RULES OF THE SUPREME COURT OF VIRGINIA
PART ONE
RULES APPLICABLE TO ALL PROCEEDINGS

Rule 1:24. Requirements for Court Payment Agreements for the Collection of Fines and Costs.

The purposes of the statutory court collection process are (i) to facilitate the payment of fines, court costs, penalties, restitution and other financial responsibilities assessed against defendants convicted of a criminal offense or traffic infraction, (ii) to collect the monies due to the Commonwealth and localities as a result of these convictions, and (iii) to assure payment of court-ordered restitution to victims of crime. To achieve these purposes, this Rule is intended to ensure that all courts approve deferred and installment payment agreements consistent with §§ 19.2-354, 19.2-354.1, and the provisions of this Rule and to further the legal values of predictability, fairness, and similarity in the collection of fines, court costs, penalties, and restitution throughout the courts of the Commonwealth.

(a) *Definitions*. —

(1) "Fines and costs" mean all the fines, court costs, forfeitures, and penalties assessed in all cases by a single court against a defendant for the commission of crimes or traffic infractions. The term "fines and costs" also includes restitution unless the court orders a separate payment schedule for restitution.

(2) An "installment payment agreement" is an agreement in which the defendant agrees to make monthly or other periodic payments until the fines and costs are paid in full.

(3) A "deferred payment agreement" is an agreement in which the defendant agrees to pay the full amount of the fines and costs at the end of the agreement's stated term and no installment payments are required.

(4) A "modified deferred payment agreement" is a deferred payment agreement in which the defendant also agrees to use best efforts to make monthly or other periodic payments.

(b) *Access to payment alternatives*. — Any defendant may enter into a deferred payment agreement, a modified deferred payment agreement or an installment payment agreement to pay fines and costs. The court may not deny a defendant the opportunity to enter into a deferred, modified deferred, or installment payment agreement solely because (i) the defendant previously defaulted under the terms of a payment agreement, (ii) the fines and costs have been referred for collection pursuant to § 19.2-349, (iii) a defendant has not established a payment history, (iv) of the category of offense for which the defendant was convicted or found not innocent, or (v) of the total amount of all fines and costs.

(c) *Notice of payment alternatives*. — The court must give the defendant written notice of deferred, modified deferred, and installment payment agreements and, if a community service

program has been established, the availability of earning credit toward discharge of fines and costs through the performance of community service work.

(d) *Conditions of a payment agreement.* — All the fines and costs that a defendant owes for all cases in any single court may be incorporated into one payment agreement, unless otherwise ordered by the court in specific cases. A payment agreement must include only those outstanding fines and costs for which the limitations period set forth in § 19.2-341 has not run.

In determining the length of time to pay under a deferred, modified deferred, or installment payment agreement and the amount of the payments, a court must take into account the defendant's financial resources and obligations, including any fines and costs the defendant owes in other courts. ~~In assessing the~~ If the defendant requests to enter into an installment agreement, the court may offer installment payments of (i) $25 per month, or a higher amount, depending on a defendant's ability to pay, which the court ~~must use~~ will determine using a written financial statement, on a form developed by the Executive Secretary of the Supreme Court, setting forth the defendant's financial resources and obligations or ~~conduct~~ by conducting an oral examination of the defendant to determine his financial resources and obligations or (ii) less than $25 per month, if the defendant is determined to be indigent by the court pursuant to § 19.2-159. In the case of a defendant otherwise eligible to enter a payment plan under this rule, any resources exempted by subsection (h) may not be considered when determining the payment amount or the length of time to pay under any deferred, modified deferred, or installment payment agreement.

No court may require a defendant to make a down payment upon entering a deferred, modified deferred, or installment payment agreement, other than a subsequent payment agreement, in which case the court may require a down payment pursuant to subsection (g). Nothing in this rule prevents a defendant from voluntarily making a down payment upon entering any payment agreement.

Where available, the court may provide community service work as an option to defray fines and costs, especially when the defendant is indigent or otherwise unable to make meaningful payments. Any portion of the community service completed should be credited to the defendant's obligations. Community service may not be credited against any amount owed as restitution, the interest which has accrued on restitution, and any collection fee required.

