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Supreme Court of Virginia
Appellate Rules Advisory Committee

Report of the Committee

June 9, 2008

Hon. Donald W. Lemons
Chairman

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I. Executive Summary

The Supreme Court of Virginia may "prescribe the forms of writs and make general regulations for the practice in all courts of the Commonwealth; and may prepare a system of rules of practice and a system of pleading and the forms of process and may prepare rules of evidence to be used in all such courts." Code § 8.01-3(A). Pursuant to this authority, the Court created the Appellate Rules Advisory Committee and appointed Justice Lemons as its chairman. The Committee was commissioned to review Parts 5 and 5A of the Rules of the Supreme Court of Virginia and suggest revisions in order to promote clarity, conciseness, and uniformity in the rules of both the Supreme Court (Part 5) and the Court of Appeals of Virginia (Part 5A).

Justice Lemons organized the Committee in the summer of 2005, drawing together a group of attorneys representative of the practice of law in the Commonwealth. He conducted initial phone interviews with each member to obtain an impression of the revisions that might be necessary and then held an organizational meeting of the full Committee on September 28, 2005. At this meeting, the Committee was divided into five task forces: (1) Procedure for Filing an Appeal; (2) Perfecting the Appeal; (3) Granted Cases; (4) Capital Cases, Habeas Corpus, and Actual Innocence; and (5) Original Jurisdiction/Miscellaneous. The task forces were given specific rules and subject areas to review and were asked to prepare suggested revisions, if any were deemed necessary.

Despite dealing with different aspects of the appellate process, all of the task forces shared the same set of general principles and goals. These included making the rules more fair, efficient, and user-friendly. There was a sense that the Court should consider ways to punish lawyers for making procedural mistakes instead of the clients. Major goals of the Committee were to harmonize the rules in the Court of Appeals with the rules in the Supreme Court, and ensure that the rules reflect advances in technology and incorporate more electronic filing.

The task forces met separately from October 2005 to February 2006, and submitted their reports to Justice Lemons. These reports were then sent to the full Committee, and two meetings of the full Committee were held to discuss and vote on the suggested revisions. On March 27, 2006, the Committee acted on the reports submitted by the Procedure for Filing an Appeal Task Force and the Perfecting the Appeal Task Force. On May 2, 2006, the Committee acted on the reports submitted by the Granted Cases Task Force, the Capital Cases, Habeas Corpus, and Actual Innocence Task Force, and the Original Jurisdiction/Miscellaneous Task Force.

The work of the Committee was then referred to an Editing Committee. The Editing Committee was charged with incorporating the suggested revisions and creating new Parts 5 and 5A that were clear, concise, and uniform. The Editing Committee worked throughout the remainder of 2006 and into 2007, and submitted its "Revised Version of the Rules" to the full Committee in October 2007. On November 7, 2007, the

1 Committee reconvened to approve the final draft of the Rules. Additional edits were
2 made as a result of this meeting, and the final draft incorporating these edits was
3 completed in December 2007.

4
5 Substantive changes were made to many of the rules and almost all of the rules
6 have had some revision made to their form. This includes changing the titles to more
7 accurately reflect the information contained in the rules, and incorporating the use of
8 headings for each paragraph. As such, the general appearance of the rules has been
9 greatly altered to make them more user friendly, which can be seen at Appendices A
10 and B.

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1 **II. Members of the Committee and Organizational Structure**

2
3 A. Members of the Committee

- 4
5 David B. Beach
6 W. Hamilton Bryson
7 Jane S. Chittom
8 Hon. Sam W. Coleman, III
9 Joseph A. Condo
10 Craig Cooley
11 Bernard J. DiMuro
12 Steve Emmert
13 Eugene P. Murphy
14 John T. Frey
15 Frank K. Friedman
16 Patricia L. Harrington
17 Michael Herring
18 Hon. D. Arthur Kelsey
19 Hon. Elizabeth B. Lacy
20 Richard Ladd
21 Hon. Donald W. Lemons
22 R. Lee Livingston
23 Robert W. Loftin
24 Gregory E. Lucyk
25 Cynthia L. McCoy
26 Hon. William G. Petty
27 Hon. Jane Marum Roush
28 Joanne B. Rome
29 Kent Sinclair
30 Mary Lynn Tate
31 Ashley Taylor
32 Hon. Wilford Taylor
33 John Charles Thomas

34
35 B. Organizational Structure by Task Force

- 36
37 1. *Procedure for Filing An Appeal*
38 Mary Lynn Tate, Chairman
39 Joseph A. Condo, Reporter
40 W. Hamilton Bryson
41 John T. Frey
42 Patricia L. Harrington
43 Cynthia L. McCoy
44 Hon. Jane Marum Roush
45 Robert W. Loftin
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2. *Perfecting the Appeal*
Frank K. Friedman, Chairman
S. Jane Chittom, Reporter
Patricia L. Harrington
Hon. D. Arthur Kelsey
Cynthia L. McCoy
Kent Sinclair
Joanne B. Rome
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3. *Granted Cases*
Richard Ladd, Chairman
R. Lee Livingston, Reporter
Hon. Sam W. Coleman, III
Hon. Elizabeth B. Lacy
John Charles Thomas
Ashley Taylor
Robert W. Loftin
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4. *Capital Cases, Habeas Corpus, and Actual Innocence*
Craig Cooley, Chairman
William G. Petty, Reporter
Hon. Elizabeth B. Lacy
Gregory E. Lucyk
Hon. Wilford Taylor
Joanne B. Rome
- 27
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5. *Original Jurisdiction/Miscellaneous*
Bernard J. DiMuro, Chairman
Eugene P. Murphy, Reporter
David B. Beach
Hon. D. Arthur Kelsey
Gregory E. Lucyk
Robert W. Loftin
Joanne B. Rome
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6. *Editing Committee*
Frank K. Friedman
Patricia L. Harrington
Hon. D. Arthur Kelsey
Hon. Donald W. Lemons
Robert W. Loftin
Cynthia L. McCoy
Joanne B. Rome
Kent Sinclair
Mary Lynn Tate
Steve Emmert

1 III. Recommended Changes to Part 5
2
3

4 This section contains a summary of the recommended substantive changes to
5 each rule in Part 5 of the Rules of the Supreme Court of Virginia. A red-lined version of
6 the rules with the recommended changes is attached as Appendix A, and any significant
7 substantive changes are also included below. In addition to substantive changes,
8 editorial changes such as capitalizing, spacing, formatting, and renumbering were
9 made. These editorial changes will not be discussed in the summary below unless they
10 are significant, but are available for review in the red-lined version at Appendix A.
11
12

13 **PART FIVE – THE SUPREME COURT**

14 **A. General.**

15
16
17 **Rule 5:1. Scope, Citation, Applicability, and General Provisions.**
18

19 Two substantive additions were recommended to this rule. The first is a section
20 stating that unless otherwise noted in the rules, anything filed in the Court must include
21 a certificate of service. The second addition is a section describing how to cite
22 unpublished opinions and orders for persuasive authority only. The Committee debated
23 the issue of citing unpublished opinions, and felt that counsel should have the ability to
24 do so for persuasive authority, particularly when there was no published opinion on
25 point.

26 (d) Service. Unless service or notice is otherwise specified in a given Rule, any
27 paper or object filed with this Court must have included within it or appended to it a
28 certificate of service or acceptance of service showing that a copy has been transmitted
29 to all counsel and showing the date and manner of transmittal. If a word count is used,
30 the certificate must also state the number of words (headings, footnotes, and quotations
31 count towards the word limitation; the cover page, table of contents, table of authorities,
32 and certificate do not count towards the word count).
33

34 (f) Citing Unpublished Judicial Dispositions. The citation of judicial opinions,
35 orders, judgments, or other written dispositions designated as “unpublished,” “not for
36 publication,” “non precedential,” or the like is not prohibited, but only as persuasive
37 authority. If the citation is from a judicial opinion, order, judgment, or other written
38 disposition that is not available in a publicly accessible electronic database, the party
39 must file and serve that judicial opinion, order, judgment, or other written disposition
40 with the brief or other paper in which it is cited.
41

42 **Rule 5:1A. Penalties for Non-compliance; Show Cause; Dismissal.**
43

44 This is a new rule that states the Court may dismiss an appeal or impose any
45 other appropriate penalty for failure to comply with the rules. It also gives the Court the
46 ability to issue a show cause order at its discretion and allow the party an opportunity to

1 cure the defect in situations that do not involve the violation of a mandatory filing
2 deadline. Additionally the rule states that if an attorney’s failure to comply with the rules
3 results in a dismissal, the Court may report the attorney to the Virginia State Bar.
4

5 The Committee wanted to make the public, and the legal community, aware that
6 the Court does report attorneys to the Bar when their failure to comply with the rules
7 results in a dismissal of an appeal. The Committee also wanted to put into writing the
8 show cause option so that the Court has the option to allow a party to cure a procedural
9 defect.

10
11 (a) Penalties; Show Cause; Dismissal. This Court may dismiss an appeal or
12 impose such other penalty as it deems appropriate for any non-compliance with these
13 Rules. Prior to the dismissal of an appeal for any defect in the filings related to
14 technical, formatting, content, the failure to meet non-mandatory filing deadlines, this
15 Court shall issue a show cause order to counsel or a party not represented by an
16 attorney, requiring a specified time in which to cure such defect or to otherwise show
17 cause why the appeal should not be dismissed or other penalty imposed.
18

19 (b) Report to Virginia State Bar. If an attorney's failure to comply with these Rules
20 results in the dismissal of an appeal, this Court may report the attorney to the Virginia
21 State Bar in accordance with Rule 8.3 of the Virginia Rules of Professional Conduct.
22

23 **Rule 5:2. Sessions and Divisions.**

24
25 Language was added to state that divisions of the Court may be hear cases at
26 locations other than Richmond if the Court chooses.
27

28 Except as provided in Code § 17.1-304, sessions and divisions of this Court will
29 be held at Richmond, or at such other locations as this Court may designate consistent
30 with applicable law, and will continue for such length of time as this Court may
31 determine.
32

33 **Rule 5:3. Convening of Court - When En Banc - When in Division.**

34
35 The term “in banc” was changed to “en banc.”
36

37 **Rule 5:4. Motions and Responses; Orders.**

38
39 Language was added to section (a)(1) requiring counsel to state that they have
40 informed opposing counsel that a motion has been filed. This language tracks Fourth
41 Circuit LR 27(c). An advisory note was also added to this rule to clarify that it does not
42 limit the type of motions that counsel may file regarding pending appeals. Various
43 members of the Committee noted that there is confusion among practitioners regarding
44 whether they are permitted to file motions that are not specifically enumerated in the
45 Rules. This note attempts to address that confusion. This is the only rule that has an
46 advisory note.

1
2 (a) Motions and Responses.

3
4 (1) Motions. All motions, except motions for the qualification of attorneys
5 at law to practice in this Court, shall be in writing and filed with the clerk of this Court. In
6 cases where all parties are represented by counsel, all motions shall contain a
7 statement by counsel that counsel for the other parties to the appeal have been
8 informed of the intended filing of the motion. The statement shall indicate whether the
9 other parties consent to the granting of the motion, or intend to file responses in
10 opposition.

11
12
13 **ADVISORY NOTE:** This rule is not intended to limit the scope of motions that
14 may be filed in the Supreme Court. Such motions may be filed in any pending or
15 contemplated appeal, and may request from the Court any form of relief that is available
16 to the movant. The practitioner should consult individual rules relating to the filing of
17 motions in particular matters; for example, Rule 5:12 (trial judge authorized to act on
18 matters pertaining to record); Rule 5:30(a)(3) (motion for leave to file brief amicus
19 curiae). Rehearings are not within the scope of this rule, but are governed by Rules
20 5:20, 5:20A, and 5:39.

21
22
23 **Rule 5:5. Filing Deadlines; Post Trial Proceedings Below; Timely Filing by Mail;**
24 **Inmate Filing; Extension of Time.**

25
26 The language regarding the standard upon which to grant extensions was
27 changed to “good cause sufficient to excuse the delay.” Language was also added to
28 clarify the effect of post-trial proceedings on the deadline for filing a notice of appeal.
29 Language was added to permit filing by third party commercial carriers and priority and
30 express mail. Finally, a section was added regarding how timely file a request for an
31 extension.

32
33 (a) Filing Deadlines. The times prescribed for filing the notice of appeal or cross-
34 appeal (Rules 5:9(a), 5:14(a) and 5:21(c)), a petition for appeal (Rules 5:17(a) and
35 5:21(g)) and a petition for rehearing (Rules 5:20 and 5:39), are mandatory. A single
36 extension not to exceed thirty days may be granted if at least two justices of the
37 Supreme Court of Virginia concur in a finding that an extension for papers to be filed is
38 warranted by a showing of good cause sufficient to excuse the delay. The time period
39 for filing the notice of appeal is not extended by the filing of a motion for a new trial, a
40 petition for rehearing, or a like pleading unless the final judgment is modified, vacated,
41 or suspended by the trial court pursuant to Rule 1:1 or a petition for rehearing is filed in
42 the Court of Appeals. In any such case the time for filing shall be computed from the
43 date of final judgment entered following such modification, vacation, or suspension, or
44 from the date the Court of Appeals refuses a timely petition for rehearing or enters final
45 judgment following the granting of such a petition.

1
2 (b) Post-Trial Proceedings Below and Their Effect on the Notice of Appeal. The
3 time period for filing the notice of appeal is not extended by the filing of a motion for a
4 new trial, a petition for rehearing, or a like pleading unless the final judgment is
5 modified, vacated, or suspended by the trial court pursuant to Rule 1:1 or a timely
6 petition for rehearing is filed in the Court of Appeals. In any such case, the time for filing
7 the notice of appeal shall be computed from the date of final judgment entered following
8 such modification, vacation, or suspension, or from the date the Court of Appeals
9 refuses a timely petition for rehearing or enters final judgment following the granting of
10 such a petition.

11
12 (c) How to File by Mail in a Timely Manner. Any document required to be filed
13 with the clerk of this Court, ~~or filed in the office of the clerk of this Court,~~ shall be
14 deemed to be timely filed if (1) it is transmitted expense pre-paid to the clerk of this
15 Court by a third-party commercial carrier for next-day delivery, or by priority, express,
16 registered, or certified mail via the United States Postal Service, and (2) if the official
17 receipt therefor be exhibited upon demand of the clerk of this Court or any party and it
18 shows such transmission or mailing within the prescribed time limits. This rule does not
19 apply to documents to be filed in the office of the clerk of the trial court or clerk of the
20 Virginia Workers' Compensation Commission or clerk of the State Corporation
21 Commission.

22
23
24
25 (d) Inmate Filing. A paper filed by an inmate confined in an institution is timely
26 filed if deposited in the institution's internal mail system with first-class postage prepaid
27 on or before the last day for filing. Timely filing of a paper by an inmate confined in an
28 institution may be established by (1) an official stamp of the institution showing that the
29 paper was deposited in the internal mail system on or before the last day for filing, (2)
30 an official postmark dated on or before the last day for filing, or (3) a notarized
31 statement signed by an official of the institution showing that the paper was deposited in
32 the internal mail system on or before the last day for filing.

33
34 (e) Extensions Generally. A motion for an extension of time is timely if filed either
35 within the original filing deadline or within the specified extension period or within a
36 reasonable period of time thereafter if the extension period is unspecified. Filing the
37 motion within the original filing deadline or within the specified extension period does
38 not toll the original filing deadline or further extend the period of extension.=

39
40 **Rule 5:6. Forms of Briefs and Other Papers.**

41
42 Language was included to state that condensed or multi-page transcripts are
43 prohibited. The font size was increased to 14 and the three acceptable fonts were
44 listed. Parties are now supposed to include email addresses along with their address
45 information, if they have one.

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

2
3 (1) General Rules. Briefs, appendices, motions, petitions, and other
4 papers may be printed by any process that yields a clear black image on white paper
5 and must be on 8-1/2 x 11 inch paper. Margins must be at least one inch on all four
6 sides of each page.
7

8 (2) Specific Rules for Motions, Petitions, and Briefs. Except by leave of
9 Court, all motions, petitions, and briefs, including footnotes, must be in at least 14-point
10 font, must use either Courier, Arial, or Verdana font, and must be printed on only one
11 side of the page. Text shall not be reduced and must be double spaced except for
12 headings, assignments of error, quotations, and footnotes, which must be single
13 spaced. Page numbers are required and may appear in either the top or bottom margin,
14 but no text, including footnotes, is permitted in the one inch margins. Page limits for
15 motions, petitions, and briefs do not include the cover page, table of contents, table of
16 authorities, or certificate.
17

18 (3) Specific Rules for the Appendix. The appendix may be printed using
19 both sides of the page. Any transcript, including a deposition transcript, that is made a
20 part of the appendix shall be in 12-point type or larger. Any transcript contained in the
21 appendix that fails to conform to the 12-point type requirement may be returned to
22 counsel, and counsel shall be required to promptly comply with this requirement in
23 accordance with the instruction of this Court. The use of condensed or multi-page
24 transcripts is prohibited. Page numbers are required and may appear in either the top
25 or bottom margin.
26

27 (b) Binding and Cover. All briefs and appendices shall be bound on the left
28 margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco
29 fasteners, and the like are not acceptable. The style of the case (with the name of the
30 appellant stated first) and the record number of the case shall be stated on the front
31 cover of all briefs and appendices and, in addition, the name, Virginia State Bar number,
32 mailing address, telephone number (including any applicable extension), facsimile
33 number (if any), and e-mail address (if any) of counsel submitting the brief shall be
34 placed on the front cover of all briefs.
35

36 (c) Effect of Non-compliance. No appeal shall be dismissed for failure to comply
37 with the provisions of this Rule; the clerk of this Court may, however, require that a
38 document be redone in compliance with this Rule.
39

40 **B. Original Jurisdiction.**

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

42 This rule was restructured so that there is a section regarding habeas corpus
43 petitions, and a separate section for writs of mandamus and prohibition. The Attorney
44 General was given a longer time to respond to these types of petitions – 40 days for
45
46

1 writs of habeas corpus and 21 days for all other writs. This extension is a recognition of
2 the fact that it takes the Attorney General time to obtain the record from the circuit court
3 and respond appropriately. This Court regularly grants extensions of time for the
4 Attorney General to respond, and the goal of the revision is that by extending this
5 deadline, the number of motions for an extension of time will be reduced.

