

1 Rules of the Supreme Court of Virginia
2 (not including forms)
3

4 **PART FIVE – THE SUPREME COURT**

5 **A. General.**
6

7
8 **Rule 5:1. Scope, Citation, Applicability, and General Provisions.**
9

10 (a) Scope of Rules. Part Five governs all proceedings in the
11 Supreme Court of Virginia.
12

13 (b) Citation. These Rules may be cited generally as the “Rules of the
14 Supreme Court of Virginia” and specifically as “Rule 5:____.”
15

16 (c) Definitions.
17

18
19
20 (1) "clerk" means clerk of the court or commission from which
21 an appeal is taken unless some other clerk is specified and, unless
22 the context otherwise requires, includes a deputy clerk;
23

24 (2) "clerk of this Court" includes a deputy clerk;
25

26 (3) "counsel" has the definition given in Rule 1:5 and in this Part
27 Five includes a party not represented by counsel;
28

29 (4) "counsel for the appellant" means one of the attorneys
30 representing each appellant represented by an attorney and each
31 appellant not represented by an attorney;
32

33 (5) "counsel for the appellee" means one of the attorneys
34 representing each appellee represented by an attorney and each
35 appellee not represented by an attorney. In an appeal from the State
36 Corporation Commission, "counsel for the appellee" shall also include
37 counsel for the Commission and, unless the Commonwealth is the
38 appellant, the Attorney General;
39

1 (6) "Court of Appeals" means the Court of Appeals of Virginia;
2

3 (7) "opposing counsel" means, depending on the context,
4 "counsel for the appellant" or "counsel for the appellee";
5

6 (8) "judge" means judge of the trial court, unless the context
7 otherwise requires, or if the judge of the trial court is not available,
8 any judge authorized to act under Rule 5:12;
9

10 (9) "judgment" includes an order or decree from which an
11 appeal is taken;
12

13
14
15 (10) "trial court" means the circuit court from which an appeal is
16 taken;
17

18 (11) the "date of entry" of any final judgment or other
19 appealable order or decree shall be the date the judgment, order, or
20 decree is signed by the judge.
21

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

31 (e) Notice of Change of Address and Other Contact Information. If an
32 attorney has a change in mailing address, telephone number, facsimile
33 number, or e-mail address any time after the filing of the notice of appeal,
34 the attorney must immediately notify the clerk of this Court and all other
35 counsel of record in writing. The notice must reference the style and record
36 number of all cases pending before this Court.
37

38 (f) Citing Unpublished Judicial Dispositions. The citation of judicial
39 opinions, orders, judgments, or other written dispositions designated as
40 "unpublished," "not for publication," "non precedential," or the like, is not

1 prohibited, but only as persuasive authority. If the citation is from a judicial
2 opinion, order, judgment, or other written disposition that is not available in
3 a publicly accessible electronic database, the party must file and serve that
4 judicial opinion, order, judgment, or other written disposition with the brief
5 or other paper in which it is cited.

6
7 **Rule 5:1A. Penalties for Non-compliance; Show Cause; Dismissal.**

8
9 (a) Penalties; Show Cause; Dismissal. This Court may dismiss an
10 appeal or impose such other penalty as it deems appropriate for any non-
11 compliance with these Rules. Prior to the dismissal of an appeal for any
12 defect in the filings related to formatting, content, or the failure to meet non-
13 mandatory filing deadlines, this Court shall issue a show cause order to
14 counsel or a party not represented by an attorney, requiring a specified
15 time in which to cure such defect or to otherwise show cause why the
16 appeal should not be dismissed or other penalty imposed.

17
18 (b) Report to Virginia State Bar. If an attorney's failure to comply with
19 these Rules results in the dismissal of an appeal, this Court may report the
20 attorney to the Virginia State Bar in accordance with Rule 8.3 of the Virginia
21 Rules of Professional Conduct.

22
23 **Rule 5:2. Sessions and Divisions.**

24
25 Except as provided in Code § 17.1-304, sessions and divisions of this
26 Court will be held at Richmond, or at such other locations as this Court may
27 designate consistent with applicable law, and will continue for such length
28 of time as this Court may determine.

29
30 **Rule 5:3. Convening of Court - When En Banc - When in Division.**

31
32 (a) This Court will sit en banc or in divisions.

33
34 (b) Whenever four or more of the Justices are convened, this Court
35 shall be deemed to be sitting en banc and vested with all of the powers of
36 this Court. Whenever three of the Justices are convened, this Court shall
37 be deemed to be sitting as a division, and vested with all of the powers of a
38 division of this Court.

1 (c) If the Justices composing any division shall differ as to the
2 judgment to be rendered in any case, or if, within ten days after the
3 decision is rendered by the division any Justice of such division shall file in
4 the office of the clerk of this Court a certificate that, in the opinion of the
5 Justice, such decision is in conflict with a prior decision of this Court or of
6 one of the divisions thereof, or if this Court shall so determine, the case
7 shall be reheard and decided by this Court sitting en banc.

8
9 **Rule 5:4. Motions and Responses; Orders.**

10
11 (a) Motions and Responses.

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

20
21 (2) Responses. Opposing counsel may have 10 days after
22 such motion is filed to file with such clerk a response to such motion, but
23 this Court may act before the 10 days expire, if necessary.

24
25 (3) Number of Copies. An original and three copies of all
26 motions or responses must be filed.

27
28 (4) Oral Argument. No motion shall be argued orally except by
29 leave of this Court.

30
31 (b) Orders. Promptly after this Court has entered an order, the clerk
32 of this Court shall send a copy of the order to all counsel.

33
34 **ADVISORY NOTE:** This rule is not intended to limit the scope of
35 motions that may be filed in the Supreme Court. Such motions may be
36 filed in any pending or contemplated appeal, and may request from the
37 Court any form of relief that is available to the movant. The practitioner
38 should consult individual rules relating to the filing of motions in particular
39 matters; for example, Rule 5:12 (trial judge authorized to act on matters
40 pertaining to record); Rule 5:30(a)(3) (motion for leave to file brief amicus

1 curiae). Rehearings are not within the scope of this rule, but are governed
2 by Rules 5:20, 5:20A, and 5:37.

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

6
7 (a) Filing Deadlines. The times prescribed for filing the notice of
8 appeal (Rules 5:9(a), 5:14(a) and 5:21(c)), a petition for appeal (Rules
9 5:17(a) and 5:21(g)) and a petition for rehearing (Rules 5:20 and 5:37), are
10 mandatory. A single extension not to exceed thirty days may be granted if
11 at least two justices of the Supreme Court of Virginia concur in a finding
12 that an extension for papers to be filed is warranted by a showing of good
13 cause sufficient to excuse the delay.

14
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16
17 (b) Post-Trial Proceedings Below and Their Effect on the Notice of
18 Appeal. The time period for filing the notice of appeal is not extended by
19 the filing of a motion for a new trial, a petition for rehearing, or a like
20 pleading unless the final judgment is modified, vacated, or suspended by
21 the trial court pursuant to Rule 1:1 or a timely petition for rehearing is filed
22 in the Court of Appeals. In any such case, the time for filing the notice of
23 appeal shall be computed from the date of final judgment entered following
24 such modification, vacation, or suspension, or from the date the Court of
25 Appeals refuses a timely petition for rehearing or enters final judgment
26 following the granting of such a petition.

27
28 (c) How to File by Mail in a Timely Manner. Any document required to
29 be filed with the clerk of this Court, ~~or filed in the office of the clerk of this~~
30 ~~Court,~~ shall be deemed to be timely filed if (1) it is transmitted expense pre-
31 paid to the clerk of this Court by a third-party commercial carrier for next-
32 day delivery, or by priority, express, registered, or certified mail via the
33 United States Postal Service, and (2) if the official receipt therefor be
34 exhibited upon demand of the clerk of this Court or any party and it shows
35 such transmission or mailing within the prescribed time limits. This rule
36 does not apply to documents to be filed in the office of the clerk of the trial
37 court or clerk of the Virginia Workers' Compensation Commission or clerk
38 of the State Corporation Commission.

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

10
11 (e) Extensions Generally. A motion for an extension of time is timely if
12 filed either within the original filing deadline or within the specified
13 extension period or within a reasonable period of time thereafter if the
14 extension period is unspecified. Filing the motion within the original filing
15 deadline or within the specified extension period does not toll the original
16 filing deadline or further extend the period of extension.=

17
18 **Rule 5:6. Forms of Briefs and Other Papers.**

19
20 (a) Paper Size, Line Spacing, Font, and Margins.

21
22 (1) General Rules. Briefs, appendices, motions, petitions, and
23 other papers may be printed by any process that yields a clear black
24 image on white paper and must be on 8-1/2 x 11 inch paper.
25 Margins must be at least one inch on all four sides of each page.

26
27 (2) Specific Rules for Motions, Petitions, and Briefs. Except by
28 leave of Court, all motions, petitions, and briefs, including
29 footnotes, must be in at least 14-point font, must use either Courier,
30 Arial, or Verdana font, and must be printed on only one side of the page.
31 Text shall not be reduced and must be double spaced except for
32 headings, assignments of error, quotations, and footnotes, which must
33 be single spaced. Page numbers are required
34 and may appear in either the top or bottom margin, but no text,
35 including footnotes, is permitted in the one inch margins. Page limits for
36 motions, petitions, and briefs do not include the cover page, table of
37 contents, table of authorities, or certificate.

