petition for rehearing shall be granted unless one of the Justices who decided the case adversely to the applicant determines that there is good cause for such rehearing. The proceedings upon such rehearing shall be in accordance with Code § 8.01-675.2. No oral argument will be permitted on applications for rehearing.

(f) *When a Rehearing is Granted.* When a rehearing is granted, the case will be placed on the privileged docket for oral argument. The petitioner may not file any brief in addition to the petition for rehearing. The respondent may file electronically, in compliance with paragraph (d) of this Rule, a brief in reply that shall not exceed 15 pages in length or 2,625 words within 21 days after the date of the order granting the rehearing. The respondent will be heard orally whether or not respondent files a brief in reply. The case will be called at the next session of the Court after the expiration of the

21 days unless counsel agree that it be called at a session of the Court commencing at an earlier time and the Court permits the case to be called at an earlier time.

## **I. Settlement or Withdrawal.**

### **Rule 5:38. Settlement or Withdrawal of Pending Appeal.**

When a case has been settled or the appeal withdrawn at any time after the notice of appeal has been filed, it shall be the duty of counsel to notify the clerk of this Court by filing a written notice that the case has been settled or the appeal withdrawn. If counsel certifies that the terms of the settlement or withdrawal require further proceedings in the trial court, a single Justice may approve entry of an order of remand.

## **J. Supreme Court of the United States.**

### **Rule 5:39. Delay in Issuing Mandate Upon Appeal or Petition to Supreme Court of the United States.**

If a party intends to file an appeal with the Supreme Court of the United States or seek a writ of certiorari from that court, this Court may, upon motion filed within 15 days after the date of the order of this Court deciding the case, and upon compliance with such conditions as this Court may impose, defer the issuance of its mandate until proceedings in the Supreme Court of the United States have been terminated. Thereupon, the mandate shall issue forthwith.

## **K. Certification of Questions of Law.**

### **Rule 5:40. Certification Procedures.**

(a) *Power to Answer.* This Court may in its discretion answer questions of law certified to it by the Supreme Court of the United States, a United States court of appeals for any circuit, a United States district court, or the highest appellate court of any state, territory, or the District of Columbia. Such answer may be furnished, when requested by the certifying court, if a question of Virginia law is determinative in any proceeding pending before the certifying court and it appears there is no controlling precedent on point in the decisions of this Court or the Court of Appeals of Virginia.

(b) *Method of Invoking.* This Rule may be invoked only by an order of one of the courts referred to in paragraph (a) of this Rule. No party litigant in the foregoing courts may file a petition or motion for certification in this Court.

(c) *Contents of Certification Order.* A certification order shall set forth:

- (1) the nature of the controversy in which the question arises;
- (2) the question of law to be answered;
- (3) a statement of all facts relevant to the question certified;

(4) the names of each of the parties involved;

(5) the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel for each of the parties involved;

(6) a brief statement explaining how the certified question of law is determinative of the proceeding in the certifying court; and

(7) a brief statement setting forth relevant decisions, if any, of this Court and the Court of Appeals of Virginia and the reasons why such decisions are not controlling.

(d) *Preparation of Certification Order.* The certification order shall be prepared by the certifying court, signed by the presiding justice or judge, and forwarded to this Court by the clerk of the certifying court under its official seal. This Court may require the original or copies of all or of any portion of the record before the certifying court to be filed, if, in the opinion of this Court, the record or portion thereof may be necessary in answering the certified question. This Court may in its discretion restate any question of law certified or may request from the certifying court additional clarification with respect to any question certified or with respect to any facts.

(e) *Notification of Acceptance or Rejection.* This Court, in its discretion, may decide whether to answer any certified question of law. This Court will notify the certifying court and counsel for the parties of its decision to accept or to reject any certified question of law. A notice accepting a question will include a briefing schedule and, if this Court permits oral argument, a tentative date and the length of time allowed for such argument.

(f) *Revocation of Acceptance.* This Court, in its discretion, may revoke its decision to answer a certified question of law at any time. This Court will notify the certifying court and counsel for the parties of any such action.

(g) *Costs of Certification.* Fees and costs shall be the same as in civil appeals docketed in this Court and shall be paid as ordered by the certifying court in its order of certification.

(h) *Briefs.* The form, length, and time for submission of briefs shall comply with Rules 5:26 through 5:32 *mutatis mutandis*.

(i) *Opinion.* A written opinion of this Court stating the law governing each question certified will be rendered as soon as practicable after the submission of briefs and after any oral argument. The opinion will be sent by the clerk under the seal of this Court to the certifying court and to counsel for the parties and shall, if this Court so directs, be published in the Virginia Reports.

## **L. Appeals Relating to Quarantine or Isolation Orders**

### **Rule 5:41. Appeal of Orders Relating to Quarantine or Isolation of Persons.**

A. *Quarantine Related Code Provisions.* In proceedings involving circuit court orders of quarantine of a person or persons pursuant to Article 3.02 of Title 32.1 of the Code of Virginia, the provisions of Code § 32.1-48.010 shall apply with respect to appealability of such orders, the effect of an appeal upon any order of quarantine, availability of expedited review, stay of quarantine orders, and representation by counsel.

B. *Isolation Order Code Provisions.* In proceedings involving circuit court orders of isolation of a person or persons pursuant to Article 3.02 of Title 32.1 of the Code of Virginia, the provisions of Code § 32.1-48.013 shall apply with respect to appealability of such orders, the effect of an appeal

upon any order of isolation, availability of expedited review, stay of isolation orders, and representation by counsel.

C. *Transmission of Record.* In all appeals under this rule, the clerk of the court from which an appeal is taken shall transmit the record to the Clerk of the Supreme Court immediately upon the filing of the notice of appeal.

D. *Expedited Procedures.* Unless otherwise ordered by the Supreme Court, after the filing of the petition for appeal under this Rule, 48 hours shall be allowed for the filing of the brief in opposition. However, the Supreme Court may employ the expedited review provision in Rule 5:18(c). The Supreme Court shall act upon the petition within 72 hours of its filing. Should the Supreme Court grant a writ, the Supreme Court may, in its discretion, permit oral argument within 48 hours of granting the writ. The Supreme Court will issue an order within 24 hours of the argument or of its review of the case without oral argument. The Supreme Court has the authority to alter these time frames in any case.

E. *Oral Argument.* The Court shall hold any oral argument in appeals under this rule in a manner so as to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, and the general public. To this end, the Court may take measures including, but not limited to, ordering any oral argument to be held by telephone or video conference or ordering those present to take appropriate precautions, including wearing personal protective equipment. If necessary, the Court may dispense with oral argument.

\* \* \*

Amend Part Five A, The Court of Appeals, to read as follows:

## **PART FIVE A THE COURT OF APPEALS**

### **A. General.**

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

- (a) *Scope of Rules.* Part Five A governs all proceedings in the Court of Appeals of Virginia.
- (b) *Citation.* These Rules may be cited generally as the “Rules of the Court of Appeals of Virginia” and specifically as “Rule 5A: \_\_\_\_.”
- (c) *Definitions.*
  - (1) "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 when the context requires;
  - (2) "clerk of the Court of Appeals" includes a deputy clerk;

(3) "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;

(4) "counsel for appellant" means one of the attorneys representing each appellant represented by an attorney, and each appellant not represented by an attorney;

(5) "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;

(6) "opposing counsel" means, depending on the context, "counsel for the appellant" or "counsel for the appellee";

(7) "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;

(8) "judgment" includes an order or decree from which an appeal is taken;

(9) "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;

(10) "trial court" means the circuit court from which an appeal is taken to the Court of Appeals;

(11) 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.

(d) *Service.* Unless service or notice is otherwise specified in a given Rule, any paper or object filed with this Court must have included within it or appended to it a certificate of service or acceptance of service showing that a copy has been transmitted to all counsel and showing the date and manner of transmittal. If a word count limitation is required, the certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

(e) *Notice of Change of Address and Other Contact Information.* If an attorney has a change in mailing address, telephone number, facsimile number, or e-mail address any time after the filing of the notice of appeal, the attorney must immediately notify the clerk of this Court and all other counsel of record in writing. The notice must reference the style and record number of all cases pending before this Court.

(f) *Citing Unpublished Judicial Dispositions.* The citation of judicial opinions, orders, judgments, or other written dispositions that are not officially reported, whether designated as "unpublished," "not for publication," "non precedential," or the like, is permitted as informative, but shall not be received as binding authority. If the cited disposition is not available in a publicly accessible electronic database, a copy of that disposition must be filed with the brief or other paper in which it is cited.