At any time during the duration of a payment agreement, the defendant may request a modification of the agreement in writing, on a form provided by the Executive Secretary of the Supreme Court, and the court may grant such modification based on a good faith showing of need.

(e) *Timeliness of payments*. — Any payment which is received within 10 days of the date due is considered timely made.

(f) *Combined payment agreements*. — The court may offer a payment agreement combining an appropriate initial period during which no payment of fines and costs is required, followed by a period of installment payments. Such a combined payment plan may be

appropriate when the defendant is incarcerated, but should not be limited only to these circumstances.

(g) *Re-entry into a payment agreement after default.* — A defendant who has defaulted on a payment agreement may petition the court for a subsequent payment agreement. In determining whether to approve the request for a subsequent payment agreement, the court must consider any change in the defendant's circumstances.

A court may require a down payment to enter into a subsequent payment agreement, provided that (i) if the fines and costs owed are $500 or less, the required down payment may not exceed 10 percent of such amount or (ii) if the fines and costs owed are more than $500, the required down payment may not exceed 5 percent of such amount or $50, whichever is greater.

(h) *Exemptions.* ─ Any defendant owing fines and costs whose sole financial resource is a Social Security benefit or Supplemental Security Income is exempt from making any payments toward such fines and costs at least until such time that the defendant has a resource other than a Social Security benefit or Supplemental Security Income. If the defendant informs the court that his sole financial resource is a Social Security benefit or Supplemental Security Income, the case may not be referred to collections under § 19.2-349.

Courts must include in their payment plan policies developed under Code §§ 19.2-354 and 19.2-354.1 that when the court is informed that a defendant receives a Social Security benefit or Supplemental Security Income, no payment toward fines and costs may be taken from such exempt resource.

RULES OF THE SUPREME COURT OF VIRGINIA
PART THREE
PRACTICE AND PROCEDURE IN CIVIL ACTIONS

Rule 3:17. Substitution of Parties.

(a) *Substitution of a successor.* — If a person becomes incapable of prosecuting or defending because of death, disability, conviction of felony, removal from office, or other cause, a successor in interest may be substituted as a party in such person's place.

(b) *Motion, Consent, Procedure*. — Substitution may be made on motion of the successor or of any party to the suit. If the successor does not make or consent to the motion, the party making the motion may file the motion and a proposed amended pleading effecting the substitution in the clerk's office and serve a copy of the motion and the proposed amended pleading upon the party to be substituted in the manner prescribed by the Code of Virginia for serving original process upon such party. Unless the movant and the party to be substituted agree otherwise, or the court orders a different schedule, the party sought to be substituted must file a written response to the motion for substitution within 21 days after service of the motion and proposed amended pleading upon the party sought to be substituted.

(c) *Public Officers; Death or Separation from Office*. — An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name. Any misnomer not affecting the parties' substantial rights will be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

RULES OF THE SUPREME COURT OF VIRGINIA
PART FOUR
PRETRIAL PROCEDURES, DEPOSITIONS AND PRODUCTION AT TRIAL

Rule 4:1. General Provisions Governing Discovery.

(a) *Discovery Methods.* — Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) *Scope of Discovery*. — Unless otherwise limited by order of the court in accordance with these Rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Subject to the provisions of Rule 4:8 (g), the frequency or extent of use of the discovery methods set forth in subdivision (a) may be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice to counsel of record or pursuant to a motion under subdivision (c).

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person (which includes any individual, corporation, partnership or other association) carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance will not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this Rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this Rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering

discovery of such materials when the required showing has been made, the court must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts; Costs - Special Provisions for Eminent Domain Proceedings. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this Rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) A party may depose any person who has been identified as an expert whose opinion may be presented at trial, subject to the provisions of subdivision (b)(4)(C) of this Rule concerning fees and expenses.

(iii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this Rule, concerning fees and expenses as the court may deem appropriate.

(iv) Drafts of expert reports, disclosures, or interrogatory responses called for by subdivision (b)(4)(A)(i) of this Rule are not discoverable except on a showing of exceptional circumstances under which it is impractical for the party seeking discovery to obtain otherwise discoverable information contained in the draft by other means. The party seeking discovery of such information bears the burden of proving such exceptional circumstances.

