

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
A. GENERAL

Rule 5:1. Scope, Citation, Applicability, and General Provisions.

(a) *Scope of Rules.* Part Five governs all proceedings in the Supreme Court of Virginia.

(b) *Citation.* These Rules may be cited generally as the “Rules of the Supreme Court of Virginia” and specifically as “Rule 5:___.”

(c) *Definitions.*

(1) "clerk" means clerk of the court or commission from which an appeal is taken unless some other clerk is specified and, unless the context otherwise requires, includes a deputy clerk;

(2) "clerk of this Court" includes a deputy clerk;

(3) "counsel" has the definition given in Rule 1:5 and in this Part Five includes a party not represented by counsel;

(4) "counsel for the appellant" means one of the attorneys representing each appellant represented by an attorney and each appellant not represented by an attorney;

(5) "counsel for the appellee" means one of the attorneys representing each appellee represented by an attorney and each appellee not represented by an attorney. In an appeal from the State Corporation Commission, "counsel for the appellee" includes counsel for the Commission and, unless the Commonwealth is the appellant, the Attorney General;

(6) "Court of Appeals" means the Court of Appeals of Virginia;

(7) "opposing counsel" means, depending on the context, "counsel for the appellant" or "counsel for the appellee";

(8) "judge" means judge of the trial court, unless the context otherwise requires, or if the judge of the trial court is not available, any judge authorized to act under Rule 5:12;

(9) "judgment" includes an order or decree from which an appeal is taken;

(10) "trial court" means the circuit court from which an appeal is taken;

(11) the "date of entry" of any final judgment or other appealable order or decree is the date the judgment, order, or decree is signed by the judge.

(d) *Service.* Unless service or notice is otherwise specified in a given Rule, any paper or object filed with this Court must have included within it or appended to it a certificate of service or acceptance of service showing that a copy has been transmitted to all counsel and showing the date and manner of transmittal. If a word count is used, the certificate must also state the number of words (headings, footnotes, and quotations count

towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

(e) *Notice of Change of Address and Other Contact Information.* If an attorney has a change in mailing address, telephone number, facsimile number, or e-mail address any time after the filing of the notice of appeal, the attorney must immediately notify the clerk of this Court and all other counsel of record in writing. The notice must reference the style and record number of all cases pending before this Court.

(f) *Citing Unpublished Judicial Dispositions.* The citation of judicial opinions, orders, judgments, or other written dispositions that are not officially reported, whether designated as “unpublished,” “not for publication,” “non precedential,” or the like, is permitted as informative, but will not be received as binding authority. If the cited disposition is not available in a publicly accessible electronic database, a copy of that disposition must be filed with the brief or other paper in which it is cited.

(g) *Filings.* Every ~~paper~~ document or object filed with or transmitted to this Court must be filed or transmitted in compliance with these Rules. Originals or copies of ~~papers~~ documents or objects should not be filed with or transmitted to any justice of this Court, unless expressly authorized by the Court. A failure to comply with this prohibition may result in the imposition of penalties under Rule 5:1A.

Promulgated by Order dated Friday, April 16, 2018; effective June 15, 2018.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
A. GENERAL

Rule 5:1B. Electronic Filing.

(a) Record on Appeal. – If available, all components of the record on appeal must be filed in electronic form as provided in Rule 5:13A. If such a digital appellate record is not available, a paper record must be filed complying with Rules 5:10, 5:11, 5:13, and related provisions of these Rules.

(b) Electronic Filing of All Other Documents (“e-filing”). – All documents – other than the record on appeal – must be filed electronically, except for filings by pro se prisoners or a litigant who has been granted leave by the Court to file documents in paper form. Documents to be filed electronically include, but are not limited to, all notices, motions, pleadings, petitions, briefs, appendices, letters, exhibits, or other items to be filed or served during an appeal. All such documents must be filed with the clerk of this Court electronically, in Portable Document Format (referred to in these Rules as the “PDF” or “electronic version”). The electronic version must be filed in the manner prescribed by the Virginia Appellate Courts Electronic System (“VACES”) Guidelines and User's Manual, located on the Court's website at <https://eapps.courts.state.va.us/help/robo/vaces/index.htm#t=VACES.htm>.

(c) Service on Other Parties by Email. – An electronic version of any document filed in this Court pursuant to Rule 5:1B(b) must be served via email on all other parties on the date the document is filed with the Court or immediately thereafter, unless excused by this Court for good cause shown. An e-filed document must contain a certificate stating the date(s) of filing and of email service of the document. For any litigant exempted under Rule 5:1B from the requirement to file documents electronically, a paper copy of each document filed with the Court must be served upon all other parties – by mailing, delivery, or another means authorized in Rule 1:12 – on or before the date of filing, and must contain a certificate stating the date(s) and method(s) of service.

(d) Technical Problems with Electronic Filing. – A person who files a document electronically has the same responsibility as a person filing a document in paper form to ensure that the

document is timely and properly filed, complete, and readable. However, if a technical problem in the operation of the VACES system results in a failure to timely file an electronic document, counsel must provide to the clerk of this Court on the next business day all documentation that exists demonstrating the attempt to electronically file the document in the VACES system, any error message received in response to the attempt, documentation that the document was later successfully resubmitted, and a motion requesting that the Court accept the resubmitted document. In the event that filing was not available due to a VACES technical problem during the last filing hours of a business day, the office of the clerk of the Court is deemed to have been closed on that day solely with respect to that attempted filing and the provisions of Virginia Code § 1-210(B) and (C) apply to that particular attempted filing for purposes of computing the last day for performing any act in the judicial proceeding or the filing of any legal action.

(e) Copies. – No paper copies are to be filed for any e-filed documents. Where a paper document is filed by a party who is exempt from e-filing requirements pursuant to Rule 5:1B(b), only the original document need be filed, and no additional copies thereof may be filed.

(f) Signatures. – All documents filed pursuant to Part Five of these Rules must be signed by counsel for the filing party, or personally signed if the party is proceeding pro se. Documents that are filed electronically may be digitally signed using the conventional electronic signature “s/.” Otherwise, documents must contain a handwritten signature.

Promulgated by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
A. GENERAL

Rule 5:4. Motions and Responses; Orders.

(a) *Motions and Responses.* —

(1) Motions. All motions, except motions for the qualification of attorneys at law to practice in this Court, must be in writing and filed with the clerk of this Court, as provided for in Rule 5:1B. All motions must contain a statement by the movant that the other parties to the appeal have been informed of the intended filing of the motion. For all motions in cases in which all parties are represented by counsel – except motions to dismiss petitions for a writ of habeas corpus – the statement by the movant must also indicate whether the other parties consent to the granting of the motion, or intend to file responses in opposition.

(2) Responses. Opposing counsel may have 10 days after such motion is filed to file with such clerk a response to such motion, but this Court may act before the 10 days expire, if necessary. Once such a response is filed, no further pleadings in support of or in opposition to a motion may be filed without leave of Court.

~~(3) Number of Copies. An original and three copies of all motions or responses must be filed.~~

(4) Oral Argument. No motion will be argued orally except by leave of this Court.

(b) *Orders.* — Promptly after this Court has entered an order, the clerk of this Court must send a copy of the order to all counsel.

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(a)(3) (motion for leave to file brief amicus curiae). Rehearings are not within the scope of this rule, but are governed by Rules 5:20, 5:20A, and 5:37.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
A. GENERAL

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

(a) *Filing Deadlines.* – The times prescribed for filing the notice of appeal (Rules 5:9(a), 5:14(a), 5:21(a)(3), and 5:21(b)(2)), a petition for appeal (Rules 5:17(a) and 5:21(a)(6)), a petition for review pursuant to Code § 8.01-626 (Rule 5:17A) and a petition for rehearing (Rules 5:20 and 5:37), are mandatory. A single extension not to exceed thirty days may be granted if at least two Justices of the Supreme Court of Virginia concur in a finding that an extension for papers to be filed is warranted by a showing of good cause sufficient to excuse the delay.

(b) *Post-Trial Proceedings Below and Their Effect on the Notice of Appeal.* – The time period for filing the notice of appeal and the petition for 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 or a timely petition for rehearing is filed in the Court of Appeals. In any such case, the time for filing the notice of appeal and the petition for appeal is computed from the date of final judgment entered following such modification, vacation, or suspension, or from the date the Court of Appeals refuses a timely petition for rehearing or enters final judgment following the granting of such a petition.

(c) *How to File by Mail in a Timely Manner.* – Filing must be accomplished electronically as provided in Rule 5:1B. For any party exempt from the e-filing requirements under Rule 5:1B(b), any document required to be filed with the clerk of this Court is deemed to be timely filed if (1) it is transmitted expense pre-paid to the clerk of this Court by priority, express, registered, or certified mail via the United States Postal Service, or by a third-party commercial carrier for next-day delivery, and (2) if the official receipt therefor be exhibited upon demand of the clerk of this Court or any party and it shows such transmission or mailing within the prescribed time limits. This rule does not apply to documents to be filed in the office of the clerk of the trial court or clerk of the Virginia Workers' Compensation Commission or clerk of the State Corporation Commission.

(d) *Inmate Filing.* – A paper filed by an individual confined in an institution, including a prison, jail, or the Virginia Center for Behavioral Rehabilitation, is timely filed if deposited in the institution's internal mail system on or before the last day for filing. Timely filing of a paper by an individual confined in such an institution may be established by (1) an official stamp of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing, (2) an official postmark dated on or before the last day for filing, or (3) a notarized statement signed by an official of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing.

(e) *Extensions Generally.* – Except as provided in paragraph (a) of this Rule, a motion for an extension of time is timely if filed either within the original filing deadline or within any extension period specified by the governing rule. Filing the motion within the original filing deadline or within the specified extension period does not toll the original filing deadline or further extend the period of extension.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
A. GENERAL

Rule 5:6. Forms of Briefs and Other Papers.

(a) *Paper Size, Line Spacing, Font, and Margins.*

(1) Application. Electronic filing requirements, and exemptions therefrom, are specified in Rule 5:1B. Provisions of this Rule 5:6 apply to electronically filed documents, and to paper documents filed by persons exempted from e-filing requirements under Rule 5:1B(b).

(2) General Rules. Briefs, appendices, motions, petitions, and other papers documents must be formatted to appear on an 8-1/2 by 11-inch page with ~~may be printed or produced on screen by any process that yields~~ a clear black image on a white background ~~and, when printed, must be on 8-1/2 x 11-inch paper~~. Margins must be at least one inch on all four sides of each page.

(3) Specific Rules for Motions, Petitions, and Briefs. Except by leave of Court, all motions, petitions, and briefs, including footnotes, must use one of the font styles listed on the Court's website in at least 14-point type and must be printed on only one side of the page. Text may not be reduced and must be double spaced except for headings, assignments of error, quotations that exceed 49 words, and footnotes, which must be single spaced. Page numbers are required and may appear in either the top or bottom margin, but no text, including footnotes, is permitted in the one-inch margins. Page or word limits for motions, petitions, and briefs do not include the cover page, table of contents, table of authorities, or certificate.

(4) Specific Rules for the Appendix. The appendix may be printed using both sides of the page. Any transcript, including a deposition transcript, that is made a part of the appendix must be in 12-point type or larger. Any transcript contained in the appendix that fails to conform to the 12-point type requirement may be returned to counsel, and counsel will be required to promptly comply with this requirement in accordance with the instruction of this Court. The use of condensed or multi-page transcripts is prohibited. Page numbers are required and may appear in either the top or bottom margin.

(b) Binding and Cover Contents; Printing. ~~All briefs and appendices must be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco-fasteners, and the like are not acceptable.~~ The style of the case (with the name of the appellant stated first) and the record number of the case must be stated on the front cover of all briefs and appendices and, in addition, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address of counsel submitting the brief must be placed on the front cover of all briefs. For parties exempted from electronic filing requirements under Rule 5:1B(b), all documents to be filed must be printed with black text on 8-1/2 x 11-inch white paper. All briefs and appendices filed in paper form must be bound on the left margin in such a manner

as to produce a flat, smooth binding. The covers of documents filed in paper form must comply with the color requirements of Rule 5:31.

(c) *Effect of Non-compliance.* – No appeal will be dismissed for failure to comply with the provisions of this Rule; the clerk of this Court may, however, require that a document be redone in compliance with this Rule. Failure to comply after notice of noncompliance, however, may result in the dismissal of the case.

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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
B. ORIGINAL JURISDICTION

Rule 5:7. Petitions for Writs of Habeas Corpus, Mandamus, and Prohibition.

(a) *Petition for Writ of Habeas Corpus.* — An application to this Court for a writ of habeas corpus under its original jurisdiction must be by petition filed in the office of the clerk of this Court, [as provided for in Rule 5:1B](#).

(1) *When Petition Must be Filed.* The petition for a writ of habeas corpus challenging a criminal conviction or sentence, except as provided in Rule 5:7A for cases in which the death penalty has been imposed, must be filed within two years from the date of the final judgment in the trial court or within one year from either final disposition of the direct appeal in state court or the time for filing such appeal has expired, whichever is later. All other petitions for a writ of habeas corpus must be filed within one year after the cause of action accrues.

(2) *What the Petition Must Contain.* The petition must be notarized and must state whether the petitioner believes that the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing relevant authorities must accompany each petition. All petitions must comply with the requirements of Code § 8.01-655. Where a petition for a writ of habeas corpus is filed by counsel, counsel must [attach file](#) as an exhibit a single copy of the complete record of the proceedings that resulted in the detention the petition challenges. The record must comply with the form and content requirements of Rule 5:7(a)(5), and counsel may seek leave to provide less than the complete record as provided for in Rule 5:7(a)(6).

(3) *Service of Petitions; Service of Papers after Initial Process.* Except as provided herein, service of process must be accomplished in accordance with Chapter 8 of Title 8.01. Service of all papers filed after the petition must be accomplished in accordance with Rule 1:12.

(i) *Non-Public Officials.* A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent.

(ii) Public Officials. When habeas corpus is directed to a public official, service must be made on the respondent and must also be made on or accepted by the Attorney General or an Assistant Attorney General. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent.

(iii) Prisoners Pro Se. In cases brought by prisoners pro se, a copy of the petition must be forwarded to the respondent by first class mail, and the application must contain a certificate at the end stating as follows:

I hereby certify that on the ____ day of _____,
20____, I mailed a copy of the foregoing application to the
respondent(s), _____, by first class mail.

Petitioner

(4) When to Respond to a Petition; Reply. No responsive pleading to a petition filed by a prisoner acting pro se is required except as ordered by this Court. For all other petitions, a responsive pleading must be filed with the clerk of this Court within forty days after service of the petition. The deadline for counsel for the petitioner to file a reply to a responsive pleading is 30 days from the date the responsive pleading is due.

(5) Contents of the Response. In one responsive pleading, the respondent may move to dismiss on any appropriate ground, including the failure to state facts upon which relief should be granted, and, in the alternative, may set forth grounds of defense as in an action at law. The answer must state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities must accompany each responsive pleading. In any case in which the respondent states an opinion that the taking of evidence is not necessary for the proper disposition of a petition for a writ of habeas corpus, the respondent must [attach file](#) as separate exhibits:

(i) a single copy of the complete record of the proceedings that resulted in the detention the petition challenges, provided that such complete record has not previously been provided by counsel for petitioner. When criminal proceedings resulted in the challenged detention, the record of those proceedings must include:

(1) a copy of the documents and exhibits filed or lodged in the office of the clerk of the trial court;

(2) a copy of each instruction marked “given” or “refused” and initialed by the judge;

(3) a copy of each exhibit offered in evidence, whether admitted or not, except for drugs, guns and other weapons, ammunition, blood vials and other bio-hazard type materials, money, jewelry, articles of clothing, and bulky items such as large graphs and maps;

(4) a copy of each order entered by the trial court;

(5) a copy of any opinion or memorandum decision rendered by the judge of the trial court;

(6) a copy of any transcript that was filed with the circuit court, or a copy of any videotape recording of any proceeding in those circuit courts authorized by this Court to use videotape recordings.

(7) These records must be compiled as follows:

(a) with a table of contents listing each paper included in the record and the page on which it begins;

(b) each paper constituting a part of the record in chronological order;

(c) each page of the record must be numbered at the bottom; and

(d) transcripts and exhibits may be included in separate volumes or envelopes identified by the table of contents, except that any exhibit that cannot be conveniently placed in a volume or envelope must be identified by a tag. Each such volume or envelope must include, on its cover or inside, a descriptive list of exhibits contained therein.

(ii) copies of any other document on which the respondent relies to assert that the taking of evidence is not necessary.

(6) Leave to respond without providing a complete record. In any case in which the respondent states an opinion that the complete record of the proceedings that resulted in the detention the petition challenges is not necessary for the proper disposition of the petition, the respondent may move for leave to provide less than all of the record. Such leave must be sought no later than 14 days prior to the filing of a responsive pleading. In

any case where leave is granted, the Court may direct the respondent to provide any additional portion of the record at any time.

(7) Length. Except by permission of a Justice of this Court, no petition, including the accompanying memorandum of law, or a response thereto, including its accompanying memorandum of law, may exceed the longer of 50 ~~printed~~ pages or 8,750 words. No reply filed to a responsive pleading may exceed the longer of 10 ~~printed~~ pages or 1,750 words. Page and word limits do not include appendices, exhibits, cover page, table of contents, table of authorities, and certificate.

(8) Number of Copies. ~~Four copies of the petition, responsive pleading, memoranda of law, reply of the petitioner, and motions must be filed in the office of the clerk of this Court. Prisoners filing pro se are only required to file three copies.~~ For prisoners filing pro se and other petitioners exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of a petition and any other document need be filed.

(9) Calling up the Record. If this Court determines that any portion of the underlying trial or appellate record is necessary for a proper determination of the merits of the petition, the clerk of this Court is authorized to request the record and, to the extent necessary, the preparation of any transcripts, and the clerk of the trial court, commission, or the Court of Appeals as appropriate must prepare the requested transcripts and transmit it forthwith upon request without the necessity of an order.