## **Rule 5A:2. Motions and Responses; Orders.**

(a) *Motions and Responses.*

(1) **Motions.** All motions shall be in writing and filed with the clerk of this Court. All motions shall contain a statement by the movant that the other parties to the appeal have been informed of the intended filing of the motion. For all motions in cases when all parties are represented by counsel – except motions to dismiss petitions for a writ of habeas corpus – the statement by the movant shall also indicate whether the other parties consent to the granting of the motion, or intend to file responses in opposition.

(2) **Responses.** Opposing counsel may have ten days after such motion is filed to file with such clerk a response to such motion, but this Court may act before the ten days expire, if necessary.

(3) **Number of Copies.** An original and three copies of all motions or responses must be filed.

(4) **Oral Argument.** No motion shall be argued orally except by leave of this Court.

(b) *Motion for Review of Pre-trial Bail Orders in Criminal Cases.* When a circuit court has granted or denied pre-trial bail or set a bond or terms of recognizance or revoked bail, either party may move this Court to review the order. With the motion for review, the party seeking review shall submit copies of: (1) the warrant(s) or indictment(s) in the case; (2) the order granting, denying, or setting bond; and (3) a transcript of the bond hearing or a stipulation between counsel stating the evidence introduced at the bond hearing and the ruling of the circuit court. An order setting or denying bail or setting terms of a bond or recognizance shall be reviewable for abuse of discretion.

(c) *Motion for Review of Post-trial Bail Pending Appeal Orders in Criminal Cases.* When a notice of appeal has been filed in a criminal case, an appellant other than the Commonwealth may move this Court to review the trial court's order denying bail pending appeal or setting an excessive bail pending appeal. With the motion for review, the appellant shall submit copies of: (1) the sentencing order entered by the trial court; (2) a pre-sentence report when available; (3) the trial court's decision setting or denying bail; and (4) a transcript of the bail hearing or a stipulation between counsel stating the evidence introduced at the bail hearing and the reason the trial court gave for the bail decision. An order setting or denying bail pending appeal in a criminal case shall be reviewable for abuse of discretion. If this Court overrules a trial court decision denying bail pending appeal, this Court shall set the amount of the bail pending appeal or remand the matter to the trial court with directions to set bail pending appeal.

(d) *Orders.* Promptly after this Court has entered an order, the clerk of this Court shall send a copy of the order to all counsel.

### **Rule 5A:3. Filing Deadlines; Post Trial Proceedings Below; Timely Filing by Mail; Inmate Filing; Extension of Time.**

(a) *Filing Deadlines and Extensions.* The times prescribed for filing the notice of appeal (Rules 5A:6 and 5A:11), a petition for appeal (Rule 5A:12), and a petition for rehearing (Rule 5A:33) and a request for rehearing en banc (Rule 5A:34) are mandatory. Except for the petition for appeal which is addressed in Rule 5A:12(a) and Code § 17.1-408, a single extension not to exceed thirty days may be granted if at least three judges of the Court of Appeals concur in a finding that an extension for papers to be filed is warranted upon a showing of good cause sufficient to excuse the delay. The time period for filing the notice of appeal is not extended by the filing of a motion for a new trial, a petition for rehearing, or a like pleading unless the final judgment is modified, vacated, or suspended

by the trial court pursuant to Rule 1:1, in which case the time for filing shall be computed from the date of the final judgment entered following such modification, vacation, or suspension.

(b) *Extensions Generally.* Except as provided in paragraph (a) of this Rule, the times prescribed in these Rules for filing papers, except transcripts (Rule 5A:8(a)), may be extended by a judge of the court in which the papers are to be filed upon a showing of good cause sufficient to excuse the delay.

(c) *Motions for Extension.* A motion for extension of time is timely if filed:

- (1) within the original filing deadline; or
- (2) within the specified extension period – see Rules 5A:3(a) and 5A:12(a); or
- (3) within any specific deadline governing motions to extend – see Rules 5A:8(a), 5A:13(a), 5A:14, 5A:19(b), and 5A:19(c).

Filing a motion for extension does not toll the applicable deadline or further extend the period of extension.

(d) *How to File by Mail in a Timely Manner.* Any document required to be filed with the clerk of this Court shall be deemed to be timely filed if (1) it is by transmitted expense pre-paid to the clerk of this Court by priority, express, registered, or certified mail via the United States Postal Service, or by a third-party commercial carrier for next-day delivery, and (2) if the official receipt therefor be exhibited upon demand of the clerk or any party and it shows such transmission or mailing within the prescribed time limits. This Rule does not apply to documents to be filed in the office of the clerk of the trial court or clerk of the Virginia Workers' Compensation Commission.

(e) *Inmate Filing.* A paper filed by an inmate confined in an institution is timely filed if deposited in the institution's internal mail system with first-class postage prepaid on or before the last day for filing. Timely filing of a paper by an inmate confined in an institution may be established by (1) an official stamp of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing, (2) an official postmark dated on or before the last day for filing, or (3) a notarized statement signed by an official of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing.

#### **Rule 5A:4. Forms of Briefs and Other Papers.**

(a) *Paper Size, Line Spacing, Font, and Margins.* Briefs, appendices, motions, petitions, and other papers may be printed by any process that yields a clear black image on white paper and must be on pages 8-1/2 x 11 inch paper. All printed matter for briefs, motions, petitions, and other papers must be in at least 12-point font; appendices must be in at least 12-point font. Text shall not be reduced, and must be double-spaced except for headings, assignments of error, quotations, and footnotes. Margins must be at least one inch on all four sides of each page. The use of condensed or multi-page transcripts is prohibited.

(b) *Binding and Cover.* All briefs, appendices, petitions for rehearing, and petitions for rehearing en banc shall be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco fasteners, and the like are not acceptable. The style of the case (with the name of the appellant stated first) and the record number of the case and the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel submitting the paper shall be placed on the front cover.



(c) *Effect of Non-compliance.* No appeal shall be dismissed for failure to comply with the provisions of this Rule; however, the clerk of this Court may require that a document be redone in compliance with this Rule.

(d) *Certificate of Compliance with Word Count Limitation.* Any brief, motion, petition, or other paper that has a word count limitation in these Rules must include a certificate by the attorney, or unrepresented party, that the document complies with the applicable word count limitation. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the document. The certificate must state the number of words the document contains, excluding those parts specifically exempted by these Rules.

## **B. Original Jurisdiction.**

### **Rule 5A:5. Original Proceedings.**

(a) *Original Jurisdiction Proceedings Other Than Actual Innocence Petitions.* With the exception of petitions for the issuance of writs of actual innocence under paragraph (b) of this Rule, all proceedings before the Court of Appeals pursuant to its original jurisdiction shall be conducted in accordance with the procedure prescribed by Rule 5:7 of the Rules of the Supreme Court.

(b) *Petition for a Writ of Actual Innocence.*

(1) *Scope.* Any person convicted of a felony upon a plea of not guilty may file in this Court a petition under Code § 19.2-327.10 et seq. seeking a writ of actual innocence based on nonbiological evidence.

(2) *Form and Contents of Petition.* The petition must be filed using Form 12 in the Appendix of Forms following Part 5A and must include all allegations and documents required by subsections A and B of Code § 19.2-327.11. Under Code § 19.2-3217.11(B) “relevant documents” shall include, but not be limited to, any felony conviction and sentencing orders being challenged, any appellate dispositions on direct review or any habeas corpus orders (issued by any federal or state court), and any prior petitions filed under Code § 19.2-3217.10 et seq. in the Court of Appeals or under Code § 19.2-327.2 et seq. in the Supreme Court.

(3) All pleadings shall name as the petitioner the person convicted of a felony who is seeking relief. The pleadings shall identify the Commonwealth, represented by the Attorney General, as the respondent.

(4) *Filing Fee.* The petition must be accompanied by either (i) a \$50.00 check or money order for the filing fee required by statute, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee. An affidavit seeking in forma pauperis status shall list all assets and liabilities of petitioner, including the current balance of any inmate account maintained by correctional facility.