38
39 (3) Specific Rules for the Appendix. The appendix may be
40 printed using both sides of the page. Any transcript, including a

1 deposition transcript, that is made a part of the appendix shall be in
2 12-point type or larger. Any transcript contained in the appendix that
3 fails to conform to the 12-point type requirement may be returned to
4 counsel, and counsel shall be required to promptly comply with this
5 requirement in accordance with the instruction of this Court. The use
6 of condensed or multi-page transcripts is prohibited. Page numbers
7 are required and may appear in either the top or bottom margin.

8
9 (b) Binding and Cover. All briefs and appendices shall be bound on
10 the left margin in such a manner as to produce a flat, smooth binding.
11 Spiral binding, acco fasteners, and the like are not acceptable. The style of
12 the case (with the name of the appellant stated first) and the record number
13 of the case shall be stated on the front cover of all briefs and appendices
14 and, in addition, the name, Virginia State Bar number, mailing address,
15 telephone number (including any applicable extension), facsimile number (if
16 any), and e-mail address (if any) of counsel submitting the brief shall be
17 placed on the front cover of all briefs.

18
19 (c) Effect of Non-compliance. No appeal shall be dismissed for failure
20 to comply with the provisions of this Rule; the clerk of this Court may,
21 however, require that a document be redone in compliance with this Rule.

22 23 **B. Original Jurisdiction.**

24 25 **Rule 5:7. Petitions for Writs of Habeas Corpus, Mandamus, and** 26 **Prohibition..**

27
28
29
30 (a) Petition for Writ of Habeas Corpus. An application to this Court for
31 a writ of habeas corpus under its original jurisdiction shall be by petition
32 filed in the office of the clerk of this Court.

33
34 (1) When Petition Must be Filed. The petition for a writ of
35 habeas corpus challenging a criminal conviction or sentence, except
36 as provided in Rule 5:7A for cases in which the death penalty has
37 been imposed, shall be filed within two years from the date of the final
38 judgment in the trial court or within one year from either final
39 disposition of the direct appeal in state court or the time for filing such
40 appeal has expired, whichever is later. All other petitions for a writ of

1 habeas corpus must be filed within one year after the cause of action
2 accrues.

3
4 (2) What the Petition Must Contain. The petition must be notarized
5 and must state whether the petitioner believes that the taking of
6 evidence is necessary for the proper disposition of the petition. A
7 memorandum of law citing relevant authorities must accompany each
8 petition. All petitions must comply with the requirements of Code §
9 8.01-655.

10 (3) Service of Petitions. Except as provided herein, service of
11 process must be accomplished in accordance with Chapter 8 of Title
12 8.01.

13
14 (i) Non-Public Officials. A petition must be accompanied
15 by a return of service executed by the appropriate officer
16 evidencing service of a copy thereof on the respondent or by an
17 acceptance of service signed by the respondent.

18
19 (ii) Public Officials. When habeas corpus is directed to a
20 public official, service shall be made on the respondent and
21 shall also be made on or accepted by the Attorney General or
22 an Assistant Attorney General. A petition must be
23 accompanied by a return of service executed by the appropriate
24 officer evidencing service of a copy thereof on the respondent
25 or by an acceptance of service signed by the respondent.

26
27 (4) When to Respond to a Petition. No responsive pleading to
28 a petition filed by a prisoner acting pro se shall be required except as
29 ordered by this Court. For all other petitions, a responsive pleading
30 must be filed with the clerk of this Court within forty days after service
31 of the petition.

32
33 (5) Contents of the Response. In one responsive pleading, the
34 respondent may move to dismiss on any appropriate ground,
35 including the failure to state facts upon which relief should be
36 granted, and, in the alternative, may set forth an answer as in an
37 action at law. The answer shall state whether, in the opinion of the
38 respondent, the taking of evidence is necessary for the proper
39 disposition of the petition. A memorandum of law citing the relevant
40 authorities shall accompany each responsive pleading.

1
2 (6) Length. Except by permission of a Justice of this Court, no
3 petition, including the accompanying memorandum of law, or a
4 response thereto, including its accompanying memorandum of law,
5 shall exceed 50 pages or 8,750 words. Page and word limits do not
6 include appendices, exhibits, cover page, table of contents, table of
7 authorities, and certificate.

8
9 (7) Number of Copies. Ten copies of the petition, responsive
10 pleading, memoranda of law, and motions shall be filed in the office
11 of the clerk of this Court. Prisoners filing pro se shall only be required
12 to file three copies.

13
14 (8) Calling up the Record. If this Court determines that any
15 portion of the underlying trial or appellate record is necessary for a
16 proper determination of the merits of the petition, the clerk of this
17 Court is authorized to request the record and the clerk of the trial
18 court, commission, or the Court of Appeals, as appropriate, shall
19 transmit it forthwith upon request without the necessity of an order.

20
21 (b) Petitions for Writs of Mandamus and Prohibition. An application
22 for a writ of mandamus or a writ of prohibition under the original jurisdiction
23 of this Court shall be by petition filed in the office of the clerk of this Court.

24
25 (1) What the Petition Must Contain. The petition must be
26 notarized and must state whether the petitioner believes that the
27 taking of evidence is necessary for the proper disposition of the
28 petition. A memorandum of law citing relevant authorities must
29 accompany each petition.

30
31 (2) Service of Petitions.

32
33 (i) Generally. A petition must be accompanied by a
34 return of service executed by the appropriate officer evidencing
35 service of a copy thereof on the respondent or by an
36 acceptance of service signed by the respondent. Except in
37 cases brought by prisoners acting pro se, service of process
38 must be accomplished in accordance with Chapter 8 of Title
39 8.01.
40

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

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

Petitioner

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

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

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

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

1 respondent, the taking of evidence is necessary for the proper
2 disposition of the petition. A memorandum of law citing the relevant
3 authorities should accompany each responsive pleading.
4

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

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

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

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

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

34 In cases in which the sentence of death has been imposed:
35

36 (a) Petition for the Writ. A petition for a writ of habeas corpus shall be
37 filed in the office of the clerk of this Court within 60 days after the earliest
38 of: (i) the denial by the Supreme Court of the United States of a petition for
39 a writ of certiorari to the judgment of this Court on direct appeal, (ii) an
40 order of the Supreme Court of the United States affirming imposition of the

1 sentence of death in a case in which that Court granted a writ of certiorari
2 to review the judgment of this Court on direct appeal, or (iii) the expiration
3 of the period for filing a petition for a writ of certiorari in the Supreme Court
4 of the United States without such a petition being filed.

5
6 (b) Contents of Petition for Writ. Each petition for a writ of habeas
7 corpus shall be verified and shall include an enumerated list of the grounds
8 asserted for relief together with all supporting facts upon which the
9 petitioner relies. The petition shall contain citation to the relevant legal
10 authorities and an enumeration of all previous petitions and their
11 disposition. The petition shall state whether, in the opinion of the petitioner,
12 the taking of evidence is necessary for the proper disposition of the petition.
13 The petition shall be accompanied by a return of service executed by the
14 appropriate officer evidencing service of a copy thereof upon the Attorney
15 General of Virginia or by an acceptance of service signed by the Attorney
16 General or an Assistant Attorney General.

17
18 (c) Response. Within 30 days after service of the petition, the
19 Attorney General shall file with the clerk of this Court a responsive
20 pleading, which may include a motion to dismiss. The response shall
21 include citation to the relevant legal authorities and shall state whether, in
22 the opinion of the Attorney General, the taking of evidence is necessary for
23 the proper disposition of the petition.

24
25 (d) Reply. Within 20 days after the Attorney General's responsive
26 pleading is filed pursuant to subparagraph (c), the petitioner may file a
27 reply.

28
29 (e) Copies to be Filed. Ten copies of the petition, the Attorney
30 General's responsive pleading, and the petitioner's reply shall be filed in the
31 office of the clerk of this Court.

32
33 (f) Motions. Upon the filing of any motion other than a motion to
34 dismiss included in a responsive pleading filed pursuant to subparagraph
35 (c) of this Rule, or upon the filing of an objection pursuant to Code § 8.01-
36 654(C)(3), the opposing party may file a response within ten days of the
37 filing of the motion or objection, or within such time as this Court may order.

