

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday, the 10th day of November, 2022.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect are hereby amended, effective January 9, 2023.

Amend Rules 1:16, 1:26, 5:4, 5:30, 5A:19, 5A:20, 5A:21, 5A:23, 5A:25 and add Rule 3:14A, as follows:

Rule 1:16. Filing Format and Procedure.

(a) Except as provided in Rules 1:17, 3:3, 3A:23, 7A:7(c), and 8:8(f) pertaining to Electronically Filed Cases:

* * *

(2) Subdivision (a)(1) of this Rule does not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.

(3) All transcripts of proceedings, including any excerpt of a transcript filed as an exhibit, must be filed in the format of one transcript page per page. The filing of condensed, “minuscrit,” or multi-page transcripts is prohibited.

(b) No paper will be refused for failure to comply with the provisions of this Rule, but the clerk may require that the paper be redone in compliance with this Rule and substituted for the paper initially filed. Counsel must certify that the substituted paper is identical in content to the paper initially filed.

Rule 1:26. File Format Requirements for Pleadings, Motions, Notices, Briefs and Exhibits Sought to be Filed or Admitted in Electronic or Digital Form.

Any digital or electronic pleading, motion, notice, brief, exhibit or other material (“electronic document”) made part of any court record is a public record unless sealed by court order or otherwise provided by law. The party filing, offering, or seeking the admission of an electronic document must ensure that the document is (i) readily accessible in an unencrypted, non-proprietary, and open-source format or (ii) accompanied by the computer software necessary to view the document if it is encrypted or stored in a proprietary file format.

Rule 3:14A. Intervention by the Commonwealth where constitutionality of law challenged.

(a) *Intervention of right by the Commonwealth.* — In any civil action in any circuit court, the Court of Appeals, or the Supreme Court in which a party challenges the constitutionality of a statute or regulation of the Commonwealth or of a provision of the Constitution of Virginia, and in which no party is represented by the Office of the Attorney General, the Attorney General, on behalf of the Commonwealth, is entitled to intervene in the action.

(b) *Notice to the Attorney General.* — A party who files a pleading or written motion challenging the constitutionality of a statute or regulation of the Commonwealth or of a provision of the Constitution of Virginia must promptly (1) file with the court a notice stating the nature of the challenge and identifying the filing in which it was raised and (2) serve a copy of the notice and the filing on the Attorney General by certified or registered mail, return receipt requested, to Notices of Constitutional Challenges, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219, or by electronic mail to noticesofappeal@oag.state.va.us.

(c) *Time to Intervene.* — The Attorney General, on behalf of the Commonwealth, may intervene in such action by filing a motion to intervene within 30 days after being served with a copy of the notice required by subsection (b), unless the court extends the time to intervene.

(d) *Further proceedings.* — Before the expiration of the time to intervene in subsection (c), or if the party has failed to give the notice required by subsection (b) within 10 days after notice of such failure has been received by the party in writing, the court may reject the constitutional challenge but may not enter a final judgment holding the statute, regulation, or constitutional provision unconstitutional.

Rule 5:4. Motions and Responses; Orders.

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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(c) (motion for leave to file brief amicus curiae). Rehearings are not within the scope of this rule, but are governed by Rules 5:20 and 5:37.

Rule 5:30. Briefs Amicus Curiae.

(a) *Stage of proceedings.*— Subject to the requirements in this Rule, a brief amicus curiae may be filed during the petition, perfected appeal, and rehearing stages of the appellate proceedings in this Court, and in proceedings invoking this Court’s original jurisdiction.

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

(1) The United States of America; and

(2) The Commonwealth of Virginia.

(c) *Who Needs Leave of Court to File a Brief Amicus Curiae.* — Except as provided in paragraph (b) of this Rule, any person or entity seeking to file a brief amicus curiae must obtain leave of Court by motion. Such motion must:

(1) state whether the brief would be in support of a party (and if so, which party or parties), or in support of none of the parties;

(2) certify that the applicant has sought to obtain consent of all parties;

(3) state which, if any, of the parties has consented to the motion and whether a party that has not consented has stated an intention to file an opposition to the motion; and

(4) attach the proposed brief.

(d) *When a Brief Amicus Curiae Must Be Filed.* — A brief amicus curiae is timely if filed no later than 7 days after the principal brief or filing of the party supported. An amicus brief in support of neither party is timely if filed no later than 7 days after the opening brief or petition. Except by the Court’s permission, an amicus curiae may not file a reply brief.

(e) *What a Brief Amicus Curiae Must Contain.* — A brief amicus curiae must comply with the rules applicable to the brief or filing of the party supported. If a person or entity is filing an amicus brief in support of neither party, the brief amicus curiae must comply with the rules

applicable to the appellant or petitioner. The cover must identify the party or parties supported, if any.

(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.

(g) *Prohibition on Amicus Filings that Would Require Recusal.* — The Court may prohibit the filing of or strike an amicus brief that would result in the recusal of a Justice of this Court.

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

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(b) *Filing Time: Appeal as a Matter of Right.* — In cases when appeal lies as a matter of right to this Court, except as otherwise provided by statute or order of this Court, briefs must be filed as follows:

(1) The appellant must file the opening brief in the office of the clerk of this Court 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 must be filed in the office of the clerk of this Court within 30 days after filing of the opening brief, except in cases governed by Rule 5A:20(i).