(5) *Appointment of Counsel.* If this Court does not summarily dismiss the petition, this Court shall appoint counsel for any indigent petitioner who requests the appointment of counsel and satisfies the indigency criteria of Code § 19.2-159. In this Court’s discretion, counsel may be appointed at an earlier stage of the proceeding at the petitioner’s request upon a showing of requisite indigency. All requests for the appointment of counsel shall be made on the form provided by this Court.

(6) Service of Petition and Return of Service. Prior to filing a petition, the petitioner shall serve the petition, along with all attachments, on the Attorney General and on the Commonwealth's Attorney for the jurisdiction where the conviction occurred. When represented by counsel, the petitioner shall file with the petition either (i) a duly executed return of service in the form of a verification that a copy of the petition and all attachments have been served, or (ii) an acceptance of service signed by either or both of the parties to be served, or (iii) a combination of the two. When unrepresented by counsel, the petitioner shall file with the petition a certificate that a copy of the petition and all attachments have been sent, by certified mail, to the Attorney General and the Commonwealth's Attorney for the jurisdiction where the conviction occurred.

(7) Response. If the Court of Appeals does not summarily dismiss the petition, this Court will provide written notice to all parties directing the Commonwealth, within 60 days after receipt of such notice, to file a response to the petition pursuant to Code § 19.2-327.11(C). For good cause shown, the 60-day deadline may be extended by this Court. The Commonwealth's response may include any information pertinent to the petitioner's guilt, including proffers of evidence outside the trial court record and evidence previously suppressed at trial.

(8) Reply. The petitioner may file a reply to the Commonwealth's response only if directed to do so by this Court.

(9) Copies. An original and four copies of the petition, the Commonwealth's response, and the petitioner's reply, if any, shall be filed with this Court. Attachments shall be included with the original petition, response, or reply, but not with any copies of the same.

(10) Evidentiary Hearing. The Court of Appeals may order the circuit court that entered the conviction to conduct an evidentiary hearing and to certify factual findings pursuant to Code § 19.2-327.12. Such findings, however, shall be limited to the specific questions addressed by the Court of Appeals in its certification order. In the circuit court, the petitioner and the Commonwealth shall be afforded an opportunity to present evidence and to examine witnesses on matters relevant to the certified questions.

(11) Oral Argument. Unless otherwise directed by this Court, oral argument shall only be allowed on the final decision whether to grant or deny the writ under Code § 19.2-327.13.

(12) Appeal. The petitioner or the Commonwealth may petition for appeal to the Supreme Court from any adverse final decision issued by the Court of Appeals under Code § 19.2-327.13 to issue or deny a writ of actual innocence. Such an appeal shall be initiated by the filing of a notice of appeal pursuant to Rule 5:14.

## **C. Procedure for Filing an Appeal From the Trial Court.**

### **Rule 5A:6. Notice of Appeal.**

(a) *Filing Deadline; Where to File.* No appeal shall be allowed unless, within 30 days after entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court under Rule 5A:3(a), counsel files with the clerk of the trial court a notice of appeal, and at the same time mails or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the court announces a decision or ruling – but before the entry of such judgment or order – is treated as filed on the date of and after the entry. A party filing a notice of an appeal of

right to the Court of Appeals shall simultaneously file in the trial court an appeal bond in compliance with Code § 8.01-676.1.

(b) *Content.* The notice of appeal shall contain a statement whether any transcript or statement of facts, testimony, and other incidents of the case will be filed.

(c) *Filing Fee.* A copy of the notice of appeal shall be filed in the office of the clerk of the Court of Appeals and, except as otherwise provided by law, must be accompanied by a check or money order in the amount of \$50 payable to the "Clerk of the Court of Appeals" for the filing fee required by statute. The fee shall be due at the time the notice of appeal is presented. The clerk of the Court of Appeals may file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within ten days of the date the notice of appeal is filed. If the fee is not received within such time, the appeal shall be dismissed.

(d) *Certificate.* The appellant shall include with the notice of appeal a certificate stating:

(1) the names and addresses of all appellants and appellees, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel for each party, and the mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of any party not represented by counsel; and

(2) that a copy of the notice of appeal has been mailed or delivered to all opposing counsel; and

(3) in a criminal case, a statement whether counsel for defendant has been appointed or privately retained; and

(4) that in the event a transcript is to be filed a copy of the transcript has been ordered from the court reporter who reported the case.

(e) *Separate Cases.* Whenever two or more cases were tried together in the trial court, one notice of appeal and one record may be used to bring all of such cases before this Court even though such cases were not consolidated by formal order.

(f) *Special Provision for Cases Involving a Guardian Ad Litem.* No appeal shall be dismissed because the notice of appeal fails to identify a guardian ad litem or to provide notice to a guardian ad litem. Upon motion for good cause shown or by sua sponte order of this Court, the notice of appeal may be amended to identify the guardian ad litem and to provide notice to such guardian.

### **Rule 5A:7. Record on Appeal: Contents.**

(a) *Contents.* The following constitute the record on appeal from the trial court:

(1) the original papers and exhibits filed or lodged in the office of the clerk of the trial court, including any report of a commissioner in chancery and the accompanying depositions and other papers;

(2) each instruction marked "given" or "refused" and initialed by the judge;

(3) each exhibit offered in evidence, whether admitted or not, and initialed by the trial judge (or any photograph thereof as authorized by § 19.2-270.4 (A) and (C)). (All non-documentary exhibits shall be tagged or labeled in the trial court and the tag or label initialed by the judge.);

(4) the original draft or a copy of each order entered by the trial court;

(5) any opinion or memorandum decision rendered by the judge of the trial court;

(6) any deposition and any discovery material encompassed within Part Four offered in evidence (whether admitted or rejected) at any proceeding; and

(7) the transcript of any proceeding or a written statement of facts, testimony, and other incidents of the case when made a part of the record as provided in Rule 5A:8, or the official videotape recording of any proceeding in those circuit courts authorized by the Supreme Court to use videotape recordings. This Court may require that any videotape proceedings be transcribed, in whole or in part, and made a part of the record as provided in Rule 5A:8, except that the transcript shall be filed within 60 days after the entry of the order requiring such transcript; and

(8) the notice of appeal.

(b) *Disagreement on Contents.* If disagreement arises as to the contents of any part of the record, the matter shall, in the first instance, be submitted to and decided by the trial court.

### **Rule 5A:8. Record on Appeal: Transcript or Written Statement.**

(a) *Transcript.* The transcript of any proceeding is a part of the record when it is filed in the office of the clerk of the trial court within 60 days after entry of the final judgment. This deadline may be extended by a Judge of the Court of Appeals only upon a written motion filed within 90 days after the entry of final judgment. Timely motions will be granted only upon a showing of good cause to excuse the delay.

(b) *Notice of Filing Transcript.*

(1) Time for Filing. Within 10 days after the transcript is filed or, if the transcript is filed prior to the filing of the notice of appeal, within 10 days after the notice of appeal is filed, counsel for appellant shall:

(i) give written notice to all other counsel of the date on which the transcript was filed, and

(ii) file a copy of the notice with the clerk of the trial court.

There shall be appended to the notice either a certificate of counsel for appellant that a copy of the notice has been mailed to all other counsel or an acceptance of service of such notice by all other counsel.

(2) Multiple Transcripts. When multiple transcripts are filed, the 10-day period for filing the notice required by this Rule shall be calculated from the date on which the last transcript is filed or from the date on which the notice of appeal is filed, whichever is later. The notice of filing transcripts shall identify all transcripts filed and the date upon which the last transcript was filed.

(3) Notice of No Further Transcripts. If the notice of appeal states that no additional transcripts will be filed and identifies the transcripts that have been filed, if any, then no additional written notice of filing transcripts is required and the notice of appeal will serve as the notice of filing transcripts for purposes of Rule 5A:8(b).

(4) Effect of Non-compliance.

(i) Any failure to file the notice required by this Rule that materially prejudices an appellee will result in the affected transcripts being stricken from the record on appeal. For purposes of this Rule, material prejudice includes preventing the appellee from raising

legitimate objections to the contents of the transcript or misleading the appellee about the contents of the record. The appellee shall have the burden of establishing such prejudice in the brief in opposition or, if no brief in opposition is filed, in a written statement filed with the clerk of this Court within twenty-one days after the record is received by the clerk.

(ii) When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues, any assignments of error affected by such omission shall not be considered.

