

RULES OF THE SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
E. PERFECTING THE APPEAL

Rule 5:17A. Petition for Review Pursuant to Code § 8.01-626; Preliminary Injunctions and Interlocutory Immunity Rulings.

(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, as provided for in Rule 5:1B, no later than 15 days after the circuit court enters the order to be reviewed.

(b) *Copy to Opposing Counsel.* — At the time the petition for review is filed, a copy of the petition must be served by email on counsel for the respondent, unless such counsel does not have, or does not provide, an email address—in which case a copy may be served by any method authorized under Rule 1:12.

(c) *Length and What the Petition for Review Must Contain.* —

(i) Except by permission of a Justice of this Court, a petition for review may not exceed the longer of 20 pages or 3,500 words. The petition for review must otherwise comply with the requirements for a petition for appeal in Rule 5:17(c), except as set out below.

(ii) The petition must be accompanied by a copy of the pertinent portions of the record of the lower tribunal(s), including the relevant portions of any transcripts filed in the circuit court and the order(s) entered by the lower tribunal(s) respecting the matter under review (“the record”). The copy of the record constitutes part of the petition for the purpose of paragraph (b) but does not count against the petition size limit.

(iii) The petition for review must contain a certificate:

(1) providing the names of all petitioners and respondents; the name, Virginia State Bar number, mailing address, telephone number, and e-mail address of counsel for each party; and the mailing address, telephone number, and e-mail address of any party not represented by counsel;

(2) certifying that a copy of the petition has been served on all opposing counsel and all parties not represented by counsel, and specifying the date and manner of service.

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

(4) certifying that the copy of the record being filed is an accurate copy of the record of the lower tribunal(s) and contains everything necessary for a review of the petition.

(d) *Number of Copies to File.* — For prisoners filing pro se and other petitioners exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of the petition need be filed.

(e) *Filing Fee.* — The petition must be accompanied by the filing fee required by statute, unless the petitioner files an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee. The clerk of this Court will file a petition for review that is not accompanied by such fee, but if the fee is not received by the clerk within 10 days, the petition for review will be dismissed.

(f) *Scope and Review.* — ~~(i) A petition for review of an order concerning an injunction may be considered by this Court regardless of whether the injunction at issue involves a preliminary or a permanent injunction. See Code § 8.01-626(i)-(iii). If review is sought from a final order that addresses issues in addition to injunctive relief, a petition for review must address only that part of the final order concerning injunctive relief. All other issues are governed by the normal rules and timetables that apply to appeals. If both a petition for review under Code § 8.01-626 and an appeal under § 8.01-670 are filed to challenge the same final order, the clerk of this Court will assign separate record numbers to the two proceedings.~~

~~(ii) The clerk will assign the petition for review to a panel of at least three Justices of the Court. A petition for review will be assigned by the clerk to a three-Justice panel of the Court. If a single Justice issues an order on such a petition as provided in Code § 8.01-626, that order will become a judgment of the Court upon the concurrence of at least three Justices.~~

(g) *Responsive Pleading.* — A respondent may file a response to a petition for review within ~~seven~~15 days of the date of service unless otherwise determined by the Court ~~specifies a shorter time frame~~. The response may not exceed the greater of 20 pages or 3,500 words. The Court may act on a petition for review without awaiting a response, but absent exceptional circumstances, the Court will not grant a petition for review without affording the respondent an opportunity to file a responsive pleading. The response must be filed in compliance with Rule 5:1B. If the respondent is exempt from electronic filing under Rule 5:1B(b), then one paper copy of the responsive pleading is to be filed.

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

Last amended by Order dated May 26, 2023; effective immediately.