

Wednesday

22nd

December, 2004.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective immediately.

Amend Rule 2A:1 to read as follows:

**RULE 2A:1. Authorization; Definitions; Application.**

(a) These rules are promulgated pursuant to § 2.2-4026 of the Code of Virginia.

(b) All terms used in this part that are defined in Chapter 40, Article 1 of Title 2.2 are used with the definitions therein contained. In addition, the term "agency secretary" means the secretary of the agency or, if there be none, the executive officer or a member of the agency. Every agency may, by regulation, name some individual to perform the function of agency secretary. The term "party" means any person affected by and claiming the unlawfulness of a regulation or a party aggrieved who asserts a case decision is unlawful and any other affected person or aggrieved person who appeared in person or by counsel at a hearing, as defined in § 2.2-4001, with respect to the regulation or case decision as well as the agency itself.

(c) These rules shall apply to the review of, by way of direct appeal from, the adoption of a regulation or the decision of a case by an agency.

Amend Rule 2A:2 to read as follows:

**RULE 2A:2. Notice of Appeal.**

Any party appealing from a regulation or case decision shall file, within 30 days after adoption of the regulation or after service of the final order in the case decision, with the agency secretary a notice of appeal signed by him or his counsel. In the event that service of a case decision upon a party is accomplished by mail, 3 days shall be added to the 30-day period. Service under this Rule shall be consistent with § 2.2-4023 and, if made by mail, shall be sufficient if sent by registered or certified mail to the party's last address known to the agency. The notice of appeal shall identify the regulation or case decision appealed from, shall state the names and addresses of the appellant and of all other parties and their counsel, if any, shall specify the circuit court to which the appeal is taken, and shall conclude with a certificate that a copy of the notice of appeal has been mailed to each of the parties. Any copy of a notice of appeal that is sent to a party's counsel or to a party's registered agent, if the party is a corporation, shall be deemed adequate and shall not be a cause for dismissal of the appeal; provided, however, sending a notice of appeal to an agency's counsel shall not satisfy the requirement that a notice of appeal be filed with the agency secretary. The omission of a party whose name and address cannot, after due diligence, be ascertained shall not be cause for dismissal of the appeal. Any final agency case decision as described in § 2.2-4023 shall advise the party of the time for filing a notice of appeal under this Rule.

Amend Rule 5:22 to read as follows:

**RULE 5:22. Special Rule Applicable to Cases in Which Sentence of Death Has Been Imposed.**

(a) Upon receipt of a record pursuant to § 17.1-313B, 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 Filing Date). The case shall thereupon stand matured as if an appeal had been awarded to review the conviction and the sentence of death, and 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.

(b) Within 10 days after the Filing Date, counsel for the appellant shall file with the clerk of this Court assignments of error upon which he intends to rely for reversal of the conviction or review of the sentence of death. He 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(d)) shall apply to the appendix.

(c) 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.

(d) Except to the extent that a conflict with this Rule may arise (and 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.

(e) 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.

A Copy,

Teste:

Clerk