(c) *Written Statement in Lieu of Transcript.* A written statement of facts, testimony, and other incidents of the case becomes a part of the record when:

(1) within 55 days after entry of judgment a copy of such statement is filed in the office of the clerk of the trial court. A copy must be mailed or delivered to opposing counsel on the same day that it is filed in the office of the clerk of the trial court, accompanied by notice that such statement will be presented to the trial judge no earlier than 15 days nor later than 20 days after such filing; and

(2) the statement is signed by the trial judge and filed in the office of the clerk of the trial court. The judge may sign the statement forthwith upon its presentation to him if it is signed by counsel for all parties, but if objection is made to the accuracy or completeness of the statement, it shall be signed in accordance with paragraph (d) of this Rule.

The term “other incidents of the case” in this subsection includes motions, proffers, objections, and rulings of the trial court regarding any issue that a party intends to assign as error or otherwise address on appeal.

(d) *Objections.* Any party may object to a transcript or written statement on the ground that it is erroneous or incomplete. Notice of such objection specifying the errors alleged or deficiencies asserted shall be filed with the clerk of the trial court within 15 days after the date the notice of filing the transcript (paragraph (b) of this Rule) or within 15 days after the date the notice of filing the written statement (paragraph (c) of this Rule) is filed in the office of the clerk of the trial court or, if the transcript or written statement is filed before the notice of appeal is filed, within 10 days after the notice of appeal has been filed with the clerk of the trial court. The clerk shall give prompt notice of the filing of such objections to the trial judge. Within 10 days after the notice of objection is filed with the clerk of the trial court, the judge shall:

- (1) overrule the objection; or
- (2) make any corrections that the trial judge deems necessary; or
- (3) include any accurate additions to make the record complete; or
- (4) certify the manner in which the record is incomplete; and
- (5) sign the transcript or written statement.

At any time while the record remains in the office of the clerk of the trial court, the trial judge may, after notice to counsel and hearing, correct the transcript or written statement.

The judge's signature on a transcript or written statement, without more, shall constitute certification that the procedural requirements of this Rule have been satisfied.

### **Rule 5A:9. Judge Authorized to Act.**

The judge authorized to act in all matters relating to the record on appeal shall be any judge having authority to enter orders in the case or in the court in which the case was heard or, in a case heard by three judges, any one of them.

### **Rule 5A:10. Record on Appeal: Preparation and Transmission.**

(a) *Preparation.* The clerk of the trial court shall prepare the record as soon as possible after notice of appeal is filed. In the event of multiple appeals in the same case, or in cases tried together, only one record need be prepared and transmitted.

(b) *Form of the Record.*

(1) The record shall be compiled in the following order:

(i) a front cover setting forth the name of the court and the short style of the case;

(ii) a table of contents listing each paper included in the record and the page on which it begins;

(iii) each paper constituting a part of the record in chronological order; and

(iv) the certificate of the clerk of the trial court that the foregoing constitutes the true and complete record, except omitted exhibits as hereinafter provided.

(2) Each page of the record shall be numbered at the bottom.

(3) Transcripts, depositions, and reports of commissioners may be included in separate volumes identified by the clerk of the trial court if referred to in the table of contents and at the appropriate place in the record.

(4) Exhibits, other than those filed with pleadings, may be included in a separate volume or envelope certified by the clerk of the trial court, except that any exhibit that cannot be conveniently placed in a volume or envelope shall be identified by a tag. Each such volume or envelope shall include, on its cover or inside, a descriptive list of exhibits contained therein. Reference shall be made to exhibits in the table of contents and at the appropriate place in the record referred to in paragraph (b)(1) of this Rule. The clerk of the trial court shall not transmit the following types of exhibits, unless requested to do so by the clerk of this Court: drugs, guns and other weapons, ammunition, blood vials and other bio-hazard type materials, money, jewelry, articles of clothing, and bulky items such as large graphs and maps. The omission of any such exhibit shall be noted on the descriptive list of exhibits. Upon motion by counsel, this Court may order the trial court to transmit any of these prohibited exhibits.

(5) Any transcript or statement of facts that the clerk of the trial court deems not a part of the record because of untimely filing shall be certified as such and transmitted with the record.

(c) *Abbreviated Record.* When the assignments of error presented by an appeal can be determined without examination of all the pleadings, facts, testimony, and other incidents of the case, all counsel with the approval of the trial court may prepare for submission an abbreviated record, stating how the assignments of error in the case arose and were decided, and setting forth only so much of the pleadings, facts, testimony, and other incidents of the case as are essential to a determination of the issues on appeal. Such abbreviated record shall be signed by all counsel and the trial judge and filed in the office of the clerk of the trial court. It will be assumed that the abbreviated record contains

everything germane to the assignments of error. The Court of Appeals may, however, consider other parts of the record to enable this Court to attain the ends of justice.

(d) *Transmission.* The clerk of the trial court shall retain the record for 21 days after the notice of appeal has been filed with him pursuant to Rule 5A:6. If the notice of appeal states that a transcript or statement will thereafter be filed, the clerk of the trial court shall retain the record for 21 days after the filing in his office of such transcript or statement or, if objection is made to the transcript or statement pursuant to Rule 5A:8 (d), the clerk of the trial court shall retain the record for five days after the objection is acted upon by the trial judge. The clerk of the trial court shall then forthwith transmit the record to the clerk of this Court; provided, however, that, notwithstanding that the foregoing periods of retention may not have expired, the clerk of the trial court shall transmit the record sooner if requested in writing by counsel for all parties to the appeal and shall, whether or not so requested, transmit the record in time for delivery to the clerk of this Court within three months after entry of the judgment appealed from. The failure of the clerk of the trial court to transmit the record as herein provided shall not be a ground for dismissal of the appeal by this Court.

(e) *Notice of Filing.* The clerk of this Court shall promptly notify all counsel of the date on which the record is filed in the office of the clerk of the Court of Appeals.

(f) *Disposition of Record.* When the mandate is issued by this Court, the clerk of this Court shall return the record to the clerk of the trial court or commission in which the proceeding originated. The record shall be returned by that clerk upon the request of the clerk of this Court.

## **D. Procedure for Filing an Appeal From the Workers' Compensation Commission.**

### **Rule 5A:11. Special Rule Applicable to Appeals From the Virginia Workers' Compensation Commission.**

(a) *Non-Application of Other Rules.* Rules 5A:6 through 5A:10 do not apply to appeals from the Virginia Workers' Compensation Commission except as otherwise specified in this Part Five A.

(b) *Notice of Appeal.* No appeal from an order of the Commission shall be allowed unless, within 30 days after entry of the order appealed from, or within 30 days after receipt of notice by priority mail with delivery confirmation or equivalent mailing option of the order appealed from, counsel files with the clerk of the Virginia Workers' Compensation Commission a notice of appeal which shall state the names and addresses of all appellants and appellees, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel for each party, and the mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of any party not represented by counsel, and whether the appellant challenges the sufficiency of the evidence to support the findings of the Commission. A copy of the notice of appeal also shall be filed in the office of the clerk of this Court, and except as otherwise provided by law, must be accompanied by a check or money order in the amount of \$50 payable to the "Clerk of the Court of Appeals," for the filing fee required by statute. The fee shall be due at the time the notice of appeal is presented. The clerk of this Court may file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within ten days of the date the notice of appeal is filed. If the fee is not received within such time, the appeal shall be dismissed.

(c) *Record on Appeal.* The record on appeal from the Commission shall consist of the originals or copies of the notice of appeal, the employer's first report, medical reports, applications for hearings, the transcript of any hearing, depositions, interrogatories and answer to interrogatories, and opinions of a commissioner or deputy commissioner and opinions of the Commission, together with such other material as may be certified by the clerk of the Commission and shall conform as nearly as practicable to the requirements of Rule 5A:10 (b), provided, that, unless it is stated in the notice of appeal that the appellant challenges the sufficiency of the evidence to support the findings of the Commission, the clerk of the Commission need not prepare or certify the transcript of any hearing.

(d) *Transmission of Record.* The record shall, as soon as it is certified by the clerk of the Commission, be transmitted by him to the clerk of this Court. It shall be so transmitted within 30 days after filing of the notice of appeal.

(e) *Notice of Filing.* The clerk of this Court shall promptly notify all counsel of the date on which the record is filed in the office of the clerk of this Court.

(f) *Separate Cases.* Whenever two or more cases were tried together in the Virginia Workers' Compensation Commission, one notice of appeal and one record may be used to bring all such cases before this Court even though such cases were not consolidated by formal order.