6
7 Language was added directing pro se litigants to forward a copy of their petition
8 to the respondent via first class mail. A section was also added giving the Clerk the
9 authority to call up the underlying criminal record when needed. This is in response to
10 some problems the Clerk's office has had with certain circuit courts refusing to prepare
11 and send the underlying criminal record in a timely fashion. Language was also added
12 giving judges the ability to have counsel appointed on their behalf when they are the
13 subject of a petition for a writ of prohibition or mandamus

14
15 (a) Petition for Writ of Habeas Corpus. An application to this Court for a writ of
16 habeas corpus under its original jurisdiction shall be by petition filed in the office of the
17 clerk of this Court.

18
19 (1) When Petition Must be Filed. The petition for a writ of habeas corpus
20 challenging a criminal conviction or sentence, except as provided in Rule 5:7A for cases
21 in which the death penalty has been imposed, shall be filed within two years from the
22 date of the final judgment in the trial court or within one year from either final disposition
23 of the direct appeal in state court or the time for filing such appeal has expired,
24 whichever is later. All other petitions for a writ of habeas corpus must be filed within
25 one year after the cause of action accrues.

26
27 (2) What the Petition Must Contain. The petition must be notarized and must
28 state whether the petitioner believes that the taking of evidence is necessary for the
29 proper disposition of the petition. A memorandum of law citing relevant authorities
30 must accompany each petition. All petitions must comply with the requirements of Code
31 § 8.01-655.

32 (3) Service of Petitions. Except as provided herein, service of process
33 must be accomplished in accordance with Chapter 8 of Title 8.01.

34
35 (i) Non-Public Officials. A petition must be accompanied by a
36 return of service executed by the appropriate officer evidencing
37 service of a copy thereof on the respondent or by an acceptance of
38 service signed by the respondent.

39
40 (ii) Public Officials. When habeas corpus is directed to a public
41 official, service shall be made on the respondent and shall also be
42 made on or accepted by the Attorney General or an Assistant Attorney
43 General. A petition must be accompanied by a return of service
44 executed by the appropriate officer evidencing service of a copy
45 thereof on the respondent or by an acceptance of service signed by the
46 respondent.

1
2 (iii) Prisoners Pro Se. In cases brought by prisoners pro se, a
3 copy of the petition shall be forwarded to the respondent by first class
4 mail, and the application shall contain a certificate at the end stating as follows:
5

6 I hereby certify that on the ____ day of _____,
7 20____, I mailed a copy of the foregoing _____ application to
8 the respondent(s), _____, by first class mail.
9
10 _____
11 Petitioner
12

13 (4) When to Respond to a Petition. No responsive pleading to a petition
14 filed by a prisoner acting pro se shall be required except as ordered by this
15 Court. For all other petitions, a responsive pleading must be filed with the clerk
16 of this Court within forty days after service of the petition.
17

18 (5) Contents of the Response. In one responsive pleading, the
19 respondent may move to dismiss on any appropriate ground, including the failure
20 to state facts upon which relief should be granted, and, in the alternative, may set
21 forth grounds of defense as in an action at law. The answer shall state whether,
22 in the opinion of the respondent, the taking of evidence is necessary for the
23 proper disposition of the petition. A memorandum of law citing the relevant
24 authorities shall accompany each responsive pleading.
25

26 (6) Length. Except by permission of a Justice of this Court, no petition,
27 including the accompanying memorandum of law, or a response thereto,
28 including its accompanying memorandum of law, shall exceed 50 printed pages
29 or 8,750 words. Page and word limits do not include appendices, exhibits, cover
30 page, table of contents, table of authorities, and certificate.
31

32 (7) Number of Copies. Ten copies of the petition, responsive pleading,
33 memoranda of law, and motions shall be filed in the office of the clerk of this
34 Court. Prisoners filing pro se shall only be required to file three copies.
35

36 (8) Calling up the Record. If this Court determines that any portion of the
37 underlying trial or appellate record is necessary for a proper determination of the
38 merits of the petition, the clerk of this Court is authorized to request the record
39 and the clerk of the trial court, commission, or the Court of Appeals, as
40 appropriate shall transmit it forthwith upon request without the necessity of an
41 order.
42

43 (b) Petitions for Writs of Mandamus and Prohibition. An application for a writ of
44 mandamus or a writ of prohibition under the original jurisdiction of this Court shall be by
45 petition filed in the office of the clerk of this Court.
46

1 (1) What the Petition Must Contain. The petition must be notarized and
2 must state whether the petitioner believes that the taking of evidence is
3 necessary for the proper disposition of the petition. A memorandum of law citing
4 relevant authorities must accompany each petition.
5

6 (2) Service of Petitions.
7

8 (i) Generally. A petition must be accompanied by a return of
9 service executed by the appropriate officer evidencing service of a copy
10 thereof on the respondent or by an acceptance of service signed by the
11 respondent. Except in cases brought by prisoners acting pro se, service
12 of process must be accomplished in accordance with Chapter 8 of Title
13 8.01.
14

15 (ii) Prisoners Pro Se. In cases brought by prisoners pro se, a copy
16 of the petition shall be forwarded to the respondent by first class mail, and
17 the application shall contain a certificate at the end stating as follows:
18

19 I hereby certify that on the ____ day of _____,
20 20____, I mailed a copy of the foregoing application to the
21 respondent(s), _____, by first
22 class mail.
23

24 _____
25 Petitioner

26 (3) Limitations for Petitions for Mandamus. A petition for writ of
27 mandamus filed by or on behalf of a person confined in a state correctional
28 facility must be brought within one year after the cause of action accrues.
29

30 (4) Petitions for Mandamus or Prohibition Against a Judge. A petition for
31 writ of mandamus or writ of prohibition against a judge shall not bear the name of
32 the judge but shall be entitled, "In re , Petitioner." Where the Attorney General
33 determines, with the concurrence of the judge, that it is impracticable or
34 unnecessary for the Attorney General to represent the judge, the judge may be
35 represented pro forma by counsel for the party opposing the relief, who shall
36 appear in the name of the party and not that of the judge. Or, in the alternative,
37 the Attorney General may provide for the appointment of special counsel to
38 represent the judge, in accordance with the provisions of Code §§ 2.2-507 or 2.2-
39 510.
40

41
42 (5) When to Respond to a Petition. No responsive pleading shall be
43 required for a petition filed by a prisoner acting pro se except as ordered by this
44 Court. For all other petitions, a responsive pleading must be filed with the clerk
45 of this Court within 21 days after service of the petition or the filing thereof,
46 whichever date is later.

1
2 (6) Contents of the Response. In one responsive pleading, the
3 respondent may move to dismiss on any appropriate ground, including the failure
4 to state facts upon which relief should be granted, and, in the alternative, may set
5 forth an answer as in an action at law. The answer shall state whether, in the
6 opinion of the respondent, the taking of evidence is necessary for the proper
7 disposition of the petition. A memorandum of law citing the relevant authorities
8 should accompany each responsive pleading.
9

10 (7) Length. Except by permission of a Justice of this Court, no petition,
11 including the accompanying memorandum of law, or a response thereto,
12 including its accompanying memorandum of law, shall exceed 50 printed pages
13 or 8,750 words. This page or word limit does not include appendices, exhibits,
14 table of contents, table of authorities, and certificate.
15

16 (8) Number of Copies. Ten copies of the petition, responsive pleading,
17 memoranda of law, and motions shall be filed in the office of the clerk of this
18 Court. Prisoners filing pro se shall only be required to file three copies.
19

20 (c) When this Court May Act on a Petition. This Court may act on any petition for
21 a writ of habeas corpus, mandamus, or prohibition before a responsive pleading is filed.
22 This Court may by order shorten the period within which a responsive pleading must be
23 filed.
24

25 (d) Further Proceedings on Petitions. Further proceedings shall be in
26 accordance with the orders of this Court or a Justice thereof to whom this Court may
27 delegate authority to determine all procedural matters. If this Court or the designated
28 Justice determines that evidence is desirable, depositions shall be taken according to a
29 schedule agreed upon by counsel and filed in the office of the clerk of this Court or, in
30 the absence of agreement, according to a schedule determined by this Court or the
31 designated Justice.
32

33 **Rule 5:7A. Petitions for Writs of Habeas Corpus in Cases in Which the Sentence**
34 **of Death Has Been Imposed.**
35

36 Sections (i) and (j) have been eliminated. These sections dealt with situations
37 involving petitions filed prior to 1995, and are no longer necessary. A section has been
38 added that would permit a petitioner to file one amended petition without leave of court
39 as long as the original petition has not yet been ruled on. There are concerns, however,
40 that this might not comport with § 8.01-654(B)(2).
41
42
43
44

45 (i) Amendment of Petition. A petitioner is permitted to submit one amended
46 petition without leave of this Court if there has not yet been a ruling on the merits of the

1 initial petition currently before this Court and the statute of limitations has not expired.
2 This amendment can include additional claims not presented in the first petition. After
3 this first amendment by right, any subsequent amendment can only be filed with the
4 permission of this Court.

5
6 **Rule 5:7B. Petition for a Writ of Actual Innocence.** [*NOTE: see also suggested*
7 *revision to Code § 19.2-327.3*]

8
9 The requirement of personal service was removed. The section dealing with
10 appointment of counsel now states that counsel shall only be appointed if the petition is
11 filed in compliance with Rule 5:7B. This change was made so as to reflect current
12 practice involving appointment of counsel.

13
14 (d) Service of the Petition and Return of Service. Prior to filing a petition, the
15 petitioner shall serve the petition, along with all attachments, on the Attorney General
16 and on the Commonwealth's Attorney for the jurisdiction where the conviction occurred.
17 When represented by counsel, the petitioner shall file with the petition either (i) a duly
18 executed return of service in the form of a verification that a copy of the petition and all
19 attachments have been served, or (ii) an acceptance of service signed by either or both
20 of the parties to be served, or (iii) a combination of the two. When not represented by
21 counsel, the petitioner shall file with the petition a certificate that a copy of the petition
22 and all attachments have been sent, by certified mail, to the Attorney General and the
23 Commonwealth's Attorney for the jurisdiction where the conviction occurred.

24
25 (e) Filing Fee. The petition must be accompanied by either (i) a check or money
26 order for the filing fee required by statute, or (ii) an in forma pauperis affidavit
27 demonstrating that the petitioner cannot afford the filing fee.

28
29 (j) Appointment of Counsel. In any petition filed pursuant to and in compliance
30 with this Rule, petitioner shall be entitled to the appointment of counsel subject to the
31 provisions of Code § 19.2-157 et seq. Any request for counsel in this Court must be
32 made on the form provided by this Court, entitled REQUEST FOR COUNSEL -
33 PETITION FOR A WRIT OF ACTUAL INNOCENCE, and must include: (i) all the
34 information required by the in forma pauperis affidavit attached to the request for
35 appointment of counsel, and (ii) an attested copy of the order of the circuit court
36 ordering that testing of human biological evidence on the petitioner's behalf be
37 conducted by the Division of Forensic Science pursuant to Code § 19.2-327.1.

38
39 Recommended revisions to Code:

40
41 § 19.2-327.3. Contents and form of the petition based on previously unknown or
42 untested human biological evidence of actual innocence.

43
44 A. The petitioner shall allege categorically and with specificity, under oath, the
45 following: (i) the crime for which the petitioner was convicted, and that such conviction
46 was upon a plea of not guilty or that the person is under a sentence of death or

1 convicted of (1) a Class 1 felony, (2) a Class 2 felony or (3) any felony for which the
2 maximum penalty is imprisonment for life; (ii) that the petitioner is actually innocent of
3 the crime for which he was convicted; (iii) an exact description of the human biological
4 evidence and the scientific testing supporting the allegation of innocence; (iv) that the
5 evidence was not previously known or available to the petitioner or his trial attorney of
6 record at the time the conviction became final in the circuit court, or if known, the reason
7 that the evidence was not subject to the scientific testing set forth in the petition; (v) the
8 date the test results under § 19.2-327.1 became known to the petitioner or any attorney
9 of record; (vi) that the petitioner or his attorney of record has filed the petition within 60
10 days of obtaining the test results under § 19.2-327.1; (vii) that the petitioner is currently
11 incarcerated; (viii) the reason or reasons the evidence will prove that no rational trier of
12 fact could have found proof of guilt beyond a reasonable doubt; and (ix) for any
13 conviction that became final in the circuit court after June 30, 1996, that the evidence
14 was not available for testing under § 9.1-1104. The Supreme Court may issue a stay of
15 execution pending proceedings under the petition. Nothing in this chapter shall
16 constitute grounds to delay setting an execution date pursuant to § 53.1-232.1 or to
17 grant a stay of execution that has been set pursuant to § 53.1-232.1 (iii) or (iv).
18

19 B. Such petition shall contain all relevant allegations of facts that are known to
20 the petitioner at the time of filing and shall enumerate and include all previous records,
21 applications, petitions, appeals and their dispositions. A copy of any test results shall be
22 filed with the petition. The petition shall be filed on a form provided by the Supreme
23 Court. If the petitioner fails to submit a completed form, the court may dismiss the
24 petition or return the petition to the prisoner pending the completion of such form. The
25 petitioner shall be responsible for all statements contained in the petition. Any false
26 statement in the petition, if such statement is knowingly or willfully made, shall be a
27 ground for prosecution and conviction of perjury as provided for in § 18.2-434.
28

29 C. In cases brought by counsel for the petitioner, the Supreme Court shall not
30 accept the petition unless it is accompanied by a duly executed return of service in the
31 form of a verification that a copy of the petition and all attachments have been served
32 on the attorney for the Commonwealth of the jurisdiction where the conviction occurred
33 and the Attorney General, or an acceptance of service signed by these officials, or any
34 combination thereof. In cases brought by petitioners pro se, the Supreme Court shall
35 not accept the petition unless it is accompanied by a certificate that a copy of the
36 petition and all attachments have been sent, by certified mail, to the attorney for the
37 Commonwealth of the jurisdiction where the conviction occurred and the Attorney
38 General. The Attorney General shall have 30 days after receipt of the record by the
39 clerk of the Supreme Court in which to file a response to the petition. The response may
40 contain a proffer of any evidence pertaining to the guilt of the defendant that is not
41 included in the record of the case, including evidence that was suppressed at trial.
42

43 D. The Supreme Court may, when the case has been before a trial or appellate
44 court, inspect the record of any trial or appellate court action, and the Court may, in any
45 case, award a writ of certiorari to the clerk of the respective court below, and have
46 brought before the Court the whole record or any part of any record.

1
2 E. In any petition filed pursuant to and in compliance with the provisions of this
3 chapter, the defendant is entitled to representation by counsel subject to the provisions
4 of Article 3 (§ 19.2-157 et seq.) of Chapter 10 of this title.
5

6
7
8 **C. Procedure for Filing an Appeal From a Trial Court.**
9

10 **Rule 5:8. Applicability.**

11
12 This Section C applies only to cases where direct appeal to this Court from a trial
13 court is authorized by law.
14

15 No changes were recommended to this rule.
16

17 **Rule 5:8A. Appeal From Judgment Upon Multiple Claims or Involving Multiple**
18 **Parties.**

19
20 The Committee recommends adding this rule to clarify who may appeal what
21 issues in cases involving multiple claims and multiple parties. This is in response to a
22 general sense of confusion over who can appeal and when in multi-party litigation. This
23 draft is very similar to one that has been approved by the Boyd-Graves Commission.
24 There was a great deal of debate over this draft, and this draft did not receive
25 unanimous approval, but no alternative had greater support.
26

27 When more than one claim for relief is presented in an action, whether as a
28 claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are
29 involved, the trial court may direct the entry of a final judgment as to one or more but
30 fewer than all of the claims or parties only upon an express determination that there is
31 no just reason for delay and upon an express direction for the entry of judgment. In the
32 absence of such determination and direction, any order or other form or decision,
33 however designated, which adjudicates fewer than all the claims or the rights and
34 liabilities of fewer than all the parties shall not terminate the action as to any of the
35 claims or parties, and the order or other form of decision is subject to revision at any
36 time before the entry of judgment adjudicating all the claims and the rights and liabilities
37 of all the parties.
38

39
40 **Rule 5:9. Notice of Appeal.**
41

42 Language was added that clarifies that a notice of appeal filed after the
43 announcement of a decision but prior to the entry of an order is considered filed on the
44 date of the entry of the order. This tracks Rule 4(a)(2) of the Federal Rules of Appellate
45 Procedure. A special section for cases involving guardians ad litem was added that
46 states no appeal will be dismissed because the notice of appeal fails to identify the

1 guardian ad litem or provide notice to the guardian ad litem. There was a great deal of
2 discussion regarding whether to permit appellees to file a notice of separate appeal 14
3 days after the appellant filed their notice of appeal, but the decision was made not to
4 include these “separate appeals.” It was determined that this would adversely impact all
5 the of the subsequent deadlines, and would be unworkable.
6

7 (a) Filing Deadline; Where to File. No appeal shall be allowed unless, within 30
8 days after the entry of final judgment or other appealable order or decree, or within any
9 specified extension thereof granted by this Court pursuant to Rule 5:5(e), counsel for
10 the appellant files with the clerk of the trial court a notice of appeal and at the same time
11 mails or delivers a copy of such notice to all opposing counsel. A notice of appeal filed
12 after the court announces a decision or order – but before the entry of judgment or order
13 – is treated as filed on the date of and after the entry.
14
15

16 (d) Special Provision for Cases Involving a Guardian Ad Litem. No appeal shall
17 be dismissed because the notice of appeal fails to identify a guardian ad litem or to
18 provide notice to a guardian ad litem. Upon motion for good cause shown or by sua
19 sponte order of this Court, the notice of appeal may be amended to identify the guardian
20 ad litem and to provide notice to such guardian.
21

22 **Rule 5:10. Record on Appeal: Contents.**

23
24 No substantive changes were made to this rule.
25
26

27 **Rule 5:11. Record on Appeal: Transcript or Written Statement.**

28
29 Language was added that gives a party an opportunity to supplement a missing
30 or untimely transcript before dismissal. Language was also added regarding the written
31 statement of facts that requires the trial court’s permission to use a written statement
32 instead of a transcript prior to commencement of the hearing. This revision generated a
33 great deal of debate and discussion. The Committee considered completely eliminating
34 the written statement of facts, but the compromise was to allow it in limited
35 circumstances where the judge has given prior approval. Any supplementation or
36 modification of the transcript after the due date must be approved by at least two
37 Justices for good cause shown.
38

39 (a) Effect of Non-compliance.
40

41 (1) Obligation of the Petitioner/Appellant. It is the obligation of the
42 petitioner/appellant to ensure that the record is sufficient to enable the Court to
43 evaluate and resolve the assignments of error. When the appellant fails to
44 ensure that the record contains transcripts or a written statement of facts
45 necessary to permit resolution of appellate issues related to the assignments of
46 error, any assignments of error affected by the omission shall not be considered.