(b) *Petitions for Writs of Mandamus and Prohibition.* — An application for a writ of mandamus or a writ of prohibition under the original jurisdiction of this Court must be by petition filed in the office of the clerk of this Court, as provided for in Rule 5:1B.

(1) What the Petition Must Contain. The petition must be notarized and must state whether the petitioner believes that the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing relevant authorities must accompany each petition.

(2) Service of Petitions; Service of Papers after Initial Process.

(i) Generally. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent. Except in cases brought by prisoners acting pro se, service of process must be accomplished in accordance with Chapter 8 of

Title 8.01. Service of all papers filed after the petition must be served in accordance with Rule 1:12.

(ii) Prisoners Pro Se. In cases brought by prisoners pro se, a copy of the petition must be forwarded to the respondent by first class mail, and the application must contain a certificate at the end stating as follows:

I hereby certify that on the ____ day of _____,
20____, I mailed a copy of the foregoing application to the
respondent(s), _____, by first class mail.

Petitioner

(3) Limitations for Petitions for Mandamus. A petition for writ of mandamus filed by or on behalf of a person confined in a state correctional facility must be brought within one year after the cause of action accrues.

(4) Petitions for Mandamus or Prohibition Against a Judge. A petition for writ of mandamus or writ of prohibition against a judge must not bear the name of the judge but must be entitled, "In re, Petitioner." When the Attorney General determines, with the concurrence of the judge, that it is impracticable or unnecessary for the Attorney General to represent the judge, the judge may be represented pro forma by counsel for the party opposing the relief, who must appear in the name of the party and not that of the judge. Or, in the alternative, the Attorney General may provide for the appointment of special counsel to represent the judge, in accordance with the provisions of Code §§ 2.2-507 or 2.2-510.

(5) When to Respond to a Petition; Reply. No responsive pleading is required for a petition filed by a prisoner acting pro se except as ordered by this Court. For all other petitions, a responsive pleading must be filed with the clerk of this Court within 21 days after service of the petition or the filing thereof, whichever date is later. The deadline for counsel for the petitioner or a pro se petitioner to file a reply to a responsive pleading is 14 days from the date the responsive pleading is due.

(6) Contents of the Response. In one responsive pleading, the respondent may move to dismiss on any appropriate ground, including the failure to state facts upon which relief should be granted, and, in the alternative, may set forth an answer as in an action at law. The answer must state whether, in the opinion of the respondent, the taking of evidence is

necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities should accompany each responsive pleading.

(7) Length. Except by permission of a Justice of this Court, no petition, including the accompanying memorandum of law, or a response thereto, including its accompanying memorandum of law, may exceed the longer of 50 ~~printed~~ pages or 8,750 words. No reply filed to a responsive pleading may exceed the longer of 10 ~~printed~~ pages or 1,750 words. This page or word limit does not include appendices, exhibits, cover page, table of contents, table of authorities, and certificate.

(8) Number of Copies. ~~Four copies of the petition, responsive pleading, memoranda of law, reply of the petitioner, and motions must be filed in the office of the clerk of this Court. Prisoners filing pro se are only required to file three copies.~~ For prisoners filing pro se and other petitioners exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of a petition and any other document need be filed.

(c) *When this Court May Act on a Petition.* — This Court may act on any petition for a writ of habeas corpus, mandamus, or prohibition before a responsive pleading or reply of the petitioner is filed. This Court may by order shorten the period within which a responsive pleading must or reply may be filed.

(d) *Further Proceedings on Petitions.* — Further proceedings will be in accordance with the orders of this Court or a Justice thereof to whom this Court may delegate authority to determine all procedural matters. If this Court or the designated Justice determines that evidence is desirable, (1) depositions may be taken according to a schedule agreed upon by counsel and filed in the office of the clerk of this Court or, in the absence of agreement, according to a schedule determined by this Court or the designated Justice, or (2) the Court may order the circuit court in which the judicial proceeding resulting in petitioner's detention occurred to conduct an evidentiary hearing. Such hearings will be limited in subject matter to the issues enumerated in the order. The circuit court must conduct such a hearing within 90 days after the order has been received and must report its findings of fact to this Court within 60 days after the conclusion of the hearing. The Court may extend these deadlines upon a motion filed by either party and supported by good cause. Any objection to the report must be filed in this Court within 30 days after the report is filed.

(e) *Amendment of Petition.* — If the statute of limitations has not expired, a petitioner may move – at any time before a ruling is rendered on the merits of the petition as initially filed – for leave of this Court to substitute an amended petition. This amendment can include additional claims not presented in the petition as initially filed. Any such motion must attach a copy of the proposed amended petition.

(f) *Filing Fee.* – The petition must be accompanied by either (i) the filing fee required by statute, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee. For mandamus petitions filed by pro se inmates, the Court may require the petitioner to provide a certified copy of the petitioner’s inmate trust account for the preceding 12 months.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
B. ORIGINAL JURISDICTION

Rule 5:7A. Petitions for Writs of Habeas Corpus in Cases in Which the Sentence of Death Has Been Imposed.

In cases in which the sentence of death has been imposed:

(a) *Petition for the Writ.* – A petition for a writ of habeas corpus must be filed as provided for in Rule 5:1B in the office of the clerk of this Court within 60 days after the earliest of: (i) the denial by the Supreme Court of the United States of a petition for a writ of certiorari to the judgment of this Court on direct appeal, (ii) an order of the Supreme Court of the United States affirming imposition of the sentence of death in a case in which that Court granted a writ of certiorari to review the judgment of this Court on direct appeal, or (iii) the expiration of the period for filing a petition for a writ of certiorari in the Supreme Court of the United States without such a petition being filed.

(b) *Contents of Petition for Writ.* – Each petition for a writ of habeas corpus must be verified and must include an enumerated list of the grounds asserted for relief together with all supporting facts upon which the petitioner relies. The petition must contain citation to the relevant legal authorities and an enumeration of all previous petitions and their disposition. The petition must state whether, in the opinion of the petitioner, the taking of evidence is necessary for the proper disposition of the petition. The petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof upon the Attorney General of Virginia or by an acceptance of service signed by the Attorney General or an Assistant Attorney General.

(c) *Response.* – Within 30 days after service of the petition, the Attorney General must file with the clerk of this Court a responsive pleading, which may include a motion to dismiss. The response should include citation to the relevant legal authorities and must state whether, in the opinion of the Attorney General, the taking of evidence is necessary for the proper disposition of the petition.

(d) *Reply.* – Within 20 days after the Attorney General's responsive pleading is filed pursuant to subparagraph (c), the petitioner may file a reply.

~~(e) *Copies to be Filed.*—Ten copies of the petition, the Attorney General's responsive pleading, and the petitioner's reply must be filed in the office of the clerk of this Court.~~

~~(f) *Motions.* – Upon the filing of any motion other than a motion to dismiss included in a responsive pleading filed pursuant to subparagraph (c) of this Rule, or upon the filing of an objection pursuant to Code § 8.01-654(C)(3), the opposing party may file a response within ten days of the filing of the motion or objection, or within such time as this Court may order.~~

~~(g) *Length.* – Except by permission of a justice of this Court, no petition for a writ of habeas corpus or a response thereto may exceed the longer of 100 pages or 17,500 words,~~

and no reply to a response may exceed the longer of 50 pages or 8,750 words. Page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. All petitions, responses, replies, motions, and other papers filed pursuant to this Rule must conform to the provisions of Rule 5:6(a). If counsel wishes to file a petition or response in excess of the page or word limit prescribed in this paragraph, a motion to exceed the page or word limit must be filed with the clerk of this Court at least 10 days before the due date for the petition or response. If the motion is denied, or if no timely motion to exceed the page or word limit is filed, any pages in the petition or response that exceed the page or word limit, except the signature and certificate of service, will be stricken and not considered by this Court.

(hg) *Further Proceedings by Order of this Court.* – Further proceedings will be conducted in accordance with the orders of this Court. If it is determined that an evidentiary hearing is necessary for the proper disposition of the petition, this Court will enter an order directing the circuit court that entered the judgment imposing the sentence of death to conduct such a hearing in accordance with the provisions of Code § 8.01-654(C)(1), (2), and (3).

(ih) *Amendment of Petition.* – If the statute of limitations has not expired, a petitioner may move – at any time before a ruling is rendered on the merits of the petition as initially filed – for leave of this Court to substitute an amended petition. This amendment can include additional claims not presented in the petition as initially filed. Any such motion must attach a copy of the proposed amended petition.

(i) *Filing Fee.* – If the petitioner is not represented by court-appointed counsel, the petition must be accompanied by the filing fee required by statute, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
B. ORIGINAL JURISDICTION

Rule 5:7B. Petition for a Writ of Actual Innocence.

(a) *Who may File a Petition.* – A petition for a writ of actual innocence based upon previously unknown or untested human biological evidence may be filed by any person who has been convicted of a felony upon a plea of not guilty, or who was adjudicated delinquent upon a plea of not guilty by a circuit court of an offense that would be a felony if committed by an adult, or by any person, regardless of plea, who has been sentenced to death, or convicted or adjudicated delinquent of a class 1 felony, a class 2 felony or any felony for which the maximum penalty is imprisonment for life.

(b) *Time for Filing.* – A petition under this Rule must be filed in the office of the Clerk of this Court, as provided for in Rule 5:1B, within 60 days after the date upon which exculpatory test results are obtained by the petitioner or his counsel of record from the Department of Forensic Science for any tests conducted on human biological evidence pursuant to Code § 19.2-327.1.

(c) *Contents of the Petition.* – Each petition for a writ of actual innocence must be filed on a form provided by this Court and must be verified under oath. The petition must state categorically and with specificity: (i) the offense or offenses for which petitioner was convicted or adjudicated delinquent, including all previous records, applications, petitions, and appeals relating to these convictions or adjudications of delinquency, and their dispositions; (ii) that the petitioner is actually innocent of the crime or crimes for which he was convicted or adjudicated delinquent; (iii) an exact description of the human biological evidence and the scientific testing supporting the allegation of innocence, attaching a copy of the test results; (iv) that the human biological evidence was not known or available to the petitioner or his attorney at trial, or if it was known, why it was not subject to scientific testing; (v) the earliest date the test results described in the petition became known to the petitioner or any attorney of record; (vi) that the petitioner or his attorney has filed the petition within 60 days of obtaining the test results; (vii) an explanation of the reason or reasons the evidence will prove that no rational trier of fact would have found the petitioner guilty or delinquent beyond a reasonable doubt of the offense or offenses for which the petitioner was convicted or adjudicated delinquent; and (viii) if the conviction or adjudication of delinquency became final in the circuit court after June 30, 1996, that the evidence was not available for testing under Code § 9.1-1104.

(d) *Service of the Petition and Return of Service.* – Prior to filing a petition, the petitioner must serve the petition, along with all attachments, on the Attorney General and on the Commonwealth's Attorney for the jurisdiction where the conviction or adjudication of delinquency occurred. The petitioner must file with the petition either (i) a duly executed return of service in the form of a verification that a copy of the

petition and all attachments have been served, or (ii) an acceptance of service signed by either or both of the parties to be served, or (iii) a combination of the two.

(e) *Filing Fee.* – The petition must be accompanied by either (i) ~~a check or money order for~~ the filing fee required by statute, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee.

(f) *Response.* – The Attorney General must respond to the petition as follows:

(1) Within 30 days after service of the petition, the Attorney General must file with the clerk of this Court, as provided for in Rule 5:1B, a pleading in the form of a declaration stating, in the opinion of the Attorney General, with an explanation of the reasons therefor, whether the record of any trial or appellate proceedings involving the conviction or convictions, or adjudication or adjudications of delinquency, or of any proceedings under Code § 19.2-327.1, is necessary for preparation of a response to the petition. If the Attorney General asserts that the record, or any part thereof, of any trial or appellate court proceedings is necessary, the Attorney General should request the production of such record by this Court, and must describe with specificity, including the court, docket number and date of judgment, each and every record or part thereof which is requested.

(2) If the Attorney General asserts in the declaration required by subparagraph (f)(1) of this Rule that no trial or appellate court record, or any part thereof, is necessary for the preparation of a responsive pleading to the petition, the Attorney General must file with the clerk of this Court within 30 days thereafter a pleading in response to the petition. Any pleading in response filed by the Attorney General may include a motion to dismiss. The response must include citation to any relevant legal authorities, and may contain a proffer of any evidence pertaining to the guilt of the petitioner that is not included in the record of the case, including any evidence that was suppressed at trial.

(3) If the Attorney General asserts in the declaration required by subparagraph (f)(1) of this Rule that a trial or appellate court record, or any part thereof, is necessary for the preparation of a response to the petition, the court must issue the writ of certiorari described in Code § 19.2-327.3(D) to the clerk of the respective court below for the production of the record forthwith to the clerk of this Court. Upon receipt of the record by the clerk of this Court, the clerk must immediately notify in writing the petitioner, any attorney for the petitioner, the Attorney General, and the attorney for the Commonwealth of the jurisdiction where the conviction or convictions or adjudication or adjudications of delinquency occurred, of the date of receipt of the record. Within 30 days after receipt of the record by the clerk of this Court, the Attorney General must file the responsive pleading described in subparagraph (f)(2) of this Rule.

(g) *Reply*. – Within 20 days after the Attorney General's responsive pleading is filed pursuant to subparagraph (f) of this Rule, the petitioner may file a reply.

(h) *Copies to be Filed*. – ~~Ten copies of the petition, and the Attorney General's responsive pleading, and the petitioner's reply, if any, must be filed in the office of the clerk of this Court.~~ 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 and reply need be filed.

(i) *Further Proceedings by Order of this Court*. – Further proceedings will be conducted in accordance with the orders of this Court. If this Court determines that an evidentiary hearing is necessary for the proper disposition of the petition, this Court may order that the circuit court conduct a hearing within 90 days after the order has been issued to certify findings of fact with respect to such issues as this Court directs. The record and certified findings of fact of the circuit court must be filed with the clerk of this Court within 30 days after the hearing is concluded. The Court may extend these deadlines upon a motion filed by either party and supported by good cause.

(j) *Appointment of Counsel*. – In any petition filed pursuant to and in compliance with this Rule, petitioner is entitled to the appointment of counsel subject to the provisions of Code § 19.2-157 et seq. Any request for counsel in this Court must be made on the form provided by this Court, entitled REQUEST FOR COUNSEL – PETITION FOR A WRIT OF ACTUAL INNOCENCE, and must include: (i) all the information required by the in forma pauperis affidavit attached to the request for appointment of counsel, and (ii) an attested copy of the order of the circuit court ordering that testing of human biological evidence on the petitioner's behalf be conducted by the Department of Forensic Science pursuant to Code § 19.2-327.1.

(k) *Duty of Counsel*. – Any attorney(s) appointed to represent a petitioner pursuant to Code § 19.2-327.1 is deemed to be counsel of record for petitioner for all purposes and proceedings under this Rule until a final order of this Court is issued pursuant to Code § 19.2-327.5, or until counsel is relieved or replaced by other counsel by leave of this Court.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
D. PROCEDURE FOR FILING AN APPEAL FROM THE COURT OF APPEALS

Rule 5:14. Notice of Appeal; Certification.

(a) *Notice of Appeal.* – No appeal from a judgment of the Court of Appeals which is subject to appeal to this Court will be allowed unless, within 30 days after entry of final judgment or order denying a timely petition for rehearing, a notice of appeal is filed with the clerk of the Court of Appeals, [as provided for in Rule 5A:1](#).

(b) *Notice of Certification.* – Whenever this Court may certify a case pending in the Court of Appeals for review by this Court, notice of certification must be given by the clerk of this Court to all counsel and to the clerk of the Court of Appeals. A case certified for review by this Court will proceed as if a petition for appeal had been granted by this Court on the date of the certification for review, except as otherwise ordered.

(c) *Bail Pending Appeal in Criminal Cases.* – In criminal cases, either party may appeal an order of the Court of Appeals affirming, reversing, or modifying a circuit court order regarding bail pending appeal as provided by this Rule, Rule 5:15 and Rule 5:17.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF 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; Injunctions.

(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, within 15 days of:

(i) an order of a circuit court that grants an injunction, refuses an injunction, or dissolves or refuses to enlarge an existing injunction; or

(ii) an order of the Court of Appeals deciding a petition for review filed in that court pursuant to Code § 8.01-626.

(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. ~~At the same time that the petition is served, a copy of the petition must also be emailed to counsel for the respondent~~, unless said 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. ~~With the agreement of the parties, the petition may be served on counsel for the respondent solely by email.~~

(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 15 pages or 2,625 words. The petition for review must otherwise comply with the requirements for a petition for appeal in Rule 5:17(c).

(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 injunction (hereafter "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, facsimile number (if any), and e-mail address of counsel for each party; and the mailing address, telephone number, facsimile number (if any), 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, 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 therefrom necessary for a review of the petition.

(d) *Number of Copies to File.* — ~~Four copies of the petition, including the record of the lower tribunal(s), must be filed. Only one copy of the record of the lower tribunal(s) need be filed if, upon filing the petition, counsel for the petitioner also files an electronic copy of the said record as an Adobe Acrobat Portable Document Format (PDF) document on a CD-ROM.~~ 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 ~~a check or money order payable to the clerk of this Court for the amount~~ the filing fee required by statute, unless the appellant files an in forma pauperis affidavit demonstrating that he cannot afford the filing fee. The clerk of this Court may file a petition for review that is not accompanied by such fee if the fee is received by the clerk within 5 days of the date the petition for review is filed. If the fee is not received within such time, the petition for review will be dismissed.

(f) *Scope and Review.* —

(i) a petition for review may be considered by this Court whether the lower court's order, or that part of the order dealing with the injunction, is temporary or permanent. If review is sought from a final order that deals with injunctive relief and other issues, a petition for review must address only that part of the final order that actually addresses 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 may be considered by a single Justice of this Court, or by a panel of Justices.