38
39 (g) Length. Except by permission of a justice of this Court, no petition
40 for a writ of habeas corpus or a response thereto shall exceed 50 pages or

1 8,750 words, and no reply to a response shall exceed 15 pages or 2,625
2 words. Page or word limits under this Rule do not include appendices, the
3 cover page, table of contents, table of authorities, and certificate. All
4 petitions, responses, replies, motions, and other papers filed pursuant to
5 this Rule shall conform to the provisions of Rule 5:6(a). If counsel wishes to
6 file a petition or response in excess of the 50-page limit, a motion to exceed
7 the page limit must be filed with the clerk of this Court at least 10 days
8 before the due date for the petition or response. If the motion is denied, or if
9 no timely motion to exceed the page limit is filed, any pages in the petition
10 or response that exceed the page limit, except the signature and certificate
11 of service, shall be stricken and not considered by this Court.
12

13 (h) Further Proceedings by Order of this Court. Further proceedings
14 shall be conducted in accordance with the orders of this Court. If it is
15 determined that an evidentiary hearing is necessary for the proper
16 disposition of the petition, this Court shall enter an order directing the
17 circuit court that entered the judgment imposing the sentence of death to
18 conduct such a hearing in accordance with the provisions of Code § 8.01-
19 654(C)(1), (2), and (3).
20
21
22
23

24 (i) Amendment of Petition. A petitioner is permitted to submit one
25 amended petition without leave of this Court if there has not yet been a
26 ruling on the merits of the initial petition currently before this Court and the
27 statute of limitations has not expired. This amendment can include
28 additional claims not presented in the first petition. After this first
29 amendment by right, any subsequent amendment can only be filed with the
30 permission of this Court.
31

32 **Rule 5:7B. Petition for a Writ of Actual Innocence.** [NOTE: see also
33 *suggested revision to Code § 19.2-327.3, infra*]
34

35 (a) Who may File a Petition. A petition for a writ of actual innocence
36 based upon previously unknown or untested human biological evidence
37 may be filed by any incarcerated person who has been convicted of a
38 felony upon a plea of not guilty, or by any person, regardless of plea, who
39 has been sentenced to death, or convicted of a class 1 felony, a class 2
40 felony or any felony for which the maximum penalty is imprisonment for life.

1
2 (b) Time for Filing. A petition under this Rule shall be filed in the office
3 of the clerk of this Court within 60 days after the date upon which
4 exculpatory test results are obtained by the petitioner or his counsel of
5 record from the Division of Forensic Science for any tests conducted on
6 human biological evidence pursuant to Code § 19.2-327.1.
7

8 (c) Contents of the Petition. Each petition for a writ of actual
9 innocence shall be filed on a form provided by this Court and shall be
10 verified under oath. The petition must state categorically and with
11 specificity: (i) the offense or offenses for which petitioner was convicted,
12 including all previous records, applications, petitions, and appeals relating
13 to these convictions, and their dispositions; (ii) that the petitioner is actually
14 innocent of the crime or crimes for which he was convicted; (iii) an exact
15 description of the human biological evidence and the scientific testing
16 supporting the allegation of innocence, attaching a copy of the test results;
17 (iv) that the human biological evidence was not known or available to the
18 petitioner or his attorney at trial, or if it was known, why it was not subject to
19 scientific testing; (v) the earliest date the test results described in the
20 petition became known to the petitioner or any attorney of record; (vi) that
21 the petitioner or his attorney has filed the petition within 60 days of
22 obtaining the test results; (vii) that the petitioner is currently incarcerated;
23 (viii) an explanation of the reason or reasons the evidence will prove that
24 no rational trier of fact could have found the petitioner guilty beyond a
25 reasonable doubt of the offense or offenses for which the petitioner was
26 convicted; and (ix) if the conviction became final in the circuit court after
27 June 30, 1996, that the evidence was not available for testing under Code
28 § 9.1-121.
29

30 (d) Service of the Petition and Return of Service. Prior to filing a
31 petition, the petitioner shall serve the petition, along with all attachments,
32 on the Attorney General and on the Commonwealth's Attorney for the
33 jurisdiction where the conviction occurred. When represented by counsel,
34 the petitioner shall file with the petition either (i) a duly executed return of
35 service in the form of a verification that a copy of the petition and all
36 attachments have been served, or (ii) an acceptance of service signed by
37 either or both of the parties to be served, or (iii) a combination of the two.
38 When not represented by counsel, the petitioner shall file with the petition a
39 certificate that a copy of the petition and all attachments have been sent, by

1 certified mail, to the Attorney General and the Commonwealth's Attorney
2 for the jurisdiction where the conviction occurred.

3
4 (e) Filing Fee. The petition must be accompanied by either (i) a
5 check or money order for the filing fee required by statute, or (ii) an in
6 forma pauperis affidavit demonstrating that the petitioner cannot afford the
7 filing fee.

8
9 (f) Response. The Attorney General shall respond to the petition as
10 follows:

11
12 (1) Within 30 days after service of the petition, the Attorney
13 General shall file with the clerk of this Court a pleading in the form of
14 a declaration stating, in the opinion of the Attorney General, with an
15 explanation of the reasons therefor, whether the record of any trial or
16 appellate proceedings involving the conviction or convictions, or of
17 any proceedings under Code § 19.2-327.1, is necessary for
18 preparation of a response to the petition. If the Attorney General
19 asserts that the record, or any part thereof, of any trial or appellate
20 court proceedings is necessary, the Attorney General shall request
21 the production of such record by this Court, and shall describe with
22 specificity, including the court, docket number and date of judgment,
23 each and every record or part thereof which is requested.

24
25 (2) If the Attorney General asserts in the declaration required by
26 subparagraph (f)(1) of this Rule that no trial or appellate court record,
27 or any part thereof, is necessary for the preparation of a responsive
28 pleading to the petition, the Attorney General shall file with the clerk
29 of this Court within 30 days thereafter a pleading in response to the
30 petition. Any pleading in response filed by the Attorney General may
31 include a motion to dismiss. The response shall include citation to
32 any relevant legal authorities, and may contain a proffer of any
33 evidence pertaining to the guilt of the petitioner that is not included in
34 the record of the case, including any evidence that was suppressed
35 at trial.

36
37 (3) If the Attorney General asserts in the declaration required by
38 subparagraph (f)(1) of this Rule that a trial or appellate court record,
39 or any part thereof, is necessary for the preparation of a response to
40 the petition, the court shall issue the writ of certiorari described in

1 Code § 19.2-327.3(D) to the clerk of the respective court below for
2 the production of the record forthwith to the clerk of this Court. Upon
3 receipt of the record by the clerk of this Court, the clerk shall
4 immediately notify in writing the petitioner, any attorney for the
5 petitioner, the Attorney General, and the attorney for the
6 Commonwealth of the jurisdiction where the conviction or convictions
7 occurred, of the date of receipt of the record. Within 30 days after
8 receipt of the record by the clerk of this Court, the Attorney General
9 shall file the responsive pleading described in subparagraph (e)(2) of
10 this Rule.

11
12 (g) Reply. Within 20 days after the Attorney General's responsive
13 pleading is filed pursuant to subparagraph (e) of this Rule, the petitioner
14 may file a reply.

15
16 (h) Copies to be Filed. Ten copies of the petition, and the Attorney
17 General's responsive pleading, and the petitioner's reply, if any, shall be
18 filed in the office of the clerk of this Court.

19
20 (i) Further Proceedings by Order of this Court. Further proceedings
21 shall be conducted in accordance with the orders of this Court. If this Court
22 determines that an evidentiary hearing is necessary for the proper
23 disposition of the petition, this Court may order that the circuit court conduct
24 a hearing within 90 days after the order has been issued to certify findings
25 of fact with respect to such issues as this Court shall direct. The record and
26 certified findings of fact of the circuit court shall be filed with the clerk of this
27 Court within 30 days after the hearing is concluded.

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

39

1 (k) Duty of Counsel. Any attorney(s) appointed to represent a
2 petitioner pursuant to Code § 19.2-327.1 shall be deemed to be counsel of
3 record for petitioner for all purposes and proceedings under this Rule until a
4 final order of this Court is issued pursuant to Code § 19.2-327.5, or until
5 counsel is relieved or replaced by other counsel by leave of this Court.
6

7 **Text of suggested revised version of Code § 19.2-327.3 —**

8
9 § 19.2-327.3. Contents and form of the petition based on previously
10 unknown or untested human biological evidence of actual innocence.
11

12 A. The petitioner shall allege categorically and with specificity, under
13 oath, the following: (i) the crime for which the petitioner was convicted, and
14 that such conviction was upon a plea of not guilty or that the person is
15 under a sentence of death or convicted of (1) a Class 1 felony, (2) a Class
16 2 felony or (3) any felony for which the maximum penalty is imprisonment
17 for life; (ii) that the petitioner is actually innocent of the crime for which he
18 was convicted; (iii) an exact description of the human biological evidence
19 and the scientific testing supporting the allegation of innocence; (iv) that the
20 evidence was not previously known or available to the petitioner or his trial
21 attorney of record at the time the conviction became final in the circuit
22 court, or if known, the reason that the evidence was not subject to the
23 scientific testing set forth in the petition; (v) the date the test results under §
24 19.2-327.1 became known to the petitioner or any attorney of record; (vi)
25 that the petitioner or his attorney of record has filed the petition within 60
26 days of obtaining the test results under § 19.2-327.1; (vii) that the petitioner
27 is currently incarcerated; (viii) the reason or reasons the evidence will prove
28 that no rational trier of fact could have found proof of guilt beyond a
29 reasonable doubt; and (ix) for any conviction that became final in the circuit
30 court after June 30, 1996, that the evidence was not available for testing
31 under § 9.1-1104. The Supreme Court may issue a stay of execution
32 pending proceedings under the petition. Nothing in this chapter shall
33 constitute grounds to delay setting an execution date pursuant to § 53.1-
34 232.1 or to grant a stay of execution that has been set pursuant to § 53.1-
35 232.1 (iii) or (iv).
36

37 B. Such petition shall contain all relevant allegations of facts that are
38 known to the petitioner at the time of filing and shall enumerate and include
39 all previous records, applications, petitions, appeals and their dispositions.
40 A copy of any test results shall be filed with the petition. The petition shall

1 be filed on a form provided by the Supreme Court. If the petitioner fails to
2 submit a completed form, the court may dismiss the petition or return the
3 petition to the prisoner pending the completion of such form. The petitioner
4 shall be responsible for all statements contained in the petition. Any false
5 statement in the petition, if such statement is knowingly or willfully made,
6 shall be a ground for prosecution and conviction of perjury as provided for
7 in § 18.2-434.