(g) *Record Returned to Commission.* When the mandate is issued by this Court, the clerk of this Court shall return the record to the clerk of the Commission. The clerk of the Commission shall return the record upon request of the clerk of this Court.

## **E. Procedure on Petition for Appeal in Criminal Cases and Traffic Infractions.**

### **Rule 5A:12. Petition for Appeal.**

(a) *When the Petition Must be Filed.* When an appeal to the Court of Appeals does not lie as a matter of right, a petition for appeal must be filed with the clerk of this Court not more than 40 days after the filing of the record with the Court of Appeals. An extension of 30 days may be granted on motion in the discretion of this Court upon a showing of good cause sufficient to excuse the delay.

(b) *Copy to Opposing Counsel.* At the time the petition for appeal is filed, a copy of the petition shall be mailed or delivered to the Commonwealth's attorney or the city, county, or town attorney, as the case may be.

(c) *What the Petition Must Contain.* A petition for appeal must contain the following:

(1) *Assignments of Error.* The provisions of Rule 5A:18 shall apply to limit those assignments of error which this Court will rule upon on appeal. Under a heading entitled "Assignments of Error," the petition shall list, clearly and concisely and without extraneous argument, the specific errors in the rulings below upon which the party intends to rely. An exact reference to the pages of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken shall be included with each assignment of error.

(i) *Effect of Failure to Assign Error.* Only assignments of error assigned in the petition for appeal will be noticed by this Court. If the petition for appeal does not contain assignments of error, it shall be dismissed.



(ii) **Insufficient Assignments of Error.** An assignment of error which does not address the findings or rulings in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence is not sufficient. If the assignments of error are insufficient or otherwise fail to comply with the requirements of this Rule, the petition for appeal shall be dismissed.

(2) **Table of Contents and Table of Authorities.** A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities shall include the year thereof.

(3) **Nature of the Case and Material Proceedings Below.** A brief statement of the nature of the case and of the material proceedings in the trial court or commission in which the case originated. This statement shall omit references to any paper filed or action taken that does not relate to the assignments of error.

(4) **Statement of Facts.** A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the record, transcript, or written statement of facts. Any quotation from the record should be brief. When the facts are in dispute, the petition shall so state. 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 appellant's version of the facts.

(5) **Authorities and Argument.** With respect to each assignment of error, the standard of review and the argument – including principles of law and the authorities – shall be stated in one place and not scattered through the petition. At the option of counsel, the argument may be preceded by a short summary.

(6) **Conclusion.** A short conclusion stating the precise relief sought.

(7) **Certificate.** A certificate stating the date of mailing or delivery of the petition to opposing counsel and whether or not the appellant desires to state orally the reasons why the petition for appeal should be granted.

(d) **Number of Copies to File.** Four copies of the petition shall be filed with the clerk of this Court.

(e) **Length.** Except by leave of a Judge of this Court, a petition shall not exceed 12,300 words. The word limit does not include the cover page, table of contents, table of authorities, and certificate.

(f) **Single Petition in Separate Cases.** Whenever two or more cases were tried together in the trial court or commission below, one petition for appeal may be used to bring all such cases before the Court of Appeals even though the cases were not consolidated below by formal order.

(g) **Oral Argument.** When the appeal is not granted by the Judge of this Court to whom the petition for appeal is originally presented, the petitioner shall be entitled to state orally, in person or by conference telephone call, to a panel of this Court the reasons the petition for appeal should be granted. The appellant may waive the right to oral argument on the petition for appeal before a panel by notifying the clerk of this Court and opposing counsel in writing, or by filing a reply brief. Any lawyer not licensed to practice in Virginia who seeks to appear pro hac vice to present oral argument to this Court must comply with the requirements of Rule 1A:4.

(h) **Procedure for an Anders appeal.** If counsel for appellant finds his client's appeal to be without merit, he must comply with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *Akbar v. Commonwealth*, 7 Va. App. 611, 376 S.E.2d 545 (1989). In compliance therewith, counsel is required to file (1) a petition for appeal which refers to anything in the record which might

arguably support the appeal and which demonstrates to the Court of Appeals counsel's conscientious examination of the merits of the appeal; (2) a motion for leave to withdraw as counsel; and (3) a motion for an extension of time to allow the appellant to file a supplemental petition for appeal. The petition for appeal and the motion for leave to withdraw as counsel should specifically cite to *Anders*. All three pleadings must be served on opposing counsel and upon the client and must contain a certificate providing evidence of such service. The Court of Appeals will rule upon the motion for extension of time upon its receipt, but will not rule on the motion to withdraw as counsel until this Court considers the case in its entirety, including any supplemental petition for appeal that may be filed.

### **Rule 5A:13. Brief in Opposition.**

(a) *Filing Time.* A brief in opposition to granting the appeal may be filed with the clerk of this Court by the appellee within 21 days after the petition for appeal is served on counsel for the appellee. Within the same time he shall mail or deliver a copy to counsel for appellant. Four copies shall be filed. Motions for an extension to this briefing deadline shall be filed no later than 10 days after the expiration of the deadline.

(b) *Form and Content.* The brief in opposition shall conform in all respects to the requirements of the brief of appellee (Rule 5A:21).

(1) Length. Except by leave of a Judge of this Court, the brief shall not exceed 8,800 words.

(2) Table of Contents and Table of Authorities. If the brief exceeds 3,500 words, it shall contain a table of contents and table of authorities with cases alphabetically arranged.

(3) Criminal or Traffic Cases. In a criminal or traffic case, a brief may be filed by the Commonwealth's attorney, city, county, or town attorney, as the case may be.

(c) *Expedited Review.* When it clearly appears that an appeal ought to be granted without further delay, an appeal may be granted before the filing of the brief in opposition.

### **Rule 5A:14. Reply Brief.**

When a brief in opposition to the petition for appeal has been filed, the appellant may, within 14 days thereafter, in lieu of oral argument, file with the clerk of this Court a reply brief not to exceed 5,300 words in length. Four copies shall be filed. Motions for an extension to this briefing deadline shall be filed no later than 10 days after the expiration of the deadline.

### **Rule 5A:15. Denial of Petition for Appeal; Petition for Rehearing.**

(a) *Denial by a Single Judge.* When a petition for appeal is denied by a Judge of this Court pursuant to Code § 17.1-407(C), the clerk of this Court shall send a copy of the order denying the petition to counsel for the appellant and counsel for the appellee. Pro se prisoners and those with leave of this Court to proceed under this Rule may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D). The demand shall be filed in writing. Four copies must be filed with the clerk of this Court within fourteen days after the date of the order by which the petition was denied. The demand, which shall include a statement identifying how the one-judge order is in error, shall not exceed 350 words. Oral argument shall not be permitted on consideration of a petition by a three-judge panel unless oral argument was requested in the petition for appeal

pursuant to Rule 5A:12(c). A petitioner who has previously requested oral argument may waive oral argument by so stating in the demand for review. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this Rule must follow the provisions of Rule 5A:15A(a) when filing a demand for three-judge review pursuant to Code § 17.1-407(D).

(b) *Denial by a Three-Judge Panel.* When a petition for appeal is denied by a three-judge panel, the clerk of this Court shall send a copy of the order or memorandum opinion denying the appeal to counsel for the appellant and counsel for the appellee. Pro se prisoners and those with leave of this Court to proceed under this Rule may, within 14 days after the date of this notice, file a petition for rehearing in writing in the office of the clerk of this Court unless the denial was by a three-Judge panel after its consideration of a petition denied by a Judge of this Court pursuant to Code § 17.1-407. The petition for rehearing shall not exceed 5,300 words in length. The petition shall state that a copy has been mailed or delivered to counsel for the appellee. Four copies shall be filed. Oral argument on the petition for rehearing will not be allowed. The petition for rehearing shall be referred to the panel of this Court that considered the petition for appeal. No responsive brief shall be filed unless requested by this Court. The clerk of this Court shall notify counsel for the appellant and counsel for the appellee of the action taken by this Court on the petition for rehearing. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this Rule must follow the provisions of Rule 5A:15A(b) when filing a petition for a rehearing of an order of a three-judge panel denying a petition for appeal.

### **Rule 5A:15A. Denial of Petition for Appeal; Petition for Rehearing Filed by Electronic Means.**

(a) *Proceedings After Denial of Petition by Single Judge.*

(1) When a petition for appeal is denied by a Judge of this Court pursuant to Code § 17.1-407(C), the clerk of this Court shall send a copy of the order denying the petition to counsel for the appellant and counsel for the appellee. The appellant may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D). Demands for three-judge review filed by pro se prisoners or by those with leave of this Court to proceed under Rule 5A:15(a) shall be filed in accordance with the provisions of Rule 5A:15(a).