1
2 (2) Obligation of the Respondent/Appellee. It is the obligation of the
3 respondent/appellee to ensure that the record is sufficient to enable the Court to
4 evaluate and resolve any assignments of cross-error. When the
5 respondent/appellee who assigns cross-error fails to ensure that the record
6 contains transcripts or a written statement of facts necessary to permit resolution
7 of appellate issues related to the assignments of cross-error, any assignments of
8 cross-error affected by the omission shall not be considered.
9

10 (b) Transcript. The transcript of any proceeding in the case that is necessary for
11 the appeal shall be filed in the office of the clerk of the trial court within 60 days after
12 entry of judgment.
13

14 (c) Notice of Filing Transcript.
15

16 (1) Within 10 days after the transcript is filed or, if the transcript is filed
17 prior to the filing of the notice of appeal, within 10 days after the notice of appeal
18 is filed, counsel for appellant shall (i) give written notice to all other counsel of the
19 date on which the transcript was filed, and (ii) file a copy of the notice with the
20 clerk of the trial court. There shall be appended to the notice either a certificate of
21 counsel for appellant that a copy of the notice has been mailed to all other
22 counsel or an acceptance of service of such notice by all other counsel. In cases
23 where a notice of separate appeal has been filed, the party that filed the first
24 notice of appeal shall be responsible for complying with this provision.
25

26 (2) When multiple transcripts are filed, the 10 day period for filing the
27 notice required by this Rule shall be calculated from the date on which the last
28 transcript is filed, or from the date on which the notice of appeal is filed,
29 whichever is later. The notice of filing transcripts shall identify all transcripts filed
30 and the date upon which the last transcript was filed. If the notice of appeal
31 states that no additional transcripts will be filed and identifies the transcripts that
32 have been filed, if any, then no additional written notice of filing of transcripts is
33 required and the notice of appeal will serve as the notice of filing transcripts for
34 purposes of this Rule.
35

36 (3) Any failure to file the notice required by this Rule that materially
37 prejudices an appellee will result in the affected transcripts being stricken from
38 the record on appeal. For purposes of this Rule, material prejudice includes
39 preventing the appellee from raising legitimate objections to the contents of the
40 transcript or misleading the appellee about the contents of the record. The
41 appellee shall have the burden of establishing such prejudice in the brief in
42 opposition or, if no brief in opposition is filed, in a written statement filed with the
43 clerk of this Court within the time fixed by these Rules for the filing of a brief in
44 opposition.
45
46

1 (d) Supplementation, Correction, or Modification of Transcript. If anything
2 material to any party is omitted from or misstated in the transcript, or if the transcript or
3 any portion thereof is untimely filed, by omission, clerical error, or accident, the filing
4 may be supplemented, corrected, or modified at any time within 70 days from the entry
5 of judgment appealed from. Notice as provided in paragraph (c) of this Rule must be
6 given for any such supplementation, correction, or modification. Thereafter, such
7 supplementation, correction, or modification may be made, by order of this Court sua
8 sponte or upon motion of any party, if at least two Justices of this Court concur in a
9 finding that any such supplementation, correction, or modification is warranted by a
10 showing of good cause sufficient to excuse the deficiency.
11
12

13 (e) Written Statement of Facts. A written statement of facts may be included in
14 the record if, upon written motion before the commencement of the hearing, the trial
15 court allows a written statement of facts in lieu of a transcript. The written statement of
16 facts becomes a part of the record when:
17

18 (1) within 55 days after entry of judgment a copy of such statement is filed
19 in the office of the clerk of the trial court. A copy must be mailed or delivered to
20 opposing counsel on the same day that it is filed in the office of the clerk of the
21 trial court, accompanied by notice that such statement will be presented to the
22 trial judge no earlier than 15 days nor later than 20 days after such filing; and
23

24 (2) the statement is signed by the trial judge and filed in the office of the
25 clerk of the trial court. The judge may sign the statement forthwith upon its
26 presentation to him if it is signed by counsel for all parties, but if objection is
27 made to the accuracy or completeness of the statement, it shall be signed in
28 accordance with paragraph (f) of this Rule.
29

30 (f) Objections. Any party may object to a transcript or written statement on the
31 ground that it is erroneous or incomplete. Notice of such objection specifying the errors
32 alleged or deficiencies asserted shall be filed with the clerk of the trial court within 10
33 days after the date the notice of filing the transcript (paragraph (c) of this Rule) or within
34 10 days after the date the notice of filing the written statement (paragraph (e) of this
35 Rule) is filed in the office of the clerk of the trial court or, if the transcript or written
36 statement is filed before the notice of appeal is filed, within 10 days after the notice of
37 appeal has been filed with the clerk of the trial court. Counsel for the objecting party
38 shall give the trial judge prompt notice of the filing of such objections. Within 10 days
39 after the notice of objection is filed with the clerk of the trial court, the trial judge shall:
40

41 (1) overrule the objections; or

42 (2) make any corrections that the trial judge deems necessary; or

43 (3) include any accurate additions to make the record complete; or
44
45
46

1 (4) certify the manner in which the record is incomplete; and

2
3 (5) sign the transcript or written statement.

4
5 At any time while the record remains in the office of the clerk of the trial court, the trial
6 judge may, after notice to counsel and hearing, correct the transcript or written
7 statement.

8
9 The judge's signature on a transcript or written statement, without more, shall
10 constitute certification that the procedural requirements of this Rule have been satisfied.

11
12 **Rule 5:12. Judge Authorized to Act.**

13
14 No changes were recommended to this rule.

15
16 **Rule 5:13. Record on Appeal: Preparation and Transmission.**

17
18 Language was added to this rule stating that the clerk of the trial court shall not
19 transmit certain exhibits to this Court, such as guns, drugs, blood vials, money, and
20 other large or bulky items, unless this Court orders the trial court to transmit a particular
21 exhibit.

22
23 (4) Exhibits, other than those filed with pleadings, may be included in a
24 separate volume or envelope certified by the clerk of the trial court, except that
25 any exhibit that cannot be conveniently placed in a volume or envelope shall be
26 identified by a tag. Each such volume or envelope shall include, on its cover or
27 inside, a descriptive list of exhibits contained therein. Reference shall be made to
28 exhibits in the table of contents and at the appropriate place in the record
29 referred to in paragraph (b)(1) of this Rule. The clerk of the trial court shall not
30 transmit the following types of exhibits, unless requested to do so by the clerk of
31 this Court: drugs, guns and other weapons, ammunition, blood vials and other
32 bio-hazard type materials, money, jewelry, articles of clothing, and bulky items
33 such as large graphs and maps. The omission of any such exhibit shall be noted
34 on the descriptive list of exhibits. Upon motion by counsel, this Court may order
35 the trial court to transmit any of these prohibited exhibits.

36
37 **D. Procedure for Filing an Appeal From the Court of Appeals.**

38
39 **Rule 5:14. Notice of Appeal; Certification.**

40
41 A section was added regarding appealing from an order by the Court of Appeals
42 regarding appeals of orders denying bail.

43
44 (c) Bail Pending Appeal in Criminal Cases. In criminal cases, either party may
45 appeal an order of the Court of Appeals affirming, reversing, or modifying a circuit court
46 order regarding bail, as provided by this Rule and Rule 5:17.

1
2 **Rule 5:15. Record on Appeal From Court of Appeals or Certification for Review.**
3

4 A section was added to this rule regarding what the record should consist of in
5 appeals from the Court of Appeals related to appeal bonds.
6

7 (b) Bail Pending Appeal in Criminal Cases. In criminal cases on appeal from a
8 Court of Appeals order affirming a trial court’s decision to set or deny [bail pending](#)
9 [appeal](#), the record shall consist of: (1) the sentencing order entered by the trial court; (2)
10 a pre-sentence report when available; (3) the trial court’s order denying or setting bail;
11 (4) the transcript of the bail hearing or a stipulation of facts between the parties
12 regarding what evidence was introduced at the hearing and the reason(s) the trial judge
13 gave for the bail decision; (5) appellant’s motion for review in the Court of Appeals; and
14 (6) the order of the Court of Appeals on the motion for review.
15

16 **Rule 5:16. Disposition of Record.**
17

18 The word “commission” was added.
19

20 When there can be no further proceedings in this Court, the clerk of this Court
21 shall return the record to the clerk of the trial court or commission in which the case
22 originated. The record shall be returned by that clerk upon the request of the clerk of
23 this Court.
24

25 **E. Perfecting the Appeal.**
26

27 **Rule 5:17. Petition for Appeal.**
28

29 The Committee originally voted to change the three months to 90 days, but since
30 that would require a statutory change, the Committee agreed to keep the three months
31 timeframe. The section requiring questions presented was eliminated, and the Court of
32 Appeals will also only have assignments of error so as to harmonize the rules in both
33 courts. Language was added requiring an appellant to cite to the location in the record
34 where each assignment of error has been preserved. A section was also added to this
35 rule explaining how to file an [Anders](#) petition. Additionally, language was added to the
36 oral argument section explaining that certain criminal appeals may be heard by the
37 Chief Staff Attorney. Finally, a section was added regarding notice of oral argument
38 and explaining that the appellee must request notice in writing of oral argument.
39

40 (a) When the Petition Must be Filed. Unless otherwise provided by rule or statute,
41 in every case in which the appellate jurisdiction of this Court is invoked, a petition for
42 appeal must be filed with the clerk of this Court within the following time periods:
43

44 (1) in the case of an appeal direct from a trial court, not more than three
45 months after entry of the order appealed from; or
46

1 (2) in the case of an appeal from the Court of Appeals, within 30 days after
2 entry of the judgment appealed from or a denial of a petition for rehearing.
3

4 (b) Who Must Receive a Copy of the Petition. When the petition for appeal is filed
5 with the clerk of this Court, a copy of the petition shall be served on opposing counsel.
6

7 (c) What the Petition Must Contain. A petition for appeal must contain the
8 following:
9

10 (1) Assignments of Error. Under a heading entitled "Assignments of
11 Error," the petition shall list the specific errors in the rulings below upon which the
12 party intends to rely. A clear and exact reference to the pages of the transcript,
13 written statement of facts, or record where the alleged error has been preserved
14 shall be included with each assignment of error.
15

16 (i) Effect of Failure to Assign Error. Only assignments of error
17 assigned in the petition for appeal will be noticed by this Court. If the
18 petition for appeal does not contain assignments of error, it shall be
19 dismissed.
20

21 (ii) Nature of Assignments of Error in Appeals from the Court of
22 Appeals. Where appeal is taken from a judgment of the Court of Appeals,
23 only assignments of error relating to assignments of error presented in or
24 to actions taken by the Court of Appeals may be included in the petition for
25 appeal to this Court.
26

27 (iii) Insufficient Assignments of Error. An assignment of error which
28 merely states that the judgment or award is contrary to the law and the
29 evidence is not sufficient. If the assignments of error are insufficient or
30 otherwise fail to comply with the requirements of this Rule, the petition for
31 appeal shall be dismissed.
32

33 (2) Required Statements When the Appeal is from the Court of
34 Appeals. Where appeal is taken from a judgment of the Court of Appeals in
35 a case where judgment is made final under Code § 17.1-410, the petition for
36 appeal shall contain a statement setting forth in what respect the decision of
37 the Court of Appeals involves the following:
38

39 (i) a substantial constitutional question as a determinative
40 issue, or
41

42 (ii) matters of significant precedential value.
43

44 If the petition for appeal does not contain such a statement, the appeal will
45 be dismissed.
46

1
2
3 (3) Table of Contents and Table of Authorities. A table of contents and
4 table of authorities with cases alphabetically arranged. Citations of Virginia cases
5 shall be to the Virginia Reports and the Southeastern Reporter. Citations of all
6 authorities shall include the year thereof.
7

8 (4) Nature of the Case and Material Proceedings Below. A brief statement
9 of the nature of the case and of the material proceedings in the trial court or
10 commission in which the case originated. This statement shall omit references to
11 any paper filed or action taken that does not relate to the assignments of error.
12

13 (5) Statement of Facts. A clear and concise statement of the facts that
14 relate to the assignments of error, with references to the pages of the record,
15 transcript, or written statement of facts. Any quotation from the record should be
16 brief. When the facts are in dispute, the petition shall so state. The testimony of
17 individual witnesses should not be summarized seriatim unless the facts are in
18 dispute and such a summary is necessary to support the appellant's version of
19 the facts.
20

21 (6) Authorities and Argument. The standard of review, the argument, and
22 the authorities relating to each assignment of error. With respect to each
23 assignment of error, the standard of review, the argument –including principles of
24 law, and the authorities shall be stated in one place and not scattered through
25 the petition. At the option of counsel, the argument may be preceded by a brief
26 summary.
27

28 (7) Conclusion. A short conclusion stating the precise relief sought.
29
30
31

32 (d) Filing Fee Required With the Petition. When it is filed, the petition for appeal
33 must be accompanied by a check or money order payable to the "Clerk of the Supreme
34 Court of Virginia" for the amount required by statute. The clerk of this Court may file a
35 petition for appeal that is not accompanied by such fee if the fee is received by the clerk
36 within 10 days of the date the petition for appeal is filed. If the fee is not received within
37 such time, the petition for appeal shall be dismissed.
38

39 (e) Number of Copies to File. Seven copies of the petition shall be filed with the
40 clerk of this Court.
41

42 (f) Length. Except by leave of a Justice of this Court, a petition shall not exceed
43 35 printed pages or 6,125 words. The page or word limit does not include the cover
44 page, table of contents, table of authorities, and certificate.
45

1 (g) Use of a Single Petition in Separate Cases. Whenever two or more cases
2 were tried together in the court or commission below, one petition for appeal may be
3 used to bring all such cases before this Court even though the cases were not
4 consolidated below by formal order.
5

6 (h) Procedure for an *Anders* appeal. If counsel for appellant finds appellant's
7 appeal to be without merit, counsel must comply with the requirements of *Anders v.*
8 *California*, 386 U.S. 738 (1967), and *Brown v. Warden of Virginia State Penitentiary*,
9 238 Va. 551, 385 S.E.2d 587 (1989). In compliance therewith, counsel is required to file
10 (1) a petition for appeal which refers to anything in the record which might arguably
11 support the appeal and which demonstrates to this Court counsel's conscientious
12 examination of the merits of the appeal; (2) a motion for leave to withdraw as counsel;
13 and (3) a motion for an extension of time to allow the appellant to file a pro se
14 supplemental petition for appeal. The petition for appeal and the motion for leave to
15 withdraw as counsel should specifically cite to *Anders*. All three pleadings must be
16 served on opposing counsel and upon the client and must contain a certificate providing
17 evidence of such service. This Court will rule upon the motion for extension of time upon
18 its receipt, but will not rule on the motion to withdraw until this Court considers the case
19 in its entirety, including any pro se supplemental petition for appeal that may be filed.
20

21 (i) What the Certificate Must Contain. The appellant shall include within the
22 petition for appeal a certificate stating:
23

24 (1) the names of all appellants and appellees, the name, mailing address,
25 telephone number (including any applicable extension), facsimile number (if any),
26 and e-mail address (if any) of counsel for each party, and the mailing address,
27 telephone number (including any applicable extension), facsimile number (if any),
28 and e-mail address (if any) of any party not represented by counsel;
29

30 (2) that a copy of the petition for appeal has been mailed or delivered on
31 the date stated therein to all opposing counsel and all parties not represented by
32 counsel;
33

34 (3) if a word count is used, the number of words (headings, footnotes, and
35 quotations count towards the word limitation; the cover page, table of contents,
36 table of authorities, and certificate do not count towards the word count);
37

38 (4) in a criminal case or habeas corpus appeal, a statement whether
39 counsel for defendant has been appointed or privately retained; and
40

41 (5) whether the appellant desires to state orally to a panel of this Court the
42 reasons why the petition for appeal should be granted, and, if so, whether in
43 person or by conference telephone call.
44

45 (j) Oral Argument.
46

1
2 (1) Right to Oral Argument. The appellant shall be entitled to state orally,
3 in person or by telephone conference call, to a panel of this Court the reasons
4 why the petition for appeal should be granted. The appellee shall not be entitled
5 to oral argument, whether in person or by telephone conference call, under any
6 circumstances. Any lawyer not licensed in Virginia who seeks to appear pro hac
7 vice to present oral argument to the Court must comply with the requirements of
8 Rule 1A:4.
9

10 (2) Waiver of Right to Oral Argument. The appellant may waive the right to
11 oral argument on the petition for appeal before a panel by notifying the clerk of
12 this Court and opposing counsel in writing, or by filing a reply brief.
13

14 (3) No Oral Argument on Pro Se Inmate's Petition. If an appellant or
15 cross-appellant is not represented by counsel and is incarcerated, the petition
16 for appeal may be considered by this Court without oral argument.
17

18 (4) Special Rule for Certain Criminal Appeals from the Court of Appeals.
19 While the final decision on the petition for appeal is made by this Court, oral
20 argument in all petitions for appeals to this Court in criminal cases from the Court
21 of Appeals in which the Court of Appeals did not issue a published opinion may
22 be heard by this Court's Chief Staff Attorney.
23

24 (5) Notice of Oral Argument. If the appellant has requested oral
25 argument, notice of the date and time of such argument shall be provided to
26 counsel for the appellant or to any pro se appellant. If requested in writing,
27 notice of the oral argument shall also be provided to counsel for the appellee
28 or any pro se appellee.
29

30 **Rule 5:17A. Petition for Review Pursuant to Code § 8.01-626; Injunctions.**
31

32 A section was added clarifying that rehearings are not permitted for these
33 appeals.
34

35 (g) Rehearing. The provisions of Rules 5:20, 5:20A, and 5:39 do not apply to
36 proceedings under Code § 8.01-626.
37

38 **Rule 5:18. Brief in Opposition.**
39

40 Language was added to the form and content section to explain in greater detail
41 the requirements involving assignments of cross-error.
42

43 (a) Filing Time. A brief in opposition to granting the appeal may be filed with the
44 clerk of this Court by the appellee within 21 days after petition for appeal is served on
45 counsel for the appellee. Within the same time the counsel for appellee shall mail or
46 deliver a copy to counsel for appellant. Seven copies shall be filed.