(g) *Responsive Pleading*. — A respondent may file a response to a petition for review within seven days of the date of service of same, unless the Court specifies a shorter time frame. The response may not exceed the greater of 12 pages or 2,100 words. For the purpose of this rule, a petition for review is considered served 3 days from the date on which it was mailed, or 1 day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent. Notwithstanding the foregoing, the Court may act on a petition for review without awaiting a response; however, 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.

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

Rule 5:17. Petition for Appeal.

(a) *When the Petition Must be Filed.* – Unless otherwise provided by rule or statute, in every case in which the appellate jurisdiction of this Court is invoked, a petition for appeal must be filed with the clerk of this Court, as provided for in Rule 5:1B, within the following time periods:

(1) in the case of an appeal direct from a trial court, not more than 90 days after entry of the order appealed from; or

(2) in the case of an appeal from the Court of Appeals, within 30 days after entry of the judgment appealed from or a denial of a timely petition for rehearing.

(b) *Who Must Receive a Copy of the Petition.* – When the petition for appeal is filed with the clerk of this Court, a copy of the petition must be served on opposing counsel.

(c) *What the Petition Must Contain.* – A petition for appeal must contain the following:

(1) Assignments of Error. Under a heading entitled “Assignments of Error,” the petition 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 transcript, written statement of facts, or record 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. 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 where the issue was preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

(i) Effect of Failure to Assign Error. Only assignments of error assigned in the petition for appeal will be noticed by this Court. If the petition for appeal does not contain assignments of error, the petition will be dismissed.

(ii) Nature of Assignments of Error in Appeals from the Court of Appeals. When appeal is taken from a judgment of the Court of Appeals, only assignments of error relating to assignments of error presented in, and to actions taken by, the Court of Appeals may be included in the petition for appeal to this Court. If the error relates to failure of the Court of Appeals to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the petition, briefs or record where the issue was preserved in that Court and, if applicable, the place(s) in the disposition by the Court of Appeals where it failed or refused to rule on such issue(s).

(iii) Insufficient Assignments of Error. An assignment of error that does not address the findings, rulings, or failures to rule on issues in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. An assignment of error in an appeal from the Court of Appeals to the Supreme Court which recites that "the trial court erred" and specifies the errors in the trial court, will be sufficient so long as the Court of Appeals ruled upon the specific merits of the alleged trial court error and the error assigned in this Court is identical to that assigned in the Court of Appeals. If the assignments of error are insufficient, the petition for appeal will be dismissed.

(iv) Effect of Failure to Use Separate Heading or Include Preservation Reference. If the petition for appeal contains assignments of error, but the assignments of error are not set forth under a separate heading as provided in subparagraph (c)(1) of this Rule, a rule to show cause will issue pursuant to Rule 5:1A. If there is a deficiency in the reference to the page(s) of the transcript, written statement of facts, or record 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) of the record 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 5:1A.

(2) Required Statements When the Appeal is from the Court of Appeals.

When appeal is taken from a judgment of the Court of Appeals in a case in which judgment is made final under Code § 17.1-410, the petition for appeal must contain a statement setting forth in what respect the decision of the Court of Appeals involves the following:

- (i) a substantial constitutional question as a determinative issue, or
- (ii) matters of significant precedential value.

If the petition for appeal does not contain such a statement, the appeal will be dismissed.

(3) Table of Contents and Table of Authorities. A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities must include the year thereof.

(4) Nature of the Case and Material Proceedings Below. A brief statement of the nature of the case and of the material proceedings in the trial court or commission in which the case originated. This statement should omit references to any paper filed or action taken that does not relate to the assignments of error.

(5) Statement of Facts. A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the record, transcript, or written statement of facts. Any quotation from the record should be brief. When the facts are in dispute, the petition 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.

(6) Authorities and Argument. With respect to each assignment of error, the standard of review and the argument – including principles of law and the authorities

– must be stated in one place and not scattered through the petition. At the option of counsel, the argument may be preceded by a short summary.

(7) Conclusion. A short conclusion stating the precise relief sought.

(d) *Filing Fee Required With the Petition.* – When it is filed, the petition for appeal must be accompanied by ~~a check or money order payable to the "Clerk of the Supreme Court of Virginia" for the amount~~ the filing fee required by statute, unless the appellant is represented by court-appointed counsel or the appellant files an in forma pauperis affidavit demonstrating that he cannot afford the filing fee. The clerk of this Court may file a petition for appeal that is not accompanied by such fee if the fee is received by the clerk within 10 days of the date the petition for appeal is filed. If the fee is not received within such time, the petition for appeal will be dismissed.

(e) *Number of Copies to File.* – ~~Seven copies of the petition must be filed with the clerk of this Court.~~ 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.

(f) *Length.* – Except by leave of a Justice of this Court, a petition must not exceed the longer of 35 pages or 6,125 words. The page or word limit does not include the cover page, table of contents, table of authorities, and certificate.

(g) *Use of a Single Petition in Separate Cases.* – Whenever two or more cases were tried together in the court or commission below, one petition for appeal may be used to bring all such cases before this Court even though the cases were not consolidated below by formal order.

(h) *Procedure for an Anders appeal.* – If counsel for appellant finds appellant's appeal to be without merit, counsel must comply with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *Brown v. Warden of Virginia State Penitentiary*, 238 Va. 551, 385 S.E.2d 587 (1989). In compliance therewith, counsel is required to file (1) a petition for appeal which refers to anything in the record which might arguably support the appeal and which demonstrates to this Court 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 petition for appeal. The petition for appeal and the motion for leave to withdraw as counsel should specifically cite to *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 until this Court considers the case in its entirety, including any supplemental petition for appeal that may be filed.

(i) *What the Certificate Must Contain.* – The appellant must include within the petition for appeal a certificate stating:

(1) the names of all appellants and appellees, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel for each party, and the mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of any party not represented by counsel;

(2) that a copy of the petition for appeal has been mailed or delivered on the date stated therein to all opposing counsel and all parties not represented by counsel;

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

(4) in a criminal, sexually violent predator, termination of parental rights, ease or habeas corpus appeal, a statement whether counsel for defendant has been appointed or privately retained; and

(5) whether the appellant desires to state orally to a panel of this Court the reasons why the petition for appeal should be granted, and, if so, whether in person or by conference telephone call.

When filed through VACES, a petition for appeal need not contain a separate certificate as long as the information contained in this subsection (i) is provided through the electronic filing process.

(j) *Oral Argument.*

(1) Right to Oral Argument. The appellant is entitled to state orally, in person or by telephone conference call, to a panel of this Court the reasons why the petition for appeal should be granted. The appellee is not entitled to oral argument, whether in person or by telephone conference call. Any lawyer not licensed in Virginia who seeks to appear pro hac vice to present oral argument to the Court must comply with the requirements of Rule 1A:4.

(2) Waiver of Right to Oral Argument. The appellant may waive the right to oral argument on the petition for appeal before a panel by notifying the clerk of this Court and opposing counsel in writing, or by filing a reply brief.

(3) No Oral Argument on Pro Se Inmate's Petition. If an appellant is not represented by counsel and is incarcerated, the petition for appeal may be considered by this Court without oral argument.

(4) Notice of Oral Argument. If the appellant has requested oral argument, notice of the date and time of such argument will be provided to counsel for the appellant or to any pro se appellant and to counsel for the appellee or any pro se appellee who has filed a Brief in Opposition or otherwise appeared in the appeal.

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

Rule 5:18. Brief in Opposition.

(a) *Filing Time.* – A brief in opposition to granting the appeal may be filed with the clerk of this Court, as provided for in Rule 5:1B, by the appellee within 21 days after petition for appeal is served on counsel for the appellee. Within the same time the counsel for appellee must ~~mail or deliver~~ send a copy to counsel for appellant. ~~Seven copies must be filed.~~ For any appellee exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of the brief need be filed.

(b) *Form and Content.* – The brief in opposition must conform in all respects to the content requirements for the brief of appellee in Rule 5:28. However, the brief in opposition need not be bound or have a blue cover. Except by leave of a Justice of this Court, the brief may not exceed the longer of 25 pages or 4,375 words. If the brief exceeds 10 pages or 1,750 words, it must contain a table of contents and table of authorities with cases alphabetically arranged. ~~The brief in opposition must be signed by at least one counsel of record.~~

(c) *Assignments of cross-error.* – The brief in opposition may include assignments of cross-error. If the brief in opposition contains an assignment or assignments of cross-error, the cover of the brief must so indicate by being styled, “Brief in Opposition and Assignment of Cross-Error.”

(1) A cross-error must be assigned in the brief in opposition in order to be noticed by this Court.

(2) The provisions of Rule 5:25 apply to limit the assignments of cross-error which will be heard on the appeal.

(3) A brief in opposition containing assignments of cross-error must conform to the form, content, and maximum word requirements of paragraph (b) of this Rule.

(4) When an appellee assigns cross-error in the brief in opposition:

(i) this Court will not grant any assignment of cross-error unless it first decides to grant some or all of the assignments of error contained in the appellant’s petition for appeal.

(ii) the appellee is not be permitted to present oral argument to a writ panel.

(iii) if the appellant withdraws the petition for appeal, the appeal will be dismissed without consideration of the cross-error assigned by an appellee.

(d) *Expedited Review.* – When it clearly appears that an appeal ought to be granted without further delay, an appeal may be granted before the filing of the brief in opposition.

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

Rule 5:19. Reply Brief.

(a) When a brief in opposition to the petition for appeal has been filed, the appellant may, within 7 days thereafter, in lieu of oral argument, file with the clerk of this Court, as provided for in Rule 5:1B, a reply brief not to exceed the longer of 15 pages or 2,625 words in length. Seven copies must be filed.

(b) When cross-error is assigned in a brief in opposition, the appellant may, without waiving oral argument, file with the clerk of this Court, as provided for in Rule 5:1B and within 14 days after filing of the brief in opposition, a reply brief not in excess of 10 pages or 1,750 words which addresses only the cross-error. ~~Seven copies must be filed.~~

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

Rule 5:20. Petition for Rehearing After Refusal of Petition for Appeal, Refusal of Assignments of Cross-Error, or Disposition of an Original Jurisdiction Petition.

(a) *Scope.* – This Rule governs requests for rehearing of the refusal or dismissal of a petition for appeal filed pursuant to Rule 5:17, the refusal of one or more assignments of cross-error, or the disposition of an original jurisdiction petition filed pursuant to Rule 5:7, Rule 5:7A, or Rule 5:7B.

(b) *Time to File.* — (1) Petition for Rehearing After Refusal or Dismissal of Petition for Appeal. — When a petition for appeal is either refused or dismissed, in whole or in part, the clerk of this Court will ~~mail~~ send a copy of the order denying the appeal, in whole or in part, to counsel for the appellant and counsel for the appellee. Counsel for the appellant may, within 14 days after the date of such order, file in the office of the clerk of this Court a petition for rehearing. If the petition for appeal is granted but one or more assignments of cross-error are refused, counsel for the appellee may, within 14 days after the date of that order, file in the office of the clerk of this Court a petition for rehearing.

(2) Petition for Rehearing after Disposition of Original Jurisdiction Petition. — When a petition filed pursuant to this Court’s original jurisdiction (habeas corpus, mandamus, prohibition, or actual innocence) is decided, the clerk of this Court will mail a copy of the order to counsel for the petitioner and counsel for the respondent. Counsel for either party may, within 30 days after the date of this order, file in the office of the clerk of this Court a petition for rehearing.

(c) *Filing Requirements.* — Except for petitions for rehearing filed by pro se prisoners or with leave of this Court, a petition for rehearing must be filed electronically, as provided for in Rule 5:1B.

(1) ~~Requirements for Electronic Filing.~~ — (i) ~~The petition for rehearing must be filed as a Portable Document Format (PDF) document attached to an e-mail addressed to sevpfr@vacourts.gov and will be timely filed if received by the clerk’s office on or before 11:59 p.m. on the date due.~~

(ii) ~~The petition for rehearing must be formatted in compliance with the requirements of Rule 5:6(a) and must not exceed the greater of 10 pages or a word count of 1,750 words. The petition must include a certificate of service to opposing counsel and the certificate must specify the manner of service and the date of service, which must be via email unless opposing counsel does not have, or does not provide, an email address. The petition must also include a certificate of compliance with the word count limit. ~~The petition will be considered filed on the date and time that it is received by sevpfr@vacourts.gov. If the petition does not meet the requirements of~~~~

~~this rule as to format, the clerk will so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed.~~

~~(iii) A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Supreme Court result in a failure to timely receive the electronically filed petition for rehearing, counsel must provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.~~

~~(iv) The e-mail message to which the petition for rehearing is attached must recite in the subject line the style of the case and the Supreme Court record number. The e-mail message must contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Supreme Court record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel. The message must also state whether a copy of the petition for rehearing has been served by e-mail or another means on opposing counsel and the date of such service. If opposing counsel has an e-mail address, that address must also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will automatically be forwarded to counsel seeking the rehearing.~~

(2) Requirements When Paper Filing is Allowed. – ~~(i)~~ The petition for rehearing may not exceed the greater of 10 pages or 1,750 words in length and must be formatted in compliance with the requirements of Rule 5:6(a). The petition for rehearing must state that a copy has been mailed or delivered to counsel for the appellee.

~~(ii) Two copies must be filed.~~

(d) *Oral Argument and Responsive Brief.* — Oral argument on the petition for rehearing will not be allowed. No responsive brief may be filed unless requested by this Court.

(e) *Incorporation of Facts or Arguments.* — Attempts to incorporate facts or arguments from the petition for appeal or original jurisdiction petition are prohibited.

(f) *Notification of Action on the Petition.* — The clerk of this Court will notify counsel for all parties of the action taken by this Court on the petition for rehearing via e-mail, if e-mail addresses have been provided, or via U.S. Mail to any counsel or party who has not provided an email address.

(g) *Attorney's Fees.* — Upon denial of a petition for appeal and any petition for rehearing, any appellee who has received attorney's fees and costs in the circuit court may make application in the circuit court for additional fees and costs incurred on appeal pursuant to Rule 1:1A.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
F. SPECIAL RULES

Rule 5:21. Special Rules Applicable to Certain Appeals of Right.

(a) *Appeals from the State Corporation Commission.* —

(1) **Applicability.** Paragraph (a) of this Rule applies to all appeals from the State Corporation Commission and supersedes all other Rules except as otherwise specified herein.

(2) **Party to the Commission Proceeding.** For the purposes of paragraph (a), the Commission, the Attorney General, the applicant or petitioner, and every person who made an appearance in person or by counsel in a capacity other than as a witness at any hearing in any proceeding before the Commission are the parties to such proceeding. Any party who is aggrieved by any final order, judgment, or finding of the Commission, or part thereof, is entitled to an appeal to this Court upon perfecting the appeal as provided by paragraph (a). Upon the request of any party, the clerk of the Commission must prepare and certify a list of all parties (including their addresses and the names and addresses of their counsel) to a proceeding before the Commission. Service upon a party represented by counsel must be made upon his counsel.

(3) **Notice of Appeal.** No appeal from an order of the Commission will be allowed unless the aggrieved party files a notice of appeal in the office of the clerk of the Commission within 30 days after entry of the order appealed from. A copy of the notice of appeal must be mailed or delivered to each party to the Commission proceeding, including the Attorney General of Virginia, and an acceptance of such service or a certificate showing the date of delivery or mailing must be appended thereto. All appeals from the same order will be deemed to be a consolidated case for the purpose of oral argument in this Court unless this Court orders a severance for convenience of hearing.

(4) **Record.** The clerk of the Commission must prepare and certify the record as soon as possible after a notice of appeal is filed and must, as soon as it has been certified by him, transmit the record to the clerk of this Court within 4 months after entry of the order appealed from. In the event of multiple appeals in the same case or in cases tried together below, only one record need be prepared and transmitted.

(5) **Contents of Record.** The record on appeal from the Commission consists of all notices of appeal, any application or petition, all orders entered in the case by the Commission, the opinions, the transcript of any testimony received, and all exhibits

accepted or rejected, together with such other material as may be certified by the clerk of the Commission to be a part of the record. The record must conform as nearly as practicable to the requirements of Rule 5:10.

(6) Petition for Appeal. (a) Only a party who has filed a notice of appeal in compliance with paragraph (a)(3) of this Rule may file a petition for appeal. A party filing a notice of appeal must file a petition for appeal, accompanied by the prescribed filing fee, in the office of the clerk of this Court, as provided for in Rule 5:1B, within 120 days after entry of the final order, judgment or finding by the Commission and, prior to the filing of the petition must ~~mail or deliver~~ send a copy to every other party to the Commission proceeding.

(b) Except as provided herein, the provisions of Rule 5:17 do not apply to a petition filed pursuant to this subparagraph. The petition for appeal must identify the order appealed from and the date of the order, contain assignments of error, and include the certificate required by Rule 5:17(i) (when filed through VACES, a petition for appeal need not contain a separate certificate as long as the information contained in subsection (i) is provided through the electronic filing process).

(c) Oral argument on the petition will not be allowed nor will a brief in opposition be received. If the petition prays for a suspension of the effective date of the order appealed from, it must contain an assignment of error regarding the effective date of the order appealed from and such statements of the facts and argument as may be necessary for an understanding of this assignment of error. In that event, a brief in opposition will be received. The brief in opposition must be filed, as provided for in Rule 5:1B, within 15 days of the filing of the petition for appeal, may be no longer than 10 pages or 1,750 words, and may only address the assignment of error regarding the effective date of the order appealed from. Oral argument on the assignment of error regarding the effective date of the order appealed from may be granted.