(2) Except for demands for three-judge review filed by pro se prisoners or by those with leave of this Court to proceed under Rule 5A:15(a), the demand shall be filed as a single Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail addressed to [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us) and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

(3) The demand, which shall include a statement identifying how the one-judge order is in error, must be formatted to print on a page 8 1/2 x 11 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 350 words. The demand must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall be included in the certificate of service. The demand must also include a certificate of compliance with the word count limit. The demand will be considered filed on the date and time that it is received by [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us). If the demand does not meet the requirements of this rule as to format, the clerk of this Court shall so notify counsel and provide a specific amount of time for a corrected copy of the demand to be filed. A person who files a document electronically shall have the same responsibility as a person

filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed demand for three-judge review, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the demand by e-mail, any delivery failure notice received in response to the attempt, and a copy of the demand for three-judge review.

(4) The e-mail message to which the demand is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a demand for three-judge review is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the demand, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the demand. The message shall also state whether a copy of the demand has been served by e-mail or another means on opposing counsel and the date of such service. If the demand has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the demand for three-judge review in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel seeking the rehearing.

(5) Oral argument shall not be permitted on consideration of a petition by a three-judge panel unless oral argument was requested in the petition for appeal pursuant to Rule 5A:12(c). An appellant who has previously requested oral argument may waive oral argument by so stating in the demand for review.

*(b) Proceedings After Denial of Petition by Three-Judge Panel.*

(1) When a petition for appeal is denied by a three-judge panel, the clerk of this Court shall send a copy of the order or memorandum opinion denying the appeal to counsel for the appellant and counsel for the appellee. Counsel for the appellant may file a petition for rehearing in the office of the clerk of this Court unless the denial was by a three-judge panel after its consideration of a petition denied by a Judge of this Court pursuant to Code § 17.1-407. Petitions for rehearing filed by pro se prisoners or by those with leave of court to proceed under Rule 5A:15(b) shall be in accordance with the provisions of Rule 5A:15(b).

(2) Except for petitions for rehearing filed by pro se prisoners or by those with leave of this Court to proceed under Rule 5A:15(b), the petition shall be filed as a single PDF document attached to an email addressed to [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us) and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

(3) The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 5,300 words. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall be included in the certificate of service. The petition must also include a certificate of compliance with the word count limit. Petitions filed by e-mail will be considered filed on the date and time that it is received by [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us). If the petition does not meet the requirements of this rule as to format, the clerk of this Court shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court

of Appeals result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

(4) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel seeking the rehearing.

(5) Oral argument on the petition for rehearing will not be allowed. The petition for rehearing shall be referred to the panel of this Court that considered the petition for appeal. No responsive brief shall be filed unless requested by this Court. The clerk of this Court shall notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

## **F. Procedure Following Perfection of Appeal.**

### **Rule 5A:16. Perfection of Appeal; Docketing.**

(a) *Appeals as a Matter of Right.* In cases when an appeal lies as a matter of right to the Court of Appeals, such appeal shall be perfected by the timely filing of a notice of appeal pursuant to Rule 5A:6. Such case shall be considered mature for purposes of further proceedings from the date the record is filed in the office of the clerk of the Court of Appeals. A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file in the trial court an appeal bond in compliance with Code § 8.01-676.1.

(b) *Grant of Petition for Appeal.* Promptly after a petition for appeal has been granted by the Court of Appeals, the clerk of the Court of Appeals shall certify this action to the trial court and all counsel. Such case shall be considered mature for purposes of further proceedings from the date of such certificate.

(c) *Docketing.* Cases shall be placed on the docket in the order in which they mature, provided that precedence shall be given to the following cases:

- (1) criminal cases;
- (2) cases from the Virginia Workers' Compensation Commission;
- (3) cases involving termination of parental rights;
- (4) cases of original jurisdiction;
- (5) cases to be reheard; and

(6) any other cases required by statute to be given precedence.

The Court of Appeals may, however, for good cause shown or for reasons appearing sufficient to the Court, give preference to other cases.

### **Rule 5A:17. Security for Appeal.**

(a) *Form for Security.* All security for appeal required under Code § 8.01-676.1 shall substantially conform to the forms set forth in the Appendix to this Part Five A.

(b) *Security for Appeal; Defects.* Whenever an appellant files an appeal bond or irrevocable letter of credit, he shall contemporaneously give notice in writing of said filing to counsel for appellee. No appeal shall be dismissed because of defect in any bond or irrevocable letter of credit unless an appellee, within 21 days after the giving of such notice, files with the clerk of the Court of Appeals a statement in writing of the defects in the bond or irrevocable letter of credit, and unless the appellant fails to correct such defects, if any, within 21 days after such statement is filed. If the appellant fails to correct such defects within 21 days, an appellee may move that the appeal be dismissed and it shall be dismissed unless the appellant satisfies the Court of Appeals that the bond or irrevocable letter of credit, either as originally given or as amended, has been filed as required by law.

### **Rule 5A:18. Preservation of Issues for Appellate Review.**

No ruling of the trial court or the Virginia Workers' Compensation Commission will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable the Court of Appeals to attain the ends of justice. A mere statement that the judgment or award is contrary to the law and the evidence is not sufficient to preserve the issue for appellate review.

### **Rule 5A:19. General Requirements for All Briefs.**

(a) *Length.* Except by permission of a Judge of this Court, neither the opening brief of appellant, nor the brief of appellee, nor a brief amicus curiae shall exceed 12,300 words. No reply brief shall exceed 3,500 words. Word limits under this Rule do not include appendices, or the cover page, table of contents, table of authorities, and certificate. There shall be no exception to these limits except by permission of this Court on motion for extension of the limits.

(b) *Filing Time: Appeal as a Matter of Right.* In cases when 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 and the brief of the guardian ad litem 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.

(4) Motions for extensions to these briefing deadlines shall be filed no later than 10 days after the expiration of the deadline.

(c) *Filing Time: Grant of Petition for Appeal.* In cases when 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.

(4) Motions for extensions to these briefing deadlines shall be filed no later than 10 days after the expiration of the deadline.

(d) *Participation by Guardian Ad Litem.* 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) *Arguments Made by Reference.* Attempts to incorporate arguments made below by reference to pleadings, motions, memorandum, or other filings are prohibited.

(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.

### **Rule 5A:20. Requirements for Opening Brief of Appellant.**

The opening brief of appellant shall contain:

(a) A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities shall include the year thereof.

(b) A brief statement of the nature of the case and of the material proceedings in the trial court, which shall omit references to any paper filed or action taken that does not relate to the assignments of error.

(c) A statement of the assignments of error with a clear and exact reference to the page(s) of the transcript, written statement, record, or appendix where each assignment of error was preserved in the trial court.

(d) A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the transcript, written statement, record, or appendix. Any quotation from the record should be brief. When the facts are in dispute, the brief shall so state. 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 appellant's version of the facts.

(e) The standard of review and the argument (including principles of law and authorities) relating to each assignment of error. When the assignment of error 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 assignment of error, the standard of review and the argument – including principles of law 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 short summary.

(f) A short conclusion stating the precise relief sought.

(g) The signature (which need not be in handwriting) of at least one counsel and counsel's Virginia State Bar number, address, telephone number, facsimile number (if any), and email address (if any).

(h) A certificate (which need not be signed in handwriting) stating (1) that Rule 5A:19(f) has been complied with, and (2) whether counsel desires to waive oral argument. The certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count). Additionally, any party may waive oral argument without leave of this 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.

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

The brief of appellee or the brief of the guardian ad litem shall contain:

(a) A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities shall include the year thereof.

(b) A statement of the case if the appellee disagrees with the statement presented by the appellant and a statement of any additional assignments of error 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 assignment of error 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 standard of review and the argument (including principles of law and authorities) relating to each assignment of error. For any additional assignment of error 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 assignment of error, the standard of review and the argument – including principles of law 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 short 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 counsel's Virginia State Bar number, address, telephone number, facsimile number (if any), and email address (if any).

(g) A certificate (which need not be signed in handwriting) stating (1) that Rule 5A:19(f) has been complied with, and (2) whether counsel desires to waive oral argument. The certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count). Additionally, any party may waive oral argument without leave of this 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.