1
2 (b) Form and Content. The brief in opposition shall conform in all respects to the
3 content requirements for the brief of appellee in Rule 5:28. However, the brief in
4 opposition need not be bound or have a blue cover. Except by leave of a Justice of this
5 Court, the brief shall not exceed 25 printed pages or 4,375 words. If the brief exceeds
6 10 pages or 1,750 words, it shall contain a table of contents and table of authorities with
7 cases alphabetically arranged.

8
9 (c) Assignments of cross-error. The brief in opposition may include assignments
10 of cross-error.

11
12 (1) Except in cases of appeals of right to this Court, no cross-error not
13 assigned in the brief in opposition will be noticed by this Court.

14
15 (2) The provisions of Rule 5:25 shall apply to limit the assignments of
16 cross-error which will be heard on the appeal.

17
18 (3) A brief in opposition containing assignments of cross-error shall
19 conform to the form, content, and maximum word requirements of subdivision (b)
20 of this Rule.

21
22 (4) Where an appellee assigns cross-error in the brief in opposition:

23
24 (i) this Court will not grant any assignment of cross-error unless it
25 first decides to grant some or all of the assignments of error contained in
26 the appellant's petition for appeal.

27
28 (ii) the appellee shall not be permitted to present oral argument to a
29 writ panel.

30
31 (iii) if the appellant withdraws the petition for appeal, the appeal will
32 be dismissed without consideration of the cross-error assigned by an
33 appellee.

34
35
36 **Rule 5:19. Reply Brief.**

37
38 No substantive changes were made to this rule.

39
40
41 **Rule 5:20. Petition for Rehearing After Refusal of Petition for Appeal or**
42 **Disposition of an Original Jurisdiction Petition.**

43
44 The Committee is suggesting a new name for this rule, "Petition for Rehearing
45 After Refusal of Petition for Appeal or Disposition of an Original Jurisdiction Petition." A

1 section was added to this rule explaining how to file a petition for rehearing from a
2 disposition of an original jurisdiction petition.

3
4 (b) Original Jurisdiction Petition. When a petition filed pursuant to this Court's
5 original jurisdiction (habeas corpus, mandamus, prohibition, or actual innocence) is
6 decided, the clerk of this Court shall mail a copy of the order to counsel for the petitioner
7 and counsel for the respondent. Counsel for either party may, within 30 days after the
8 date of this order, file in the office of the clerk of this Court a petition for rehearing. Oral
9 argument on the petition for rehearing will not be allowed. No responsive brief shall be
10 filed unless requested by this Court. The clerk of this Court shall notify counsel for the
11 petitioner and counsel for the respondent of the action taken by this Court on the
12 petition for rehearing.

13
14 **Rule 5:20A. Denial of Appeal; Petition for Rehearing.**

15
16 No substantive changes were made to this rule.

17
18
19 **F. Special Rules.**

20
21 **Rule 5:21. Special Rules Applicable to Certain Appeals of Right.**

22
23 This rule used to just contain information on appeals from the State Corporation
24 Commission, but a section was added now on appeals from the State Bar Disciplinary
25 Board or a Three Judge Circuit Court Determination.

26
27 (a) Appeals from the State Corporation Commission.

28
29 (1) Applicability. Paragraph (a) of this Rule applies to all appeals from
30 the State Corporation Commission and supersedes all other Rules except as otherwise
31 specified herein.

32
33 (2) Party. For the purposes of this Rule, the Commission, the Attorney
34 General, the applicant or petitioner, and every person who made an appearance
35 in person in a capacity other than as a witness or by counsel at any hearing in
36 any proceeding before the Commission shall be the parties to such proceeding.
37 Upon the request of any party, the clerk of the Commission shall prepare and
38 certify a list of all parties (including their addresses and the names and
39 addresses of their counsel) to a proceeding before the Commission. Initially, the
40 parties to an appeal from an order in a proceeding shall be the parties to that
41 proceeding, but the number of parties to an appeal may thereafter be limited as
42 hereinafter provided. Service upon a party represented by counsel shall be made
43 upon his counsel.

44
45 (3) Notice of Appeal. No appeal from an order of the Commission shall be
46 allowed unless, within 30 days after entry of the order appealed from, counsel

1 files in the office of the clerk of the Commission a notice of appeal. A copy of the
2 notice of appeal shall be mailed or delivered to each party to the appeal,
3 including the Attorney General of Virginia, and an acceptance of such service or
4 a certificate showing the date of delivery or mailing shall be appended thereto. All
5 petitions for appeal from the same order shall be deemed to be a consolidated
6 case for the purpose of oral argument in this Court unless this Court shall order a
7 severance for convenience of hearing.
8

9 (4) Record. The clerk of the Commission shall prepare and certify the
10 record as soon as possible after the notice of appeal is filed and shall, as soon as
11 it has been certified by him, transmit it to the clerk of this Court within 4 months
12 after entry of the order appealed from. In the event of multiple appeals in the
13 same case or in cases tried together below, only one record need be prepared
14 and transmitted.
15

16 (5) Contents of Record. The record on appeal from the Commission shall
17 consist of all notices of appeal, any application or petition, all orders entered in
18 the case by the Commission, the opinions, the transcript of any testimony
19 received, and all exhibits accepted or rejected, together with such other material
20 as may be certified by the clerk of the Commission to be a part of the record. The
21 record shall conform as nearly as practicable to the requirements of Rule 5:10.
22

23 (6) Alignment of Parties. Within 21 days after the notice of appeal shall
24 have been filed in the office of the clerk of the Commission, each party who has
25 not filed a notice of appeal and who intends to participate in the appeal shall file
26 in the office of the clerk of the Commission and shall mail to every other party a
27 notice that he intends to participate as an appellant or as an appellee. Every
28 party who seeks reversal or modification of the order appealed from shall be
29 deemed an appellant, and every party who seeks affirmance of the order
30 appealed from shall be deemed an appellee. Every party who does not file such
31 a notice and every party who, having filed such a notice as an appellant, does
32 not thereafter file a petition for appeal shall be deemed no longer to be a party to
33 the appeal, and no further papers need be served on him. Notwithstanding the
34 foregoing provisions, (i) a necessary party who does not file such a notice or
35 petition for appeal shall be deemed an appellee, and (ii) the Commission need
36 not file such a notice and shall be deemed an appellee.
37

38 (7) Petition for Appeal. The petition(s) for appeal, accompanied by the
39 prescribed filing fee, shall be filed in the office of the clerk of this Court within 4
40 months after entry of the final order, judgment or finding by the Commission.
41 Each party deemed to be an appellant shall file a petition for appeal, as limited
42 hereafter, and shall, before the petition is filed, mail or deliver a copy to every
43 other party to the appeal. Except as provided herein, the provisions of Rule 5:17
44 do not apply to a petition filed pursuant to this paragraph. The petition for appeal
45 need only identify the order appealed from, with its date, contain a prayer that the
46 appeal be granted, and include the certificate required by Rule 5:17(i). Oral

1 argument on the petition shall not be allowed nor will a brief in opposition be
2 received. If the petition prays for a suspension of the effectiveness of the order
3 appealed from, it shall contain such statements of the facts and argument as
4 shall be necessary for an understanding of the assignments of error. In that
5 event, a brief in opposition will be received and oral argument may be granted.
6

7 (8) Award of Appeal. When the notice of appeal, the record, and the
8 petition(s) for appeal appear to have been filed in the manner provided herein
9 and within the time provided herein and by law, the clerk of this Court shall
10 forthwith enter an order docketing the appeal, requiring such bond as the clerk
11 shall deem proper. The clerk's action shall be subject to review by this Court.
12

13 (9) Assignments of Error. Within 10 days after the issuance by the clerk of
14 this Court of the certificate pursuant to Rule 5:23, each party appellant shall file
15 assignments of error in the office of the clerk of this Court and mail a copy
16 thereof to every other party to the appeal. A clear and exact reference to the
17 pages of the transcript, written statement of facts, or record where the alleged
18 error has been preserved shall be included with each assignment of error. Only
19 errors so assigned will be noticed by this Court and no error not so assigned will
20 be admitted as the ground for reversal of the decision below. Error will not be
21 sustained to any ruling by the Commission unless the objection was stated with
22 reasonable certainty at the time of the ruling, except for good cause shown or to
23 enable this Court to attain the ends of justice. An assignment of error which
24 merely states that the judgment is contrary to the law and the evidence is not
25 sufficient.
26

27 (10) Further Proceedings. Further proceedings in this Court shall conform
28 to Rules 5:23 through 5:40 provided that (i) the time within which the appellee
29 may file with the clerk of this Court a designation of the additional parts of the
30 record that the appellee wishes included in the appendix (Rule 5:32(d)) shall be
31 extended to 30 days after the date of the certificate of the clerk of this Court
32 pursuant to Rule 5:23 an appeal has been awarded; and (ii) the time within which
33 the opening brief of the appellant shall be filed in the office of the clerk of this
34 Court shall be extended to 50 days after such date.
35

36 (11) Additional Brief. An appellant who seeks relief different from that
37 sought by another appellant may file an answering brief at the time prescribed for
38 filing the brief of appellee.
39

40 (b) Appeals from the Virginia State Bar Disciplinary Board or a Three-Judge
41 Circuit Court Determination.
42

43 (1) Applicability. Paragraph (b) of this Rule applies to appeals from the
44 Virginia State Bar Disciplinary Board, pursuant to Part 6, § IV, Paragraph 13.J of
45 the Rules of the Supreme Court of Virginia, and to appeals from the decisions of
46 a three-judge circuit court pursuant to Code § 54.1-3935. As used in this

1 paragraph, "Respondent" is defined as the attorney who is appealing the decision
2 of the disciplinary proceeding.

3
4 (2) Perfecting the Appeal.

5
6 (i) Provisions for Appeals from the Virginia State Bar Disciplinary
7 Board. No appeal shall be allowed under this paragraph unless the
8 Respondent files a notice of appeal and assignments of error with the
9 clerk of the Disciplinary System within 30 days after the Memorandum
10 Order is served on the attorney by certified mail, return receipt requested,
11 at the attorney's last address on record for membership purposes with the
12 Virginia State Bar. At the same time the Respondent files a notice of
13 appeal and assignments of error, a copy of the notice of appeal and
14 assignments of error must be sent to the counsel for the Bar and the
15 Attorney General of Virginia. The Respondent is responsible for filing a
16 transcript or written statement of facts in compliance with Rule 5:11. The
17 date of the Memorandum Order shall be the date from which the time
18 limits contained in Rule 5:11 shall run. This action within the time
19 prescribed is jurisdictional. Upon timely compliance with these rules, the
20 Clerk of the Supreme Court shall docket the appeal as provided in Rule
21 5:23.

22
23 (ii) Provisions for Appeals from a Three-Judge Circuit Court. No
24 appeal shall be allowed under this paragraph unless the Respondent files
25 a notice of appeal and assignments of error with the clerk of the three-
26 judge circuit court within 30 days after the entry of the final judgment and,
27 at the same time, mails a copy of the notice of appeal and assignments of
28 error to counsel for the Bar and the Attorney General of Virginia. The
29 Respondent is responsible for filing a transcript or written statement of
30 facts in compliance with Rule 5:11. The date of the judgment shall be the
31 date from which the time limits contained in Rule 5:11 shall run. This
32 action within the time prescribed is jurisdictional. Upon timely compliance
33 with these rules, the Clerk of the Supreme Court shall docket the appeal
34 as provided in Rule 5:23.

35
36 (3) Record on Appeal. The clerk of the Disciplinary System or the clerk of
37 the three-judge circuit court shall compile and transmit the record as set out in
38 Rules 5:10, 5:11, and 5:13. The clerk shall immediately notify by certified mail the
39 Respondent, and the Respondent's counsel, if any, and the Attorney General of
40 the date the record is filed with the clerk of this Court. At the time the record is
41 filed, the clerk shall also notify the clerk of this Court and the Respondent
42 whether the Attorney General or Bar Counsel will represent the interests of the
43 Commonwealth as appellee.

44
45 (4) Time for Filing Briefs and Appendix. The parties shall designate the
46 contents of the appendix pursuant to the requirements of Rule 5:32 and the

1 Respondent shall be responsible for filing the appendix pursuant to that Rule.
2 The Respondent shall file the opening brief in the office of the clerk of this Court
3 within 40 days after the date the record is filed. The opening brief shall contain
4 assignments of error and references to the pages of the appendix, transcript,
5 written statement, or record where each assignment of error was preserved. The
6 brief of the appellee shall be filed in the office of the clerk of this Court within 25
7 days after the filing of the Respondent's opening brief. The Respondent may file
8 a reply brief within 14 days after the filing of the appellee's brief. With the
9 permission of a Justice of this Court, the time for filing any brief under this
10 paragraph may be altered. All briefs and the appendix shall conform to the
11 provisions of Rules 5:26 through 5:32 and Rule 5:34.
12

13 (5) Stay Pending Appeal. The Respondent may file a motion with the clerk
14 of this Court requesting a stay pending appeal of an order suspending the
15 Respondent's license. No other motions for stay will be considered by this Court.
16 The Respondent must file four copies of the motion for stay along with a copy of
17 the order imposing the suspension and a copy of the Respondent's notice of
18 appeal, which must contain the date stamp of the clerk showing the date the
19 notice of appeal was filed.
20

21 (6) Procedure on Appeal. Except as provided in this paragraph, further
22 proceedings shall be as provided in this Court's procedure following the
23 perfection of an appeal set out in Rules 5:23, 5:25, and Rules 5:35 through 5:40.
24

25 **Rule 5:22. Special Rule for Appeals in Death Penalty Cases.**
26

27 The time for appellant to file assignments of error was extended from 10 days to
28 30 days. A section describing the requirements of the briefs was added, and the page
29 length was extended to 150 pages for both sides, with a 50 page reply brief for
30 appellant. The task force researched the page limits in death penalty cases in other
31 states, and determined that the majority of states either did not have a page limit for
32 death penalty appeals, or routinely granted extensions on the page limit. The time for
33 filing the various briefs was also extended. A proposal was made to have the entire
34 record designated as the appendix, but the Committee voted against that proposal.
35

36 (a) Notice of Receipt of Record. Upon receipt of a record pursuant to § 17.1-313
37 B, the clerk of this Court shall notify in writing counsel for the accused in the circuit court
38 (who shall be deemed to be counsel for the appellant), the Attorney General (who shall
39 be deemed to be counsel for the appellee), and the Director of the Department of
40 Corrections of the date of its receipt. The date of the receipt of the record is the Filing
41 Date and the case shall thereupon stand matured as if an appeal had been awarded to
42 review the conviction and the sentence of death.
43

44 (b) Stay of Sentence of Death. Upon the Filing Date, the notice issued by the
45 clerk of this Court shall be deemed to be the certificate of the clerk of this Court
46 pursuant to Rule 5:23 that an appeal has been awarded, and the enforcement of the

1 sentence of death shall thereby be stayed pending the final determination of the case by
2 this Court.

3
4 (c) Filing of Assignments of Error and of the Appendix. Within 30 days after the
5 Filing Date, counsel for the appellant shall file with the clerk of this Court assignments of
6 error upon which the appellant intends to rely for reversal of the conviction or review of
7 the sentence of death. Counsel for the appellant shall accompany the assignments of
8 error with a designation of the parts of the record relevant to the review and to the
9 assignments of error. Not more than 10 days after such assignments of error and
10 designation are filed, counsel for the appellee may file with the clerk of this Court a
11 designation of the additional parts of the record that he wishes included as germane to
12 the review or to any assignments of error. Counsel for the appellant shall include in the
13 appendix the parts so designated. The provisions of Rules 5:31 and 5:32 (except Rule
14 5:32(b)(1) and (b)(3)) shall apply to the appendix.

15
16 (d) Assigning Error to the Sentence of Death. With respect to the sentence of
17 death, it shall be a sufficient assignment of error to state that the sentence was imposed
18 under the influence of passion, prejudice, or other arbitrary factor or that the sentence is
19 excessive or disproportionate to the penalty imposed in similar cases.

20
21 (e) Requirements for Briefs.

22
23 (1) Brief of Appellant. The appellant shall file the opening brief, which
24 shall not exceed 150 printed pages or 26,250 words, in the office of the clerk of
25 this Court within 60 days after the Filing Date.

26
27 (2) Brief of the Appellee. The appellee shall file its brief, which shall not
28 exceed 150 printed pages or 26,250 words, in the office of the clerk of this Court
29 within 120 days after the Filing Date.

30
31 (3) Reply Brief of the Appellant. The appellant shall file the reply brief,
32 which shall not exceed 50 printed pages or 8,750 words, in the office of the clerk
33 of this Court within 140 days after the Filing Date.

34
35 (f) Compliance with Rules for Perfected Appeals. Except to the extent that a
36 conflict with this Rule may arise, in which case this Rule shall then be controlling, further
37 proceedings in the case shall conform to the Rules relating to cases in which an appeal
38 has been perfected.