(7) Assignments of Error. The assignments of error must be listed under a heading entitled "Assignments of Error." The assignments of error must clearly and concisely and without extraneous argument identify the specific errors in the rulings below upon which the party intends to rely. A clear and exact reference to the pages of the transcript, written statement of facts, or record where the alleged error has been preserved must be included with each assignment of error. Only errors so assigned will be noticed by this Court and no error not so assigned will be considered as grounds for reversal of the decision below. No ruling by the Commission will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice. An assignment of error which merely states that the judgment is contrary to the law and the evidence is not sufficient.

(8) Award of Appeal. When the notice(s) of appeal, the record, and the petition(s) for appeal have been filed in the manner provided herein and within the time provided herein and by law, the clerk of this Court must forthwith enter an order docketing the

appeal, requiring such bond as the clerk may deem proper. The clerk's action is subject to review by this Court.

(9) Notice of Participation in an Appeal. Within 21 days after an appeal from a Commission order has been docketed as provided in subparagraph (8), any party to the Commission proceeding who did not file a notice of appeal may file a notice of participation with the clerk of this Court. The notice must identify whether the party seeks to be an appellant or appellee. If there is more than one appellant, the notice of participation as an appellant must identify the specific appellant(s) with which the participating appellant will align. Participating parties must follow the briefing schedule and requirements of subparagraph 10, except that a participating party may not raise any additional assignments of error or cross-error. The notice of participation as appellant or appellee must be mailed or delivered to every other party to the Commission proceeding.

Every party who has not filed a notice of appeal or notice of participation, or having filed a notice of appeal does not file a petition as provided herein, will not be a party to the appeal and no further papers need be served on such party. Notwithstanding the foregoing provision, a necessary party who does not file a notice of appeal, petition or notice of participation is deemed an appellee. The Commission need not file a notice of participation and will be deemed an appellee.

(10) Further Proceedings. Further proceedings in this Court must conform to Rules 5:23 through 5:38 provided that (i) the time within which the appellee may file with the clerk of this Court a designation of the additional parts of the record that the appellee wishes included in the appendix (Rule 5:32(b)) is extended to 30 days after the date of the certificate of the clerk of this Court, pursuant to Rule 5:23, has been awarded; and (ii) the time within which the opening brief of the appellant(s) must be filed in the office of the clerk of this Court is extended to 50 days after such date.

(11) Withdrawal or Settlement of Pending Appeal. A party who filed a notice of and petition for appeal may withdraw his appeal. Notice of withdrawal or settlement must conform to Rule 5:38. Settlement or withdrawal of an appeal terminates that appellant's appeal and any participating party aligned with that appellant is deemed to have withdrawn its participation in the settled or withdrawn appeal.

(b) *Appeals from the Virginia State Bar Disciplinary Board or a Three-Judge Circuit Court Determination.* —

(1) Applicability. Paragraph (b) of this Rule applies to appeals from the Virginia State Bar Disciplinary Board, pursuant to Part 6, § IV, Paragraph 13-26 of the Rules of the Supreme Court of Virginia, and to appeals from the decisions of a three-judge circuit court pursuant to Code § 54.1-3935. As used in this paragraph, "Respondent" is defined as the attorney who is appealing the decision of the disciplinary proceeding.

(2) Perfecting the Appeal.

(i) Provisions for Appeals from the Virginia State Bar Disciplinary Board. No appeal will be allowed under this paragraph unless the Respondent files a notice of appeal and assignments of error with the clerk of the Disciplinary System within 30 days after the Memorandum Order is served on the attorney by certified mail, return receipt requested, at the attorney's last address on record for membership purposes with the Virginia State Bar. At the same time the Respondent files a notice of appeal and assignments of error, a copy of the notice of appeal and assignments of error must be sent to the counsel for the Bar and the Attorney General of Virginia. The Respondent is responsible for filing a transcript in compliance with Rule 5:11. The date of the Memorandum Order is the date from which the time limits contained in Rule 5:11 run. This action within the time prescribed is mandatory. Upon timely compliance with these rules, the Clerk of the Supreme Court will docket the appeal as provided in Rule 5:23.

(ii) Provisions for Appeals from a Three-Judge Circuit Court. No appeal will be allowed under this paragraph unless the Respondent files a notice of appeal and assignments of error with the clerk of the three-judge circuit court within 30 days after the entry of the final judgment and, at the same time, ~~ma~~ails serves a copy of the notice of appeal and assignments of error ~~to~~on counsel for the Bar and the Attorney General of Virginia by any method authorized under Rule 1:12. The Respondent is responsible for filing a transcript in compliance with Rule 5:11. The date of the judgment is the date from which the time limits contained in Rule 5:11 run. This action within the time prescribed is mandatory. Upon timely compliance with these rules, the Clerk of the Supreme Court will docket the appeal as provided in Rule 5:23.

(3) Record on Appeal. The clerk of the Disciplinary System or the clerk of the three-judge circuit court must compile and transmit the record as set out in Rules 5:10, 5:11, and 5:13. The clerk must immediately notify by certified mail the Respondent, and the Respondent's counsel, if any, and the Attorney General of the date the record is filed with the clerk of this Court. At the time the record is filed, the clerk must also notify the clerk of this Court and the Respondent whether the Attorney General or Bar Counsel will represent the interests of the Commonwealth as appellee.

(4) Time for Filing Briefs and Appendix. The parties must designate the contents of the appendix pursuant to the requirements of Rule 5:32 and the Respondent is responsible for filing the appendix pursuant to that Rule. The Respondent must file the opening brief in the office of the clerk of this Court within 40 days after the date the record is filed. The opening brief must contain assignments of error and references to the pages of the appendix, transcript, written statement, or record where each assignment of error was preserved. The brief of the appellee must be filed in the office of the clerk of this Court within 25 days after the filing of the Respondent's opening brief. The Respondent may file a reply brief within 14 days after the filing of the appellee's brief. All briefs and the appendix must conform to the provisions of Rules 5:26 through 5:32.

(5) Stay Pending Appeal. The Respondent may file a motion with the clerk of this Court requesting a stay pending appeal of an order suspending or revoking the

Respondent's license. The Respondent must file four copies of the motion for stay along with a copy of the order imposing the suspension or revocation and a copy of the Respondent's notice of appeal, which must contain the date stamp of the clerk showing the date the notice of appeal was filed. Any order of Admonition or Public Reprimand is automatically stayed prior to or during the pendency of an appeal of the order.

(6) Procedure on Appeal. Except as provided in this paragraph, further proceedings will be as provided in this Court's procedure following the perfection of an appeal set out in Rules 5:23, 5:25, and Rules 5:33 through 5:38.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
F. SPECIAL RULES

Rule 5:22. Special Rule for Appeals in Death Penalty Cases.

(a) *Notice of Receipt of Record.* — Upon receipt of a record pursuant to § 17.1-313 B, the clerk of this Court must notify in writing counsel for the accused in the circuit court (who is deemed to be counsel for the appellant), the Attorney General (who is deemed to be counsel for the appellee), and the Director of the Department of Corrections of the date of its receipt. The date of the receipt of the record is the Filing Date and the case thereupon stands matured as if an appeal had been awarded to review the conviction and the sentence of death.

(b) *Stay of Sentence of Death.* — Upon the Filing Date, the notice issued by the clerk of this Court is 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 is thereby stayed pending the final determination of the case by this Court.

(c) *Filing of Assignments of Error and of the Appendix.* — Within 30 days after the Filing Date, counsel for the appellant must file with the clerk of this Court, as provided for in Rule 5:1B, assignments of error upon which the appellant intends to rely for reversal of the conviction or review of the sentence of death. Counsel for the appellant must 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 must include in the appendix the parts so designated. The provisions of Rules 5:31 and 5:32 (except Rule 5:32(b)(1) and (b)(3)) apply to the appendix.

(d) *Assigning Error to the Sentence of Death.* — With respect to the sentence of death, it is 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.

(e) *Requirements for Briefs.* — All briefs and the appendix must be filed in compliance with Rule 5:1B.

(1) Brief of Appellant and Appendix. The appellant must file the opening brief, which may not exceed the longer of 100 pages or 17,500 words, and the appendix, in the office of the clerk of this Court within 60 days after the Filing Date.

(2) Brief of the Appellee. The appellee must file its brief, which may not exceed the longer of 100 pages or 17,500 words, in the office of the clerk of this Court within 120 days after the Filing Date.

(3) Reply Brief of the Appellant. The appellant must file the reply brief, which may not exceed the longer of 50 pages or 8,750 words, in the office of the clerk of this Court within 140 days after the Filing Date. The page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. There will be no exception to these limits except by permission of this Court on motion for extension of the limits.

(f) *Compliance with Rules for Perfected Appeals.* — Except to the extent that a conflict with this Rule may arise, in which case this Rule will then be controlling, further proceedings in the case must conform to the Rules relating to cases in which an appeal has been perfected.

(g) *Varying Procedure to Attain the Ends of Justice.* — 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.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

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

Rule 5:26. General Requirements for All Briefs.

(a) *Applicability.* -- This Rule, along with Rule 5:6, sets forth the general requirements for all briefs filed in this Court. Rule 5:22 sets forth the special rule for appeals in death penalty cases. All briefs and the appendix must be filed in compliance with the requirements of Rule 5:1B.

(b) *Length.* — Except by permission of a Justice of this Court, neither the opening brief of appellant, nor the brief of appellee, nor a brief amicus curiae may exceed the longer of 50 pages or 8,750 words. No reply brief may exceed the longer of 15 pages or 2,625 words. Briefs of amici curiae must comply with the page limits that apply to briefs of the party being supported. The page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. There will be no exception to these limits except by permission of this Court on motion for extension of the limits.

(c) *Filing Time.* — In cases in which a petition for appeal has been granted by this Court, briefs must be filed subject to the provisions of Rule 5:1(d), as follows:

(1) The appellant must file the opening brief and appendix in the office of the clerk of this Court within 40 days after the date of the certificate of appeal issued by the clerk of this Court pursuant to Rule 5:23.

(2) The brief of appellee must be filed in the office of the clerk of this Court within 25 days after filing of the opening brief.

(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.

(d) *Extension of Time.* — Upon motion and with permission of a Justice of this Court, the time for filing any brief in this Court may be altered.

~~(e) *Copies for Filing.* — An electronic version, in Portable Document Format (PDF), must be filed with the clerk of this Court and served on opposing counsel, unless excused by this Court for good cause shown. An electronic version of a brief amicus curiae must be filed with the clerk of this Court and served on counsel for all parties and on any other counsel amicus curiae. The electronic version must be filed in the manner prescribed by the VACES Guidelines and User's Manual, using the Virginia Appellate Courts eBriefs System (VACES). The Guidelines are located on the Court's website at <http://www.vacourts.gov/online/vaces/resources/guidelines.pdf>. In addition, 3 printed copies of each brief (including a brief amicus curiae) must be filed in the office of the~~

~~clerk of this Court. All briefs must contain a certificate evidencing the date and method of electronic transmission of the brief to opposing counsel.~~

(~~f~~e) *Reference to Parties.* — In their briefs, counsel should avoid reference to parties by such designations as “appellant” and “appellee.” Clarity is promoted by the use of the names of the parties or descriptive terms such as “the employee,” “the injured person,” “the driver,” “the wife,” or the designations used in the lower court or commission.

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

(~~h~~g) *Signature and Certificate.* — All briefs must contain the signature, which need not be in handwriting, of at least one counsel of record, counsel’s Virginia State Bar number, address, telephone number, facsimile number (if any), and email address, and a certificate that there has been compliance with this Rule. If a word count is used, the certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

(~~i~~h) *Failure to File Complying Brief.* — Any party who fails to file a brief in compliance with these Rules or otherwise fails to file a required brief may be subject to sanctions deemed reasonable by the Court, including, but not limited to, forfeiture of oral argument.

~~(j) *Technical Problems with Electronic Filing of Brief or Appendix.* — A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Supreme Court result in a failure to timely receive the electronically filed brief or appendix, counsel must provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to electronically file the brief or appendix, any error message received in response to the attempt, documentation that the brief or appendix was later successfully resubmitted, and a motion requesting that the Court accept the resubmitted brief or appendix.~~

Last amended by Order dated April 1, 2021; effective June 1, 2021.

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

Rule 5:31. Covers of Documents.

(a) *What Covers Must Be Used on Papers Filed with this Court.* — Where a party has been exempted from electronic filing requirements under Rule 5:1B(b), ¶to facilitate identification, documents must bear covers colored as follows:

Document	Color of Cover
Appendix	Red
Brief of the Appellant	White
Brief of the Appellee	Blue
Reply Brief of the Appellant	Green
Brief Amicus Curiae	Gray
Petition for Rehearing	Yellow

(b) *Effect of failure to comply.* — No appeal will be dismissed for failure to comply with the provisions of this Rule.

Promulgated by Order dated Friday, April 30, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

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 must 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 3 printed copies and an electronic copy of the appendix with the appellant's brief, and must serve 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 must 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 <http://www.vacourts.gov/online/vaces/resources/guidelines.pdf>.~~

(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 must 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 materials in the appendix, then, in order to maintain the confidentiality of the materials, counsel must designate the sealed materials 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 <http://www.vacourts.gov/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 must advance the cost of including such parts. The cost of producing the appendix may be taxed as costs in the case, but if any party causes 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 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
H. DECISION, COSTS, AND MANDATE

Rule 5:35. Attorney's Fees, Costs, and Notarized Bill of Costs.

(a) *To Whom Allowed.* — Except as otherwise provided by law, if an appeal is dismissed, costs will be taxed against the appellant unless otherwise agreed by the parties or ordered by this Court; if a judgment is affirmed, costs will be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs will be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs may be allowed as ordered by this Court.

(b) *Attorney's Fees.* — (1) Refusal or Dismissal of Petition for Appeal. Upon refusal or dismissal of a petition for appeal and any petition for rehearing, any appellee who has received attorney's fees and costs in the circuit court may make application in the circuit court for additional fees and costs incurred on appeal pursuant to Rule 1:1A.

(2) Attorney Fees in Domestic Relations and Other Family-Law Proceedings Where Authorized by Statute.

(A) Attorney Fees in Domestic Relations and Family-Law Proceedings Where Authorized by Statute. (1) In any case in which attorney fees are recoverable under Title 16.1, Title 20, or Title 63.2, a party may request an award of fees incurred in the appeal of the case by including a prayer for such recovery in the Opening Brief or the Reply Brief of Appellant, or in the Brief of Appellee.

(B) Upon the making of a request for attorney fees as set forth in (b) (1) above, and unless otherwise provided by the terms of a contract or stipulation between the parties, the Supreme Court may award to a party who has made such request, all of their attorney fees, or any part thereof, or remand the issue as directed in the mandate order for a determination thereof. Such fees may include the fees incurred by such party in pursuing fees as awarded in the circuit court.

(C) In determining whether to make such an award, the Supreme Court is not limited to a consideration of whether a party's position on an issue was frivolous or lacked substantial merit but may consider all the equities of the case.

(D) Where the appellate mandate remands the issue to the circuit court for an award of reasonable attorney fees, in determining the reasonableness of such an award the circuit court may consider all relevant factors, including but not limited to, the extent to which the party was a prevailing party on the issues, the nature of the issues involved, the

time and labor involved, the financial resources of the parties, and the fee customarily charged in the locality for similar legal services.

(c) *Taxable Costs*. — Costs, including the filing fee and costs incurred in the printing or producing of necessary copies of briefs, appendices, and petitions for rehearing, are taxable in this Court. Costs incurred in the preparation of transcripts may be taxable in this Court. See, Code § 17.1-128.

(d) *Notarized Bill of Costs*. — Counsel for a party who desires costs to be taxed must itemize them in a notarized bill of costs, which must be filed with the clerk of this Court, as provided for in Rule 5:1B, within 14 days after the date of the decision in the case. Objections to the bill of costs must be filed with the clerk of this Court within 10 days after the date of filing the bill of costs.

(e) *Award*. — The clerk of this Court must prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate will not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, will be added to the mandate on request by the clerk of this Court to the clerk of the tribunal in which the case originated.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
H. DECISION, COSTS, AND MANDATE

Rule 5:37. Petition for Rehearing After Consideration by the Full Court.

(a) *Scope.* – This Rule does not apply to the refusal or dismissal of a petition for appeal, or the refusal or dismissal of an original jurisdiction petition. See Rules 5:20 and 5:20A.

(b) *Notice of Intent.* — A party intending to apply for a rehearing must file written notice with the clerk of this Court, as provided for in Rule 5:1B, within 10 days after the date of the order or opinion of this Court deciding the case. If such notice is given, the clerk of this Court must withhold certification of the mandate until time for filing the petition for rehearing has expired and, if the petition is filed, until it is disposed of.

(c) *Requirements for Pro Se Prisoners or By Leave of Court.* — Unless the rehearing is abandoned, ~~20 copies of~~ a petition for rehearing not to exceed the longer of 10 pages or 1,750 words in length must be thereafter filed in the office of the clerk of this Court and ~~3 copies~~ a copy delivered or mailed to opposing counsel within 30 days after the date of the order of this Court deciding the case.

(d) *Requirements for All Others.* — ~~(1)~~ Except for petitions filed by pro se prisoners, or with leave of this Court, the petition for rehearing must be filed electronically, as provided for in Rule 5:1B. ~~as a Portable Document Format (PDF) document attached to an e-mail addressed to scvpfr@vacourts.gov and will be timely filed if received by the clerk's office on or before 11:59 p.m. within 30 days after the date of the order or opinion of this Court deciding the case.~~ The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 14-point font type or larger, must be double-spaced, and must not exceed the longer of 10 pages or 1,750 words. The petition must include a certificate of service to opposing counsel and the certificate must specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. ~~The petition will be considered filed on the date and time that it is received by scvpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk must so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at this Court result in a failure to timely receive the electronically filed petition for rehearing, counsel must provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to email the~~

~~petition, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.~~

~~(2) The e-mail message to which the petition is attached must recite in the subject line the style of the case and the Supreme Court record number. The e-mail message must contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Supreme Court record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel. The message must also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel must also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will automatically be sent to counsel seeking the rehearing.~~

(e) *Grounds for Granting.* — No petition for rehearing will be granted unless one of the Justices who decided the case adversely to the applicant determines that there is good cause for such rehearing. The proceedings upon such rehearing will be in accordance with Code § 8.01-675.2. No oral argument will be permitted on applications for rehearing.