**Rule 5A:22. Requirements for Reply Brief.**

The reply brief, if any, shall contain argument in reply to contentions made in the brief of appellee. No reply brief is necessary if the contentions have been adequately answered in the opening brief of appellant. The reply brief shall contain a certificate (which need not be signed in handwriting) that Rule 5A:19(f) has been complied with. The certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

**Rule 5A:23. Briefs Amicus Curiae.**

(a) A brief amicus curiae may be filed at the petition, perfected appeal and rehearing stages of the appellate proceedings:

- (1) on behalf of the United States or the Commonwealth of Virginia without the prior consent of this Court or counsel; and
- (2) by any other person if it is accompanied by the written consent of all counsel; and
- (3) otherwise only on motion (which may be accompanied by the proposed brief) and the consent of this Court.

(b) A brief amicus curiae will be accepted only if filed on or before the date on which the brief of the party supported is required to be filed. A brief amicus curiae may be filed at the time of filing of the reply brief of the appellant only if an opening brief amicus curiae has been filed.

(c) A brief amicus curiae shall comply with the rules applicable to the brief of the party supported.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, the Court of Appeals may request that a brief amicus curiae be filed at any time.

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

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

<b>Document</b>	<b>Color of Cover</b>
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.

### **Rule 5A:25. Appendix.**

(a) *When Required.* An appendix shall be filed by the appellant in all cases no later than the time of filing his opening brief.

(b) *Filing.* If the combined lengths of the appendix and the opening brief of the appellant do not exceed the limitation prescribed in Rule 5A:19, the appendix may be filed as an addendum to the opening brief and within the same cover. If the combined lengths of the appendix and the opening brief exceed the limitation prescribed in Rule 5A:19, the appellant shall file the appendix as a separate volume. The number of copies filed and mailed to opposing counsel shall conform to Rule 5A:19(f).

(c) *Contents.* An appendix shall include:

- (1) the basic initial pleading (as finally amended);
- (2) the judgment appealed from, and any memorandum or opinion relating thereto;
- (3) any testimony and other incidents of the case germane to the assignments of error;
- (4) the title (but not the caption) of each paper contained in the appendix, and its filing date;
- (5) the names of witnesses printed at the beginning of excerpts from their testimony and at the top of each page thereof; and
- (6) exhibits necessary for an understanding of the case that can reasonably be reproduced.

(d) *Determination of Contents.* Within ten days after the filing of the record with the Court of Appeals or, in a case in which a petition for appeal has been granted, within ten days after the date of the certificate of appeal issued by the clerk of the Court of Appeals, counsel for appellant shall file in the office of the clerk of the Court of Appeals a written statement signed by all counsel setting forth an agreed designation of the parts of the record to be included in the appendix. In the absence of such an agreement, counsel for appellant shall file with the clerk of the Court of Appeals a statement of the assignments of error and a designation of the contents to be included in the appendix within fifteen days after the filing of the record or, in a case in which a petition for appeal has been granted, within fifteen days after the date of the certificate of appeal; not more than ten days after this designation is filed, counsel for appellee shall file with the clerk of the Court of Appeals a designation of any additional contents to be included in the appendix. The appellant shall include in the appendix the parts thus designated, together with any additional parts he considers germane.

(e) *Table of Contents; Form of Presentation.* At the beginning of the appendix there shall be a table of contents, which shall include the name of each witness whose testimony is included in the appendix and the page number of the appendix at which each portion of the testimony of the witness begins. Thereafter, the parts of the record to be reproduced shall be set out in chronological order. When matter contained in the transcript of proceedings is set out in the appendix, the page of the transcript or of the record at which such matter may be found shall be indicated in brackets immediately before the matter which is set out. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial matters (such as captions, subscriptions and

acknowledgements) shall be omitted. A question and its answer may be contained in a single paragraph.

(f) *Costs*. Unless counsel otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issue presented, he may so advise the appellee, and the appellee shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case.

(g) *Penalty*. Nothing shall be included in the appendix that is not germane to an assignment of error. As examples, no pleadings (other than the basic initial pleading as finally amended) shall be included unless an assignment of error is presented relating to it, and then only the portion thereof to which the assignment relates; and testimony relating solely to the amount of damages shall not be included unless error is assigned relating to the amount of damages. If parts of the record are included in the appendix unnecessarily at the direction of a party, this Court may impose the cost of producing such parts on that party.

(h) *Assumptions*. It will be assumed that the appendix contains everything germane to the assignments of error. The Court of Appeals may, however, consider other parts of the record.

#### **Rule 5A:26. Effect of Noncompliance With Rules Regarding Briefs.**

If an appellant fails to file a brief in compliance with these Rules, the Court of Appeals may dismiss the appeal. If an appellee fails to file a brief in compliance with these Rules, the Court of Appeals may disregard any additional assignments of error raised by the appellee. If one party has complied with the Rules governing briefs, but the other has not, the party in default will not be heard orally if the case proceeds to oral argument, except for good cause shown.

#### **Rule 5A:27. Summary Disposition.**

In cases in which appeal lies as a matter of right, if all the Judges of the panel of the Court of Appeals to which a pending appeal has been referred conclude from a review of the record and the briefs of the parties that the appeal is without merit, the panel shall forthwith affirm the judgment of the trial court or commission.

#### **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 notice to counsel of the date, approximate time, and location for oral argument.

(b) *Length*. Except as otherwise directed by the Court of Appeals, argument for a party shall not exceed 15 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 requests additional time to argue, the guardian ad litem must state that application in its brief, subject to approval of this Court.

(c) *Appearance Pro Hac Vice*. Any lawyer not licensed in Virginia who seeks to appear pro hac vice to present oral argument to the Court of Appeals must comply with the requirements of Rule 1A:4.

(d) *Amicus Curiae*. No oral argument is permitted by amicus curiae except by leave of this Court. Leave may be granted upon the joint written request of amicus curiae and the party whose position amicus curiae supports. The request shall specify the amount of its allotted time the supported party is willing to yield to amicus curiae.

(e) *Waiver*. During oral argument, it shall not be necessary for any party to expressly reserve any argument made on brief, and the failure to raise any such argument shall not constitute a waiver. Any party may, without waiving the arguments made on brief, waive oral argument. See Rules 5A:20(h) and 5A:21(g).

## **G. Decision, Costs, and Mandate.**

### **Rule 5A:29. Notice of Decision.**

Promptly after the Court of Appeals has decided a case, the clerk of the Court of Appeals shall send a copy of the decision to all counsel of record and to the court or commission from which the appeal proceeded.

### **Rule 5A:30. Costs and Notarized Bill of Costs.**

(a) *To Whom Allowed*. Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court of Appeals; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs shall be allowed as ordered by the Court of Appeals.

(b) *Taxable Costs*. Costs, including the filing fee and costs incurred in the printing or producing of necessary copies of briefs, appendices, and petitions for rehearing, shall be taxable in this Court.

(c) *Notarized Bill of Costs*. Counsel for a party who desires costs to be taxed shall itemize them in a notarized bill of costs, which shall be filed with the clerk of this Court within 14 days after the date of the decision in the case. Objections to the bill of costs must be filed with the clerk of this Court within 10 days after the date of filing the bill of costs.

(d) *Award*. The clerk of this Court shall prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate on request by the clerk of this Court to the clerk of the trial court or the clerk of the Virginia Workers' Compensation Commission.

### **Rule 5A:31. Mandate.**

(a) *Time*. When there can be no further proceedings in the Court of Appeals or in the Supreme Court with respect to a decision of the Court of Appeals, the clerk of the Court of Appeals shall

forward its mandate promptly to the clerk of the court or commission from which the appeal proceeded.

(b) *Opinions.* If the judgment or order is supported by an opinion, a certified copy of the opinion shall accompany the mandate.

## **H. Rehearing.**

### **Rule 5A:32. Scope.**

The provisions of Rules 5A:33 through 5A:35 do not apply to the denial of a petition for appeal.

### **Rule 5A:33. Rehearing - On Motion of a Party After Final Disposition of a Case.**

(a) *Requirements for Pro Se Prisoners and By Leave of Court.* Pro se prisoners and those with leave of Court to proceed under this paragraph of the Rule desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case shall within 14 days following such decision or order, file seven copies of a petition for rehearing with the clerk of the Court of Appeals. The petition for rehearing shall not exceed 5,300 words in length. All petitioners other than pro se prisoners and those with leave of Court to proceed under this paragraph of the Rule must follow the provisions of paragraph (b) of this Rule when filing a petition for rehearing.