39
40 (g) Varying Procedure to Attain the Ends of Justice. This Court may, on motion in
41 a particular case, vary the procedure prescribed by this Rule in order to attain the ends
42 of justice and the purpose of § 17.1-313.

43
44 **G. Procedure Following Perfection of Appeal.**

45
46 **Rule 5:23. Perfection of Appeal; Docketing.**

1
2 No substantive changes were made to this rule.

3
4 **Rule 5:24. Security for Appeal.**

5
6 No substantive changes were made to this rule. There was discussion at the
7 various meetings about whether to revise this rule, but no consensus was reached .

8
9 **Rule 5:25. Preservation of Issues for Appellate Review.**

10
11 The Committee decided to change Rule 5:25 to conform with 5A:18.

12
13
14 No ruling of the trial court, disciplinary board, or commission before which the
15 case was initially tried will be considered as a basis for reversal unless the objection
16 was stated together with the grounds therefor at the time of the ruling, except for good
17 cause shown or to enable this Court to attain the ends of justice. A mere statement that
18 the judgment or award is contrary to the law and the evidence is not sufficient to
19 preserve the issue for appellate review.

20
21
22 **Rule 5:26. General Requirements for All Briefs.**

23
24 All parties must now file an electronic version along with the 20 hard copies,
25 unless the Court excuses a party from doing so for good cause. A section was also
26 included requiring a signature and certificate that this rule has been complied with.

27
28 (a) Applicability. This Rule, along with Rule 5:6, sets forth the general
29 requirements for all briefs filed in this Court. Rule 5:22 sets forth the special rule for
30 appeals in death penalty cases.

31
32 (e) Copies. One electronic version, in Adobe Acrobat Portable Document Format
33 (PDF) format, must be filed with the clerk of this Court and served on opposing counsel,
34 unless excused by this Court for good cause shown. The electronic version may be
35 filed on CD-ROM or emailed to scvbrieffs@courts.state.va.us. In addition, twelve copies
36 of each brief (including a brief amicus curiae) shall be filed in the office of the clerk of
37 this Court and three copies shall be mailed or delivered to opposing counsel on or
38 before the day on which the brief is filed. Three copies of a brief amicus curiae shall be
39 mailed or delivered to counsel for all parties and to any other counsel amicus curiae. All
40 briefs shall contain a certificate evidencing such mailing or delivery and the method of
41 transmission to the clerk for filing.

42
43 (g) Arguments Made by Reference. Attempts to incorporate arguments made
44 below by reference to pleadings, motions, memorandum, or other filings are prohibited.
45

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

8
9 (i) Any party who fails to file a brief in compliance with these Rules or otherwise
10 fails to file a required brief will not be heard orally, except for good cause shown.

11
12
13 **Rule 5:27. Requirements for Opening Brief of Appellant.**

14
15 This rule was expanded to state the various sections an opening brief must
16 contain, including a subject index and table of citations, a statement of the case,
17 assignments of error, argument with standard of review, principles of law and
18 authorities, and a conclusion stating the precise relief sought. References to Rules 5:6
19 and 5:26 were included.

20
21
22 The opening brief of the appellant shall comply with the requirements of Rules
23 5:6 and 5:26, and must contain the following:

24
25 (a) A table of contents and table of authorities with cases alphabetically
26 arranged. Citations of Virginia cases shall be to the Virginia Reports and the
27 Southeastern Reporter. Citations of all authorities shall include the year thereof.

28
29 (b) A statement of the case containing the material proceedings below and
30 the facts, with references to the appendix.

31
32 (c) The assignments of error, with a clear and exact reference to the pages of the
33 appendix where the alleged error has been preserved.

34
35 (d) The standard of review, the argument, and the authorities relating to each
36 assignment of error. With respect to each assignment of error, the standard of review,
37 the argument – including principles of law, and the authorities shall be stated in one
38 place and not scattered through the brief. At the option of counsel, the argument may be
39 preceded by a brief summary.

40
41 (e) A short conclusion stating the precise relief sought.

42
43 **Rule 5:28. Requirements for Brief of Appellee.**

1 References to Rules 5:6 and 5:26 were included. Language was added
2 regarding assignments of cross-error and requiring the appellee to cite to the page in
3 the appendix where the cross-error is preserved.
4

5 The brief of appellee shall comply with Rules 5:6 and 5:26, and must contain the
6 following:
7

8 (a) A table of contents and table of authorities with cases alphabetically
9 arranged. Citations of Virginia cases shall be to the Virginia Reports and the
10 Southeastern Reporter. Citations of all authorities shall include the year thereof.
11

12 (b) A statement of the case if the appellee disagrees with the statement
13 presented by the appellant. In an appeal of right to this Court from an order disciplining,
14 suspending, or disbaring an attorney-at-law, the Virginia State Bar may include
15 assignments of cross-error. In such cases, no cross-error not then assigned will be
16 noticed by this Court.
17

18 (c) A statement of the facts necessary to correct or amplify the statement in the
19 brief of appellant with appropriate references to the pages of the appendix. Any
20 quotation from the record should be brief. The testimony of individual witnesses should
21 not be summarized seriatim unless the facts are in dispute and such a summary is
22 necessary to support the appellee's version of the facts.
23

24 (d) The standard of review, the argument, and the authorities relating to each
25 assignment of error. With respect to each assignment of error, the standard of review,
26 the argument – including principles of law, and the authorities shall be stated in one
27 place and not scattered through the brief. At the option of counsel, the argument may be
28 preceded by a brief summary.
29

30
31 (e) With respect to the assignments of cross-error, if any:
32

33 (1) A statement of the assignment of error cross-error, with a clear and
34 exact reference to the pages of the appendix where the alleged cross-error has
35 been preserved.
36

37 (2) The standard of review, the argument, and the authorities relating to
38 each assignment of cross-error. With respect to each such assignment of cross-
39 error, the standard of review, the argument – including principles of law, and the
40 authorities shall be stated in one place and not scattered through the brief.
41

42 (3) A statement of the precise relief sought.
43
44
45
46

1
2 **Rule 5:29. Requirements for Reply Brief.**
3

4 References to Rules 5:6 and 5:26 were included, as was language stating that
5 the reply brief should only contain argument in reply to contentions raised in the
6 appellee’s brief.
7

8
9 The reply brief, if any, shall comply with the requirements of Rules 5:6 and 5:26
10 and shall contain only argument in reply to contentions made in the brief of appellee.
11 No reply brief is necessary if the contentions have been adequately answered in the
12 opening brief of appellant.
13

14 **Rule 5:30. Briefs Amicus Curiae.**
15

16 Language was added to state that amicus curiae briefs can be filed at any stage
17 of appellate proceedings.
18

19 (a) Subject to the requirements outlined in this Rule, a brief amicus curiae may
20 be filed at any stage of the appellate proceedings in this Court.
21

22
23
24 (b) Who May File a Brief Amicus Curiae Without Leave of Court.
25

26 (1) The United States or the Commonwealth of Virginia; or
27

28 (2) Any other person whose filing is accompanied by the written
29 consent of all counsel.
30

31 (3) Any person requested by the Court to file a brief amicus curiae
32 pursuant to paragraph (f) of this Rule.
33

34 (c) Who Needs Leave of Court to File a Brief Amicus Curiae. Any person or
35 entity other than those described in paragraph (b) of this Rule.
36

37 (d) When a Brief Amicus Curiae Must Be Filed. A brief amicus curiae will be
38 accepted only if filed on or before the date on which the brief of the party supported is
39 required to be filed. A brief amicus curiae may be filed at the time of filing of the reply
40 brief of the appellant only if an opening brief amicus curiae has been filed.
41

42 (e) What a Brief Amicus Curiae Must Contain. A brief amicus curiae shall comply
43 with the rules applicable to the brief of the party supported.
44

1 (f) This Court's Authority to Request a Brief Amicus Curiae. Notwithstanding the
2 provisions of this Rule, this Court may request that a brief amicus curiae be filed at any
3 time.
4

5 **Rule 5:31. Covers of Documents.**
6

7 No substantive changes were made to this rule.
8

9 **Rule 5:32. Appendix.**
10

11 This rule was drafted to combine old rules 5:32, 5:33, and 5:34. The new rule
12 lists everything that must be included in the appendix. A section was added stating that
13 an appeal will not be dismissed for failure to file and appendix. If an appendix is not
14 timely filed, the Court may direct the filing and may order the non-complying party to
15 advance the costs of printing the appendix. If a party fails to comply with an order
16 entered under this rule, then the appeal can be dismissed.
17
18
19

20 (a) Responsibility of the Appellant.
21

22 (1) Contents of the Appendix. The appellant must prepare and file an
23 appendix. Where a cross-appeal has been granted, the initial appellant shall
24 be responsible for filing a single appendix for the appeal. The appendix shall
25 contain:
26

27 (i) the initial pleading (as finally amended), unless other versions
28 are necessary to consider the assignments of error;
29

30 (ii) final judgments of all tribunals that have considered the case,
31 including the judgment appealed from, and any opinion relating to such
32 judgments;
33

34 (iii) testimony and other incidents of the case germane to the
35 assignments of error;
36

37 (iv) exhibits necessary for an understanding of the case that can
38 reasonably be reproduced;
39

40 (v) the granted assignments of error and cross-error;
41

42 (vi) other parts of the record to which the parties wish to direct this
43 Court's attention; and
44

45 (vii) a table of contents as described in paragraph (d) below.
46

1 (2) Assumptions and Excluded Material. It will be assumed that the
2 appendix contains everything germane to the granted assignments of error
3 and, if any, assignments of cross-error. Memoranda of law in the trial court
4 should not be included in the appendix unless they have independent
5 relevance. Parts of the record may be relied on by this Court or the parties
6 even though not included in the appendix.
7

8 (3) Time to File; Number of Copies.
9

10 (i) Generally. The appellant must file 20 copies of the appendix with
11 the appellant's brief, and must serve two copies on counsel for each party
12 separately represented. This Court may by order require the filing or
13 service of a different number.
14

15 (ii) Special Rule for Electronic Filing of the Appendix. In lieu of the
16 20 tangible copies required by paragraph (a)(3)(i) of this Rule, the
17 appellant may file 10 tangible copies of the appendix and 10 electronic
18 copies of the appendix as an Adobe Acrobat Portable Document Format
19 (PDF) document on CD-ROMs. If the appellant files 10 electronic copies
20 with this Court, then it must also serve one electronic copy on counsel for
21 each party separately represented in addition to the one tangible copy
22 required by paragraph (a)(3)(i) of this Rule.
23

24 (b) Responsibility of All Parties.
25

26 (1) Determining the Contents of the Appendix. The parties are
27 encouraged to agree on the contents of the appendix. Within 15 days after the
28 date of the certificate of the clerk of this Court issued pursuant to Rule 5:23,
29 counsel for appellant shall file in the office of the clerk of this Court a written
30 statement signed by all counsel setting forth an agreed designation of the parts
31 of the record on appeal to be included in the appendix. In the absence of an
32 agreement, the appellant must, within 15 days after the date of the certificate of
33 appeal issued by the clerk of this Court pursuant to Rule 5:23, file with the clerk
34 of this Court and serve on the appellee a designation of the parts of the record
35 the appellant intends to include in the appendix. The appellee may, within 15
36 days after receiving the designation, file with the clerk of this Court and serve on
37 the appellant a designation of additional parts of the record the appellee deems
38 germane. The appellant must include the parts designated by the appellee or
39 any cross-appellant in the appendix. The parties must not engage in an
40 unnecessary designation of parts of the record, because the entire record is
41 available to the Court.
42

43 (2) Sealed Materials in the Appendix. Appendices filed with this Court are
44 a matter of public record. If counsel concludes it is necessary to include sealed
45 material in the appendix, then, in order to maintain the confidentiality of the
46 materials, counsel must designate the sealed material for inclusion in a

1 supplemental appendix to be filed separately from the regular appendix, and
2 must file a specific motion asking this Court to seal the supplemental appendix
3 within the time stated for the designation of the appendix in paragraph (b)(1) of
4 this Rule.

5
6 (3) Costs of Appendix. Unless the parties agree otherwise, the appellant
7 must initially pay the cost of the appendix, but if the appellant in good faith
8 considers that parts of the record designated by the appellee for inclusion are
9 unnecessary for the determination of the assignments of error, the appellant
10 initially preparing the appendix may so advise the clerk of this Court, the appellee
11 who designated the challenged material shall advance the cost of including such
12 parts. The cost of producing the appendix shall be taxed as costs in the case,
13 but if any party shall cause unnecessary material to be included in the appendix
14 this Court sua sponte or upon motion may impose the cost of including such
15 parts upon that party.

16
17 (c) Appeal on the Original Record Without an Appendix. This Court may,
18 sua sponte or on motion, enter an order dispensing with the appendix and permitting an
19 appeal to proceed on the original record with any copies of the record, or relevant parts,
20 that the Court may order the parties to file. A motion may be made under this rule
21 within 10 days of the issuance of a writ. The making of a motion under this paragraph
22 does not excuse the filing of the proposed contents of an appendix under paragraph
23 (b)(1).

24
25 (d) Table of Contents and Form of Presentation. The appendix must begin with a
26 table of contents identifying the page at which each part begins. When the testimony of
27 witnesses is included, the name of each witness who is testifying must be in the table of
28 contents with a page number at which each portion of the testimony begins (direct,
29 cross, redirect, etc.). Parts of the record should be in the appendix in chronological
30 order. Omissions in the text of papers or of the transcript must be indicated by asterisks.
31 The index for exhibits should include a description of the exhibit sufficient to inform this
32 Court of its nature rather than merely an exhibit number.

33
34 (e) Effect of Non-Compliance with this Rule. An appeal will not be dismissed for
35 failure to file an appendix in compliance with this Rule. If an appendix is not filed within
36 the time prescribed, or on its face fails to comply with this Rule, this Court may direct
37 the filing of a proper appendix within a specific time and may require a non-complying
38 attorney or unrepresented party to advance all or part of the cost of printing the
39 appendix. This Court may dismiss an appeal for non-compliance with an order entered
40 under this paragraph.

41
42 **Rule 5:33. Oral Argument.**

43
44 A section was added stating that a party does not waive any argument made in
45 its brief that is not raised at oral argument, and there is no need to expressly reserve
46 any arguments made on brief. Language was also added that in general, no additional

1 time will be granted in situations where cross-error has been granted. Oral argument
2 was limited to 15 minutes per side.
3

4 (a) Notice. Whenever an appeal lies as a matter of right or a petition for appeal
5 has been granted, the clerk of this Court, except in extraordinary circumstances, shall
6 give at least 15 days notice to counsel of the date, approximate time, and location for
7 oral argument.
8

9 (b) Length. Except as otherwise directed by this Court, argument for a party shall
10 not exceed 15 minutes in length. Such time may be apportioned among counsel for the
11 same side at their discretion.
12

13 (c) Appearance Pro Hac Vice. Any lawyer not licensed in Virginia who seeks to
14 appear pro hac vice to present oral argument to the Court must comply with the
15 requirements of Rule 1A:4.
16

17 (d) Amicus Curiae. No oral argument by amicus curiae is permitted except by
18 leave of this Court. Leave may be granted upon the joint written request of amicus
19 curiae and the party whose position amicus curiae supports. The request shall specify
20 the amount of its allotted time the supported party is willing to yield to amicus curiae.
21
22
23

24 (e) Waiver. During oral argument, it shall not be necessary for any party to
25 expressly reserve any argument made on brief, and the failure to raise any such
26 argument shall not constitute a waiver. Any party may, without waiving the arguments
27 made on brief, waive oral argument.
28

29 **H. Decision, Costs, and Mandate.**

30 **Rule 5:34. Notice of Decision.**

31 No substantive changes were made to this rule.
32
33
34
35

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

37 Information regarding attorney's fees was added to this rule. The word "verified"
38 was changed to "notarized." The time for filing the bill of costs was extended from 10
39 days to 14 days, and the time for filing objections was shortened from 14 days to 10
40 days.
41
42

43 (a) To Whom Allowed. Except as otherwise provided by law, if an appeal is
44 dismissed, costs shall be taxed against the appellant unless otherwise agreed by the
45 parties or ordered by this Court; if a judgment is affirmed, costs shall be taxed against
46 the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed

1 against the appellee unless otherwise ordered; if a judgment is affirmed in part or
2 reversed in part, or is vacated, costs shall be allowed as ordered by this Court.
3

4 (b) Attorney's Fees. Upon refusal or dismissal of a petition for appeal and any
5 petition for rehearing, any appellee who has received attorney's fees and costs in the
6 circuit court may make application in the circuit court for additional fees and costs
7 incurred on appeal pursuant to Rule 1:1A.
8

9 (c) Taxable Costs. Costs, including the filing fee and costs incurred in the printing
10 or producing of necessary copies of briefs, appendices, and petitions for rehearing, shall
11 be taxable in this Court.
12

13 (d) Notarized Bill of Costs. Counsel for a party who desires costs to be taxed
14 shall itemize them in a notarized bill of costs, which shall be filed with the clerk of this
15 Court within 14 days after the date of the decision in the case. Objections to the bill of
16 costs must be filed with the clerk of this Court within 10 days after the date of filing the
17 bill of costs.
18

19 (e) Award. The clerk of this Court shall prepare and certify an itemized statement
20 of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate
21 shall not be delayed for taxation of costs. If the mandate has been issued before final
22 determination of costs, the statement, or any amendment thereof, shall be added to the
23 mandate on request by the clerk of this Court to the clerk of the tribunal in which the
24 case originated.
25

26 **Rule 5:36. Mandate.**
27

28 No substantive changes were made to this rule.
29

30 **Rule 5:37. Petition for Rehearing After Consideration by the Full Court.**
31

32 This rule was clarified so that it only applies to cases considered by the full court,
33 and references to Rules 5:20 and 5:20A were added. Rule 5:39A regarding electronic
34 filing was incorporated into this rule, and 5:39A was eliminated.
35

36 (a) Scope. This Rule does not apply to the refusal or dismissal of a petition for
37 appeal, or the refusal or dismissal of an original jurisdiction petition. See Rules 5:20 and
38 5:20A.
39