(f) *When a Rehearing is Granted.* — When a rehearing is granted, the Court will determine whether any additional briefing or argument is necessary. Thereafter, the Court may direct the respondent to electronically file a brief, in compliance with paragraph (d) of this Rule, that may not exceed the longer of 15 pages in length or 2,625 words. After review of the petition for rehearing and the respondent's brief, if any is filed, the Court may set oral argument on the petition for rehearing at the next available session of the Court. Otherwise, the Court will issue a ruling on the rehearing without further briefing or oral argument.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
A. GENERAL

Rule 5A:1. Scope, Citation, Applicability and General Provisions.

(a) *Scope of Rules.* – Part Five A governs all proceedings in the Court of Appeals of Virginia (“this Court”).

(b) *Citation.* – These Rules may be cited generally as the “Rules of the Court of Appeals of Virginia” and specifically as “Rule 5A:___.”

(c) *Filings; Copies; Signatures; Service.* – (1) Filings. Except as otherwise provided, all documents to be filed in this Court must be filed electronically, in Portable Document Format (PDF), with the clerk of this Court and electronically served on opposing counsel. Pro se litigants may file by non-electronic means. Others may file by non-electronic means only by leave of Court. Electronic pleadings must be filed through the Virginia Appellate Courts Electronic System (“VACES”) in the manner prescribed by the Guidelines and User’s Manual. All electronic filings are governed by Rule 1:17.

(2) Copies. No paper copies are to be filed for any electronically filed documents. For paper filings, only the original document is required.

(3) Signatures. All documents filed pursuant to Part Five A of these Rules must be signed by counsel for the filing party, or personally signed if the party is proceeding pro se. Electronically filed documents may be signed digitally. Paper filings must contain a handwritten signature.

(4) Service. Unless service or notice is otherwise specified in a given Rule, any document or object filed with this Court must have included within it or appended to it a certificate of service or acceptance of service showing that a copy has been transmitted to all counsel and showing the date and manner of transmittal. If a word count limitation is required, the certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).

(d) Definitions. –

(1) "clerk of the trial court" means clerk of the trial court from which an appeal is taken to ~~the~~ this Court ~~of Appeals~~, and includes a deputy clerk and the clerk of the Virginia Workers' Compensation Commission when the context requires;

(2) "clerk of ~~the~~ this Court ~~of Appeals~~" includes a deputy clerk;

(3) "counsel" has the definition given in Rule 1:5 for Counsel of Record and in this Part Five A includes a party not represented by counsel and any attorney appointed as a guardian ad litem;

(4) "counsel for appellant" means one of the attorneys representing each appellant represented by an attorney, and each appellant not represented by an attorney;

(5) "counsel for appellee" means one of the attorneys representing each appellee represented by an attorney, and each appellee not represented by an attorney and includes a guardian ad litem, unless the guardian ad litem is the appellant;

(6) "opposing counsel" means, depending on the context, "counsel for the appellant" or "counsel for the appellee";

(7) "judge" means judge of the trial court, unless the context otherwise requires, or if he be not available, any judge authorized to act under Rule 5A:9;

(8) "judgment" includes an order or decree from which an appeal is taken;

(9) "File with the clerk" or "files with the clerk" or "filed with the clerk" means deliver to the clerk specified a paper document, a copy of which has been electronically transmitted, mailed or delivered to opposing counsel, and appended to which is either acceptance of service or a certificate showing indicating the date and manner of mailing or delivery such transmission. "File in the office of the clerk" or "files in the office of the clerk" or "filed in the office of the clerk" means, on the other hand, deliver a paper document to the clerk specified;

(10) "trial court" means the circuit court from which an appeal is taken to ~~the~~ this Court of Appeals;

(11) the "date of entry" of any final judgment or other appealable order or decree means the date the judgment, order, or decree is signed by the judge.

~~(d) *Service.* Unless service or notice is otherwise specified in a given Rule, any paper or object filed with this Court must have included within it or appended to it a certificate of service or acceptance of service showing that a copy has been transmitted to all counsel and showing the date and manner of transmittal. If a word count limitation is required, the certificate must also state the number of words (headings, footnotes, and quotations count towards the word limitation; the cover page, table of contents, table of authorities, and certificate do not count towards the word count).~~

(e) *Notice of Change of Address and Other Contact Information.* – If an attorney or a party pro se has a change in mailing address, telephone number, facsimile number, or e-mail address any time after the filing of the notice of appeal, ~~the attorney~~ that individual must immediately notify the clerk of this Court and all other counsel of record in writing. The notice must reference the style and record number of all cases pending before this Court.

(f) *Citing Unpublished Judicial Dispositions.* – The citation of judicial opinions, orders, judgments, or other written dispositions that are not officially reported, whether designated as “unpublished,” “not for publication,” “non precedential,” or the like, is permitted as informative, but will not be received as binding authority. If the cited disposition is not available in a publicly accessible electronic database, a copy of that disposition must be filed with the brief or other paper in which it is cited.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
A. GENERAL

Rule 5A:1A. Penalties for Non-compliance; Show Cause; Dismissal.

(a) *Penalties; Show Cause; Dismissal.* – This Court may dismiss an appeal or impose such other penalty as it deems appropriate for non-compliance with these Rules. Except as provided in Rule 5A:12(c)(1)(i) and (ii) regarding assignments of error, ~~prior to the dismissal of~~ before dismissing an appeal for any defect in the filings related to formatting, curable failure to comply with other requirements, or the failure to meet non-mandatory filing deadlines, this Court may issue a show cause order to counsel or a party not represented by an attorney, prescribing a time in which to cure such defect or to otherwise show cause why the appeal should not be dismissed or other penalty imposed.

(b) *Report to Virginia State Bar.* – If an attorney's failure to comply with these Rules results in the dismissal of an appeal, this Court may report the attorney to the Virginia State Bar in accordance with Rule 8.3 of the Virginia Rules of Professional Conduct.

Promulgated by Order dated Friday, May 16, 2014; effective immediately.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
A. GENERAL

Rule 5A:2. Motions and Responses; Orders.

(a) *Motions and Responses.* –

(1) Motions. All motions must be in writing and filed with the clerk of this Court. All motions must contain a statement by the movant that the other parties to the appeal have been informed of the intended filing of the motion. For all motions in cases when all parties are represented by counsel – except motions to dismiss petitions for a writ of habeas corpus – the statement by the movant must also indicate whether the other parties consent to the granting of the motion, or intend to file responses in opposition.

(2) Responses. Opposing counsel may have ten days after such motion is filed to file with such clerk a response to such motion, but this Court may act before the ten days expire, if necessary.

(3) ~~Number of Copies. An original and three copies of all motions or responses must be filed.~~

(4) Oral Argument. No motion will be argued orally except by leave of this Court.

(b) *Motion for Review of Pre-trial Bail Orders in Criminal Cases.* – When a circuit court has granted or denied pre-trial bail or set a bond or terms of recognizance or revoked bail, either party may move this Court to review the order. With the motion for review, the party seeking review must submit copies of: (1) the warrant(s) or indictment(s) in the case; (2) the order granting, denying, or setting bond; and (3) a transcript of the bond hearing or a stipulation between counsel stating the evidence introduced at the bond hearing and the ruling of the circuit court. An order setting or denying bail or setting terms of a bond or recognizance is reviewable for abuse of discretion.

(c) *Motion for Review of Post-trial Bail Pending Appeal Orders in Criminal Cases.* – When a notice of appeal has been filed in a criminal case, an appellant other than the Commonwealth may move this Court to review the trial court's order denying bail pending appeal or setting an excessive bail pending appeal. With the motion for review, the appellant must submit copies of: (1) the sentencing order entered by the trial court; (2) a pre-sentence report when available; (3) the trial court's decision setting or denying bail; and (4) a transcript of the bail hearing or a stipulation between counsel stating the evidence introduced at the bail hearing and the reason the trial court gave for the bail decision. An order setting or denying bail pending appeal in a criminal case is reviewable for abuse of discretion. If this Court overrules a trial court decision denying bail pending appeal, this Court will set the amount of the bail pending appeal or remand the matter to the trial court with directions to set bail pending appeal.

(d) *Orders.* – Promptly after this Court has entered an order, the clerk of this Court must send a copy of the order to all counsel.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
A. GENERAL

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

(a) *Filing Deadlines and Extensions.* – The times prescribed for filing the notice of appeal (Rules 5A:6 and 5A:11), a petition for appeal (Rule 5A:12), and a petition for rehearing (Rule 5A:33) and a request for rehearing en banc (Rule 5A:34) are mandatory. Except for the petition for appeal which is addressed in Rule 5A:12(a) and Code § 17.1-408, a single extension not to exceed thirty days may be granted if at least three judges of ~~the this~~ Court ~~of Appeals~~ concur in a finding that an extension for papers to be filed is warranted upon a showing of good cause sufficient to excuse the delay. 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.

(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 upon a showing of good cause sufficient to excuse the delay.

(c) *Motions for Extension.* – A motion for extension of time is timely if filed:

- (1) within the original filing deadline; or
- (2) within the specified extension period – see Rules 5A:3(a) and 5A:12(a); or
- (3) within any specific deadline governing motions to extend – see Rules 5A:8(a), 5A:13(a), 5A:14, 5A:19(b), and 5A:19(c).

Filing a motion for extension does not toll the applicable deadline or further extend the period of extension.

(d) *How to File by Mail in a Timely Manner.* – ~~Any A~~ document ~~required to be~~ filed with the clerk of this Court by a litigant permitted to file non-electronically under Rule 5A:1(c) will be deemed to be timely filed if (1) it is transmitted expense pre-paid to the clerk of this Court by priority, express, registered, or certified mail via the United States Postal Service, or by a third-party commercial carrier for next-day delivery, and (2) if the official receipt therefor be exhibited upon demand of the clerk or any party and it shows such transmission or mailing within the prescribed time limits. This Rule does not apply to documents to be filed in the office of the clerk of the trial court or clerk of the Virginia Workers' Compensation Commission.

(e) *Inmate Filing.* A paper filed by an inmate confined in an institution is timely filed if deposited in the institution's internal mail system on or before the last day for filing.

Timely filing of a paper by an inmate confined in an institution may be established by (1) an official stamp of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing, (2) an official postmark dated on or before the last day for filing, or (3) a notarized statement signed by an official of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
A. GENERAL

Rule 5A:4. Forms of Briefs and Other Papers.

(a) *Paper Size, Line Spacing, Font, and Margins.* — Briefs, appendices, motions, petitions, and other documents may be printed or produced on screen by any process that yields a clear black image on a white background and, when printed, must be on pages 8-1/2 x 11 inch paper. All briefs, appendices, motions, petitions, and other documents must be in at least 12-point font. Text may not be reduced, and must be double-spaced except for headings, assignments of error, quotations, and footnotes. Margins must be at least one inch on all four sides of each page. The use of condensed or multi-page transcripts is prohibited.

(b) *Binding and Cover.* — All briefs, appendices, petitions for rehearing, and petitions for rehearing en banc [filed by a litigant permitted to file non-electronically under Rule 5A:1\(c\)](#) must be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco fasteners, and the like are not acceptable. The front cover of all petitions for appeal, briefs, appendices, petitions for rehearing, and petitions for rehearing en banc must contain the style of the case (with the name of the petitioner/appellant stated first) and the record number of the case and the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and email address of counsel submitting the document.

(c) *Effect of Non-compliance.* — No appeal will be dismissed for failure to comply with the provisions of this Rule; however, the clerk of this Court may require that a document be redone in compliance with this Rule. However, failure to comply after notice of noncompliance may result in the dismissal of the case.

(d) *Certificate of Compliance with Word Count Limitation.* — Any brief, motion, petition, or other document that has a word count limitation in these Rules must include a certificate by the attorney, or unrepresented party, that the document complies with the applicable word count limitation. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the document. The certificate must state the number of words the document contains, excluding those parts specifically exempted by these Rules.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective March 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
B. ORIGINAL JURISDICTION

Rule 5A:5. Original Proceedings.

(a) *Original Jurisdiction Proceedings Other Than Actual Innocence Petitions.* – With the exception of petitions for the issuance of writs of actual innocence under paragraph (b) of this Rule, all proceedings before ~~the~~ this Court ~~of Appeals~~ pursuant to its original jurisdiction will be conducted in accordance with the procedure prescribed by Rule 5:7 of the Rules of the Supreme Court.

(b) *Petition for a Writ of Actual Innocence.* –

(1) Scope. Any person convicted of a felony or any person who was adjudicated delinquent by a circuit court of an offense that would be a felony if committed by an adult, may file in ~~the~~ this Court ~~of Appeals~~ a petition under Code § 19.2-327.10 *et seq.* seeking a writ of actual innocence based on nonbiological evidence.

(2) Form and Contents of Petition. The petition must be filed using Form 10 in the Appendix of Forms following Part 5A and must include all allegations and documents required by subsections A and B of Code § 19.2-327.11. Under Code § 19.2-327.11(B) “relevant documents” include, but not be limited to, any orders of conviction, adjudication of delinquency, and sentencing orders being challenged, any appellate dispositions on direct review or any habeas corpus orders (issued by any federal or state court), and any prior petitions filed under Code § 19.2-327.10 *et seq.* in ~~the~~ this Court ~~of Appeals~~ or under Code § 19.2-327.2 *et seq.* in the Supreme Court.

(3) Parties. All pleadings must name as the petitioner the person convicted of a felony or adjudicated delinquent who is seeking relief. The pleadings must identify the Commonwealth, represented by the Attorney General, as respondent.

(4) Filing Fee. The petition must be accompanied by either (i) a \$50.00 filing fee, or (ii) an *in forma pauperis* affidavit demonstrating that the petitioner cannot afford the filing fee. An affidavit seeking *in forma pauperis* status must list all assets and liabilities of petitioner, including the current balance of any inmate account maintained by correctional facility.

(5) Appointment of Counsel. If the Court does not summarily dismiss the petition, the Court will appoint counsel for any indigent petitioner who requests the appointment of counsel and satisfies the indigency criteria of Code § 19.2-159. In the Court’s discretion, counsel may be appointed at an earlier stage of the proceeding at the petitioner’s request upon a showing of requisite indigency. All requests for the appointment of counsel must be made on the form provided by ~~the~~ this Court ~~of Appeals~~.

(6) Service of Petition and Return of Service. Prior to filing a petition, the petitioner must serve the petition, along with all attachments, on the Attorney General and on the Commonwealth's Attorney for the jurisdiction where the conviction or adjudication of delinquency occurred. When represented by counsel, the petitioner must file with the petition either (i) a duly executed return of service in the form of a verification that a copy of the petition and all attachments have been served, or (ii) an acceptance of service signed by either or both of the parties to be served, or (iii) a combination of the two. When unrepresented by counsel, the petitioner must file with the petition a certificate that a copy of the petition and all attachments have been sent, by certified mail, to the Attorney General and the Commonwealth's Attorney for the jurisdiction where the conviction or adjudication of delinquency occurred.

(7) Response. If ~~the~~ this Court ~~of Appeals~~ does not summarily dismiss the petition, the court will provide written notice to all parties directing the Commonwealth, within 60 days after receipt of such notice, to file a response to the petition pursuant to Code § 19.2-327.11(C). For good cause shown, the 60-day deadline may be extended by ~~the~~ this Court ~~of Appeals~~. The Commonwealth's response may include any information pertinent to the petitioner's guilt, delinquency, or innocence, including proffers of evidence outside the trial court record and evidence previously suppressed at trial.

(8) Reply. The petitioner may file a reply to the Commonwealth's response only if directed to do so by ~~the~~ this Court ~~of Appeals~~.

~~(9) Copies. An original and any attachments to the petition, the Commonwealth's response, and the petitioner's reply, if any, must be filed with the Court of Appeals.~~

~~(10)~~ Evidentiary Hearing. ~~The~~ This Court ~~of Appeals~~ may order the circuit court that entered the conviction or adjudication of delinquency to conduct an evidentiary hearing and to certify factual findings pursuant to Code § 19.2-327.12. Such findings, however, will be limited to the specific questions addressed by ~~the~~ this Court ~~of Appeals~~ in its certification order. In the circuit court, the petitioner and the Commonwealth must be afforded an opportunity to present evidence and to examine witnesses on matters relevant to the certified questions.

~~(11)~~ Oral Argument. Unless otherwise directed by ~~the~~ this Court ~~of Appeals~~, oral argument will only be allowed on the final decision whether to grant or deny the writ under Code § 19.2-327.13.

~~(12)~~ Appeal. The petitioner or the Commonwealth may petition for appeal to the Supreme Court from any adverse final decision issued by ~~the~~ this Court ~~of Appeals~~ under Code § 19.2-327.13 to issue or deny a writ of actual innocence. Such an appeal is initiated by the filing of a notice of appeal pursuant to Rule 5:14.

Last amended by Order dated April 1, 2021; effective March 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
C. PROCEDURE FOR FILING AN APPEAL FROM THE TRIAL COURT

Rule 5A:6. Notice of Appeal.

(a) *Filing Deadline; Where to File.* – 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 the this Court of Appeals must simultaneously file in the trial court an appeal bond in compliance with Code § 8.01-676.1.

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.

(b) *Content.* – The notice of appeal must contain a statement whether any transcript or statement of facts, testimony, and other incidents of the case will be filed.

(c) *Filing Fee.* – A copy of the notice of appeal must be filed in the office of the clerk of the this Court of Appeals and, except as otherwise provided by law, must be accompanied by ~~a check or money order in~~ the amount of \$50 ~~payable to the “Clerk of the Court of Appeals” for the~~ filing fee required by statute. The fee is due at the time the notice of appeal is presented. The clerk of the this Court of Appeals may file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within ten days of the date the notice of appeal is filed. If the fee is not received within such time, the appeal will be dismissed.