(b) *Requirements for All Others.* Any party, other than pro se prisoners or those with leave of Court to proceed under paragraph (a) of this Rule, desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case shall, within 14 days following such decision, file a petition for rehearing with the clerk of the Court of Appeals.

(1) The petition shall be filed as a single Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail addressed to [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us) and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the decision or order sought to be reheard.

(2) The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 5,300 words. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall be included in the certificate of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us). If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file e-mail the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

(3) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition for rehearing.

(c) *Response.* No response to a petition for rehearing will be received unless requested by the Court of Appeals.

(d) *No Oral Argument.* No oral argument on the petition will be permitted.

(e) *Grounds.* No petition for rehearing will be granted unless one of the Judges who decided the case adversely to the petitioner determines that there is good cause for such rehearing. The clerk of the Court of Appeals shall notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

### **Rule 5A:34. Rehearing En Banc.**

(a) *Who May File.* Any party wishing to raise any issue decided by a panel of this Court must file a petition for rehearing en banc pursuant to this Rule.

(b) *Requirements for Pro Se Prisoners and By Leave of Court.* A pro se prisoner or a party who has leave of Court to proceed under this paragraph of the Rule aggrieved by a decision of a panel of this Court may file a petition for rehearing en banc within 14 days after the date of the order sought to be reheard. Twelve copies of any such petition shall be filed with the clerk of the Court of Appeals. The petition for rehearing en banc shall not exceed 5,300 words in length. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this paragraph of the Rule must follow the provisions of paragraph (c) of this Rule when filing a petition for rehearing en banc.

(c) *Requirements for All Others.*

(1) Except for petitions for rehearing en banc filed by pro se prisoners or by those with leave of Court to proceed under paragraph (b) of this Rule, the petition shall be filed as a single Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail addressed to [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us) and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the decision or order sought to be reheard.

(2) The petition must be formatted to print on a page 8 1/2 x 12 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 5,300 words. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall be included in the certificate of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by

cavpfr@courts.state.va.us. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

(3) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing en banc is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition.

(d) *Proceedings After Petition for Rehearing.* No answer to a petition for a rehearing en banc will be received unless requested by the Court of Appeals. A rehearing en banc on motion of the Court of Appeals shall be ordered no later than 20 days after the date of rendition of the order to be reheard. The clerk of the Court of Appeals shall promptly notify counsel for both parties of the action taken by this Court on the petition for rehearing en banc via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

### **Rule 5A:35. Procedure for Rehearing.**

(a) *Rehearing by a Panel.* When rehearing by a panel is granted on petition of a party, the clerk of the Court of Appeals shall notify all counsel promptly and the case will be placed on the docket for oral argument. When practicable, such a rehearing will be heard by the same panel that rendered the final decision in the case.

(b) *Rehearing En Banc.* When all or part of a petition for rehearing en banc is granted, the clerk of this Court shall notify all counsel promptly. The mandate entered is stayed as to all issues decided by the panel pending the decision of the Court en banc. The appeal is reinstated on the docket of the Court for oral argument only as to issues granted. Briefing and oral argument shall proceed in the same order as before the three judge panel. The Court of Appeals may require any party to whom rehearing en banc has been granted to file 20 copies of an appendix, prepared in conformity with the provisions of Rule 5A:25, with the clerk of the Court within such time as the Court of Appeals shall specify.

(1) *Issues Considered Upon Rehearing En Banc.* Only issues raised in the petition for rehearing en banc and granted for rehearing or included in the grant by the Court on its own motion are available for briefing, argument, and review by the en banc Court. The Court may grant a petition in whole or in part. Any issue decided by a panel of this Court not subject to a petition for rehearing en banc remains undisturbed by an en banc decision.

(2) Appellant's Opening Brief Upon Rehearing En Banc. The party who was the appellant before the panel of this Court shall file in the office of the clerk 20 copies of a brief, which shall not exceed 12,300 words in length. Such brief shall be filed within 21 days following the date of the order of this Court granting rehearing en banc, and shall be accompanied by a certificate that three copies were mailed or delivered to opposing counsel on or before the date of filing. The brief shall bear a white cover.

(3) Appellee's Answering Brief Upon Rehearing En Banc. The party who was the appellee before the panel of this Court may file in the office of the clerk 20 copies of an answering brief not to exceed 12,300 words in length, within 14 days after the opening brief has been filed. Three copies of appellee's answering brief shall be mailed or delivered to opposing counsel on or before the date the answering brief is filed. The brief shall bear a blue cover. Appellee may be heard orally whether or not the answering brief is filed.

(4) Appellant's Reply Brief Upon Rehearing En Banc. The party who was the appellant before the panel may file in the office of the clerk a reply brief, not to exceed 3,500 words, within 14 days after the answering brief has been filed. Twenty copies of the reply brief shall be filed. Three copies of such brief shall be mailed or delivered to opposing counsel on or before the date the answering brief is filed. The brief shall bear a green cover.

## **I. Settlement, Withdrawal, and Mediation.**

### **Rule 5A:36. Settlement or Withdrawal of Pending Appeal.**

When a case has been settled or the appeal withdrawn at any time after the notice of appeal has been filed, it shall be the duty of counsel to notify the clerk of the Court of Appeals by filing a written notice that the case has been settled or the appeal withdrawn. If counsel certifies that the terms of the settlement or withdrawal require further proceedings in the trial court, a single Judge of the Court of Appeals may approve entry of an order of remand.

### **Rule 5A:37. Appellate Settlement Conference in the Court of Appeals.**

(a) *Settlement Conference.* Upon motion or sua sponte, this Court may order counsel, and clients in appropriate cases, to participate in a settlement conference. An informal motion requesting a settlement conference may be filed at any time while the matter is on appeal and should state briefly why a settlement conference would be useful. The motion shall state whether all parties concur. If a party objects, that party shall file within 7 days a short response explaining the grounds for the objection. All motions and responses may be in letter format addressed to the clerk of this Court. If this Court orders a settlement conference, it will ordinarily be held by telephone conference call and, in the discretion of the settlement judge, may be held in person at a convenient location.

(b) *Settlement Judge.* A senior or retired appellate judge will conduct all settlement conferences at no cost to the litigants.

(c) *Excluded Cases.* No settlement conference shall be conducted in appeals of criminal judgments or orders terminating parental rights or in any other case arising under this Court's original jurisdiction.



(d) *Conferences.* Prior to participating in a settlement conference, all counsel shall consult with their respective clients about settlement options and ask for express authority to settle within any parameters acceptable to the client. The settlement judge may conduct more than one conference if, in his discretion, he deems it advisable. During a conference, the settlement judge may consult ex parte with counsel, or with counsel and that counsel's client, but shall not consult ex parte with any represented client without counsel's agreement.

(e) *Conference Orders.* A settlement conference, if ordered in a case, shall not automatically affect any time deadline otherwise applicable. The settlement judge, however, may direct the clerk of court to enter orders tolling any non-mandatory time deadline before or after the deadline has passed. If any party advises the settlement judge that all or part of an appeal has been settled, the settlement judge shall direct the parties to prepare and sign a settlement agreement setting forth all agreed-upon terms. Upon receiving a copy of the settlement agreement, the settlement judge shall thereafter direct the clerk of court to enter an order dismissing with prejudice all or part of the appeal subject to the agreement.

(f) *Confidentiality.* The provisions of the settlement agreement shall not be considered confidential except to the extent the agreement specifically requires it. No confidentiality provision, however, shall prejudice any party's ability to seek judicial enforcement of a settlement agreement. In any case in which a settlement conference does not result in a settlement agreement, no statement made during a settlement conference or in motions requesting a settlement conference or responses to such motions shall be disclosed by the settlement judge, the parties, or counsel to any (i) appellate judge who may be called upon to decide the merits of the appeal or any related appeal, or (ii) lower court judge who may be called upon to decide the merits of the case if remanded or the merits of any related case.

(g) *Cross-Appeals and Related Appeals.* Appeals and cross-appeals will ordinarily be addressed in a single settlement conference. At the discretion of the settlement judge, related appeals may be consolidated for settlement conference purposes.

\* \* \*

A Copy,

Teste:

Clerk