8
9 C. In cases brought by counsel for the petitioner, the Supreme Court
10 shall not accept the petition unless it is accompanied by a duly executed
11 return of service in the form of a verification that a copy of the petition and
12 all attachments have been served on the attorney for the Commonwealth of
13 the jurisdiction where the conviction occurred and the Attorney General, or
14 an acceptance of service signed by these officials, or any combination
15 thereof. In cases brought by petitioners pro se, the Supreme Court shall not
16 accept the petition unless it is accompanied by a certificate that a copy of
17 the petition and all attachments have been sent, by certified mail, to the
18 attorney for the Commonwealth of the jurisdiction where the conviction
19 occurred and the Attorney General. The Attorney General shall have 30
20 days after receipt of the record by the clerk of the Supreme Court in which
21 to file a response to the petition. The response may contain a proffer of any
22 evidence pertaining to the guilt of the defendant that is not included in the
23 record of the case, including evidence that was suppressed at trial.

24
25 D. The Supreme Court may, when the case has been before a trial or
26 appellate court, inspect the record of any trial or appellate court action, and
27 the Court may, in any case, award a writ of certiorari to the clerk of the
28 respective court below, and have brought before the Court the whole
29 record or any part of any record.

30
31 E. In any petition filed pursuant to and in compliance with the
32 provisions of this chapter, the defendant is entitled to representation by
33 counsel subject to the provisions of Article 3 (§ 19.2-157 et seq.) of Chapter
34 10 of this title.

35
36 **End of suggested revised version of Code § 19.2-327.3**

37
38 **C. Procedure for Filing an Appeal From a Trial Court.**

39
40 **Rule 5:8. Applicability.**

1
2 This Section C applies only to cases where direct appeal to this Court
3 from a trial court is authorized by law.
4

5 **Rule 5:8A. Appeal From Judgment Upon Multiple Claims or Involving**
6 **Multiple Parties.**
7

8 When more than one claim for relief is presented in an action,
9 whether as a claim, counterclaim, cross-claim, or third-party claim, or when
10 multiple parties are involved, the trial court may direct the entry of a final
11 judgment as to one or more but fewer than all of the claims or parties only
12 upon an express determination that there is no just reason for delay and
13 upon an express direction for the entry of judgment. In the absence of
14 such determination and direction, any order or other form or decision,
15 however designated, which adjudicates fewer than all the claims or the
16 rights and liabilities of fewer than all the parties shall not terminate the
17 action as to any of the claims or parties, and the order or other form of
18 decision is subject to revision at any time before the entry of judgment
19 adjudicating all the claims and the rights and liabilities of all the parties.
20

21 **Rule 5:9. Notice of Appeal.**
22

23 (a) Filing Deadline; Where to File. No appeal shall be allowed unless,
24 within 30 days after the entry of final judgment or other appealable order or
25 decree, or within any specified extension thereof granted by this Court
26 pursuant to Rule 5:5(e), counsel for the appellant files with the clerk of the
27 trial court a notice of appeal and at the same time mails or delivers a copy
28 of such notice to all opposing counsel. A notice of appeal filed after the
29 court announces a decision or order – but before the entry of judgment or
30 order – is treated as filed on the date of and after the entry.
31

32 (b) Content. The notice of appeal shall contain a statement whether
33 any transcript or statement of facts, testimony and other incidents of the
34 case will be filed. In the event a transcript is to be filed, the notice of appeal
35 shall certify that a copy of the transcript has been ordered from the court
36 reporter who reported the case.
37

38 (c) Separate Cases. Whenever two or more cases were tried together
39 in the trial court, one notice of appeal and one record may be used to bring

1 all of such cases before this Court even though such cases were not
2 consolidated by formal order.

3
4 (d) Special Provision for Cases Involving a Guardian Ad Litem. No
5 appeal shall be dismissed because the notice of appeal fails to identify a
6 guardian ad litem or to provide notice to a guardian ad litem. Upon motion
7 for good cause shown or by sua sponte order of this Court, the notice of
8 appeal may be amended to identify the guardian ad litem and to provide
9 notice to such guardian.

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

12
13 (a) Contents. The following constitute the record on appeal from the
14 trial court:

15
16 (1) the original papers and exhibits filed or lodged in the office
17 of the clerk of the trial court, including any report of a commissioner in
18 chancery and the accompanying depositions and other papers;

19
20 (2) each instruction marked "given" or "refused" and initialed by
21 the judge;

22
23 (3) each exhibit offered in evidence, whether admitted or not,
24 and initialed by the trial judge (or any photograph thereof as
25 authorized by § 19.2-270.4 (A) and (C)). (All non-documentary
26 exhibits shall be tagged or labeled in the trial court and the tag or
27 label initialed by the judge.);

28
29 (4) the original draft or a copy of each order entered by the trial
30 court;

31
32 (5) any opinion or memorandum decision rendered by the judge
33 of the trial court;

34
35 (6) any deposition and any discovery material encompassed
36 within Part Four offered in evidence (whether admitted or rejected) at
37 any proceeding; and

38
39 (7) the transcript of any proceeding or a written statement of
40 facts, testimony, and other incidents of the case when made a part of

1 the record as provided in Rule 5:11, or the official videotape recording
2 of any proceeding in those circuit courts authorized by this Court to
3 use videotape recordings. This Court may require that any videotape
4 proceedings be transcribed, in whole or in part, and made a part of
5 the record as provided in Rule 5:11, except that the transcript shall be
6 filed within 60 days after the entry of the order requiring such
7 transcript; and

8
9 (8) the notice of appeal.

10
11 (b) Disagreement on Contents. If disagreement arises as to the
12 contents of any part of the record, the matter shall, in the first instance, be
13 submitted to and decided by the trial court.

14
15 **Rule 5:11. Record on Appeal: Transcript or Written Statement.**

16
17 (a) Effect of Non-compliance.

18
19 (1) Obligation of the Petitioner/Appellant. It is the obligation of
20 the petitioner/appellant to ensure that the record is sufficient to enable the
21 Court to evaluate and resolve the assignments of error. When the
22 appellant fails to ensure that the record contains transcripts or a written
23 statement of facts necessary to permit resolution of appellate issues related
24 to the assignments of error, any assignments of error affected by the
25 omission shall not be considered.

26
27 (2) Obligation of the Respondent/Appellee. It is the obligation
28 of the respondent/appellee to ensure that the record is sufficient to enable
29 the Court to evaluate and resolve any assignments of cross-error. When
30 the respondent/appellee who assigns cross-error fails to ensure that the
31 record contains transcripts or a written statement of facts necessary to
32 permit resolution of appellate issues related to the assignments of cross-
33 error, any assignments of cross-error affected by the omission shall not be
34 considered.

35
36 (b) Transcript. The transcript of any proceeding in the case that is
37 necessary for the appeal shall be filed in the office of the clerk of the trial
38 court within 60 days after entry of judgment.

39
40 (c) Notice of Filing Transcript.

1
2 (1) Within 10 days after the transcript is filed or, if the
3 transcript is filed prior to the filing of the notice of appeal, within 10
4 days after the notice of appeal is filed, counsel for appellant shall (i)
5 give written notice to all other counsel of the date on which the transcript
6 was filed, and (ii) file a copy of the notice with the clerk of the trial
7 court. There shall be appended to the notice either a certificate of
8 counsel for appellant that a copy of the notice has been mailed to all
9 other counsel or an acceptance of service of such notice by all other
10 counsel.

11
12 (2) When multiple transcripts are filed, the 10 day period for
13 filing the notice required by this Rule shall be calculated from the date
14 on which the last transcript is filed, or from the date on which the
15 notice of appeal is filed, whichever is later. The notice of filing
16 transcripts shall identify all transcripts filed and the date upon which
17 the last transcript was filed. If the notice of appeal states that no
18 additional transcripts will be filed and identifies the transcripts that
19 have been filed, if any, then no additional written notice of filing of
20 transcripts is required and the notice of appeal will serve as the notice
21 of filing transcripts for purposes of this Rule.