(v) Communications between a party's attorney and any expert witness expected to testify at trial are not discoverable except to the extent that such communications relate to compensation for the expert's work on the case or identify facts or assumptions that the expert considered or relied upon in forming the opinions to be expressed.

(vi) In ordering discovery of any material covered by subdivisions (b)(4)(A)(iv) or (b)(4)(A)(v) of this Rule, the court must in all events protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court must require that the party seeking discovery pay the expert a reasonable fee for time spent and expenses incurred in responding to discovery under subdivisions (b)(4)(A)(ii), (b)(4)(A)(iii), and (b)(4)(B) of this Rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(iii) of this Rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this Rule the court must require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(D) Notwithstanding the provisions of subdivision (b)(4)(C) of this Rule, the condemnor in eminent domain proceedings, when it initiates discovery, must pay all reasonable costs thereof, including the cost and expense of those experts discoverable under subdivision (b) of this Rule. The condemnor will be deemed to have initiated discovery if it uses, or gives notice of the use of, any discovery method before the condemnee does so, even though the condemnee subsequently engages in discovery.

(5) Limitations on Discovery in Certain Proceedings. In any proceeding (1) for separate maintenance, divorce, or annulment of marriage, (2) for the exercise of the right of eminent domain, or (3) for a writ of habeas corpus or in the nature of coram nobis; (a) the scope of discovery extends only to matters which are relevant to the issues in the proceeding and which are not privileged; and (b) no discovery is allowed in any proceeding for a writ of habeas corpus or in the nature of coram nobis without prior leave of the court, which may deny or limit discovery in any such proceeding. In any proceeding for divorce or annulment of marriage, a notice to take depositions must be served in the Commonwealth by an officer authorized to serve the same, except that, in cases where such suits have been commenced and an appearance has been made on behalf of the defendant by counsel, notices to take depositions may be served in accordance with Rule 1:12.

(6) Claims of Privilege or Protection of Trial Preparation Materials.

(i) When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(ii) If a party believes that a document or electronically stored information that has already been produced is privileged or its confidentiality is otherwise protected the producing party may notify any other party of such claim and the basis for the claimed privilege or protection. Upon receiving such notice, any party holding a copy of the designated material must sequester or destroy its copies thereof, and may not duplicate or disseminate such material pending disposition of the claim of privilege or protection by agreement, or upon motion by any party. If a receiving party has disclosed the information before being notified of the claim of privilege or other protection, that party must take reasonable steps to retrieve the designated material. The producing party must preserve the information until the claim of privilege or other protection is resolved.

(7) Electronically Stored Information. A party need not provide discovery of electronically stored information ("ESI") from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought has the burden of showing that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may

nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 4:1(b)(1). The court may specify conditions for the discovery, including allocation of the reasonable costs thereof.

If the party receiving a discovery request anticipates that it will require the production of ESI and that an ESI protocol is needed, then within 21 days of being served with the request, or within 28 days of service of requests served with the Complaint, the receiving party should propose an ESI protocol that addresses: (A) an initial list of custodians or the person(s) with knowledge of the party's custodians and the location of ESI, (B) a date range, (C) production specifications, (D) search terms, and (E) the identification and return of inadvertently revealed privileged materials. If the proposed protocol is not acceptable, the parties must in good faith attempt to meet within 15 days from service of the protocol on the party requesting the ESI. If, after 15 days from service of the protocol, the parties are unable to agree to limits on the discovery of the ESI, on motion to compel discovery or for a protective order, the court will, in its discretion, determine appropriate limitations or conditions on the ESI request, if any, including allocation of the reasonable costs thereof.

(8) Pre-Motion Negotiation. A motion under this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

(c) *Protective Orders.* — Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county or city where the deposition is to be taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the subpoena duces tecum seeks a nonparty's financial records or a nonparty's records protected by the attorney-client privilege, such nonparty may move for a protective order, and for such other relief permitted by this subsection, in accordance with Code § 8.01-420.9.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) *Sequence and Timing of Discovery*. —

(1) Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, will not operate to delay any other party's discovery.

(2) Discovery continues after a demurrer, plea or dispositive motion addressing one or more claims or counter-claims has been filed and while such motion is pending decision – unless the court in its discretion orders that discovery on some or all issues in the action should be suspended.