40 (b) Notice of Intent. A party intending to apply for a rehearing shall file written
41 notice with the clerk of this Court within 10 days after the date of the order or opinion of
42 this Court deciding the case. If such notice is given, the clerk of this Court shall withhold
43 certification of the mandate until time for filing the petition for rehearing has expired and,
44 if the petition is filed, until it is disposed of.
45

1 (c) Requirements for Pro Se Prisoners or By Leave of Court. Unless the
2 rehearing is abandoned, 20 copies of a petition for rehearing not to exceed 10 pages or
3 1,750 words in length shall be thereafter filed in the office of the clerk of this Court and 3
4 copies delivered or mailed to opposing counsel within 30 days after the date of the order
5 of this Court deciding the case.
6
7

8 (d) Requirements for All Others.
9

10 (1) Except for petitions filed by pro se prisoners, or with leave of this
11 Court, the petition for rehearing shall be filed as an Adobe Acrobat Portable
12 Document Format (PDF) document attached to an e-mail addressed to
13 scvpfr@courts.state.va.us and will be timely filed if received by the clerk's office
14 on or before 11:59 p.m. within 30 days after the date of the order or opinion of
15 this Court deciding the case. The petition must be formatted to print on a page 8
16 1/2 x 11 inches, must be in 14-point font or larger, must be double-spaced, and
17 must not exceed 10 printed pages or 1,750 words. The petition must include a
18 certificate of service to opposing counsel and the certificate shall specify the
19 manner of service and the date of service. The petition must also include a
20 certificate of compliance with the word count limit. The petition will be considered
21 filed on the date and time that it is received by scvpfr@courts.state.va.us. If the
22 petition does not meet the requirements of this rule as to format, the clerk shall
23 so notify counsel and provide a specific amount of time for a corrected copy of
24 the petition to be filed. A person who files a document electronically shall have
25 the same responsibility as a person filing a document in paper form for ensuring
26 that the document is properly filed, complete, and readable. However, if technical
27 problems at this Court result in a failure to timely receive the electronically filed
28 petition for rehearing, counsel shall provide to the clerk of this Court on the next
29 business day all documentation which exists demonstrating the attempt to email
30 the petition, any delivery failure notice received in response to the attempt, and a
31 copy of the petition for rehearing.
32

33 (2) The e-mail message to which the petition is attached shall recite in
34 the subject line the style of the case and the Supreme Court record number.
35 The e-mail message shall contain a paragraph stating that a petition for
36 rehearing is being filed, the style of the case, the Supreme Court record
37 number, the name and Virginia State Bar number of counsel filing the
38 petition, as well as the law firm name, mailing address, telephone number,
39 facsimile number (if any), and e-mail address (if any) of counsel. The
40 message shall also state whether a copy of the petition has been served by e-
41 mail or another means on opposing counsel and the date of such service. If
42 the petition has been served on opposing counsel by e-mail, the e-mail
43 address for opposing counsel shall also be included. Upon receipt of the
44 petition for rehearing in the e-mail box of the clerk's office, an
45 acknowledgment will automatically be sent to counsel seeking the rehearing.
46

1 (e) Grounds for Granting. No petition for rehearing shall be granted unless one of
2 the Justices who decided the case adversely to the applicant determines that there is
3 good cause for such rehearing. The proceedings upon such rehearing shall be in
4 accordance with Code § 8.01-675.2. No oral argument will be permitted on applications
5 for rehearing.
6

7 (f) When a Rehearing is Granted. When a rehearing is granted, the case will be
8 placed on the privileged docket for oral argument. The petitioner may not file any brief in
9 addition to the petition for rehearing. The respondent may file electronically, in
10 compliance with paragraph (d) of this Rule, a brief in reply that shall not exceed 15
11 printed pages in length or 2,625 words within 21 days after the date of the order
12 granting the rehearing. The respondent will be heard orally whether or not respondent
13 files a brief in reply. The case will be called at the next session of the Court after the
14 expiration of the 21 days unless counsel agree that it be called at a session of the Court
15 commencing at an earlier time.
16
17
18

19 **I. Settlement or Withdrawal.**
20

21 **Rule 5:38. Settlement or Withdrawal of Pending Appeal.**
22

23 Written notice to the Court of the settlement or withdrawal is now required.
24

25 When a case has been settled or the appeal withdrawn at any time after the
26 notice of appeal has been filed, it shall be the duty of counsel to notify the clerk of this
27 Court by filing a written notice that the case has been settled or the appeal withdrawn. If
28 counsel certifies that the terms of the settlement or withdrawal require further
29 proceedings in the trial court, a single Justice may approve entry of an order of remand.
30

31 **J. Supreme Court of the United States.**
32

33 **Rule 5:39. Delay in Issuing Mandate Upon Appeal or Petition to Supreme Court of**
34 **the United States.**
35

36 No substantive changes were made to this rule.
37
38

39 **K. Certification of Questions of Law.**
40

41 **Rule 5:40. Certification Procedures.**
42

43 This rule was amended to include requests from United States territories.

1
2 IV. Recommended Changes to Part 5A
3

4 This section contains a summary of the recommended substantive changes to
5 each rule in Part 5A of the Rules of the Supreme Court of Virginia, governing appeals to
6 the Court of Appeals. A red-lined version of the rules with the recommended changes is
7 attached as Appendix B. In addition to substantive changes, editorial changes such as
8 capitalizing, spacing, formatting, and renumbering were made. These editorial changes
9 will not be discussed in the summary below unless they are significant, but are available
10 for review in the red-lined version at Appendix B.

11
12 **Rule 5A:1. Scope, Citation, Applicability and General Provisions.**
13

14 A section was added requiring a certificate of service for all filings. A section was
15 also added requiring a party to notify the Court of a change of address. Additionally, a
16 section was added governing how and when unpublished opinions and orders may be
17 cited, for persuasive authority only.

18
19 (d) Service. Unless service or notice is otherwise specified in a given Rule, any
20 paper or object filed with this Court must have included within it or appended to it a
21 certificate of service or acceptance of service showing that a copy has been transmitted
22 to all counsel and showing the date and manner of transmittal. If a word count limitation
23 is required, the certificate must also state the number of words (headings, footnotes,
24 and quotations count towards the word limitation; the cover page, table of contents,
25 table of authorities, and certificate do not count towards the word count).

26
27 (e) Notice of Change of Address and Other Contact Information. If an attorney
28 has a change in mailing address, telephone number, facsimile number, or e-mail
29 address any time after the filing of the notice of appeal, the attorney must immediately
30 notify the clerk of this Court and all other counsel of record in writing. The notice must
31 reference the style and record number of all cases pending before this Court.

32
33 (f) Citing Unpublished Judicial Dispositions. The citation of judicial opinions,
34 orders, judgments, or other written dispositions designated as “unpublished,” “not for
35 publication,” “non precedential,” or the like, is discouraged, but no prohibited and may
36 be cited as persuasive authority. If the citation is from a judicial opinion, order,
37 judgment, or other written disposition that is not available in a publicly accessible
38 electronic database, the party must file and serve a copy of that judicial opinion, order,
39 judgment, or other written disposition with the brief or other paper in which it is cited.

40
41 **Rule 5A:2. Motions and Responses; Orders.**
42

43 Language was added requiring counsel to include a statement that they have
44 notified opposing counsel that a motion has been filed. This language tracks the Fourth

1 Circuit LR 27(c). Sections were also added governing appeals of pre-trial bail orders
2 and post-trial bond orders in criminal cases.

3
4 (a) Motions and Responses.

5
6 (1) Motions. All motions, except motions for the qualification of attorneys
7 at law to practice in this Court, shall be in writing and filed with the clerk of this Court. In
8 cases where all parties are represented by counsel, all motions shall contain a
9 statement by counsel that counsel for the other parties to the appeal have been
10 informed of the intended filing of the motion. The statement shall indicate whether the
11 other parties consent to the granting of the motion, or intend to file responses in
12 opposition.

13
14
15 (b) Motion for Review of Pre-trial Bail Orders in Criminal Cases. When a circuit
16 court has granted or denied pre-trial bail or set a bond or terms of recognizance or
17 revoked bail, either party may move this Court to review the order. With the motion for
18 review, the party seeking review shall submit copies of: (1) the warrant(s) or
19 indictment(s) in the case; (2) the order granting, denying, or setting bond; and (3) a
20 transcript of the bond hearing or a stipulation between counsel stating the evidence
21 introduced at the bond hearing and the ruling of the circuit court. An order setting or
22 denying bail or setting terms of a bond or recognizance shall be reviewable for abuse of
23 discretion.

24
25 (c) Motion for Review of Post-trial Bail Pending Appeal Orders in Criminal Cases.
26 When a notice of appeal has been filed in a criminal case, an appellant other than the
27 Commonwealth may move this Court to review the trial court's order denying bail
28 pending appeal or setting an excessive bail pending appeal. With the motion for review,
29 the appellant shall submit copies of: (1) the sentencing order entered by the trial court;
30 (2) a pre-sentence report when available; (3) the trial court's decision setting or denying
31 bail; and (4) a transcript of the bail hearing or a stipulation between counsel stating the
32 evidence introduced at the bail hearing and the reason the trial court gave for the bail
33 decision. An order setting or denying bail pending appeal in a criminal case shall be
34 reviewable for abuse of discretion. If this Court overrules a trial court decision denying
35 bail pending appeal, this Court shall set the amount of the bail pending appeal or
36 remand the matter to the trial court with directions to set bail pending appeal.

37
38
39 **Rule 5A:3. Filing Deadlines; Post Trial Proceedings Below; Timely Filing by Mail;**
40 **Inmate Filing; Extension of Time.**

41
42 This rule was amended to permit filing by third-party commercial carriers and
43 first-class and priority mail. A section regarding timely filings of motions for extension of
44 time was added, and the standard for granting them is "upon a showing of good cause
45 sufficient to excuse the delay." This rule is now consistent with the Supreme Court of
46 Virginia's version.

1
2 (a) Filing Deadlines and Extensions. The times prescribed for filing the notice of
3 appeal (Rules 5A:6 and 5A:11), a petition for appeal (Rule 5A:12), and a petition for
4 rehearing (Rule 5A:33) and a request for rehearing en banc (Rule 5A:34) are
5 mandatory. Except for the petition for appeal which is addressed in Rule 5A:12(a) and
6 Code § 17.1-408, a single extension not to exceed thirty days may be granted if at least
7 three judges of the Court of Appeals concur in a finding that an extension for papers to
8 be filed is warranted upon a showing of good cause sufficient to excuse the delay. The
9 time period for filing the notice of appeal is not extended by the filing of a motion for a
10 new trial, a petition for rehearing, or a like pleading unless the final judgment is
11 modified, vacated, or suspended by the trial court pursuant to Rule 1:1, in which case
12 the time for filing shall be computed from the date of the final judgment entered
13 following such modification, vacation, or suspension.

14
15 (b) Extensions Generally. Except as provided in paragraph (a) of this Rule, the
16 times prescribed in these Rules for filing papers, except transcripts (Rule 5A:8(a)), may
17 be extended by a judge of the court in which the papers are to be filed upon a showing
18 of good cause sufficient to excuse the delay.

19
20 (c) Motions for Extension. A motion for extension of time is timely if
21 filed:

22
23 (1) within the original filing deadline; or

24
25 (2) within the specified extension period; or

26
27 (3) within a reasonable time after the original filing deadline if the
28 extension period is unspecified. See Rules 5A:8(a), 5A:13(a), 5A:19(b), and
29 5A:19(c).

30
31 Filing a motion for extension does not toll the applicable deadline or further extend
32 the period of extension.

33
34
35
36 (d) How to File by Mail in a Timely Manner. Any document required to be filed
37 with the clerk of this Court, ~~or filed in the office of the clerk of the Court of Appeals,~~ shall
38 be deemed to be timely filed if (1) it is transmitted expense pre-paid to the clerk of this
39 Court by a third-party commercial carrier for next-day delivery, or by priority, express,
40 registered, or certified mail via the United States Postal Service, and (2) if the official
41 receipt therefor be exhibited upon demand of the clerk or any party and it shows such
42 transmission or mailing within the prescribed time limits. This Rule does not apply to
43 documents to be filed in the office of the clerk of the trial court or clerk of the Virginia
44 Workers' Compensation Commission.

1
2 (e) Inmate Filing. A paper filed by an inmate confined in an institution is timely
3 filed if deposited in the institution's internal mail system with first-class postage prepaid
4 on or before the last day for filing. Timely filing of a paper by an inmate confined in an
5 institution may be established by (1) an official stamp of the institution showing that the
6 paper was deposited in the internal mail system on or before the last day for filing, (2)
7 an official postmark dated on or before the last day for filing, or (3) a notarized
8 statement signed by an official of the institution showing that the paper was deposited in
9 the internal mail system on or before the last day for filing.

10
11
12 **Rule 5A:4. Forms of Briefs and Other Papers.**
13

14 Condensed transcripts are now prohibited. Unlike in Rule 5:6, no specific fonts
15 are listed. A certificate of compliance with the word count limitation is required.
16

17 (a) Paper Size, Line Spacing, Font, and Margins. Briefs, appendices, motions,
18 petitions, and other papers may be printed by any process that yields a clear black
19 image on white paper and must be on pages 8-1/2 x 11 inch paper. All printed matter
20 must be in at least 12 point font. Text shall not be reduced, and must be double-spaced
21 except for headings, assignments of error, quotations, and footnotes. Margins must be
22 at least one inch on all four sides of each page. The use of condensed or multi-page
23 transcripts is prohibited.
24

25 (d) Certificate of Compliance with Word Count Limitation. Any brief,
26 motion, petition, or other paper that has a word count limitation in these Rules
27 must include a certificate by the attorney, or unrepresented party, that the
28 document complies with the applicable word count limitation. The person
29 preparing the certificate may rely on the word count of the word-processing system
30 used to prepare the document. The certificate must state the number of words the
31 document contains, excluding those parts specifically exempted by these Rules.
32
33

34 **B. Original Jurisdiction.**
35

36 **Rule 5A:5. Original Proceedings.**
37

38 The language regarding whether responsive pleadings are required was
39 removed, and the filing fee was increased to \$50.
40

41 (a) With the exception of petitions for the issuance of writs of actual innocence
42 under paragraph (b) of this Rule, all proceedings before the Court of Appeals pursuant
43 to its original jurisdiction shall be conducted in accordance with the procedure
44 prescribed by Rule 5:7 of the Rules of the Supreme Court.
45

1
2 **C. Procedure for Filing an Appeal From the Trial Court.**
3

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

6 Language was added to state timely filing of the notice of appeal is a
7 jurisdictional requirement. The filing fee was increased to \$50. A section was added
8 stating that no appeal will be dismissed simply because the notice of appeal fails to
9 identify a guardian ad litem or to provide notice to a guardian at litem.

10
11 (a) Filing Deadline; Where to File. No appeal shall be allowed unless, within 30
12 days after entry of final judgment or other appealable order or decree, or within any
13 specified extension thereof granted by this Court under Rule 5A:3(e), counsel files with
14 the clerk of the trial court a notice of appeal, and at the same time mails or delivers a
15 copy of such notice to all opposing counsel. A party filing a notice of an appeal of right
16 to the Court of Appeals shall simultaneously file in the trial court an appeal bond in
17 compliance with Code § 8.01-676.1.
18

19 (c) Filing Fee. A copy of the notice of appeal shall be filed in the office of the clerk
20 of the Court of Appeals and, except as otherwise provided by law, must be
21 accompanied by a check or money order in the amount of \$50 payable to the “Clerk of
22 the Court of Appeals” for the filing fee required by statute. The fee shall be due at the
23 time the notice of appeal is presented. The clerk of the Court of Appeals may file any
24 notice of appeal that is not accompanied by such fee if the fee is received by the clerk
25 within ten days of the date the notice of appeal is filed. If the fee is not received within
26 such time, the appeal shall be dismissed.
27

28 (f) Special Provision for Cases Involving a Guardian Ad Litem. No appeal shall be
29 dismissed because the notice of appeal fails to identify a guardian ad litem or to provide
30 notice to a guardian ad litem. Upon motion for good cause shown or by sua sponte
31 order of this Court, the notice of appeal may be amended to identify the guardian ad
32 litem and to provide notice to such guardian.
33

34 **Rule 5A:7. Record on Appeal: Contents.**
35

36 No substantive changes were made to this rule.
37

38 **Rule 5A:8. Record on Appeal: Transcript or Written Statement.**
39

40 The 60 day deadline for requesting an extension of time was changed to “within a
41 reasonable time after entry of final judgment,” and “good cause sufficient to excuse the
42 delay.” A proposal was made to harmonize this rule with 5:11 and include the changes
43 regarding written statements of fact, but Judge Kelsey stated that he wants this rule to
44 remain the way it is.
45

1 (a) Transcript. The transcript of any proceeding is a part of the record when it is
2 filed in the office of the clerk of the trial court within 60 days after entry of the final
3 judgment. Upon a written motion filed within 60 days after entry of the final judgment, a
4 Judge of this Court may extend this time upon a showing of good cause sufficient to
5 excuse the delay.
6

7 (c) Written Statement. A written statement of facts, testimony, and other
8 incidents of the case may be included in the record if, upon written motion before
9 the commencement of the hearing, the trial court allows a written statement of
10 facts in lieu of a transcript. The term “other incidents of the case” includes
11 motions, proffers, objections, and rulings of the trial court regarding any issue to
12 which a party intends to assign error or otherwise address on appeal. The written
13 statement of facts becomes a part of the record when:
14

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

21 (2) the statement is signed by the trial judge and filed in the office of the
22 clerk of the trial court. The judge may sign the statement forthwith upon its
23 presentation to him if it is signed by counsel for all parties, but if objection is
24 made to the accuracy or completeness of the statement, it shall be signed in
25 accordance with paragraph (d) of this Rule.
26