22
23 (3) Any failure to file the notice required by this Rule that
24 materially prejudices an appellee will result in the affected transcripts
25 being stricken from the record on appeal. For purposes of this Rule,
26 material prejudice includes preventing the appellee from raising
27 legitimate objections to the contents of the transcript or misleading
28 the appellee about the contents of the record. The appellee shall
29 have the burden of establishing such prejudice in the brief in
30 opposition or, if no brief in opposition is filed, in a written statement
31 filed with the clerk of this Court within the time fixed by these Rules
32 for the filing of a brief in opposition.

33
34
35 (d) Supplementation, Correction, or Modification of Transcript. If
36 anything material to any party is omitted from or misstated in the transcript,
37 or if the transcript or any portion thereof is untimely filed, by omission,
38 clerical error, or accident, the filing may be supplemented, corrected, or
39 modified at any time within 70 days from the entry of judgment appealed
40 from. Notice as provided in paragraph (c) of this Rule must be given for

1 any such supplementation, correction, or modification. Thereafter, such
2 supplementation, correction, or modification may be made, by order of this
3 Court sua sponte or upon motion of any party, if at least two Justices of this
4 Court concur in a finding that any such supplementation, correction, or
5 modification is warranted by a showing of good cause sufficient to excuse
6 the deficiency.

7
8 (e) Written Statement of Facts. A written statement of facts,
9 testimony, and other incidents of the case may be included in the record if,
10 upon written motion before the commencement of the hearing, the trial
11 court allows a written statement of facts in lieu of a transcript. The written
12 statement of facts becomes a part of the record when:

13
14 (1) within 55 days after entry of judgment a copy of such
15 statement is filed in the office of the clerk of the trial court. A copy
16 must be mailed or delivered to opposing counsel on the same day
17 that it is filed in the office of the clerk of the trial court, accompanied
18 by notice that such statement will be presented to the trial judge no
19 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
22 office of the clerk of the trial court. The judge may sign the statement
23 forthwith upon its presentation to him if it is signed by counsel for all
24 parties, but if objection is made to the accuracy or completeness of
25 the statement, it shall be signed in accordance with paragraph (f) of
26 this Rule.

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

1 (1) overrule the objections; or

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

4 or

5
6 (3) include any accurate additions to make the record complete;

7 or

8
9 (4) certify the manner in which the record is incomplete; and

10
11 (5) sign the transcript or written statement.

12
13 At any time while the record remains in the office of the clerk of the trial
14 court, the trial judge may, after notice to counsel and hearing, correct the
15 transcript or written statement.

16
17 The judge's signature on a transcript or written statement, without
18 more, shall constitute certification that the procedural requirements of this
19 Rule have been satisfied.

20
21 **Rule 5:12. Judge Authorized to Act.**

22
23 The judge authorized to act in all matters relating to the record on
24 appeal shall be any judge having authority to enter orders in the case or in
25 the court in which the case was heard or, in a case heard by three judges,
26 any one of them.

27
28 **Rule 5:13. Record on Appeal: Preparation and Transmission.**

29
30 (a) Preparation. The clerk of the trial court shall prepare the record as
31 soon as possible after notice of appeal is filed. In the event of multiple
32 appeals in the same case, or in cases tried together, only one record need
33 be prepared and transmitted.

34
35 (b) Form of the Record.

36
37 (1) The record shall be compiled in the following order:

38
39 (i) a front cover setting forth the name of the court and the
40 short style of the case;

1
2 (ii) a table of contents listing each paper included in the
3 record and the page on which it begins;

4
5 (iii) each paper constituting a part of the record in
6 chronological order; and

7
8 (iv) the certificate of the clerk of the trial court that the
9 foregoing constitutes the true and complete record, except
10 omitted exhibits as hereinafter provided.

11
12 (2) Each page of the record shall be numbered at the bottom.

13
14 (3) Transcripts, depositions, and reports of commissioners may
15 be included in separate volumes identified by the clerk of the trial
16 court if referred to in the table of contents and at the appropriate
17 place in the record.

18
19 (4) Exhibits, other than those filed with pleadings, may be
20 included in a separate volume or envelope certified by the clerk of the
21 trial court, except that any exhibit that cannot be conveniently placed
22 in a volume or envelope shall be identified by a tag. Each such
23 volume or envelope shall include, on its cover or inside, a descriptive
24 list of exhibits contained therein. Reference shall be made to exhibits
25 in the table of contents and at the appropriate place in the record
26 referred to in paragraph (b)(1) of this Rule. The clerk of the trial court
27 shall not transmit the following types of exhibits, unless requested to
28 do so by the clerk of this Court: drugs, guns and other weapons,
29 ammunition, blood vials and other bio-hazard type materials, money,
30 jewelry, articles of clothing, and bulky items such as large graphs and
31 maps. The omission of any such exhibit shall be noted on the
32 descriptive list of exhibits. Upon motion by counsel, this Court may
33 order the trial court to transmit any of these prohibited exhibits.

34
35 (5) Any transcript or statement of facts that the clerk of the trial
36 court deems not a part of the record because of untimely filing shall
37 be certified as such and transmitted with the record.

38
39 (c) Transmission. The clerk of the trial court shall retain the record for
40 21 days after the notice of appeal has been filed with him pursuant to Rule

1 5:9. If the notice of appeal states that a transcript or statement will
2 thereafter be filed, the clerk of the trial court shall retain the record for 21
3 days after the filing in his office of such transcript or statement or, if
4 objection is made to the transcript or statement pursuant to Rule 5:11(f),
5 the clerk of the trial court shall retain the record for 5 days after the
6 objection is acted upon by the trial judge. The clerk of the trial court shall
7 then forthwith transmit the record to the clerk of this Court; provided,
8 however, that, notwithstanding that the foregoing periods of retention may
9 not have expired, the clerk of the trial court shall transmit the record sooner
10 if requested in writing by counsel for all parties to the appeal and shall,
11 whether or not so requested, transmit the record in time for delivery to the
12 clerk of this Court within three months after entry of the judgment appealed
13 from. The failure of the clerk of the trial court to transmit the record as
14 herein provided shall not be a ground for dismissal of the appeal by this
15 Court.

16
17 (d) Record Returned to Trial Court. When the mandate is issued by
18 this Court, the clerk of this Court shall return the record to the clerk of the
19 trial court, disciplinary board, or commission in which the proceeding
20 originated. The record shall be returned by that clerk upon the request of
21 the clerk of this Court.

22
23 **D. Procedure for Filing an Appeal From the Court of Appeals.**

24
25 **Rule 5:14. Notice of Appeal; Certification.**

26
27 (a) Notice of Appeal. No appeal from a judgment of the Court of
28 Appeals which is subject to appeal to this Court shall be allowed unless,
29 within 30 days after entry of final judgment or order denying a timely
30 petition for rehearing, counsel file with the clerk of the Court of Appeals a
31 notice of appeal.

32
33 (b) Notice of Certification. Whenever this Court shall certify a case
34 pending in the Court of Appeals for review by this Court, notice of
35 certification shall be given by the clerk of this Court to all counsel and to the
36 clerk of the Court of Appeals. A case certified for review by this Court shall
37 proceed as if a petition for appeal had been granted by this Court on the
38 date of the certification for review, except as otherwise ordered.

39

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

5
6 **Rule 5:15. Record on Appeal From Court of Appeals or Certification**
7 **for Review.**

8
9 (a) Generally. In cases on appeal from the Court of Appeals and
10 those certified for review, the record in this Court shall consist of the record
11 as filed in the office of the clerk of the Court of Appeals and, in addition, all
12 other papers relating to the case which have been filed in the office of the
13 clerk of the Court of Appeals, including any opinion or memorandum
14 decision in cases decided by the Court of Appeals. The clerk of the Court of
15 Appeals shall transmit all such documents to the clerk of this Court within
16 10 days after the filing of the notice of appeal to this Court or the issuance
17 of the certification for review. The clerk of the Court of Appeals shall certify
18 that the papers so transmitted constitute the record in the Court of Appeals.
19

20 (b) Bail Pending Appeal in Criminal Cases. In criminal cases on
21 appeal from a Court of Appeals order affirming a trial court's decision to set
22 or deny bail pending appeal, the record shall consist of: (1) the sentencing
23 order entered by the trial court; (2) a pre-sentence report when available;
24 (3) the trial court's order denying or setting bail; (4) the transcript of the bail
25 hearing or a stipulation of facts between the parties regarding what
26 evidence was introduced at the hearing and the reason(s) the trial judge
27 gave for the bail decision; (5) appellant's motion for review in the Court of
28 Appeals; and (6) the order of the Court of Appeals on the motion for review.
29

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

31
32 When there can be no further proceedings in this Court, the clerk of
33 this Court shall return the record to the clerk of the trial court or commission
34 in which the case originated. The record shall be returned by that clerk
35 upon the request of the clerk of this Court.
36

37 **E. Perfecting the Appeal.**

38
39 **Rule 5:17. Petition for Appeal.**
40

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

5
6 (1) in the case of an appeal direct from a trial court, not more
7 than three months after entry of the order appealed from; or

8
9 (2) in the case of an appeal from the Court of Appeals, within
10 30 days after entry of the judgment appealed from or a denial of a
11 timely petition for rehearing.

12
13 (b) Who Must Receive a Copy of the Petition. When the petition for
14 appeal is filed with the clerk of this Court, a copy of the petition shall be
15 served on opposing counsel.