(e) *Supplementation of Responses.* — A party who has responded to a request for discovery is under a duty to supplement or correct the response to include information thereafter acquired in the following circumstances.

(1) A party is under a duty promptly to amend and/or supplement all responses to discovery requests directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony, when additional or corrective information becomes available.

(2) A party is under a duty promptly to amend and/or supplement all other prior responses to interrogatories, requests for production, or requests for admission if the party learns that any such response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(3) A court may order, or the parties may agree to provide, supplementation in addition to that required in subsections (1) and (2) of this subpart (e).

(4) A party may supplement a prior discovery response by filing an updated response labelled "Supplemental" or "Amended", or by otherwise notifying all other parties of the updated information in writing, signed by counsel of record.

(f) *Service Under This Part.* — Except for the service of the notice required under Rule 4:2(a)(2), any notice or document required or permitted to be served under this Part Four must be served as provided in Rule 1:12 except that any notice or document permitted to be served with the initial pleading may be served (or accepted) in the same manner as such pleading.

(g) *Signing of Discovery Requests, Responses, and Objections.* — Every request for discovery or response or objection thereto made by a party represented by an attorney must be signed by at least one attorney of record in the attorney's individual name, whose address must be stated. A party who is not represented by an attorney must sign the request, response, or objection, and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these Rules and warranted by existing law or a good faith argument for extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy and the importance of the issues at stake in the litigation. General or blanket objections to discovery requests are prohibited. If a request, response, or objection is not signed, it will be stricken unless it is signed no later than 21 days after the omission is called to the attention of the party making the request, response, or objection, and a party is not obligated to take any action with respect to it until it is signed.

(1) *Raising Signature Defects; Waiver*. —

(a) The issue of a signature defect must be raised in the trial court prior to the entry of the final order;

(b) A party waives an objection to a signature defect in a discovery request, response, or objection by failing to raise the issue in the trial court in time for the defect to be corrected.

(2) *Effect of Curing Signature Defects*. If a signature defect is timely cured, the discovery request**,** response, or objection is deemed valid and relates back to the date it was originally served. When a party objects to a signature defect in a discovery request, however, the objecting party's time to respond to the discovery request runs from the date the signature defect is cured.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, may impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

RULES OF THE SUPREME COURT OF VIRGINIA
PART FOUR
PRETRIAL PROCEDURES, DEPOSITIONS AND PRODUCTION AT TRIAL

Rule 4:9A. Production from Non-Parties of Documents, Electronically Stored Information, and Things and Entry on Land for Inspection and Other Purposes; Production at Trial.

(a) *Issuance of a Subpoena Duces Tecum.* — Except as provided in paragraph (d) of this Rule, a subpoena duces tecum may be issued:

(1) By the clerk of court. Upon written request therefor filed with the clerk of the court in which the action or suit is pending by counsel of record for any party or by a party having no counsel in any pending case, with a certificate that a copy thereof has been served pursuant to Rule 1:12 upon counsel of record and to parties having no counsel, the clerk must issue to a person not a party therein a subpoena duces tecum subject to this Rule.

(2) By an attorney. In a pending civil proceeding, a subpoena duces tecum may be issued by an attorney-at-law as an officer of the court if he or she is an active member of the Virginia State Bar at the time of issuance. An attorney may not issue a subpoena duces tecum in those civil proceedings excluded in Virginia Code § 8.01-407. An attorney-issued subpoena duces tecum must be signed as if a pleading and must contain the attorney's address, telephone number and Virginia State Bar identification number. A copy of any attorney-issued subpoena duces tecum must be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance with a certificate that a copy thereof has been served pursuant to Rule 1:12 upon counsel of record and to parties having no counsel. If time for compliance with an attorney-issued subpoena duces tecum is less than fourteen (14) days after service of the subpoena, the person to whom the subpoena is directed may serve on the party issuing the subpoena a written objection setting forth any grounds upon which such production, inspection, copying, sampling or testing should not be had. If an objection is made, the party issuing the subpoena is not entitled to the requested production, inspection, copying, sampling or testing, except pursuant to an order of the court in which the civil proceeding is pending. If an objection is made, the party issuing the subpoena may, upon notice to the person to whom the subpoena is directed, move for an order to compel the production, inspection, copying, sampling or testing. Upon a timely motion, the court may quash, modify or sustain the subpoena as provided above in subsection (c) of this Rule.

