

## **VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday, the 2nd day of May, 2022.*

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect are hereby amended, effective July 1, 2022.

Amend Rules 5:17A, 5A:3, 5A:6, 5A:12, 5A:12A, 5A:13, and 5A:32 as follows:

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

(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) 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 days of the date of service unless 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.

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

(a) *Certain Filing Deadlines and Extensions*. — The times prescribed for filing a notice of appeal (Rules 5A:6 and 5A:11), a petition for appeal (Rule 5A:12), a petition for rehearing (Rule 5A:33), and a request for rehearing en banc (Rule 5A:34) are mandatory, except that an extension of the time to file a notice of appeal, a petition for rehearing, and a petition for rehearing en banc may be granted in the discretion of this Court on motion for good cause shown. 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 is computed from the date of the final judgment entered following such modification, vacation, or suspension.

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(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 on motion for good cause shown. Filing a motion for extension does not toll the applicable deadline.

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

(a) *Filing Deadline; Where to File*. — Except as otherwise provided by statute, no appeal will 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 transmits, mails, or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the trial 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 this Court must simultaneously file in the trial court an appeal bond if required by Code § 8.01-

676.1.

(a1) *Appeals from the Circuit Court.* — Pursuant to Rule 1:1B, if a circuit court vacates a final judgment, a notice of appeal filed prior to the vacatur order is moot and of no effect. A new notice of appeal challenging the entry of any subsequent final judgment must be timely filed. No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated.

(a2) *Appeal of Certified Questions or Multiple Claimant Litigation Act Orders.* — A notice of appeal is not required for a petition for appeal of a certified question under Code § 8.01-675.5(A) or an interlocutory appeal under Code § 8.01-267.8 of the Multiple Claimant Litigation Act.

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**Rule 5A:12. Petition for Appeal and Other Petitions for Discretionary Review.**

(a) *When the Petition Must be Filed.* — When an appeal to this Court does not lie as a matter of right, a petition for appeal, application for an appeal, or other authorized pleading seeking discretionary review (hereafter “petition”), as appropriate, must be filed with the clerk of this Court:

(1) not more than 10 days after entry of the trial court’s order in cases governed by Code § 8.01-267.8;

(2) not more than 15 days after entry of the trial court’s certification in cases governed by Code § 8.01-675.5(A);

(3) not more than 14 days after the filing of the notice of filing of transcripts in cases governed by Code §§ 19.2-398 (A) and (E);

(4) not more than 40 days after the filing of the record with this Court in cases governed by Code §§ 19.2-398 (B) and (C); and

(5) for any other discretionary appeal, within the time prescribed by the statute authorizing the appeal to the Court of Appeals.

(b) *Copy to Opposing Counsel.* — At the time the petition is filed, a copy of the petition must be transmitted, mailed, or emailed to all opposing counsel of record.

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**Rule 5A:12A. Reserved. This Rule was stricken by Order dated May 2, 2022.**

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

(a) *Filing Time.* — A brief in opposition to granting the petition may be filed with the clerk of this Court by the respondent within:

- (1) 7 days after the petition is served on counsel for the respondent in cases governed by Code § 8.01-267.8;
- (2) 7 days after the petition is served on counsel for the respondent in cases governed by Code § 8.01-675.5(A);
- (3) 14 days after the petition is filed in cases governed by Code §§ 19.2-398(A) and (E);
- (4) 21 days after the petition is served in cases governed by Code §§ 19.2-398(B) and (C); and
- (5) for any other discretionary appeal, any brief in opposition is due within the longer of 21 days or the time prescribed for such a response by the statute authorizing the appeal to the Court of Appeals.

Within the same time the respondent must transmit, mail, or deliver a copy of the brief in opposition to counsel for petitioner. Motions for an extension to this briefing deadline must be filed no later than 10 days after the expiration of the deadline. For the purpose of Rule 5A:13(a)(3) & (5), a petition is considered served three days from the date on which it was mailed, or one day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent.

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

The provisions of Rules 5A:33 through 5A:35 do not apply to the denial or dismissal of a petition in a discretionary appeal or decisions in pretrial appeals by the Commonwealth under Code § 19.2-398, for which no rehearing is permitted.

A Copy,

Teste:



Muriel H. Pinay  
Clerk