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

19
20 (1) Assignments of Error. Under a heading entitled
21 "Assignments of Error," the petition shall list the specific errors in the
22 rulings below upon which the party intends to rely. A clear and exact
23 reference to the pages of the transcript, written statement of facts, or
24 record where the alleged error has been preserved shall be included
25 with each assignment of error.

26
27 (i) Effect of Failure to Assign Error. Only assignments of
28 error assigned in the petition for appeal will be noticed by this
29 Court. If the petition for appeal does not contain assignments
30 of error, it shall be dismissed.

31
32 (ii) Nature of Assignments of Error in Appeals from the
33 Court of Appeals. Where appeal is taken from a judgment of
34 the Court of Appeals, only assignments of error relating to
35 assignments of error presented in or to actions taken by the
36 Court of Appeals may be included in the petition for appeal to
37 this Court.

38
39 (iii) Insufficient Assignments of Error. An assignment of
40 error which merely states that the judgment or award is

1 contrary to the law and the evidence is not sufficient. If the
2 assignments of error are insufficient or otherwise fail to comply
3 with the requirements of this Rule, the petition for appeal shall
4 be dismissed.

5
6 (2) Required Statements When the Appeal is from the Court of
7 Appeals. Where appeal is taken from a judgment of the Court of
8 Appeals in a case where judgment is made final under Code § 17.1-
9 410, the petition for appeal shall contain a statement setting forth in
10 what respect the decision of the Court of Appeals involves the
11 following:

12
13 (i) a substantial constitutional question as a
14 determinative issue, or

15
16 (ii) matters of significant precedential value.

17
18 If the petition for appeal does not contain such a statement, the
19 appeal will be dismissed.

20
21
22
23 (3) Table of Contents and Table of Authorities. A table of
24 contents and table of authorities with cases alphabetically arranged.
25 Citations of all authorities shall include the year thereof.

26
27 (4) Nature of the Case and Material Proceedings Below. A brief
28 statement of the nature of the case and of the material proceedings in
29 the trial court or commission in which the case originated. This
30 statement shall omit references to any paper filed or action taken that
31 does not relate to the assignments of error.

32
33 (5) Statement of Facts. A clear and concise statement of the
34 facts that relate to the assignments of error, with references to the
35 pages of the record, transcript, or written statement of facts. Any
36 quotation from the record should be brief. When the facts are in
37 dispute, the petition shall so state. The testimony of individual
38 witnesses should not be summarized seriatim unless the facts are in
39 dispute and such a summary is necessary to support the appellant's
40 version of the facts.

1
2 (6) Authorities and Argument. The standard of review, the
3 argument, and the authorities relating to each assignment of error.
4 With respect to each assignment of error, the standard of review, the
5 argument – including principles of law, and the authorities shall be
6 stated in one place and not scattered through the petition. At the
7 option of counsel, the argument may be preceded by a brief
8 summary.

9
10 (7) Conclusion. A short conclusion stating the precise relief
11 sought.

12
13
14
15 (d) Filing Fee Required With the Petition. When it is filed, the petition
16 for appeal must be accompanied by a check or money order payable to the
17 "Clerk of the Supreme Court of Virginia" for the amount required by statute.
18 The clerk of this Court may file a petition for appeal that is not accompanied
19 by such fee if the fee is received by the clerk within 10 days of the date the
20 petition for appeal is filed. If the fee is not received within such time, the
21 petition for appeal shall be dismissed.

22
23 (e) Number of Copies to File. Seven copies of the petition shall be
24 filed with the clerk of this Court.

25
26 (f) Length. Except by leave of a Justice of this Court, a petition shall
27 not exceed 35 pages or 6,125 words. The page or word limit does not
28 include the cover page, table of contents, table of authorities, and
29 certificate.

30
31 (g) Use of a Single Petition in Separate Cases. Whenever two or
32 more cases were tried together in the court or commission below, one
33 petition for appeal may be used to bring all such cases before this Court
34 even though the cases were not consolidated below by formal order.

35
36 (h) Procedure for an *Anders* appeal. If counsel for appellant finds
37 appellant's appeal to be without merit, counsel must comply with the
38 requirements of *Anders v. California*, 386 U.S. 738 (1967), and *Brown v.*
39 *Warden of Virginia State Penitentiary*, 238 Va. 551, 385 S.E.2d 587 (1989).
40 In compliance therewith, counsel is required to file (1) a petition for appeal

1 which refers to anything in the record which might arguably support the
2 appeal and which demonstrates to this Court counsel's conscientious
3 examination of the merits of the appeal; (2) a motion for leave to withdraw
4 as counsel; and (3) a motion for an extension of time to allow the appellant
5 to file a pro se supplemental petition for appeal. The petition for appeal
6 and the motion for leave to withdraw as counsel should specifically cite to
7 *Anders*. All three pleadings must be served on opposing counsel and upon
8 the client and must contain a certificate providing evidence of such service.
9 This Court will rule upon the motion for extension of time upon its receipt,
10 but will not rule on the motion to withdraw until this Court considers the
11 case in its entirety, including any pro se supplemental petition for appeal
12 that may be filed.

13
14 (i) What the Certificate Must Contain. The appellant shall include
15 within the petition for appeal a certificate stating:

16
17 (1) the names of all appellants and appellees, the name,
18 Virginia State Bar number, mailing address, telephone number
19 (including any applicable extension), facsimile number (if any), and e-
20 mail address (if any) of counsel for each party, and the mailing
21 address, telephone number (including any applicable extension),
22 facsimile number (if any), and e-mail address (if any) of any party not
23 represented by counsel;

24
25 (2) that a copy of the petition for appeal has been mailed or
26 delivered on the date stated therein to all opposing counsel and all
27 parties not represented by counsel;

28
29 (3) if a word count is used, the number of words (headings,
30 footnotes, and quotations count towards the word limitation; the cover
31 page, table of contents, table of authorities, and certificate do not
32 count towards the word count);

33
34 (4) in a criminal case or habeas corpus appeal, a statement
35 whether counsel for defendant has been appointed or privately
36 retained; and

37
38 (5) whether the appellant desires to state orally to a panel of
39 this Court the reasons why the petition for appeal should be granted,
40 and, if so, whether in person or by conference telephone call.

1
2
3 (j) Oral Argument.
4

5 (1) Right to Oral Argument. The appellant shall be entitled to
6 state orally, in person or by telephone conference call, to a panel of
7 this Court the reasons why the petition for appeal should be granted.
8 The appellee shall not be entitled to oral argument, whether in person
9 or by telephone conference call. Any lawyer not licensed in Virginia
10 who seeks to appear pro hac vice to present oral argument to the
11 Court must comply with the requirements of Rule 1A:4.
12

13 (2) Waiver of Right to Oral Argument. The appellant may waive
14 the right to oral argument on the petition for appeal before a panel by
15 notifying the clerk of this Court and opposing counsel in writing, or by
16 filing a reply brief.
17

18 (3) No Oral Argument on Pro Se Inmate's Petition. If an
19 appellant is not represented by counsel and is incarcerated, the
20 petition for appeal may be considered by this Court without oral
21 argument.
22

23 (4) Special Rule for Certain Criminal Appeals from the Court of
24 Appeals. While the final decision on the petition for appeal is made
25 by this Court, oral argument in all petitions for appeals to this Court in
26 criminal cases from the Court of Appeals in which the Court of
27 Appeals did not issue a published opinion may be heard by this
28 Court's Chief Staff Attorney.
29

30 (5) Notice of Oral Argument. If the appellant has requested oral
31 argument, notice of the date and time of such argument shall be
32 provided to counsel for the appellant or to any pro se appellant. If
33 requested in writing, notice of the oral argument shall also be
34 provided to counsel for the appellee or any pro se appellee.
35

36 **Rule 5:17A. Petition for Review Pursuant to Code § 8.01-626;**
37 **Injunctions.**
38

39 (a) Time for Filing. In every case in which the jurisdiction of this Court
40 is invoked pursuant to Code § 8.01-626, a petition for review must be filed

1 with the clerk of this Court within 15 days of the order sought to be
2 reviewed.

3
4 (b) Copy to Opposing Counsel. At the time the petition for review is
5 filed, a copy of the petition shall be served on counsel for the respondent.

6
7 (c) Length and What the Petition for Review Must Contain. Except by
8 permission of a Justice of this Court, a petition for review shall not exceed
9 15 pages or 2,625 words. The petition for review must otherwise comply
10 with the requirements for a petition for appeal in Rule 5:17(c).

11
12 (d) Number of Copies to File. Four copies shall be filed.

13
14 (e) Filing Fee. The petition must be accompanied by a check or
15 money order payable to the clerk of this Court for the amount required by
16 statute. The statutory fee shall be collected at the time such petition is
17 presented and the clerk of this Court shall not file a petition that is not
18 accompanied by such fee.

19
20 (f) Scope. Final judgments within the meaning of Code § 8.01-670 are
21 not reviewable by a Justice of this Court under Code § 8.01-626. See
22 *Omega Corp. v. Cobb*, 222 Va. 875, 292 S.E.2d 44 (1981).