27 (d) Objections. Any party may object to a transcript or written statement on the
28 ground that it is erroneous or incomplete. Notice of such objection specifying the errors
29 alleged or deficiencies asserted shall be filed with the clerk of the trial court within 15
30 days after the date the notice of filing the transcript (paragraph (b) of this Rule) or within
31 15 days after the date the notice of filing the written statement (paragraph (c) of this
32 Rule) is filed in the office of the clerk of the trial court or, if the transcript or written
33 statement is filed before the notice of appeal is filed, within 10 days after the notice of
34 appeal has been filed with the clerk of the trial court. The clerk shall give prompt notice
35 of the filing of such objections to the trial judge. Within 10 days after the notice of
36 objection is filed with the clerk of the trial court, the judge shall:
37

38 (1) overrule the objection; or
39

40 (2) make any corrections that the trial judge deems necessary; or
41

42 (3) include any accurate additions to make the record complete; or
43

44 (4) certify the manner in which the record is incomplete; and
45

1 (5) sign the transcript or written statement.
2

3 At any time while the record remains in the office of the clerk of the trial court, the trial
4 judge may, after notice to counsel and hearing, correct the transcript or written
5 statement.
6

7 The judge's signature on a transcript or written statement, without more, shall
8 constitute certification that the procedural requirements of this Rule have been satisfied.
9

10 **Rule 5A:9. Judge Authorized to Act.**

11 No changes were made to this rule.
12
13

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

15
16 Language was added instructing the circuit court clerks and parties not to
17 transmit certain exhibits to the Court, including guns, drugs, other weapons, bio-hazard
18 materials, and large, bulky items, unless ordered to do so by the Court.
19
20

21 (4) Exhibits, other than those filed with pleadings, may be included in a
22 separate volume or envelope certified by the clerk of the trial court, except that
23 any exhibit that cannot be conveniently placed in a volume or envelope shall be
24 identified by a tag. Each such volume or envelope shall include, on its cover or
25 inside, a descriptive list of exhibits contained therein. Reference shall be made to
26 exhibits in the table of contents and at the appropriate place in the record
27 referred to in paragraph (b)(1) of this Rule. The clerk of the trial court shall not
28 transmit the following types of exhibits, unless requested to do so by the clerk of
29 this Court: drugs, guns and other weapons, ammunition, blood vials and other
30 bio-hazard type materials, money, jewelry, articles of clothing, and bulky items
31 such as large graphs and maps. The omission of any such exhibit shall be noted
32 on the descriptive list of exhibits. Upon motion by counsel, this Court may order
33 the trial court to transmit any of these prohibited exhibits.
34

35 **D. Procedure for Filing an Appeal From the Workers' Compensation Commission.**

36
37 **Rule 5A:11. Special Rule Applicable to Appeals From the Virginia Workers'**
38 **Compensation Commission.**

39
40 The filing fee was changed to \$50, and parties must now include their email
41 addresses on the briefs if they have one. No other substantive changes were made.
42

43 **E. Procedure on Petition for Appeal in Criminal Cases and Traffic Infractions.**

44
45 **Rule 5A:12. Petition for Appeal.**
46

1 This rule was changed to require assignments of error instead of questions
2 presented. The purpose is to harmonize the requirements Virginia's two appellate
3 courts. The rules was also changed to mirror the format of 5:17. Additionally, a section
4 was added explaining the procedure for filing an Anders brief.
5

6 (a) When the Petition Must be Filed. When an appeal to the Court of Appeals
7 does not lie as a matter of right, a petition for appeal must be filed with the clerk of this
8 Court not more than 40 days after the filing of the record with the Court of Appeals. An
9 extension of 30 days may be granted on motion in the discretion of this Court upon a
10 showing of good cause sufficient to excuse the delay.
11

12 (b) Copy to Opposing Counsel. At the time the petition for appeal is filed, a copy
13 of the petition shall be mailed or delivered to the Commonwealth's attorney or the city,
14 county, or town attorney, as the case may be.
15

16
17 (c) What the Petition Must Contain. A petition for appeal must contain the
18 following:
19

20 (1) Assignments of Error. The provisions of Rule 5A:18 shall apply
21 to limit those assignments of error which this Court will rule upon on appeal.
22 Under a heading entitled "Assignments of Error," the petition shall list the
23 specific errors in the rulings below upon which the party intends to rely. A clear
24 and exact reference to the pages of the transcript, written statement of facts, or
25 record where the alleged error has been preserved shall be included with each
26 assignment of error.
27

28 (i) Effect of Failure to Assign Error. Only assignments of
29 error assigned in the petition for appeal will be noticed by this
30 Court. If the petition for appeal does not contain assignments
31 of error, it shall be dismissed.
32

33 (ii) Insufficient Assignments of Error. An assignment of
34 error which merely states that the judgment or award is
35 contrary to the law and the evidence is not sufficient. If the
36 assignments of error are insufficient or otherwise fail to comply
37 with the requirements of this Rule, the petition for appeal shall
38 be dismissed.
39

40 (2) Table of Contents and Table of Authorities. A table of contents and
41 table of authorities with cases alphabetically arranged. Citations of all authorities
42 shall include the year thereof.
43

44 (3) Nature of the Case and Material Proceedings Below. A brief statement
45 of the nature of the case and of the material proceedings in the trial court or

1 commission in which the case originated. This statement shall omit references to
2 any paper filed or action taken that does not relate to the assignments of error.
3

4 (4) Statement of Facts. A clear and concise statement of the facts that
5 relate to the assignments of error, with references to the pages of the record,
6 transcript, or written statement of facts. Any quotation from the record should be
7 brief. When the facts are in dispute, the petition shall so state. The testimony of
8 individual witnesses should not be summarized seriatim unless the facts are in
9 dispute and such a summary is necessary to support the appellant's version of
10 the facts.
11

12 (5) Authorities and Argument. The standard of review, the argument, and
13 the authorities relating to each assignment of error. With respect to each
14 assignment of error, the standard of review, the argument – including principles
15 of law, and the authorities shall be stated in one place and not scattered through
16 the petition. At the option of counsel, the argument may be preceded by a brief
17 summary.
18

19 (6) Conclusion. A short conclusion stating the precise relief sought.
20

21 (7) Certificate. A certificate stating the date of mailing or delivery of the
22 petition to opposing counsel and whether or not the appellant desires to state
23 orally the reasons why the petition for appeal should be granted.
24

25 (d) Number of Copies to File. Four copies of the petition shall be filed with the
26 clerk of this Court.
27

28 (e) Length. Except by leave of a Judge of this Court, a petition shall not exceed
29 12,300 words. The word limit does not include the cover page, table of contents, table
30 of authorities, and certificate.
31

32 (f) Single Petition in Separate Cases. Whenever two or more cases were tried
33 together in the trial court or commission below, one petition for appeal may be used to
34 bring all such cases before the Court of Appeals even though the cases were not
35 consolidated below by formal order.
36

37 (g) Oral Argument. When the appeal is not granted by the Judge of this Court to
38 whom the petition for appeal is originally presented, the petitioner shall be entitled to
39 state orally, in person or by conference telephone call, to a panel of this Court the
40 reasons the petition for appeal should be granted. The appellant may waive the right to
41 oral argument on the petition for appeal before a panel by notifying the clerk of this
42 Court and opposing counsel in writing, or by filing a reply brief. Any lawyer not licensed
43 to practice in Virginia who seeks to appear pro hac vice to present oral argument to this
44 Court must comply with the requirements of Rule 1A:4.
45

46 (h) 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.*

1 *California*, 386 U.S. 738 (1967), and *Akbar v. Commonwealth*, 7 Va. App. 611, 376
2 S.E.2d 545 (1989). In compliance therewith, counsel is required to file (1) a petition for
3 appeal which refers to anything in the record which might arguably support the appeal
4 and which demonstrates to the Court of Appeals counsel's conscientious examination of
5 the merits of the appeal; (2) a motion for leave to withdraw as counsel; and (3) a motion
6 for an extension of time to allow the appellant to file a pro se supplemental petition for
7 appeal. The petition for appeal and the motion for leave to withdraw as counsel should
8 specifically cite to *Anders*. All three pleadings must be served on opposing counsel and
9 upon the client and must contain a certificate providing evidence of such service. This
10 Court of Appeals will rule upon the motion for extension of time upon its receipt, but will
11 not rule on the motion to withdraw as counsel until this Court considers the case in its
12 entirety, including any pro se supplemental petition for appeal that may be filed.
13
14
15

16 **Rule 5A:13. Brief in Opposition.**
17

18 The page limit was increased to 25 pages.
19

20 (a) Filing Time. A brief in opposition to granting the appeal may be filed with the
21 clerk of this Court by the appellee within 21 days after the petition for appeal is served
22 on counsel for the appellee. Within the same time he shall mail or deliver a copy to
23 counsel for appellant. Four copies shall be filed.
24

25 (b) Form and Content. The brief in opposition shall conform in all respects to the
26 requirements of the brief of appellee (Rule 5A:21).
27

28 (1) Length. Except by leave of a Judge of this Court, the brief shall
29 not exceed 8,800 words.
30

31 (2) Table of Contents and Table of Authorities. If the brief exceeds
32 3,500 words, it shall contain a table of contents and table of authorities with cases
33 alphabetically arranged.
34

35 (3) Criminal or Traffic Cases. In a criminal or traffic case, a brief may be
36 filed by the Commonwealth's attorney, city, county, or town attorney, as the case may
37 be.
38

39 (c) Expedited Review. When it clearly appears that an appeal ought to be
40 granted without further delay, an appeal may be granted before the filing of the brief in
41 opposition.
42

43
44 **Rule 5A:14. Reply Brief.**
45

1 The word count was added, and page limit removed. Carbon copies were
2 deleted from the rule and are no longer acceptable.

3
4 When a brief in opposition to the petition for appeal has been filed, the appellant
5 may, within 14 days thereafter, in lieu of oral argument, file with the clerk of this Court a
6 reply brief not to exceed 5,300 words in length. Four copies shall be filed.
7

8
9 **Rule 5A:15. Denial of Petition for Appeal; Petition for Rehearing.**

10
11 No substantive changes were made to this rule. Word counts were added.
12

13 **Rule 5A:15A. Denial of Petition for Appeal; Petition for Rehearing Filed by**
14 **Electronic Means.**

15
16 No substantive changes were made to this rule. Word counts were added.
17

18 **F. Procedure Following Perfection of Appeal.**

19
20 **Rule 5A:16. Perfection of Appeal; Docketing.**

21
22 Cases involving the termination of parental rights were added as #3 on the
23 docket.
24

25 (c) Docketing. Cases shall be placed on the docket in the order in which they
26 mature, provided that precedence shall be given to the following cases:
27

28 (1) criminal cases;

29 (2) cases from the Virginia Workers' Compensation Commission;

30 (3) cases involving termination of parental rights;

31 (4) cases of original jurisdiction;

32 (5) cases to be reheard; and
33

34 (6) any other cases required by statute to be given precedence.
35
36
37

38
39 The Court of Appeals may, however, for good cause shown or for reasons appearing
40 sufficient to the Court, give preference to other cases.
41

42
43 **Rule 5A:17. Security for Appeal.**

44
45 In light of the lack on consensus on proposed changes to Rule 5:24, no changes
46 were made to this rule.

1
2
3 **Rule 5A:18. Preservation of Issues for Appellate Review.**
4

5 The title was changed from “questions to be considered,” to “preservation of
6 issues for appellate review.” Rule 5:25 was changed to conform with this rule.
7

8 No ruling of the trial court or the Virginia Workers' Compensation Commission will
9 be considered as a basis for reversal unless the objection was stated together with the
10 grounds therefor at the time of the ruling, except for good cause shown or to enable the
11 Court of Appeals to attain the ends of justice. A mere statement that the judgment or
12 award is contrary to the law and the evidence is not sufficient to preserve the issue for
13 appellate review.
14

15
16 **Rule 5A:19. Briefs.**
17

18 Language was added to strengthen the page limits. A section prohibiting the
19 incorporation of arguments by reference was added.
20

21 (a) Length. Except by permission of a Judge of this Court, neither the opening
22 brief of appellant, nor the brief of appellee, nor a brief amicus curiae shall exceed
23 12,300 words. No reply brief shall exceed 3,500 words. Word limits under this Rule do
24 not include appendices, or the cover page, table of contents, table of authorities, and
25 certificate. There shall be no exception to these limits except by permission of this
26 Court on motion for extension of the limits.
27

28
29 (e) Arguments Made by Reference. Attempts to incorporate arguments made
30 below by reference to pleadings, motions, memorandum, or other filings are prohibited.
31
32

33 **Rule 5A:20. Opening Brief of Appellant.**
34

35 Assignments of error were substituted for questions presented. The brief must
36 now also contain the applicable standard of review relating to each assignment of error.
37

38 The opening brief of appellant shall contain:
39

40 (a) A table of contents and table of authorities with cases alphabetically
41 arranged. . Citations of all authorities shall include the year thereof.
42

43 (b) A brief statement of the nature of the case and of the material proceedings in
44 the trial court, which shall omit references to any paper filed or action taken that does
45 not relate to the assignments of error.
46

1 (c) A statement of the assignments of error with a clear and exact reference to
2 the page(s) of the transcript, written statement, record, or appendix where each
3 assignment of error was preserved in the trial court.
4

5 (d) A clear and concise statement of the facts that relate to the assignments of
6 error, with references to the pages of the transcript, written statement, record, or
7 appendix. Any quotation from the record should be brief. When the facts are in dispute,
8 the brief shall so state. The testimony of individual witnesses should not be summarized
9 seriatim unless the facts are in dispute and such a summary is necessary to support the
10 appellant's version of the facts.
11

12 (e) The standard of review, the argument – including principles of law, and the
13 authorities relating to each assignment of error. Where the assignment of error was not
14 preserved in the trial court, counsel shall state why the good cause and/or ends of
15 justice exceptions to Rule 5A:18 are applicable. With respect to each assignment of
16 error, the standard of review, the argument – including principles of law, and the
17 authorities shall be stated in one place and not scattered through the brief. At the option
18 of counsel, the argument may be preceded by a brief summary.
19

20 (f) A short conclusion stating the precise relief sought.
21

22 (g) The signature (which need not be in handwriting) of at least one counsel and
23 counsel's Virginia State Bar number, address, telephone number, facsimile number (if
24 any), and email address (if any).
25

26 (h) A certificate (which need not be signed in handwriting) stating (1) that Rule
27 5A:19(f) has been complied with, and (2) whether counsel desires to waive oral
28 argument. The certificate must also state the number of words (headings, footnotes,
29 and quotations count towards the word limitation; the cover page, table of contents,
30 table of authorities, and certificate do not count towards the word count). Additionally,
31 any party may waive oral argument without leave of this Court by written notification to
32 the clerk of this Court within 21 days after the date on which the appellee's brief is due
33 to be filed or has been filed.
34

35 **Rule 5A:21. Brief of Appellee or Guardian Ad Litem.** 36

37 Assignments of error were substituted for questions presented. Language was
38 added so that appellee can include assignments of cross-error. Finally, the applicable
39 standard of review relating to each assignment of error must now also be included.
40

41 The brief of appellee and the brief of the guardian ad litem shall contain:
42

43 (a) A table of contents and table of authorities with cases alphabetically
44 arranged.. Citations of all authorities shall include the year thereof.
45

1 (b) A statement of the case if the appellee disagrees with the statement
2 presented by the appellant and a statement of any additional assignments of error the
3 appellee wishes to present with a clear and exact reference to the page(s) of the
4 transcript, written statement, record, or appendix where each additional assignment of
5 error was preserved in the trial court.
6

7 (c) A statement of the facts necessary to correct or amplify the statement in the
8 brief of appellant with appropriate references to the pages of the transcript, written
9 statement, record, or appendix. The testimony of individual witnesses should not be
10 summarized seriatim unless the facts are in dispute and such a summary is necessary
11 to support the appellee's version of the facts.
12

13 (d) The standard of review, the argument – including principles of law, and the
14 authorities relating to each assignment of error. For any additional assignment of error
15 by appellee which was not preserved in the trial court, counsel shall state why the good
16 cause and/or ends of justice exceptions to Rule 5A:18 are applicable. With respect to
17 each assignment of error, the standard of review, the argument – including principles of
18 law, and the authorities shall be stated in one place and not scattered through the brief.
19 At the option of counsel, the argument may be preceded by a brief summary.
20

21 (e) A statement of the precise relief sought, if any.
22

23 (f) The signature (which need not be in handwriting) of at least one counsel and
24 counsel's Virginia State Bar number, address, telephone number, facsimile number (if
25 any), and email address (if any).
26

27 (g) A certificate (which need not be signed in handwriting) stating (1) that Rule
28 5A:19(f) has been complied with, and (2) whether counsel desires to waive oral
29 argument. The certificate must also state the number of words (headings, footnotes,
30 and quotations count towards the word limitation; the cover page, table of contents,
31 table of authorities, and certificate do not count towards the word count). Additionally,
32 any party may waive oral argument without leave of this Court by written notification to
33 the clerk of this Court within 21 days after the date on which the appellee's brief is due
34 to be filed or has been filed.
35

36 **Rule 5A:22. Reply Brief.**

37

38 No substantive changes were made to this rule, just information regarding how to
39 use word counts.
40

41 **Rule 5A:23. Briefs Amicus Curiae.**

42

43 These briefs may now be filed at any stage of the appellate proceeding.
44

45 (a) A brief amicus curiae may be filed at any stage of the appellate proceedings:
46

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

3
4 (2) by any other person if it is accompanied by the written consent of all
5 counsel; or

6
7 (3) otherwise only on motion (which may be accompanied by the proposed
8 brief) and the consent of this Court.

9
10 **Rule 5A:24. Covers of Documents.**

11
12 No substantive changes were made to this rule.

13
14 **Rule 5A:25. Appendix.**

15
16 This Rule was not harmonized with 5:32, at the request of the Judge Kelsey. A
17 section was proposed penalizing a party for adding anything to the appendix that is not
18 germane or relevant to the appeal.

19
20 (g) Penalty. Nothing shall be included in the appendix that is not germane to an
21 assignment of error. As examples, no pleadings (other than the basic initial pleading as
22 finally amended) shall be included unless an assignment of error is presented relating to
23 it, and then only the portion thereof to which the assignment relates; and testimony
24 relating solely to the amount of damages shall not be included unless error is assigned
25 relating to the amount of damages. If parts of the record are included in the appendix
26 unnecessarily at the direction of a party, this Court may impose the cost of producing
27 such parts on that party.