(d) *Certificate.* – The appellant must include with the notice of appeal a certificate stating:

(1) the names and addresses of all appellants and appellees, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel for each party, and the mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of any party not represented by counsel; and

(2) that a copy of the notice of appeal has been transmitted, mailed, or delivered to all opposing counsel; and

(3) in a criminal case, a statement whether counsel for defendant has been appointed or privately retained; and

(4) that in the event a transcript is to be filed a copy of the transcript has been ordered from the court reporter who reported the case or is otherwise already in the possession of appellant, or was previously filed in the proceedings.

(e) *Separate Cases.* – Whenever two or more cases were tried together in the trial court, one notice of appeal and one record may be used to bring all of such cases before this Court even though such cases were not consolidated by formal order.

(f) *Special Provision for Cases Involving a Guardian Ad Litem.* – No appeal will be dismissed because the notice of appeal fails to identify a guardian ad litem or to provide notice to a guardian ad litem. Upon motion for good cause shown or by sua sponte order of this Court, the notice of appeal may be amended to identify the guardian ad litem and to provide notice to such guardian.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
C. PROCEDURE FOR FILING AN APPEAL FROM THE TRIAL COURT

Rule 5A:8. Record on Appeal: Transcript or Written Statement.

(a) *Transcript.* – The transcript of any proceeding is a part of the record when it is filed in the office of the clerk of the trial court no later than 60 days after entry of the final judgment. This deadline may be extended by a ~~J~~judge of ~~the this~~ Court ~~of Appeals~~ only upon a written motion filed within 90 days after the entry of final judgment. Timely motions will be granted only upon a showing of good cause to excuse the delay.

(b) *Notice of Filing Transcript.* –

(1) Time for Filing. Within 10 days after the transcript is filed or, if the transcript is filed prior to the filing of the notice of appeal, within 10 days after the notice of appeal is filed, counsel for appellant must:

(i) give written notice to all other counsel of the date on which the transcript was filed, and

(ii) file a copy of the notice with the clerk of the trial court.

There must be appended to the notice either a certificate of counsel for appellant that a copy of the notice has been mailed to all other counsel or an acceptance of service of such notice by all other counsel.

(2) Multiple Transcripts. When multiple transcripts are filed, the 10-day period for filing the notice required by this Rule is calculated from the date on which the last transcript is filed or from the date on which the notice of appeal is filed, whichever is later. The notice of filing transcripts must identify all transcripts filed and the date upon which the last transcript was filed.

(3) Notice of No Further Transcripts. If the notice of appeal states that no additional transcripts will be filed and identifies the transcripts that have been filed, if any, then no additional written notice of filing transcripts is required and the notice of appeal will serve as the notice of filing transcripts for purposes of Rule 5A:8(b).

(4) Effect of Non-compliance.

(i) Any failure to file the notice required by this Rule that materially prejudices an appellee will result in the affected transcripts being stricken from the record on appeal. For purposes of this Rule, material prejudice includes preventing the appellee from raising legitimate objections to the contents of the transcript or misleading the appellee about the contents of the record. The appellee has the burden of establishing such prejudice in the brief in opposition or, if no brief in opposition is filed, in a written statement filed with the clerk of this Court within twenty-one days after the record is received by the clerk.

(ii) When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues, any assignments of error affected by such omission will not be considered.

(c) *Written Statement in Lieu of Transcript.* – A written statement of facts, testimony, and other incidents of the case becomes a part of the record when:

(1) within 55 days after entry of judgment a copy of such statement is filed in the office of the clerk of the trial court. A copy must be mailed or delivered to opposing counsel on the same day that it is filed in the office of the clerk of the trial court, accompanied by notice that such statement will be presented to the trial judge no earlier than 15 days nor later than 20 days after such filing; and

(2) the statement is signed by the trial judge and filed in the office of the clerk of the trial court. The judge may sign the statement forthwith upon its presentation to him if it is signed by counsel for all parties, but if objection is made to the accuracy or completeness of the statement, it must be signed in accordance with paragraph (d) of this Rule.

The term “other incidents of the case” in this subsection includes motions, proffers, objections, and rulings of the trial court regarding any issue that a party intends to assign as error or otherwise address on appeal.

(d) *Objections.* – Any party may object to a transcript or written statement on the ground that it is erroneous or incomplete. Notice of such objection specifying the errors alleged or deficiencies asserted must be filed with the clerk of the trial court within 15 days after the date the notice of filing the transcript (paragraph (b) of this Rule) or within 15 days after the date the notice of filing the written statement (paragraph (c) of this Rule) is filed in the office of the clerk of the trial court or, if the transcript or written statement is filed before the notice of appeal is filed, within 10 days after the notice of appeal has been filed with the clerk of the trial court. The clerk must give prompt notice of the filing of such objections to the trial judge. Within 10 days after the notice of objection is filed with the clerk of the trial court, the judge must:

- (1) overrule the objection; or
- (2) make any corrections that the trial judge deems necessary; or
- (3) include any accurate additions to make the record complete; or
- (4) certify the manner in which the record is incomplete; and
- (5) sign the transcript or written statement.

At any time while the record remains in the office of the clerk of the trial court, the trial judge may, after notice to counsel and hearing, correct the transcript or written statement.

The judge's signature on a transcript or written statement, without more, constitutes certification that the procedural requirements of this Rule have been satisfied.

Promulgated by Order dated October 31, 2018; effective January 1, 2019.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
C. PROCEDURE FOR FILING AN APPEAL FROM THE TRIAL COURT

Rule 5A:10. Record on Appeal: Preparation and Transmission.

(a) *Preparation.* – The clerk of the trial court must prepare the record as soon as possible after notice of appeal is filed. In the event of multiple appeals in the same case, or in cases tried together, only one record need be prepared and transmitted.

(b) *Form of the Record.* –

(1) The record must be compiled in the following order:

(i) a front cover setting forth the name of the court and the short style of the case;

(ii) a table of contents listing each paper included in the record and the page on which it begins;

(iii) each document constituting a part of the record in chronological order; and

(iv) the certificate of the clerk of the trial court that the foregoing constitutes the true and complete record, except omitted exhibits as hereinafter provided.

(2) Each page of the record must be numbered at the bottom.

(3) Transcripts, depositions, and reports of commissioners may be included in separate volumes identified by the clerk of the trial court if referred to in the table of contents and at the appropriate place in the record.

(4) Exhibits, other than those filed with pleadings, may be included in a separate volume or envelope certified by the clerk of the trial court, except that any exhibit that cannot be conveniently placed in a volume or envelope must be identified by a tag. Each such volume or envelope must include, on its cover or inside, a descriptive list of exhibits contained therein. Reference must be made to exhibits in the table of contents and at the appropriate place in the record referred to in paragraph (b)(1) of this Rule. The clerk of the trial court must not transmit the following types of exhibits, unless requested to do so by the clerk of this Court: drugs, guns and other weapons, ammunition, blood vials and other bio-hazard type materials, money, jewelry, articles of clothing, and bulky items such as large graphs and maps. The omission of any such exhibit must be noted on the descriptive list of exhibits. Upon motion by counsel, this Court may order the trial court to transmit any of these prohibited exhibits.

(5) Any transcript or statement of facts that the clerk of the trial court deems not a part of the record because of untimely filing must be certified as such and transmitted with the record.

(c) *Abbreviated Record.* – When the assignments of error presented by an appeal can be determined without examination of all the pleadings, facts, testimony, and other

incidents of the case, all counsel with the approval of the trial court may prepare for submission an abbreviated record, stating how the assignments of error in the case arose and were decided, and setting forth only so much of the pleadings, facts, testimony, and other incidents of the case as are essential to a determination of the issues on appeal. Such abbreviated record must be signed by all counsel and the trial judge and filed in the office of the clerk of the trial court. It will be assumed that the abbreviated record contains everything germane to the assignments of error. ~~The~~ This Court ~~of Appeals~~ may, however, consider other parts of the record to enable this Court to attain the ends of justice.

(d) *Transmission.* – The clerk of the trial court must retain the record for 21 days after the notice of appeal has been filed with ~~him~~ that court pursuant to Rule 5A:6. If the notice of appeal states that a transcript or statement will thereafter be filed, the clerk of the trial court must retain the record for 21 days after the filing in ~~his~~ that clerk's office of such transcript or statement or, if objection is made to the transcript or statement pursuant to Rule 5A:8 (d), the clerk of the trial court must retain the record for five days after the objection is acted upon by the trial judge. The clerk of the trial court must then forthwith transmit the record to the clerk of this Court; provided, however, that, notwithstanding that the foregoing periods of retention may not have expired, the clerk of the trial court must transmit the record sooner if requested in writing by counsel for all parties to the appeal and must, whether or not so requested, transmit the record in time for delivery to the clerk of this Court within three months after entry of the judgment appealed from. The failure of the clerk of the trial court to transmit the record as herein provided will not be a ground for dismissal of the appeal by this Court.

(e) *Notice of Filing.* – The clerk of this Court must promptly notify all counsel of the date on which the record is filed in the office of the clerk of ~~the~~ this Court ~~of Appeals~~.

(f) *Disposition of Record.* – When the mandate is issued by this Court, the clerk of this Court must return the record to the clerk of the trial court. The record must be returned by that clerk upon the request of the clerk of this Court.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
D. PROCEDURE FOR FILING AN APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION

Rule 5A:11. Special Rule Applicable to Appeals From the Virginia Workers' Compensation Commission.

(a) *Non-Application of Other Rules.* – Rules 5A:6 through 5A:10 do not apply to appeals from the Virginia Workers' Compensation Commission except as otherwise specified in this Part Five A.

(b) *Notice of Appeal.* – No appeal from an order of the Commission will be allowed unless, within 30 days after entry of the order appealed from, ~~or within 30 days after receipt of notice by priority mail with delivery confirmation or equivalent mailing option of the order appealed from,~~ counsel files with the clerk of the Virginia Workers' Compensation Commission a notice of appeal which must state the names and addresses of all appellants and appellees, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address (if any) of counsel for each party, and the mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of any party not represented by counsel, and whether the appellant challenges the sufficiency of the evidence to support the findings of the Commission. A copy of the notice of appeal also must be filed in the office of the clerk of this Court, and except as otherwise provided by law, must be accompanied by ~~a check or money order in~~ the amount of \$50 ~~payable to the "Clerk of the Court of Appeals," for the~~ filing fee required by statute. The fee is due at the time the notice of appeal is presented. The clerk of this Court may file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within ten days of the date the notice of appeal is filed. If the fee is not received within such time, the appeal will be dismissed.

(c) *Record on Appeal.* – The record on appeal from the Commission consists of the originals or copies of the notice of appeal, the employer's first report, medical reports, applications for hearings, the transcript of any hearing, depositions, interrogatories and answer to interrogatories, and opinions of a commissioner or deputy commissioner and opinions of the Commission, together with such other material as may be certified by the clerk of the Commission and must conform as nearly as practicable to the requirements of Rule 5A:10 (b), provided, that, unless it is stated in the notice of appeal that the appellant challenges the sufficiency of the evidence to support the findings of the Commission, the clerk of the Commission need not prepare or certify the transcript of any hearing.

(d) *Transmission of Record.* – The record must, as soon as it is certified by the clerk of the Commission, be transmitted by ~~him~~ that clerk to the clerk of this Court. It must be so transmitted within 30 days after filing of the notice of appeal.

(e) *Notice of Filing.* – The clerk of this Court must promptly notify all counsel of the date on which the record is filed in the office of the clerk of this Court.

(f) *Separate Cases.* – Whenever two or more cases were tried together in the Virginia Workers' Compensation Commission, one notice of appeal and one record may be used to bring all such cases before this Court even though such cases were not consolidated by formal order.

(g) *Record Returned to Commission.* – When the mandate is issued by this Court, the clerk of this Court must return the record to the clerk of the Commission. The clerk of the Commission must return the record upon request of the clerk of this Court.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
E. PROCEDURE ON PETITION FOR APPEAL IN CRIMINAL CASES AND
TRAFFIC INFRACTIONS

Rule 5A:12. Petition for Appeal.

(a) *When the Petition Must be Filed.* – When an appeal to ~~the this~~ Court ~~of Appeals~~ does not lie as a matter of right, a petition for appeal must be filed with the clerk of this Court not more than 40 days after the filing of the record with ~~the this~~ Court ~~of Appeals~~. An extension of 30 days may be granted on motion in the discretion of this Court upon a showing of good cause sufficient to excuse the delay.

(b) *Copy to Opposing Counsel.* – At the time the petition for appeal is filed, a copy of the petition must be transmitted, mailed, or delivered to the Commonwealth's attorney or the city, county, or town attorney, as the case may be.

(c) *What the Petition Must Contain.* – A petition for appeal must contain the following:

(1) Assignments of Error. Under a heading entitled “Assignments of Error,” the petition 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 transcript, written statement of facts, or record 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 where the issue was preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

(i) Effect of Failure to Assign Error. Only assignments of error assigned in the petition for appeal will be noticed by this Court. If the petition for appeal does not contain assignments of error, the petition will be dismissed.

(ii) Insufficient Assignments of Error. An assignment of error which does not address the findings, rulings, or failures to rule on issues in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. If the assignments of error are insufficient, the petition for appeal will be dismissed.

(iii) Effect of Failure to Use Separate Heading or Include Preservation Reference. If the petition for appeal contains assignments of error, but the

assignments of error are not set forth under a separate heading as provided in subparagraph (c)(1) 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 transcript, written statement of facts, or record 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) of the record 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.

(2) Table of Contents and Table of Authorities. A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities must include the year thereof.

(3) Nature of the Case and Material Proceedings Below. A brief statement of the nature of the case and of the material proceedings in the trial court or commission in which the case originated. This statement should omit references to any paper filed or action taken that does not relate to the assignments of error.

(4) Statement of Facts. A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the record, transcript, or written statement of facts. Any quotation from the record should be brief. When the facts are in dispute, the petition 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.

(5) Authorities and Argument. With respect to each assignment of error, the standard of review and the argument – including principles of law and the authorities – must be stated in one place and not scattered through the petition. At the option of counsel, the argument may be preceded by a short summary.

(6) Conclusion. A short conclusion stating the precise relief sought.

(7) Contact Information. The signature of at least one counsel, counsel's name, Virginia State Bar number, mailing address, telephone number, facsimile number (if any), and email address (if any).

(8) Certificate. A certificate stating the date of mailing or delivery of the petition to opposing counsel and whether or not the appellant desires to state orally the reasons why the petition for appeal should be granted.

(d) ~~*Number of Copies to File.*—Four copies of the petition must be filed with the clerk of this Court.~~

(e) *Length.* – Except by leave of a Judge of this Court, a petition must not exceed 12,300 words. The word limit does not include the cover page, table of contents, table of authorities, and certificate.

(f) *Single Petition in Separate Cases.* – Whenever two or more cases were tried together in the trial court or commission below, one petition for appeal may be used to bring all such cases before ~~the~~ this Court ~~of Appeals~~ even though the cases were not consolidated below by formal order.

(~~g~~f) *Oral Argument*. – When the appeal is not granted by the ~~J~~judge of this Court to whom the petition for appeal is originally presented, the petitioner is entitled to state orally, in person or by conference telephone call, to a panel of this Court the reasons the petition for appeal should be granted. The appellant may waive the right to oral argument on the petition for appeal before a panel by notifying the clerk of this Court and opposing counsel in writing, or by filing a reply brief. Any lawyer not licensed to practice in Virginia who seeks to appear pro hac vice to present oral argument to this Court must comply with the requirements of Rule 1A:4.

(~~g~~g) *Procedure for an Anders appeal*. – If counsel for appellant finds his client’s appeal to be without merit, he must comply with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *Akbar v. Commonwealth*, 7 Va. App. 611, 376 S.E.2d 545 (1989). In compliance therewith, counsel is required to file (1) a petition for appeal which refers to anything in the record which might arguably support the appeal and which demonstrates to ~~the this~~ Court ~~of Appeals~~ 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 petition for appeal. The petition for appeal and the motion for leave to withdraw as counsel should specifically cite to *Anders*. All three pleadings must be served on opposing counsel and upon the client and must contain a certificate providing evidence of such service. The Court of Appeals 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 petition for appeal that may be filed.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
E. PROCEDURE ON PETITION FOR APPEAL IN CRIMINAL CASES AND
TRAFFIC INFRACTIONS

Rule 5A:13. Brief in Opposition.

(a) *Filing Time.* – A brief in opposition to granting the appeal may be filed with the clerk of this Court by the appellee within 21 days after the petition for appeal is served on counsel for the appellee. Within the same time ~~he~~ the appellee must transmit, mail, or deliver a copy to counsel for appellant. ~~Four copies must be filed.~~ Motions for an extension to this briefing deadline must be filed no later than 10 days after the expiration of the deadline.

(b) *Form and Content.* – The brief in opposition must conform in all respects to the requirements of the brief of appellee (Rule 5A:21).

(1) Length. Except by leave of a ~~J~~ judge of this Court, the brief must not exceed 8,800 words.

(2) Table of Contents and Table of Authorities. If the brief exceeds 3,500 words, it must contain a table of contents and table of authorities with cases alphabetically arranged.

(3) Criminal or Traffic Cases. In a criminal or traffic case, a brief may be filed by the Commonwealth's attorney, city, county, or town attorney, as the case may be.

(c) *Expedited Review.* – When it clearly appears that an appeal ought to be granted without further delay, an appeal may be granted before the filing of the brief in opposition.

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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
E. PROCEDURE ON PETITION FOR APPEAL IN CRIMINAL CASES AND
TRAFFIC INFRACTIONS

Rule 5A:14. Reply Brief.