(b) *Content of Subpoena Duces Tecum; Objections*. — Subject to paragraph (d) of this Rule, a subpoena duces tecum will command the person to whom it is directed, or someone acting on his behalf, to produce the documents, electronically stored information, or designated tangible things (including writings, drawings, graphs, charts, photographs, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form) designated and described in said request, and to permit the party filing such request, or someone acting in his behalf, to inspect

and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 4:1(b) which are in the possession, custody or control of such person to whom the subpoena is directed, at a time and place and for the period specified in the subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(c) *Responding to a Subpoena; Objections; Production of Documents and Electronically Stored Information. —*

(1) Production of Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand.

(2) Electronically Stored Information.

(A) A person responding to a subpoena need not provide discovery of electronically stored information from sources the responder identifies as not reasonably accessible because of undue burden or cost. On motion to compel production or to quash a subpoena, the person from whom production is sought under the subpoena must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order production of responsive material from such sources if the subpoenaing party shows good cause, considering the limitations of Rule 4:1(b)(1). The court may specify conditions for the production of such information, including allocation of the reasonable costs thereof.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding thereto must produce the information as it is ordinarily maintained if it is reasonably usable in such form or forms, or must produce the information in another form or forms in which it is reasonably usable. A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) Objections and Procedures. The court, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (1) quash or modify the subpoena, or the method or form for production of electronically stored information, if the subpoena would otherwise be unduly burdensome or expensive, (2) condition denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of some or all of the reasonable cost of producing the documents, electronically stored information, and tangible things so designated and described or (3) direct that the documents and tangible things subpoenaed, including electronically stored information (unless another location for production is agreed upon by the requesting and producing parties), be returned only to the office of the clerk of the court through which such documents and tangible things are subpoenaed in which event, upon request of any party in interest, or his attorney, the clerk of such court must permit the withdrawal of such documents and tangible things by such party or his attorney for such reasonable period of time as will permit his inspection, photographing, or copying thereof. If the subpoena duces tecum seeks a nonparty's financial records or a nonparty's records protected by the attorney-client privilege, such nonparty

may move to quash or modify the subpoena, and for such other relief permitted by this subsection, in accordance with Code § 8.01-420.9.

(4) Pre-Motion Negotiation. A motion under this Rule must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

(d) *Certain Officials.* — No request to produce made pursuant to paragraph (b) above may be served, and no subpoena provided for in paragraph (c) above may issue, until prior order of the court is obtained when the party upon whom the request is to be served or the person to whom the subpoena is to be directed is the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof; the President or Vice President of the United States; any member of the President's Cabinet; any Ambassador or Consul; or any Military Officer on active duty holding the rank of Admiral or General.

(e) *Certain Health Records*. Patient health records protected by the privacy provisions of Code Section 32.1-127.1:03 may be disclosed only in accordance with the provisions and procedures prescribed by that statute.

(f) *Copies of Documents and Other Subpoenaed Information.* —

(1) Documents. When one party to a civil proceeding subpoenas documents, the subpoenaing party, upon receipt of the subpoenaed documents, must, if requested, provide true and full copies of the same to any party or to the attorney for any other party in accordance with Code § 8.01-417(B).

(2) Electronically stored information. When one party to a civil proceeding subpoenas and obtains electronically stored information, the subpoenaing party must, if requested, provide true and full copies of the same to any party or that party's attorney, in the form the subpoenaing party received the information, upon reimbursement of the proportionate cost of obtaining such materials.

(g) *Proceedings on Failure or Refusal to Comply*. — If a non-party, after being served with a subpoena issued under the provisions of this Rule, fails or refuses to comply therewith, he may be proceeded against as for contempt of court as provided in § 18.2-456.

RULES OF THE 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 document or object filed with or transmitted to this Court must be filed or transmitted in compliance with these Rules. Originals or copies of 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.

(h) *Substitution of Parties*.

(1) *Substitution of a Successor*. — If a person becomes incapable of prosecuting or defending because of death, disability, conviction of felony, or other cause, and the claim is not extinguished, a successor in interest may be substituted as a party in such person's place.