23
24 (g) Rehearing. The provisions of Rules 5:20, 5:20A, and 5:37 do not
25 apply to proceedings under Code § 8.01-626.

26
27 **Rule 5:18. Brief in Opposition.**

28
29 (a) Filing Time. A brief in opposition to granting the appeal may be
30 filed with the clerk of this Court by the appellee within 21 days after petition
31 for appeal is served on counsel for the appellee. Within the same time the
32 counsel for appellee shall mail or deliver a copy to counsel for appellant.
33 Seven copies shall be filed.

34
35 (b) Form and Content. The brief in opposition shall conform in all
36 respects to the content requirements for the brief of appellee in Rule 5:28.
37 However, the brief in opposition need not be bound or have a blue cover.
38 Except by leave of a Justice of this Court, the brief shall not exceed 25
39 pages or 4,375 words. If the brief exceeds 10 pages or 1,750 words, it shall

1 contain a table of contents and table of authorities with cases alphabetically
2 arranged.

3
4 (c) Assignments of cross-error. The brief in opposition may include
5 assignments of cross-error. If the brief in opposition contains an
6 assignment or assignments of cross-error, the cover of the brief must so
7 indicate by being styled, "Brief in Opposition and Assignment of Cross-
8 Error."

9
10 (1) A cross-error must be assigned in the brief in opposition in
11 order to be noticed by this Court.

12
13 (2) The provisions of Rule 5:25 shall apply to limit the
14 assignments of cross-error which will be heard on the appeal.

15
16 (3) A brief in opposition containing assignments of cross-error
17 shall conform to the form, content, and maximum word requirements
18 of subdivision (b) of this Rule.

19
20 (4) Where an appellee assigns cross-error in the brief in
21 opposition:

22
23 (i) this Court will not grant any assignment of cross-error
24 unless it first decides to grant some or all of the assignments of
25 error contained in the appellant's petition for appeal.

26
27 (ii) the appellee shall not be permitted to present oral
28 argument to a writ panel.

29
30 (iii) if the appellant withdraws the petition for appeal, the
31 appeal will be dismissed without consideration of the cross-
32 error assigned by an appellee.

33
34 (d) Expedited Review. When it clearly appears that an appeal ought
35 to be granted without further delay, an appeal may be granted before the
36 filing of the brief in opposition.

37
38 **Rule 5:19. Reply Brief.**

1 When a brief in opposition to the petition for appeal has been filed,
2 the appellant may, within 7 days thereafter, in lieu of oral argument, file with
3 the clerk of this Court a reply brief not to exceed 15 pages or 2,625 words
4 in length. Seven copies shall be filed.

5
6 When cross-error is assigned in a brief in opposition, the appellant
7 may, without waiving oral argument, file with the clerk of this Court within
8 the said 7 day period a reply brief not in excess of 10 pages or 1,750 words
9 which addresses only the cross-error. Seven copies shall be filed.

10
11 **Rule 5:20. Petition for Rehearing After Refusal of Petition for Appeal**
12 **or Disposition of an Original Jurisdiction Petition.**

13
14 (a) Petition for Appeal. When a petition for appeal is either refused or
15 dismissed, the clerk of this Court shall mail a copy of the order denying the
16 appeal to counsel for the appellant and counsel for the appellee. Counsel
17 for the appellant may, within 14 days after the date of this notice, file in the
18 office of the clerk of this Court a petition for rehearing. Oral argument on
19 the petition for rehearing will not be allowed. No responsive brief shall be
20 filed unless requested by this Court. The clerk of this Court shall notify
21 counsel for the appellant and counsel for the appellee of the action taken
22 by this Court on the petition for rehearing.

23
24 (b) Original Jurisdiction Petition. When a petition filed pursuant to this
25 Court's original jurisdiction (habeas corpus, mandamus, prohibition, or
26 actual innocence) is decided, the clerk of this Court shall mail a copy of the
27 order to counsel for the petitioner and counsel for the respondent. Counsel
28 for either party may, within 30 days after the date of this order, file in the
29 office of the clerk of this Court a petition for rehearing. Oral argument on
30 the petition for rehearing will not be allowed. No responsive brief shall be
31 filed unless requested by this Court. The clerk of this Court shall notify
32 counsel for the petitioner and counsel for the respondent of the action
33 taken by this Court on the petition for rehearing.

34
35 (c) When Electronic Filing is Required. Except for petitions for
36 rehearing filed by pro se prisoners or with leave of this Court, a petition for
37 rehearing shall be filed as an Adobe Acrobat Portable Document Format
38 (PDF) document attached to an e-mail in compliance with Rule 5:20A.
39 Petitions filed by pro se prisoners or with leave of this Court shall be filed in
40 compliance with this Rule.

1
2 (d) Length and Number of Copies. The petition for rehearing shall not
3 exceed 15 pages or 2,625 words in length. The petition shall state that a
4 copy has been mailed or delivered to counsel for the appellee. Ten copies
5 shall be filed.

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

11
12 **Rule 5:20A. Denial of Appeal; Petition for Rehearing.**

13
14 Except for petitions for rehearing filed by pro se prisoners, or with
15 leave of this Court, the petition shall be filed as an Adobe Acrobat Portable
16 Document Format (PDF) document attached to an e-mail addressed to
17 scvpfr@courts.state.va.us and will be timely filed if received by the clerk's
18 office on or before 11:59 p.m. on the date due.

19
20 The petition must be formatted to print on a page 8 1/2 x 11 inches,
21 must be in 14-point font or larger, must be double-spaced, and must not
22 exceed 10 pages or a word count of 1,750 words. The petition must include
23 a certificate of service to counsel for the appellee and the certificate shall
24 specify the manner of service and the date of service. The petition must
25 also include a certificate of compliance with the word count limit. The
26 petition will be considered filed on the date and time that it is received by
27 scvpfr@courts.state.va.us. If the petition does not meet the requirements of
28 this rule as to format, the clerk shall so notify counsel and provide a specific
29 amount of time for a corrected copy of the petition to be filed. A person who
30 files a document electronically shall have the same responsibility as a
31 person filing a document in paper form for ensuring that the document is
32 properly filed, complete, and readable. However, if technical problems at
33 the Supreme Court result in a failure to timely receive the electronically filed
34 petition for rehearing, counsel shall provide to the clerk of this Court on the
35 next business day all documentation which exists demonstrating the
36 attempt to file the petition by e-mail, any delivery failure notice received in
37 response to the attempt, and a copy of the petition for rehearing.

38
39 The e-mail message to which the petition is attached shall recite in
40 the subject line the style of the case and the Supreme Court record

1 number. The e-mail message shall contain a paragraph stating that a
2 petition for rehearing is being filed, the style of the case, the Supreme
3 Court record number, the name and Virginia State Bar number of counsel
4 filing the petition, as well as the law firm name, mailing address, telephone
5 number, facsimile number (if any), and e-mail address (if any) of counsel.
6 The message shall also state whether a copy of the petition has been
7 served by e-mail or another means on opposing counsel and the date of
8 such service. If opposing counsel has an e-mail address, that address
9 shall also be included. Upon receipt of the petition for rehearing in the e-
10 mail box of the clerk's office, an acknowledgment will automatically be
11 forwarded to counsel seeking the rehearing.
12

13 The clerk of this Court shall notify counsel for both parties of the
14 action taken by this Court on the petition for rehearing via e-mail, if e-mail
15 addresses for both counsel have been provided, or via U.S. Mail to any
16 counsel or party who has not provided an e-mail address.
17

18 **F. Special Rules.**

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

20 (a) Appeals from the State Corporation Commission.
21

22 (1) Applicability. Paragraph (a) of this Rule applies to all
23 appeals from the State Corporation Commission and supersedes all
24 other Rules except as otherwise specified herein.
25
26

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

1
2 (3) Notice of Appeal. No appeal from an order of the
3 Commission shall be allowed unless, within 30 days after entry of the
4 order appealed from, counsel files in the office of the clerk of the
5 Commission a notice of appeal. A copy of the notice of appeal shall
6 be mailed or delivered to each party to the appeal, including the
7 Attorney General of Virginia, and an acceptance of such service or a
8 certificate showing the date of delivery or mailing shall be appended
9 thereto. All petitions for appeal from the same order shall be
10 deemed to be a consolidated case for the purpose of oral argument in this
11 Court unless this Court shall order a severance for convenience of
12 hearing.

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

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

30
31 (6) Alignment of Parties. Within 21 days after the notice of
32 appeal shall have been filed in the office of the clerk of the
33 Commission, each party who has not filed a notice of appeal and who
34 intends to participate in the appeal shall file in the office of the clerk of
35 the Commission and shall mail to every other party a notice that he
36 intends to participate as an appellant or as an appellee. Every party
37 who seeks reversal or modification of the order appealed from shall
38 be deemed an appellant, and every party who seeks affirmance of
39 the order appealed from shall be deemed an appellee. Every party
40 who does not file such a notice and every party who, having filed

1 such a notice as an appellant, does not thereafter file a petition for
2 appeal shall be deemed no longer to be a party to the appeal, and no
3 further papers need be served on him. Notwithstanding the foregoing
4 provisions, (i) a necessary party who does not file such a notice or
5 petition for appeal shall be deemed an appellee, and (ii) the
6 Commission need not file such a notice and shall be deemed an
7 appellee.