28
29 **Rule 5A:26. Effect of Noncompliance With Rules Regarding Briefs.**

30
31 Language was added to specify that anyone who fails to comply with the rules
32 regarding the briefs will not be heard orally.

33
34
35
36 If an appellant fails to file a brief in compliance with these Rules, the Court of
37 Appeals may dismiss the appeal. If an appellee fails to file a brief in compliance with
38 these Rules, the Court of Appeals may disregard any additional assignments of error
39 raised by the appellee. If one party has complied with the Rules governing briefs, but
40 the other has not, the party in default will not be heard orally if the case proceeds to oral
41 argument, except for good cause shown.

42
43 **Rule 5A:27. Summary Disposition.**

44
45 No substantive changes were proposed.

1 **Rule 5A:28. Oral Argument.**

2
3 This rule is being harmonized with Rule 5:35. The 30 minute argument time is
4 being shortened to 15 minutes.

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

11
12 (b) Length. Except as otherwise directed by the Court of Appeals, argument for a
13 party shall not exceed 15 minutes in length. Such time may be apportioned among
14 counsel for the same side at their discretion, except that only one counsel may present
15 the opening argument for the appellant. If a Guardian Ad Litem joins with either
16 appellant or appellee, the Guardian Ad Litem shall share the time for oral argument with
17 the party. If a Guardian Ad Litem wants additional time to argue, the Guardian Ad Litem
18 must state that request in its brief, subject to approval of this Court.

19
20 (c) Appearance Pro Hac Vice. Any lawyer not licensed in Virginia who seeks to
21 appear pro hac vice to present oral argument to the Court of Appeals must comply with
22 the requirements of Rule 1A:4.

23
24 (d) Amicus Curiae. No oral argument is permitted by amicus curiae except by
25 leave of this Court. Leave may be granted upon the joint written request of amicus
26 curiae and the party whose position amicus curiae supports. The request shall specify
27 the amount of its allotted time the supported party is willing to yield to amicus curiae.

28
29 (e) Waiver. During oral argument, it shall not be necessary for any party to
30 expressly reserve any argument made on brief, and the failure to raise any such
31 argument shall not constitute a waiver. Any party may, without waiving the arguments
32 made on brief, waive oral argument.

33
34 **G. Decision, Costs, and Mandate.**

35
36 **Rule 5A:29. Notice of Decision.**

37
38 No substantive changes were made, but the form is being harmonized with Rule
39 5:36.

40
41 **Rule 5A:30. Costs and Notarized Bill of Costs.**

42
43 The Committee is still considering whether to incorporate edits made to Rule
44 5:37 into this rule as well. Currently, the only substantive changes that were made
45 involve requiring a verified bill of costs in 14 days instead of 10 days, with objections
46 within 10 days instead of 14.

1
2
3 (c) Notarized Bill of Costs. Counsel for a party who desires costs to be taxed
4 shall itemize them in a notarized bill of costs, which shall be filed with the clerk of this
5 Court within 14 days after the date of the decision in the case. Objections to the bill of
6 costs must be filed with the clerk of this Court within 10 days after the date of filing the
7 bill of costs.
8

9 (d) Award. The clerk of this Court shall prepare and certify an itemized statement
10 of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate
11 shall not be delayed for taxation of costs. If the mandate has been issued before final
12 determination of costs, the statement, or any amendment thereof, shall be added to the
13 mandate on request by the clerk of this Court to the clerk of the trial court or the clerk of
14 the Virginia Workers' Compensation Commission.
15

16 **Rule 5A:31. Mandate.**

17
18 No substantive changes were made to this rule.
19

20 **H. Rehearing.**

21
22 **Rule 5A:32. Scope.**

23
24 No changes were made to this rule.
25

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

27
28 Rules 5A:33 and 5A:33A were merged. No other substantive changes were
29 made.
30

31 (a) Requirements for Pro Se Prisoners and By Leave of Court.. Pro se prisoners
32 and those with leave of Court to proceed under this paragraph of the Rule desiring a
33 rehearing of a decision or order of the Court of Appeals finally disposing of a case shall
34 within 14 days following such decision or order, file seven copies of a petition for
35 rehearing with the clerk of the Court of Appeals. The petition for rehearing shall not
36 exceed 5,300 words in length. All petitioners other than pro se prisoners and those with
37 leave of Court to proceed under this paragraph of the Rule must follow the provisions of
38 paragraph (b) of this Rule when filing a petition for rehearing.
39

40
41 (b) Requirements for All Others. Any party, other than pro se prisoners or those
42 with leave of Court to proceed under paragraph (a) of this Rule, desiring a rehearing of
43 a decision or order of the Court of Appeals finally disposing of a case shall, within 14
44 days following such decision, file a petition for rehearing with the clerk of the Court of
45 Appeals.
46

1 (1) The petition shall be filed as a single Adobe Acrobat Portable
2 Document Format (PDF) document attached to an e-mail addressed to
3 cavpfr@courts.state.va.us and will be timely filed if received by the clerk's office
4 at or before 11:59 p.m. on the fourteenth day after the date of the decision or
5 order sought to be reheard.
6

7 (2) The petition must be formatted to print on a page 8 1/2 x 11
8 inches, must be in 12-point font or larger, must be double-spaced, and must
9 not exceed 5,300 words. The petition must include a certificate of service to
10 opposing counsel and the certificate shall specify the manner of service and
11 the date of service. If opposing counsel has an e-mail address, service on
12 opposing counsel shall be by electronic means and such address shall be
13 included in the certificate of service. The petition must also include a
14 certificate of compliance with the word count limit. The petition will be
15 considered filed on the date and time that it is received by
16 cavpfr@courts.state.va.us. If the petition does not meet the requirements of
17 this rule as to format, the clerk of the Court of Appeals shall so notify
18 counsel and provide a specific amount of time for a corrected copy of the
19 petition to be filed. A person who files a document electronically shall have
20 the same responsibility as a person filing a document in paper form for
21 ensuring that the document is properly filed, complete, and readable.
22 However, if technical problems at the Court of Appeals result in a failure to
23 timely receive the electronically filed petition for rehearing, counsel shall
24 provide to the clerk of this Court on the next business day all documentation
25 which exists demonstrating the attempt to file e-mail the petition by e-mail,
26 any delivery failure notice received in response to the attempt, and a copy of
27 the petition for rehearing.
28

29 (3) The e-mail message to which the petition is attached shall recite in the
30 subject line the style of the case and the Court of Appeals record number. The
31 body of the e-mail message shall contain a paragraph stating that a petition for
32 rehearing is being filed, the style of the case, the Court of Appeals record
33 number, the name and Virginia State Bar number of counsel filing the petition, as
34 well as the law firm name, mailing address, telephone number, facsimile number
35 (if any), and e-mail address (if any) of counsel filing the petition. The message
36 shall also state whether a copy of the petition has been served by e-mail or
37 another means on opposing counsel and the date of such service. If the petition
38 has been served on opposing counsel by e-mail, the e-mail address for opposing
39 counsel shall also be included. Upon receipt of the petition for rehearing in the
40 e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to
41 counsel filing the petition for rehearing.
42

43 (c) Response. No response to a petition for rehearing will be received unless
44 requested by the Court of Appeals.
45

46 (d) No Oral Argument. No oral argument on the petition will be permitted.

1
2 (e) Grounds. No petition for rehearing will be granted unless one of the Judges
3 who decided the case adversely to the petitioner determines that there is good cause
4 for such rehearing. The clerk of the Court of Appeals shall notify counsel for the
5 appellant and counsel for the appellee of the action taken by the Court of Appeals on
6 the petition for rehearing via e-mail, if e-mail addresses for both counsel have been
7 provided, or via U.S. Mail to any counsel or party who has not provided an e-mail
8 address.
9

10
11 **Rule 5A:34. Rehearing En Banc.**
12

13 Rules 5A:34 and 5A:34A were merged. No other substantive changes were made.
14

15 (a) Requirements for Pro Se Prisoners and By Leave of Court. A pro se prisoner
16 or a party who has leave of Court to proceed under this paragraph of the Rule
17 aggrieved by a decision of a panel of this Court may file a petition for rehearing en banc
18 within 14 days after the date of the order sought to be reheard. Twelve copies of any
19 such petition shall be filed with the clerk of the Court of Appeals. The petition for
20 rehearing en banc shall not exceed 5,300 words in length. All petitioners other than pro
21 se prisoners and those with leave of this Court to proceed under this Rule must follow
22 the provisions of paragraph (b) of this Rule when filing a petition for rehearing en banc.
23

24 (b) Requirements for All Others.
25

26 (1) Except for petitions for rehearing en banc filed by pro se prisoners or
27 by those with leave of Court to proceed under paragraph (a) of this Rule, the
28 petition shall be filed as a single Adobe Acrobat Portable Document Format
29 (PDF) document attached to an e-mail addressed to cavpfr@courts.state.va.us
30 and will be timely filed if received by the clerk's office at or before 11:59 p.m. on
31 the fourteenth day after the date of the decision or order sought to be reheard.
32

33 (2) The petition must be formatted to print on a page 8 1/2 x 12
34 inches, must be in 12-point font or larger, must be double-spaced, and must
35 not exceed 5,300 words. The petition must include a certificate of service to
36 opposing counsel and the certificate shall specify the manner of service and
37 the date of service. If opposing counsel has an e-mail address, service on
38 opposing counsel shall be by electronic means and such address shall be
39 included in the certificate of service. The petition must also include a
40 certificate of compliance with the word count limit. The petition will be
41 considered filed on the date and time that it is received by
42 cavpfr@courts.state.va.us. If the petition does not meet the requirements of
43 this rule as to format, the clerk of the Court of Appeals shall so notify
44 counsel and provide a specific amount of time for a corrected copy of the
45 petition to be filed. A person who files a document electronically shall have
46 the same responsibility as a person filing a document in paper form for

1 ensuring that the document is properly filed, complete, and readable.
2 However, if technical problems at the Court of Appeals result in a failure to
3 timely receive the electronically filed petition for rehearing, counsel shall
4 provide to the clerk of this Court on the next business day all documentation
5 which exists demonstrating the attempt to file the petition by e-mail, any
6 delivery failure notice received in response to the attempt, and a copy of the
7 petition for rehearing.
8

9 (3) The e-mail message to which the petition is attached shall recite in the
10 subject line the style of the case and the Court of Appeals record number. The
11 body of the e-mail message shall contain a paragraph stating that a petition for
12 rehearing en banc is being filed, the style of the case, the Court of Appeals
13 record number, the name and Virginia State Bar number of counsel filing the
14 petition, as well as the law firm name, mailing address, telephone number,
15 facsimile number (if any), and e-mail address (if any) of counsel filing the petition.
16 The message shall also state whether a copy of the petition has been served by
17 e-mail or another means on opposing counsel and the date of such service. If the
18 petition has been served on opposing counsel by e-mail, the e-mail address for
19 opposing counsel shall also be included. Upon receipt of the petition for
20 rehearing in the e-mail box of the clerk's office, an acknowledgment will be
21 forwarded by e-mail to counsel filing the petition.
22

23 (c) No answer to a petition for a rehearing en banc will be received unless
24 requested by the Court of Appeals. A rehearing en banc on motion of the Court of
25 Appeals shall be ordered no later than 20 days after the date of rendition of the order to
26 be reheard. The clerk of the Court of Appeals shall promptly notify counsel for both
27 parties of the action taken by this Court on the petition for rehearing en banc via e-mail,
28 if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel
29 or party who has not provided an e-mail address.
30
31

32 **Rule 5A:35. Procedure for Rehearing.**

33

34 Language was added clarifying the order of arguments on rehearing.
35

36 (a) Rehearing by a Panel. Where rehearing by a panel is granted on petition of a
37 party, the clerk of the Court of Appeals shall notify all counsel promptly and the case will
38 be placed on the docket for oral argument. Where practicable, such a rehearing will be
39 heard by the same panel that rendered the final decision in the case.
40

41 (b) Rehearing En Banc. Where all or part of a petition for rehearing en banc is
42 granted, the clerk of this Court shall notify all counsel promptly. The mandate entered is
43 stayed as to all issues decided by the panel pending the decision of the Court en banc.
44 The appeal is reinstated on the docket of the Court for oral argument only as to issues
45 granted. Briefing and oral argument shall proceed in the same order as before the three
46 judge panel. The Court of Appeals may require any party to whom rehearing en banc

1 has been granted to file 20 copies of an appendix, prepared in conformity with the
2 provisions of Rule 5A:25, with the clerk of the Court within such time as the Court of
3 Appeals shall specify.
4

5 (1) Issues Considered Upon Rehearing En Banc. Only issues raised in
6 the petition for rehearing en banc and granted for rehearing or included in the
7 grant by the Court on its own motion are available for briefing, argument, and
8 review by the en banc Court. The Court may grant a petition in whole or in part.
9 Any issue decided by a panel of this Court not subject to a petition for rehearing
10 en banc remains undisturbed by an en banc decision.
11

12 (2) Appellant's Opening Brief Upon Rehearing En Banc. The party who
13 was the appellant before the panel of this Court shall file in the office of the clerk
14 20 copies of a brief, which shall not exceed 12,300 words in length. Such brief
15 shall be filed within 21 days following the date of the order of this Court granting
16 rehearing en banc, and shall be accompanied by a certificate that three copies
17 were mailed or delivered to opposing counsel on or before the date of filing. The
18 brief shall bear a white cover.
19

20 (3) Appellee's Answering Brief Upon Rehearing En Banc. The party who
21 was the appellee before the panel of this Court may file in the office of the clerk
22 20 copies of an answering brief not to exceed 12,300 words in length, within 14
23 days after the opening brief has been filed. Three copies of appellee's answering
24 brief shall be mailed or delivered to opposing counsel on or before the date the
25 answering brief is filed. The brief shall bear a blue cover. Appellee may be heard
26 orally whether or not the answering brief is filed.
27

28 (4) Appellant's Reply Brief Upon Rehearing En Banc. The party who was
29 the appellant before the panel may file in the office of the clerk a reply brief, not
30 to exceed 3,500 words, within 14 days after the answering brief has been filed.
31 Twenty copies of the reply brief shall be filed. Three copies of such brief shall be
32 mailed or delivered to opposing counsel on or before the date the answering brief
33 is filed. The brief shall bear a green cover.
34
35
36

37 **I. Settlement, Withdrawal, and Mediation.**

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

39 Written notice must now be filing in the Court.
40
41

42
43 When a case has been settled or the appeal withdrawn at any time after the
44 notice of appeal has been filed, it shall be the duty of counsel to notify the clerk of the
45 Court of Appeals by filing a written notice that the case has been settled or the appeal
46 withdrawn. If counsel certifies that the terms of the settlement or withdrawal require

1 further proceedings in the trial court, a single Judge of the Court of Appeals may
2 approve entry an order of remand.

3
4 **Rule 5A:37. Appellate Settlement Conference in the Court of Appeals.**

5
6 This is a new rule. It gives the Court of Appeals the authority to order mediation
7 in certain cases. Senior or retired judges will conduct all mediation at no cost to the
8 litigants. This rule does not apply to criminal appeals, cases involving termination of
9 parental rights, or other cases arising under the Court's original jurisdiction.

10
11 (a) Settlement Conference. Upon motion or sua sponte, this Court may order
12 counsel, and clients in appropriate cases, to participate in a settlement conference. An
13 informal motion requesting a settlement conference may be filed at any time while the
14 matter is on appeal and should state briefly why a settlement conference would be
15 useful. The motion shall state whether all parties concur. If a party objects, that party
16 shall file within 7 days a short response explaining the grounds for the objection. All
17 motions and responses may be in letter format addressed to the clerk of this Court. If
18 this Court orders a settlement conference, it will ordinarily be held by telephone
19 conference call and, in the discretion of the settlement judge, may be held in person at a
20 convenient location.

21
22 (b) Settlement Judge. A senior or retired appellate judge will conduct all
23 settlement conferences at no cost to the litigants.

24
25 (c) Excluded Cases. No settlement conference shall be conducted in appeals of
26 criminal judgments or orders terminating parental rights or in any other case arising
27 under this Court's original jurisdiction.

28
29 (d) Conferences. Prior to participating in a settlement conference, all counsel
30 shall consult with their respective clients about settlement options and ask for express
31 authority to settle within any parameters acceptable to the client. The settlement judge
32 may conduct more than one conference if, in his discretion, he deems it advisable.
33 During a conference, the settlement judge may consult ex parte with counsel, or with
34 counsel and that counsel's client, but shall not consult ex parte with any represented
35 client without counsel's agreement.

36
37 (e) Conference Orders. A settlement conference, if ordered in a case, shall not
38 automatically affect any time deadline otherwise applicable. The settlement judge,
39 however, may direct the clerk of court to enter orders tolling any non-mandatory time
40 deadline before or after the deadline has passed. If any party advises the settlement
41 judge that all or part of an appeal has been settled, the settlement judge shall direct the
42 parties to prepare and sign a settlement agreement setting forth all agreed-upon terms.
43 Upon receiving a copy of the settlement agreement, the settlement judge shall
44 thereafter direct the clerk of court to enter an order dismissing with prejudice all or part
45 of the appeal subject to the agreement.

1 (f) Confidentiality. The provisions of the settlement agreement shall not be
2 considered confidential except to the extent the agreement specifically requires it. No
3 confidentiality provision, however, shall prejudice any party's ability to seek judicial
4 enforcement of a settlement agreement. In any case where a settlement conference
5 does not result in a settlement agreement, no statement made during a settlement
6 conference or in motions requesting a settlement conference or responses to such
7 motions shall be disclosed by the settlement judge, the parties, or counsel to any (i)
8 appellate judge who may be called upon to decide the merits of the appeal or any
9 related appeal, or (ii) lower court judge who may be called upon to decide the merits of
10 the case if remanded or the merits of any related case.

11
12 (g) Cross-Appeals and Related Appeals. Appeals and cross-appeals will
13 ordinarily be addressed in a single settlement conference. At the discretion of the
14 settlement judge, related appeals may be consolidated for settlement conference
15 purposes.
16