When a brief in opposition to the petition for appeal has been filed, the appellant may, within 14 days thereafter, in lieu of oral argument, file with the clerk of this Court a reply brief not to exceed 5,300 words in length. ~~Four copies must be filed.~~ Motions for an extension to this briefing deadline must be filed no later than 10 days after the expiration of the deadline.

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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
E. PROCEDURE ON PETITION FOR APPEAL IN CRIMINAL CASES AND TRAFFIC
INFRACTIONS

Rule 5A:15. Denial of Petition for Appeal; Petition for Rehearing.

(a) *Denial by a Single Judge.* – When a petition for appeal is denied by a ~~J~~judge of this Court pursuant to Code § 17.1-407(C), the clerk of this Court must ~~send~~ **transmit** a copy of the order denying the petition to **all** counsel **of record**. ~~for the appellant and counsel for the appellee. Pro se prisoners and those with leave of this Court to proceed under this Rule~~ **An appellant** may demand consideration of the petition by ~~a~~ three-judge panel pursuant to Code § 17.1-407(D). The demand must be filed ~~in writing. Four copies must be filed~~ with the clerk of this Court within fourteen days after the date of the order by which the petition was denied. The demand, which must include a statement identifying how the one-judge order is in error, must not exceed 350 words. Oral argument is not be permitted on consideration of a petition by a three-judge panel unless oral argument was requested in the petition for appeal pursuant to Rule 5A:12(c). ~~A petitioner~~ **An appellant** who has previously requested oral argument may waive oral argument by so stating in the demand for review. ~~All petitioners other than pro se prisoners and those with leave of this Court to proceed under this Rule must follow the provisions of Rule 5A:15A(a) when filing a demand for three judge review pursuant to Code § 17.1-407(D).~~

(b) *Denial by a Three-Judge Panel.* – When a petition for appeal is denied by a three-judge panel, the clerk of this Court must ~~send~~ **transmit** a copy of the order ~~or memorandum opinion~~ denying the appeal to **all** counsel **of record**. ~~for the appellant and counsel for the appellee. Pro se prisoners and those with leave of this Court to proceed under this Rule may, within~~ **Within** 14 days after the date of ~~this notice; the order, the appellant may~~ file a petition for rehearing ~~in writing~~ in the office of the clerk of this Court unless the denial was by a three-~~J~~judge panel after its consideration of a petition denied by a ~~J~~judge of this Court pursuant to Code § 17.1-407. The petition for rehearing may not exceed 5,300 words in length. The petition must state that ~~a copy~~ **it** has been **transmitted**, mailed, or delivered to counsel for the appellee. ~~Four copies must be filed.~~ Oral argument on the petition for rehearing will not be allowed. The petition for rehearing will be referred to the panel of this Court that considered the petition for appeal. No responsive brief may be filed unless requested by this Court. The clerk of this Court will notify **all** counsel ~~for the appellant and counsel for the appellee~~ of the action taken by this Court on the petition for rehearing. ~~All petitioners other than pro se prisoners and those with leave of this Court to proceed under this Rule must follow the provisions of Rule 5A:15A(b) when filing a petition for a rehearing of an order of a three judge panel denying a petition for appeal.~~

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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5A:16. Perfection of Appeal; Docketing.

(a) *Appeals as a Matter of Right.* – In cases when an appeal lies as a matter of right to ~~the~~ this Court ~~of Appeals~~, such appeal is perfected by the timely filing of a notice of appeal pursuant to Rule 5A:6. Such case is considered mature for purposes of further proceedings from the date the record is filed in the office of the clerk of ~~the~~ this Court ~~of Appeals~~. A party filing a notice of an appeal of right to ~~the~~ this Court ~~of Appeals~~ must simultaneously file in the trial court an appeal bond in compliance with Code § 8.01-676.1.

(b) *Grant of Petition for Appeal.* – Promptly after a petition for appeal has been granted by ~~the~~ this Court ~~of Appeals~~, the clerk of ~~the~~ this Court ~~of Appeals~~ must certify this action to the trial court and all counsel. Such case is considered mature for purposes of further proceedings from the date of such certificate.

(c) *Docketing.* – Cases are placed on the docket in the order in which they mature, provided that precedence must be given to the following cases:

- (1) criminal cases;
- (2) cases from the Virginia Workers' Compensation Commission;
- (3) cases involving termination of parental rights;
- (4) cases of original jurisdiction;
- (5) cases to be reheard; and
- (6) any other cases required by statute to be given precedence.

~~The~~ This Court ~~of Appeals~~ may, however, for good cause shown or for reasons appearing sufficient to ~~the~~ this Court, give preference to other cases.

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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5A:17. Security for Appeal.

(a) *Form for Security.* — All security for appeal required under Code § 8.01-676.1 must substantially conform to the forms set forth in the Appendix to this Part Five A.

(b) *Security for Appeal; Defects.* — Whenever an appellant files an appeal bond or irrevocable letter of credit, he must contemporaneously give notice in writing of said filing to counsel for appellee. The time for initially filing the appeal bond or letter of credit prescribed by Code § 8.01-676.1(A) and (B) is not jurisdictional under Code § 8.01-676.1(P). No appeal will be dismissed because of defect in any appeal bond or irrevocable letter of credit unless an appellee, within 21 days after the giving of such notice, files with the clerk of ~~the~~ this Court ~~of Appeals~~ a statement in writing of the defects in the bond or irrevocable letter of credit, and unless the appellant fails to correct such defects, if any, within 21 days after such statement is filed. If the appellant fails to correct such defects within 21 days, an appellee may move that the appeal be dismissed and it will be dismissed unless the appellant satisfies ~~the~~ this Court ~~of Appeals~~ that the bond or irrevocable letter of credit, either as originally given or as amended, has been filed as required by law.

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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5A:18. Preservation of Issues for Appellate Review.

No ruling of the trial court or the Virginia Workers' Compensation Commission will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable ~~the~~ this Court ~~of Appeals~~ to attain the ends of justice. A mere statement that the judgment or award is contrary to the law and the evidence is not sufficient to preserve the issue for appellate review.

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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

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

(a) *Length.* – Except by permission of a ~~J~~judge of this Court, neither the opening brief of appellant, nor the brief of appellee may exceed 12,300 words. No reply brief may exceed 3,500 words. Briefs of amici curiae must comply with the word limits that apply to briefs of the party being supported. Word limits under this Rule do not include appendices, or the cover page, table of contents, table of authorities, and certificate. There will be no exception to these limits except by permission of this Court on motion for extension of the limits.

(b) *Filing Time: Appeal as a Matter of Right.* – In cases when appeal lies as a matter of right to ~~the this~~ Court ~~of Appeals~~, briefs must be filed as follows:

(1) The appellant must file the opening brief in the office of the clerk of ~~the this~~ Court ~~of Appeals~~ 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 ~~the this~~ Court ~~of Appeals~~ within 25 days after filing of the opening brief.

(3) The appellant may file a reply brief in the office of the clerk of ~~the this~~ Court ~~of Appeals~~ 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.

(c) *Filing Time: Grant of Petition for Appeal.* – In cases when a petition for appeal has been granted by ~~the this~~ Court ~~of Appeals~~, briefs must be filed as follows:

(1) The appellant must file the opening brief in the office of the clerk of ~~the this~~ Court ~~of Appeals~~ within 40 days after the date of the certificate of appeal issued by the clerk of ~~the this~~ Court ~~of Appeals~~ pursuant to Rule 5A:16(b).

(2) The brief of appellee must be filed in the office of the clerk of ~~the this~~ Court ~~of Appeals~~ within 25 days after filing of the opening brief.

(3) The appellant may file a reply brief in the office of the clerk of ~~the this~~ Court ~~of Appeals~~ within 14 days after filing of the brief of appellee.

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

(d) *Participation by Guardian Ad Litem.* – If a guardian ad litem joins with either appellant or appellee, the guardian ad litem must notify the ~~Clerk's Office~~ clerk of this Court, in writing, which side it joins. Thereafter, the guardian ad litem may rely on the brief of that party and is entitled to oral argument under Rule 5A:26.

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

~~(f) *Copies.*—An electronic version, in Portable Document Format (PDF), must be filed with the clerk of this Court and served on opposing counsel at the time of filing the brief with the Court, unless excused by this Court for good cause shown. An electronic version of a brief amicus curiae must be filed with the clerk of this Court and served on counsel for all parties and on any other counsel amicus curiae. For purposes of this Rule, service by email is governed by Rule 1:17, which allows electronic transmission without the need of consent by opposing counsel. The electronic version must be filed in the manner prescribed by the VACES Guidelines and User's Manual, using the Virginia Appellate Courts eBriefs System (VACES). The Guidelines are located on the Court's website at <http://www.vacourts.gov/online/vaces/resources/guidelines/pdf>. In addition, 3 printed copies of each brief (including a brief amicus curiae) must be filed in the office of the clerk of this Court. All briefs must contain a certificate evidencing the date and method of electronic transmission of the brief to opposing counsel.~~

~~(g) *Technical problems with electronic filing of brief or appendix.*—A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed brief or appendix, counsel must provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to electronically file the brief or appendix, any error message received in response to the attempt, documentation that the brief or appendix was later successfully resubmitted, and a motion requesting that the Court accept the resubmitted brief or appendix.~~

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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5A:23. Briefs Amicus Curiae.

(a) A brief amicus curiae may be filed at the petition, perfected appeal and rehearing stages of the appellate proceedings, and in proceedings invoking this Court's original jurisdiction:

(1) on behalf of the United States or the Commonwealth of Virginia without the prior consent of this Court or counsel; and

(2) by any other person if it is accompanied by the written consent of all counsel; and

(3) otherwise only on motion (which may be accompanied by the proposed brief) and the consent of this Court.

(b) A brief amicus curiae will be accepted only if filed on or before the date on which the brief of the party supported is required to be filed. A brief amicus curiae may be filed at the time of filing of the reply brief of the appellant only if an opening brief amicus curiae has been filed.

(c) A brief amicus curiae must comply with the rules applicable to the brief of the party supported.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, ~~the~~ this Court ~~of Appeals~~ may request that a brief amicus curiae be filed at any time.

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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5A:24. Covers of Documents.

(a) To facilitate identification, documents filed non-electronically must bear covers colored as follows:

Document	Color of Cover
Appendix	Red
Brief of the Appellant	White
Brief of the Appellee	Blue
Brief of Guardian Ad Litem (if separate from appellant and appellee)	Brown
Reply Brief of the Appellant	Green
Brief Amicus Curiae	Gray
Petition for Rehearing	Yellow
Petition for Rehearing En Banc	Yellow

(b) No appeal will be dismissed for failure to comply with the provisions of this rule; however, the clerk of ~~the~~ this Court ~~of Appeals~~ may require that a document be redone in compliance with this Rule.

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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5A:25. Appendix.

(a) *When Required.* – An appendix must be filed by the appellant in all cases no later than the time of filing ~~his~~ the opening brief.

(b) *Filing.* – ~~If the combined lengths of the appendix and the opening brief of the appellant do not exceed the limitation prescribed in Rule 5A:19, the appendix may be filed as an addendum to the opening brief and within the same cover. If the combined lengths of the appendix and the opening brief exceed the limitation prescribed in Rule 5A:19, the appellant must file the appendix as a separate volume. The appellant must file 3 printed copies and an electronic version in Portable Document Format (PDF) of the appendix and must serve an electronic copy on counsel for each party separately represented at the time of filing the appendix with the Court. For purposes of this Rule, service by email is governed by Rule 1:17, which allows electronic transmission without the need of consent by opposing counsel.~~ This Court may by order require the filing or service of a ~~different number~~ paper copy of the appendix and may, and 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~~ this Court may order the parties to file. ~~The appendix must be filed in the manner prescribed by the VACES Guidelines and User's Manual, using the Virginia Appellate Courts eBriefs System (VACES). The Guidelines are located on the Court's website at <http://www.vacourts.gov/online/vaces/resources/guidelines.pdf>.~~

(c) *Contents.* – An appendix must include:

- (1) the basic initial pleading (as finally amended);
- (2) the judgment appealed from, and any memorandum or opinion relating thereto;
- (3) any testimony and other incidents of the case germane to the assignments of error;
- (4) the title (but not the caption) of each paper contained in the appendix, and its filing date;
- (5) the names of witnesses printed at the beginning of excerpts from their testimony and at the top of each page thereof; and
- (6) exhibits necessary for an understanding of the case that can reasonably be reproduced.

(d) *Determination of Contents.* – Within ten days after the filing of the record with ~~the~~ this Court ~~of Appeals~~ or, in a case in which a petition for appeal has been granted, within ten days after the date of the certificate of appeal issued by the clerk of ~~the~~ this Court ~~of Appeals~~, counsel for appellant must file in the office of the clerk of ~~the~~ this Court ~~of Appeals~~ a written statement signed by all counsel setting forth an agreed designation of the parts of the record to be included in the appendix. In the absence of such an agreement, counsel for appellant must file with the clerk of ~~the~~ this Court ~~of Appeals~~ a statement of the assignments of error and a designation of the contents to be included in the appendix within fifteen days after the filing of the record or, in a

case in which a petition for appeal has been granted, within fifteen days after the date of the certificate of appeal; not more than ten days after this designation is filed, counsel for appellee must file with the clerk of ~~the~~ this Court of Appeals a designation of any additional contents to be included in the appendix and, in appeals of right, a statement of any additional assignments of error the appellee wishes to present. The appellant must include in the appendix the parts thus designated, together with any additional parts the appellant considers germane.

(e) *Table of Contents; Form of Presentation.* – At the beginning of the appendix there must be a table of contents, which must include the name of each witness whose testimony is included in the appendix and the page number of the appendix at which each portion of the testimony of the witness begins. Thereafter, the parts of the record to be reproduced must be set out in chronological order. When matter contained in the transcript of proceedings is set out in the appendix, the page of the transcript or of the record at which such matter may be found must be indicated in brackets immediately before the matter which is set out. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial matters (such as captions, subscriptions and acknowledgements) should be omitted. A question and its answer may be contained in a single paragraph.

(f) *Costs.* – Unless counsel otherwise agree, the cost of producing the appendix must initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issue presented, he may so advise the appellee, and the appellee must advance the cost of including such parts. The cost of producing the appendix will be taxed as costs in the case.

(g) *Penalty.* – Nothing should be included in the appendix that is not germane to an assignment of error. As examples, no pleadings (other than the basic initial pleading as finally amended) should be included unless an assignment of error is presented relating to it, and then only the portion thereof to which the assignment relates; and testimony relating solely to the amount of damages should not be included unless error is assigned relating to the amount of damages. If parts of the record are included in the appendix unnecessarily at the direction of a party, this Court may impose the cost of producing such parts on that party.

(h) *Assumptions.* – It will be assumed that the appendix contains everything germane to the assignments of error. ~~The~~ This Court of Appeals may, however, consider other parts of the record.

(i) *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 sealed supplemental appendix to be filed separately from the regular appendix. A sealed volume of the appendix must be filed in the manner prescribed by the VACES Guidelines and User's Manual. The Guidelines are located on ~~the~~ this Court's website at <http://www.vacourts.gov/online/vaces/resources/guidelines.pdf>.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5A:26. Effect of Noncompliance With Rules Regarding Briefs.

If an appellant fails to file a brief in compliance with these Rules, ~~the~~ this Court ~~of Appeals~~ may dismiss the appeal. If an appellee fails to file a brief in compliance with these Rules, ~~the~~ this Court ~~of Appeals~~ may disregard any additional assignments of error raised by the appellee. If one party has complied with the Rules governing briefs, but the other has not, the party in default will not be heard orally if the case proceeds to oral argument, except for good cause shown.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5A:27. Summary Disposition.

In cases in which appeal lies as a matter of right, if all the judges of the panel of ~~the~~ ~~this~~ Court ~~of Appeals~~ to which a pending appeal has been referred conclude from a review of the record and the briefs of the parties that the appeal is without merit, the panel may forthwith affirm the judgment of the trial court or commission.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5A:28. Oral Argument.

(a) *Notice.* – Whenever appeal lies as a matter of right or a petition for appeal has been granted, oral argument will be permitted except in those cases disposed of pursuant to Rule 5A:27. The Clerk of ~~the this~~ Court ~~of Appeals~~, except in extraordinary circumstances, must give at least 15 days notice to counsel of the date, approximate time, and location for oral argument.

(b) *Length.* – Except as otherwise directed by ~~the this~~ Court ~~of Appeals~~, argument for a party may not exceed 15 minutes in length. Such time may be apportioned among counsel for the same side at their discretion, except that only one counsel may present the opening argument for the appellant. If a guardian ad litem joins with either appellant or appellee, the guardian ad litem will share the time for oral argument with the party. If a guardian ad litem requests additional time to argue, the guardian ad litem must state that application in its brief, subject to approval of this Court.

(c) *Appearance Pro Hac Vice.* – Any lawyer not licensed in Virginia who seeks to appear pro hac vice to present oral argument to ~~the this~~ Court ~~of Appeals~~ must comply with the requirements of Rule 1A:4.

(d) *Amicus Curiae.* – No oral argument is permitted by amicus curiae except by leave of this Court. Leave may be granted upon the joint written request of amicus curiae and the party whose position amicus curiae supports. The request must specify the amount of its allotted time the supported party is willing to yield to amicus curiae.

(e) *Waiver.* – During oral argument, it is not necessary for any party to expressly reserve any argument made on brief, and the failure to raise any such argument does not constitute a waiver. Any party may, without waiving the arguments made on brief, waive oral argument. See Rules 5A:20(h) and 5A:21(g).

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
G. DECISION, COSTS, AND MANDATE

Rule 5A:29. Notice of Decision.

Promptly after ~~the~~ this Court ~~of Appeals~~ has decided a case, the clerk of ~~the~~ this Court ~~of Appeals~~ must ~~send~~ transmit a copy of the decision to all counsel of record and to the court or commission from which the appeal proceeded.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
G. DECISION, COSTS, AND MANDATE

Rule 5A:30. Costs and Notarized Bill of Costs.