(2) *Motion*. — Substitution may be made on motion of the successor or of any party to the appeal.

(3) *Public Officers; Death or Separation from Office*. — An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

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

Rule 5A:1. Scope, Citation, Applicability, Filing 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. Documents may be signed digitally using an electronic 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 page or word limit applies, the certificate must also state the number of pages or words. Headings, footnotes, and quotations are included in the page and word limit; the cover page, table of contents, table of authorities, signature blocks, and certificate are not included in the page or word limit.

(d) *Definitions.*

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

(2) "clerk of this Court" 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 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 that judge is 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 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 indicating the date and manner of 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 document to the clerk specified;

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

(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.

(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, 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.

(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) *Substitution of Parties.*

(1) *Substitution of a Successor.* — If a person becomes incapable of prosecuting or defending because of death, disability, conviction of felony, or other cause, and the claim is not extinguished, a successor in interest may be substituted as a party in such person's place.

(2) *Motion.* — Substitution may be made on motion of the successor or of any party to the appeal.

(3) *Public Officers; Death or Separation from Office*. — An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The Court may order substitution at any time, but the absence of such an order does not affect the substitution.

RULES OF THE 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.* — Except as otherwise provided by statute, no appeal will be allowed unless, within 30 days after entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court under Rule 5A:3(a), counsel files with the clerk of the trial court a notice of appeal, and at the same time transmits, mails, or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the trial court announces a decision or ruling—but before the entry of such judgment or order—is treated as filed on the date of and after the entry. A party filing a notice of an appeal of right to this Court must simultaneously file in the trial court an appeal bond if required by Code § 8.01-676.1.

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

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

(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 this Court and, except as otherwise provided by law, must be accompanied by the $50 filing fee required by statute. The fee is due at the time the notice of appeal is presented. The clerk of this Court will file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within 10 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~~, (i)~~ a statement whether counsel for defendant has been appointed or privately retained; ~~and (ii) a statement that the notice of appeal, in addition to being sent to the attorney for the Commonwealth who prosecuted the case, has been sent by e-mail to noticesofappeal@oag.state.va.us or, if the appellant does not have access to email, mailed to Notices of Appeal, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219;~~ 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.

(g) *Notice of Appearance by the Commonwealth in Criminal Cases*. — Within 10 days of the filing of the trial court record in a criminal case in the Court of Appeals, the Attorney General, or the attorney for the Commonwealth who prosecuted the underlying criminal case, acting 2 pursuant to Code § 2.2-511 and with the consent of the Attorney General, must file a notice of appearance identifying the attorney(s) representing the Commonwealth in the appeal. The notice of appearance must identify 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 who is to represent the Commonwealth in the appeal. If the notice is being filed by the attorney for the Commonwealth who prosecuted the underlying criminal case, it must include a certification that the Attorney General has consented to the representation. A copy of the notice of appearance must be served on counsel for the appellant.

Form

NOTICE OF APPEAL FROM TRIAL COURT

(Rule 5A:6)

VIRGINIA: IN THE CIRCUIT COURT OF _____

(The style of the case in the Circuit Court.)

NOTICE OF APPEAL

_____,_____

(name(s) of party(ies)) (plaintiff, defendant or other designation in trial court)

_____ hereby appeals to the Court of Appeals of Virginia from the

_____

(final judgment or other appealable order or decree)

of this Court entered on _____.

(date)

[If applicable]

This is a termination of parental rights case (Va. Code §16.1-283, §16.1-277.01, §16.1-277.02 or §16.1-278.3).

A transcript will be filed.

A statement of facts, testimony, and other incidents of the case will be filed.

