

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
G. PROCEDURE FOLLOWING PERFECTION OF APPEAL

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~~ 3 printed copies and an electronic copy of the appendix with the appellant's brief, and must serve ~~two copies~~ an electronic copy on counsel for each party separately represented. This Court may by order require the filing or service of a different number. The appendix shall be filed in the manner prescribed by the Guidelines and User's Manual, using the Virginia Appellate Courts eBriefs System (VACES). The Guidelines are located on the Court's website at www.courts.state.va.us/online/vaces/resources/guidelines.pdf.

~~(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, together with any additional parts the appellant considers germane. 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. [A sealed volume of the appendix must be filed in the manner prescribed by the Guidelines and User's Manual. The Guidelines are located on the Court's website at \[www.courts.state.va.us/online/vaces/resources/guidelines.pdf\]\(http://www.courts.state.va.us/online/vaces/resources/guidelines.pdf\).](#)

(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.

Last amended by Order dated April 10, 2015; effective July 1, 2015.