(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 or guardian ad litem.

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

* * *

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

(f) *Citations to the record or Joint Appendix.* — When referencing a page of any item in the record, briefs must cite either the record-page number (e.g., “R. 1”), for cases in which an electronic record has been filed, or the appendix-page number (e.g., “J.A. 1”), for cases in which only a paper record has been filed. *See* Rule 5A:25(a). No appeal will be dismissed for failure to

comply with the citation provisions of this rule; however, the clerk of this Court may require that a document be redone in compliance with the citation requirements.

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

The opening brief of appellant must contain:

* * *

(c) Under a heading entitled “Assignments of Error,” the brief must list, clearly and concisely and without extraneous argument, the specific errors in the rulings below—or the issue(s) on which the tribunal or court appealed from failed to rule—upon which the party intends to rely, or the specific existing case law that should be overturned, extended, modified or reversed. An exact reference to the page(s) of the record or appendix where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken must be included with each assignment of error but is not part of the assignment of error. If the error relates to failure of the tribunal or court below to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the record or appendix where the alleged error has been preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

* * *

(3) Effect of Failure to Use Separate Heading or Include Preservation Reference. If the brief contains assignments of error, but the assignments of error are not set forth under a separate heading as provided in subparagraph (c) of this Rule, a rule to show cause will issue pursuant to Rule 5A:1A. If there is a deficiency in the reference to the page(s) of the record or appendix where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken—including, with respect to error assigned to failure of such tribunal to rule on an issue, an exact reference to the page(s) where the issue was preserved in such tribunal, specifying the opportunity that was provided to the tribunal to rule on the issue(s)—a rule to show cause will issue pursuant to Rule 5A:1A.

(d) A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the record or appendix. Any quotation from the record should be brief.

When the facts are in dispute, the brief must 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.

* * *

(i) Procedure for an *Anders* appeal. — If counsel for appellant finds the client's appeal to be without merit, counsel must comply with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *Akbar v. Commonwealth*, 7 Va. App. 611 (1989). In such an appeal, counsel must file (1) an opening brief that refers to anything in the record that might arguably support the appeal and that demonstrates 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 brief. The opening brief and the motion for leave to withdraw as counsel should specifically cite *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 as counsel until this Court considers the case in its entirety, including any supplemental briefing that may be filed. The appellee brief must be filed in the office of the clerk of this Court within 30 days after the filing of the supplemental brief or, if no supplemental brief is filed, within 30 days after the supplemental brief was due.

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

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

* * *

(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 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 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.

* * *

(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 record or appendix where the alleged cross-error has been preserved.

* * *

Rule 5A:23. Briefs Amicus Curiae.

(a) *Stage of proceedings.* — Subject to the requirements in this Rule, a brief amicus curiae may be filed during the petition, appeal, and rehearing stages of the appellate proceedings in this Court, and in proceedings invoking this Court’s original jurisdiction.

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

- (1) The United States of America; and
- (2) The Commonwealth of Virginia.

(c) *Who Needs Leave of Court to File a Brief Amicus Curiae.* — Except as provided in paragraph (b) of this Rule, any person or entity seeking to file a brief amicus curiae must obtain leave of Court by motion. Such motion must:

- (1) state whether the brief would be in support of a party (and if so, which party or parties) or in support of none of the parties;
- (2) certify that the applicant has sought to obtain consent of all parties;
- (3) state which, if any, of the parties has consented to the motion and whether a party that has not consented has stated an intention to file an opposition to the motion; and
- (4) attach the proposed brief.

(d) *When a Brief Amicus Curiae Must Be Filed.* — A brief amicus curiae is timely if filed no later than 7 days after the principal brief or filing of the party supported. An amicus brief in support of neither party is timely if filed no later than 7 days after the opening brief or petition. Except by the Court’s permission, an amicus curiae may not file a reply brief.

(e) *What a Brief Amicus Curiae Must Contain.* — A brief amicus curiae must comply with the rules applicable to the brief or filing of the party supported. If a person or entity is filing an amicus brief in support of neither party, the brief amicus curiae must comply with the rules

applicable to the appellant or petitioner. The cover must identify the party or parties supported, if any.

(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.

(g) *Prohibition on Amicus Filings that Would Require Recusal.* — The Court may prohibit the filing of or strike an amicus brief that would result in the recusal of a member of the Court who has been assigned to the case or in the recusal of a member of the en banc court from voting on whether to hear or rehear a case en banc.

Rule 5A:25. Appendix and Designations of Assignments of Error.

(a) *When Appendix Is Required.* —

(1) *Electronic Record.* No appendix is required in cases where the clerk of the trial court or other tribunal has filed the record electronically. In cases where no appendix is required, parties must still file with the clerk of this Court a statement of the assignments of error on the schedule specified in Rule 5A:25(d) below.

(2) *Paper record.* Unless otherwise ordered by the Court, an appendix must be filed in cases where the clerk of the trial court or other tribunal has filed a paper record. Where an appendix is required, it must be filed by the appellant no later than the time of filing the opening brief. No appendix is required of a *pro se* appellant who is incarcerated.

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Clerk