[In criminal cases only:] Appellant requests the clerk of the circuit court to cause a transcript to be prepared of the following circuit court proceedings:

_____

_____

_____.

CERTIFICATE

The undersigned certifies as follows:

(1) The name(s) and address(es) of appellant(s) are:

[If applicable] Appellant(s), is (are) not represented by counsel. The telephone number(s),

facsimile number (if any) and e-mail address (if any) of appellant(s) are:

(2) The name(s), Virginia State Bar numbers(s), address(es), telephone number(s), facsimile number (if any), and email address(es) (if any) of counsel for appellant(s) are:

(3) The name(s) and address(es) of appellee(s) are:

[If applicable] Appellee(s), is (are) not represented by counsel. The telephone number(s) facsimile number (if any) and e-mail address (if any) of appellee(s) (are):

(4) The name(s), Virginia State Bar numbers(s), address(es), ~~and~~ telephone number(s), facsimile number (if any), and email address(es) (if any) of counsel for appellee(s) are:

(5) [If applicable] The name(s), address(es), and telephone number(s) of the guardian *ad litem* for the child(ren) is (are):

(6) [If applicable] Counsel for appellant, or appellant if not represented by counsel, has ordered from the court reporter who reported the case the transcript for filing as required by Rule 5A:8(a).

(7) [If applicable] _____, _____
(name of party) (appellant)

_____, is not represented by counsel. _____
(appellee) (his) (her)
address and telephone number are:

(8) [In criminal and termination of parental rights cases only] Counsel for defendant has been _____.
(appointed) (privately retained)

(9) A copy of this Notice of Appeal has been mailed, emailed, or delivered to all opposing counsel [and/or to unrepresented parties, to the guardian ad litem, if applicable] and to the Clerk of the Court of Appeals this _____ day of _____, 20____.

~~(10) [In criminal cases only] A copy of this Notice of Appeal has been [sent by email to noticesofappeal@oag.state.va.us] [(if the appellant does not have access to email) mailed to Office of the Attorney General, attn.: Notices of Appeal, 202 North Ninth Street, Richmond, Virginia 23219] this ____ day of _____, 20__.~~

_____
(Signature of counsel or unrepresented party)

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

Rule 5A:27. Summary Disposition.

The Court of Appeals may dispense with oral argument in any matter if the parties agree that oral argument is not necessary or the panel to which the matter is assigned has examined the briefs and record and unanimously agrees that oral argument is unnecessary because (a) the appeal is wholly without merit; ~~or~~ (b) the dispositive issue or issues have been authoritatively decided, and the appellant has not argued that the case law should be overturned, extended, modified, or reversed; or (c) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

Last amended by Order dated June 18, 2025; effective July 1, 2025.

RULES OF THE SUPREME COURT OF VIRGINIA
PART SEVEN C
GENERAL DISTRICT COURTS –CRIMINAL AND TRAFFIC

Rule 7C:5. Discovery.

(a) *Application of Rule.* This Rule applies only to the prosecution for a misdemeanor which may be punished by confinement in jail and to a preliminary hearing for a felony.

(b) *Definitions.* For purposes of discovery under this Rule 1) the prosecuting attorney is the attorney for the Commonwealth or the city attorney, county attorney, or town attorney, who is responsible for prosecuting the case; 2) if no prosecuting attorney prosecutes the case, the representative of the Commonwealth is the law enforcement officer, or, if none, such person who appears on behalf of the Commonwealth, county, city or town in the case.

(c) *Discovery by the Accused.* Upon motion of an accused, the court must order the prosecuting attorney or representative of the Commonwealth to permit the accused to hear, inspect and copy or photograph the following information or material when the existence of such is known or becomes known to the prosecuting attorney or representative of the Commonwealth and such material or information is to be offered in evidence against the accused in a General District Court:

(1) any relevant written or recorded statements or confessions made by the accused, or copies thereof and the substance of any oral statements and confessions made by the accused to any law enforcement officer; and

(2) any criminal record of the accused. *See* Code § 19.2-389(I).

(d) *Time of Motion.* A motion by the accused under this Rule must be made in writing and filed with the Court and a copy thereof mailed, faxed, or otherwise delivered to the prosecuting attorney and, if applicable, to the representative of the Commonwealth at least 10 days before the day fixed for trial or preliminary hearing. The motion must include the specific information or material sought under this Rule.

(e) *Time, Place and Manner of Discovery and Inspection.* An order granting relief under this Rule must specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(f) *Failure to Comply.* If at any time during the course of the proceedings, it is brought to the attention of the court that the prosecuting attorney or representative of the Commonwealth has failed to comply with this Rule or with an order issued pursuant to this Rule, the court must order the prosecuting attorney or representative of the Commonwealth to permit the discovery or inspection of the material not previously disclosed, and may grant such continuance to the accused as it deems appropriate.