(a) *To Whom Allowed.* – Except as otherwise provided by law, if an appeal is dismissed, costs will be taxed against the appellant unless otherwise agreed by the parties or ordered by ~~the this~~ Court ~~of Appeals~~; if a judgment is affirmed, costs will be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs will be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs will be allowed as ordered by ~~the this~~ Court ~~of Appeals~~.

(b) *Attorney Fees.* – (1) In any case where attorney fees are recoverable under Title 16.1 or Title 20 relating to affirmance or annulment of a marriage, divorce, custody, spousal or child support or the control or disposition of a juvenile and other domestic relations cases arising under Title 16.1 or Title 20, or involving adoption under Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2, a party may request an award of attorney fees incurred in the appeal of the case by making said request in the Opening Brief of Appellant, the Reply Brief of the Appellant, or in the Brief of Appellee.

(2) Upon the making of a request for attorney fees as set forth in (b) (1) above, and unless otherwise provided by the terms of a contract or stipulation between the parties, ~~the this~~ Court ~~of Appeals~~ may award to a party who has made such request, all of their attorney fees, or any part thereof, or remand the issue to the circuit court as directed in the mandate order for a determination thereof. Such fees may include the fees incurred by such party in pursuing fees as awarded in the circuit court.

(3) In determining whether to make such an award, ~~the this~~ Court ~~of Appeals~~ is not limited to a consideration of whether a party's position on an issue was frivolous or lacked substantial merit but may consider all the equities of the case.

(4) Where the appellate mandate remands the issue to the circuit court for an award of reasonable attorney fees, in determining the reasonableness of such an award the circuit court should consider all relevant factors, including but not limited to, the extent to which the party was a prevailing party on the issues, the nature of the issues involved, the time and labor involved, the financial resources of the parties, and the fee customarily charged in the locality for similar legal services.

(c) *Taxable Costs.* – Costs, including the filing fee and costs incurred in the printing or producing of necessary copies of briefs, appendices, and petitions for rehearing, are taxable in this Court. Costs incurred in the preparation of transcripts may be taxable in this Court. See, Code § 17.1-128.

(d) *Notarized Bill of Costs.* – Counsel for a party who desires costs to be taxed must itemize them in a notarized bill of costs, which must be filed with the clerk of this Court within 14 days after the date of the decision in the case. Objections to the bill of costs must be filed with the clerk of this Court within 10 days after the date of filing the bill of costs.

(e) *Award.* – The clerk of this Court must prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate will not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, must be added to the mandate on request by the clerk of this Court to the clerk of the trial court or the clerk of the Virginia Workers' Compensation Commission.

Last amended by Order dated October 30, 2015; effective January 1, 2016.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
G. DECISION, COSTS, AND MANDATE

Rule 5A:31. Mandate.

(a) *Time.* – When there can be no further proceedings in ~~the~~ this Court ~~of Appeals~~ or in the Supreme Court with respect to a decision of ~~the~~ this Court ~~of Appeals~~, the clerk of ~~the~~ this Court ~~of Appeals~~ must forward its mandate promptly to the clerk of the court or commission from which the appeal proceeded.

(b) *Opinions.* – If the judgment or order is supported by an opinion, a certified copy of the opinion must accompany the mandate.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
H. REHEARING

Rule 5A:32. Scope.

The provisions of Rules 5A:33 through 5A:35 do not apply to the denial or dismissal of a petition for appeal.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
H. REHEARING

Rule 5A:33. Rehearing - On Motion of a Party After Final Disposition of a Case.

~~(a) *Requirements for Pro Se Prisoners and By Leave of Court.*—Pro se prisoners and those with leave of Court to proceed under this paragraph of the Rule desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case must within 14 days following such decision or order, file seven copies of a petition for rehearing with the clerk of the Court of Appeals. Petition for Rehearing. – Any party seeking a rehearing of a decision or order of this Court finally disposing of a case must, within 14 days following such decision or order, file a petition for rehearing with the clerk of this Court. The petition for rehearing may not exceed 5,300 words in length. All petitioners other than pro se prisoners and those with leave of Court to proceed under this paragraph of the Rule must follow the provisions of paragraph (b) of this Rule when filing a petition for rehearing.~~

~~(b) *Requirements for All Others.*—Any party, other than pro se prisoners or those with leave of Court to proceed under paragraph (a) of this Rule, desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case must, within 14 days following such decision, file a petition for rehearing with the clerk of the Court of Appeals.~~

~~(1) The petition must be filed as a single Portable Document Format (PDF) document attached to an e-mail addressed to cavpfr@vacourts.gov and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the decision or order sought to be reheard.~~

~~(2) The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 5,300 words. The petition must include a certificate of service to opposing counsel and the certificate must specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel must be by electronic means and such address must be included in the certificate of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by cavpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals will so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in failure to timely receive the electronically filed petition for rehearing, counsel must provide to the clerk of the Court on the next business day all documentation which exists~~

~~demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and copy of the petition for rehearing.~~

~~(3) The e-mail message to which the petition is attached must recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message must contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message must also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel must also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition for rehearing.~~

~~(e**b**) *Response.* – No response to a petition for rehearing will be received unless requested by the this Court of Appeals.~~

~~(e**c**) *No Oral Argument.* – No oral argument on the petition will be permitted.~~

~~(e**d**) *Grounds.* – No petition for rehearing will be granted unless one of the J judges who decided the case adversely to the petitioner determines that there is good cause for such rehearing. The clerk of the this Court of Appeals must notify all counsel of record for the appellant and counsel for the appellee of the action taken by the this Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.~~

Promulgated by Order dated Friday, April 30, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
H. REHEARING

Rule 5A:34. Rehearing En Banc After Final Disposition of a Case.

(a) ~~*Who May File.*—Any party wishing to raise any issue decided by a panel of this Court must file a petition for rehearing en banc pursuant to this Rule.~~

~~(b) *Requirements for Pro Se Prisoners and By Leave of Court.*—A pro se prisoner or a party who has leave of Court to proceed under this paragraph of the Rule aggrieved by a decision of a panel of this Court may file a petition for rehearing en banc within 14 days after the date of the order sought to be reheard. Twelve copies of any such petition must be filed with the clerk of the Court of Appeals. Petition for Rehearing en Banc. – Any party seeking a rehearing by the full Court of a decision or order of a panel of this Court finally disposing of a case must, within 14 days following such decision or order, file a petition for rehearing en banc with the clerk of this Court. The petition for rehearing en banc may not exceed 5,300 words in length. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this paragraph of the Rule must follow the provisions of paragraph (c) of this Rule when filing a petition for rehearing en banc.~~

~~(c) *Requirements for All Others.*~~

~~(1) Except for petitions for rehearing en banc filed by pro se prisoners or by those with leave of Court to proceed under paragraph (b) of this Rule, the petition must be filed as a single Portable Document Format (PDF) document attached to an e-mail addressed to cavpfr@vacourts.gov and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the decision or order sought to be reheard.~~

~~(2) The petition must be formatted to print on a page 8 1/2 x 12 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 5,300 words. The petition must include a certificate of service to opposing counsel and the certificate must specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel must be by electronic means and such address must be included in the certificate of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by cavpfr@vacourts.gov. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals must so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically has the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in failure to timely receive the electronically filed petition for rehearing,~~

~~counsel must provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and copy of the petition for rehearing.~~

~~(3) The e-mail message to which the petition is attached must recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message must contain a paragraph stating that a petition for rehearing en banc is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message must also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel must also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition.~~

~~(d**b**) *Proceedings After Petition for Rehearing.* – No answer to a petition for a rehearing en banc will be received unless requested by the this Court of Appeals. A rehearing en banc on motion of the Court of Appeals must be ordered no later than 20 days after the date of rendition of the order to be reheard. The clerk of the this Court of Appeals must promptly notify all counsel for both parties of record of the action taken by this Court on the petition for rehearing en banc via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.~~

~~(c) *On the Court's Order.* – A rehearing en banc on motion of this Court must be ordered no later than 20 days after the date of rendition of the order to be reheard. The clerk of this Court must promptly notify all counsel of record of the action taken by this Court on this Court's motion.~~

Last amended by Order dated November 23, 2020; effective March 1, 2021.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
H. REHEARING

Rule 5A:35. Procedure for Rehearing.

(a) *Rehearing by a Panel.* – When rehearing by a panel is granted on petition of a party, the clerk of ~~the this~~ Court ~~of Appeals~~ must notify all counsel ~~promptly~~. No brief in addition to the petition may be filed by petitioner. Respondent may file in the office of the clerk ~~seven copies of~~ an answering brief, which may not exceed 5,300 words in length, within 21 days following the date of the order of this Court granting a rehearing. ~~Three copies of the~~ The respondent's answering brief must be transmitted, mailed, or delivered to opposing counsel on or before the date the answering brief is filed. Respondent may be heard orally whether or not an answering brief is filed. The case will be placed on the docket for oral argument. When practicable, such a rehearing will be heard by the same panel that rendered the final decision in the case.

(b) *Rehearing En Banc.* – When all or part of a petition for rehearing en banc is granted, the clerk of this Court must notify all counsel ~~promptly~~. The mandate entered is stayed as to all issues decided by the panel pending the decision of ~~the this~~ Court en banc. The appeal is reinstated on the docket of ~~the this~~ Court for oral argument only as to issues granted. Briefing and oral argument will proceed in the same order as before the three-judge panel. ~~The Court of Appeals may require any party to whom rehearing en banc has been granted to file 20 copies of an appendix, prepared in conformity with the provisions of Rule 5A:25, with the clerk of the Court within such time as the Court of Appeals specifies.~~

(1) Issues Considered Upon Rehearing En Banc. Only issues raised in the petition for rehearing en banc and granted for rehearing or included in the grant by ~~the this~~ Court on its own motion are available for briefing, argument, and review by the en banc Court. ~~The This~~ Court may grant a petition in whole or in part. Any issue decided by a panel of this Court not subject to a petition for rehearing en banc remains undisturbed by an en banc decision.

(2) Appellant's Opening Brief Upon Rehearing En Banc. The party who was the appellant before the panel of this Court must file in the office of the clerk ~~20 copies of~~ a brief, which may not exceed 12,300 words in length. Such brief must be filed within 21 days following the date of the order of this Court granting rehearing en banc, and must be accompanied by a certificate ~~that three copies were~~ indicating that the brief was transmitted, mailed, or delivered to opposing counsel on or before the date of filing. ~~The brief must bear a white cover.~~

(3) Appellee's Answering Brief Upon Rehearing En Banc. The party who was the appellee before the panel of this Court may file in the office of the clerk ~~20 copies of~~ ~~an the~~ answering brief not to exceed 12,300 words in length, within 14 days after the opening brief has been filed. ~~Three copies of~~ The appellee's answering brief must be transmitted, mailed, or delivered to opposing counsel on or before the date the

answering brief is filed. ~~The brief must bear a blue cover.~~ Appellee may be heard orally whether or not the answering brief is filed.

(4) Appellant's Reply Brief Upon Rehearing En Banc. The party who was the appellant before the panel may file in the office of the clerk a reply brief, not to exceed 3,500 words, within 14 days after the answering brief has been filed. ~~Twenty copies of the reply brief must be filed. Three copies of such brief~~ The appellant must ~~be mailed~~ transmit, mail, or ~~delivered~~ deliver a copy of the reply brief to opposing counsel on or before the date the answering brief is filed. ~~The brief must bear a green cover.~~

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
I. SETTLEMENT, WITHDRAWAL, AND MEDIATION

Rule 5A:36. Settlement or Withdrawal of Pending Appeal.

When a case has been settled or the appeal withdrawn at any time after the notice of appeal has been filed, it is the duty of counsel to notify the clerk of ~~the~~ this Court ~~of Appeals~~ by filing a written notice that the case has been settled or the appeal withdrawn. If counsel certifies that the terms of the settlement or withdrawal require further proceedings in the trial court, a single ~~j~~judge of ~~the~~ this Court ~~of Appeals~~ may approve entry of an order of remand.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
I. SETTLEMENT, WITHDRAWAL, AND MEDIATION

Rule 5A:37. Appellate Settlement Conference in the Court of Appeals.

(a) *Settlement Conference.* – Upon motion or sua sponte, this Court may order counsel, and clients in appropriate cases, to participate in a settlement conference. An informal motion requesting a settlement conference may be filed at any time while the matter is on appeal and should state briefly why a settlement conference would be useful. The motion must state whether all parties concur. If a party objects, that party must file within 7 days a short response explaining the grounds for the objection. All motions and responses may be in letter format addressed to the clerk of this Court. If this Court orders a settlement conference, it will ordinarily be held by telephone conference call and, in the discretion of the settlement judge, may be held in person at a convenient location.

(b) *Settlement Judge.* – A senior or retired appellate judge will conduct all settlement conferences at no cost to the litigants.

(c) *Excluded Cases.* – No settlement conference will be conducted in appeals of criminal judgments or orders terminating parental rights or in any other case arising under this Court’s original jurisdiction.

(d) *Conferences.* – Prior to participating in a settlement conference, all counsel must consult with their respective clients about settlement options and ask for express authority to settle within any parameters acceptable to the client. The settlement judge may conduct more than one conference if, in his discretion, he deems it advisable. During a conference, the settlement judge may consult ex parte with counsel, or with counsel and that counsel's client, but must not consult ex parte with any represented client without counsel's agreement.

(e) *Conference Orders.* – A settlement conference, if ordered in a case, will not automatically affect any time deadline otherwise applicable. The settlement judge, however, may direct the clerk of ~~court~~ this Court to enter orders tolling any non-mandatory time deadline before or after the deadline has passed. If any party advises the settlement judge that all or part of an appeal has been settled, the settlement judge will direct the parties to prepare and sign a settlement agreement setting forth all agreed-upon terms. Upon receiving a copy of the settlement agreement, the settlement judge must thereafter direct the clerk of ~~court~~ this Court to enter an order dismissing with prejudice all or part of the appeal subject to the agreement.

(f) *Confidentiality.* – The provisions of the settlement agreement will not be considered confidential except to the extent the agreement specifically requires it. No confidentiality provision, however, will prejudice any party’s ability to seek judicial enforcement of a settlement agreement. In any case in which a settlement conference does not result in a settlement agreement, no statement made during a settlement conference or in motions requesting a settlement conference or responses to such motions may be disclosed by the settlement judge, the parties, or counsel to any (i) appellate judge

who may be called upon to decide the merits of the appeal or any related appeal, or (ii) lower court judge who may be called upon to decide the merits of the case if remanded or the merits of any related case.

(g) *Cross-Appeals and Related Appeals.* – Appeals and cross-appeals will ordinarily be addressed in a single settlement conference. At the discretion of the settlement judge, related appeals may be consolidated for settlement conference purposes.

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Last amended by Order dated April 1, 2021; effective June 1, 2021.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS

Rule 5A:38. Petition for Review Pursuant to Code § 8.01-626; Injunctions.

(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 within 15 days of an order of a circuit court that grants an injunction, refuses an injunction, or dissolves or refuses to enlarge an existing injunction.

(b) *Copy to Opposing Counsel.* – At the time the petition for review is filed, a copy of the petition must be served on counsel for the respondent. At the same time that the petition is served, a copy of the petition must also be emailed to counsel for the respondent, unless said counsel does not have, or does not provide, an email address. With the agreement of the parties, the petition may be served on counsel for the respondent solely by email.

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

(i) Except by permission of a judge of this Court, a petition for review may not exceed ~~the longer of 15 pages or~~ 2,625 words. The petition for review must otherwise comply with the requirements for a petition for appeal in Rule 5A:12(c).

(ii) The petition must be accompanied by a copy of the pertinent portions of the record of the circuit court, including the relevant portions of any transcripts filed in the circuit court and the order(s) entered by the court respecting the injunction (hereafter “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~~ word 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, facsimile number (if any), and e-mail address of counsel for each party; and the mailing address, telephone number, facsimile number (if any), 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, 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 circuit court and contains everything therefrom necessary for a review of the petition.

(d) ~~Number of Copies to File. — Four copies of the petition, including the record of the circuit court, must be filed. Only one copy of the record need be filed if, upon filing the petition, counsel for the petitioner also files an electronic copy of the said record as an Adobe Acrobat Portable Document Format (PDF) document on a CD-ROM.~~

(e) ~~Filing Fee.~~ – The petition must be accompanied by ~~a check or money order payable to the clerk of this Court for the amount required by statute~~ the \$50 filing fee required by statute. The clerk of this Court may file a petition for review that is not accompanied by such fee if the fee is received by the clerk within 5 days of the date the petition for review is filed. If the fee is not received within such time, the petition for review will be dismissed.

(f) ~~Scope and Review.~~ –

(i) a petition for review may be considered by this Court whether the circuit court's order, or that part of the order ~~dealing with~~ addressing the injunction, is temporary or permanent. If review is sought from a final order that ~~deals with~~ addresses injunctive relief and other issues, a petition for review must address only that part of the final order that actually addresses 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 § 8.01-675.3 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 may be considered by a single ~~J~~Judge of this Court, or by a three-judge panel.

(g) ~~Responsive Pleading.~~ – A respondent may file a response to a petition for review within seven days of the date of service of same, unless ~~the~~ this Court specifies a shorter time frame. For the purpose of this ~~R~~Rule, a petition for review is considered served 3 days from the date on which it was mailed, or 1 day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent. Notwithstanding the foregoing, ~~the~~ this Court may act on a petition for review without awaiting a response; however, absent

exceptional circumstances, ~~the~~ this Court will not grant a petition for review without affording the respondent an opportunity to file a responsive pleading.

(hg) *Rehearing and Further Review*. – The provisions of Rules 5A:15, ~~5A:15A~~, and 5A:33 through 5A:35 do not apply to proceedings under Code § 8.01-626.

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

Last amended by Order dated April 1, 2021; effective June 1, 2021.