8
9 (7) Petition for Appeal. The petition(s) for appeal, accompanied
10 by the prescribed filing fee, shall be filed in the office of the clerk of
11 this Court within 4 months after entry of the final order, judgment or
12 finding by the Commission. Each party deemed to be an appellant
13 shall file a petition for appeal, as limited hereafter, and shall, before
14 the petition is filed, mail or deliver a copy to every other party to the
15 appeal. Except as provided herein, the provisions of Rule 5:17 do not
16 apply to a petition filed pursuant to this paragraph. The petition for
17 appeal need only identify the order appealed from, with its date,
18 contain a prayer that the appeal be granted, and include the
19 certificate required by Rule 5:17(i). Oral argument on the petition
20 shall not be allowed nor will a brief in opposition be received. If the
21 petition prays for a suspension of the effectiveness of the order
22 appealed from, it shall contain such statements of the facts and
23 argument as shall be necessary for an understanding of the
24 assignments of error. In that event, a brief in opposition will be
25 received and oral argument may be granted.

26
27 (8) Award of Appeal. When the notice of appeal, the record,
28 and the petition(s) for appeal appear to have been filed in the manner
29 provided herein and within the time provided herein and by law, the
30 clerk of this Court shall forthwith enter an order docketing the
31 appeal, requiring such bond as the clerk shall deem proper. The
32 clerk's action shall be subject to review by this Court.

33
34 (9) Assignments of Error. Within 10 days after the issuance by
35 the clerk of this Court of the certificate pursuant to Rule 5:23, each
36 party appellant shall file assignments of error in the office of the clerk
37 of this Court and mail a copy thereof to every other party to the appeal. A
38 clear and exact reference to the pages of the transcript, written statement
39 of facts, or record where the alleged error has been preserved shall
40 be included with each assignment of error. Only errors so assigned will

1 be noticed by this Court and no error not so assigned will be admitted as
2 the ground for reversal of the decision below. Error will not be sustained
3 to any ruling by the Commission unless the objection was stated with
4 reasonable certainty at the time of the ruling, except for good cause
5 shown or to enable this Court to attain the ends of justice. An assignment
6 of error which merely states that the judgment is contrary to the law and
7 the evidence is not sufficient.

8
9 (10) Further Proceedings. Further proceedings in this Court
10 shall conform to Rules 5:23 through 5:38 provided that (i) the time
11 within which the appellee may file with the clerk of this Court a designation
12 of the additional parts of the record that the appellee wishes included
13 in the appendix (Rule 5:32(b)) shall be extended to 30 days after the date
14 of the certificate of the clerk of this Court pursuant to Rule 5:23 an
15 appeal has been awarded; and (ii) the time within which the opening
16 brief of the appellant shall be filed in the office of the clerk of this
17 Court shall be extended to 50 days after such date.

18
19 (11) Additional Brief. An appellant who seeks relief different
20 from that sought by another appellant may file an answering brief at
21 the time prescribed for filing the brief of appellee.

22
23 (b) Appeals from the Virginia State Bar Disciplinary Board or a Three-
24 Judge Circuit Court Determination.

25
26 (1) Applicability. Paragraph (b) of this Rule applies to appeals
27 from the Virginia State Bar Disciplinary Board, pursuant to Part 6, §
28 IV, Paragraph 13.J of the Rules of the Supreme Court of Virginia, and
29 to appeals from the decisions of a three-judge circuit court pursuant
30 to Code § 54.1-3935. As used in this paragraph, "Respondent" is
31 defined as the attorney who is appealing the decision of the
32 disciplinary proceeding.

33
34 (2) Perfecting the Appeal.

35
36 (i) Provisions for Appeals from the Virginia State Bar
37 Disciplinary Board. No appeal shall be allowed under this
38 paragraph unless the Respondent files a notice of appeal and
39 assignments of error with the clerk of the Disciplinary System
40 within 30 days after the Memorandum Order is served on the

1 attorney by certified mail, return receipt requested, at the
2 attorney's last address on record for membership purposes with
3 the Virginia State Bar. At the same time the Respondent files a
4 notice of appeal and assignments of error, a copy of the notice
5 of appeal and assignments of error must be sent to the counsel
6 for the Bar and the Attorney General of Virginia. The
7 Respondent is responsible for filing a transcript in compliance
8 with Rule 5:11. The date of the Memorandum Order shall be
9 the date from which the time limits contained in Rule 5:11 shall
10 run. This action within the time prescribed is mandatory. Upon
11 timely compliance with these rules, the Clerk of the Supreme
12 Court shall docket the appeal as provided in Rule 5:23.

13
14 (ii) Provisions for Appeals from a Three-Judge Circuit
15 Court. No appeal shall be allowed under this paragraph unless
16 the Respondent files a notice of appeal and assignments of
17 error with the clerk of the three-judge circuit court within 30
18 days after the entry of the final judgment and, at the same time,
19 mails a copy of the notice of appeal and assignments of error to
20 counsel for the Bar and the Attorney General of Virginia. The
21 Respondent is responsible for filing a transcript in compliance
22 with Rule 5:11. The date of the judgment shall be the date from
23 which the time limits contained in Rule 5:11 shall run. This
24 action within the time prescribed is mandatory. Upon timely
25 compliance with these rules, the Clerk of the Supreme Court
26 shall docket the appeal as provided in Rule 5:23.

27
28 (3) Record on Appeal. The clerk of the Disciplinary System or
29 the clerk of the three-judge circuit court shall compile and transmit the
30 record as set out in Rules 5:10, 5:11, and 5:13. The clerk shall
31 immediately notify by certified mail the Respondent, and the
32 Respondent's counsel, if any, and the Attorney General of the date
33 the record is filed with the clerk of this Court. At the time the record
34 is filed, the clerk shall also notify the clerk of this Court and the
35 Respondent whether the Attorney General or Bar Counsel will
36 represent the interests of the Commonwealth as appellee.

37
38 (4) Time for Filing Briefs and Appendix. The parties shall
39 designate the contents of the appendix pursuant to the requirements
40 of Rule 5:32 and the Respondent shall be responsible for filing the

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

11
12 (5) Stay Pending Appeal. The Respondent may file a motion
13 with the clerk of this Court requesting a stay pending appeal of an
14 order suspending the Respondent's license. The Respondent
15 must file four copies of the motion for stay along with a copy of the
16 order imposing the suspension and a copy of the Respondent's notice of
17 appeal, which must contain the date stamp of the clerk showing the
18 date the notice of appeal was filed.

19
20 (6) Procedure on Appeal. Except as provided in this paragraph,
21 further proceedings shall be as provided in this Court's procedure
22 following the perfection of an appeal set out in Rules 5:23, 5:25, and
23 Rules 5:33 through 5:38.

24
25 **Rule 5:22. Special Rule for Appeals in Death Penalty Cases.**

26
27 (a) Notice of Receipt of Record. Upon receipt of a record pursuant to
28 § 17.1-313 B, the clerk of this Court shall notify in writing counsel for the
29 accused in the circuit court (who shall be deemed to be counsel for the
30 appellant), the Attorney General (who shall be deemed to be counsel for
31 the appellee), and the Director of the Department of Corrections of the date
32 of its receipt. The date of the receipt of the record is the Filing Date and the
33 case shall thereupon stand matured as if an appeal had been awarded to
34 review the conviction and the sentence of death.

35
36 (b) Stay of Sentence of Death. Upon the Filing Date, the notice
37 issued by the clerk of this Court shall be deemed to be the certificate of the
38 clerk of this Court pursuant to Rule 5:23 that an appeal has been awarded,
39 and the enforcement of the sentence of death shall thereby be stayed
40 pending the final determination of the case by this Court.

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

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

21
22 (e) Requirements for Briefs.

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

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

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

35
36 (f) Compliance with Rules for Perfected Appeals. Except to the extent
37 that a conflict with this Rule may arise, in which case this Rule shall then be
38 controlling, further proceedings in the case shall conform to the Rules
39 relating to cases in which an appeal has been perfected.
40

1 (g) Varying Procedure to Attain the Ends of Justice. This Court may,
2 on motion in a particular case, vary the procedure prescribed by this Rule
3 in order to attain the ends of justice and the purpose of § 17.1-313.
4

5 **G. Procedure Following Perfection of Appeal.**
6

7 **Rule 5:23. Perfection of Appeal; Docketing.**
8

9 (a) Grant of Petition for Appeal. Promptly after a petition for appeal
10 has been granted, the clerk of this Court shall certify this action to counsel
11 for the appellant, counsel for the appellee, and the tribunal from which the
12 appeal is taken. The case shall be considered mature for purposes of
13 further proceedings from the date of such certificate.
14

15 (b) Docketing. Cases shall be placed on the docket when they
16 mature. Precedence shall be given to the following cases:
17

18 (1) review of sentences of death;
19

20 (2) criminal cases;
21

22 (3) cases from the State Corporation Commission;
23

24 (4) cases of original jurisdiction;
25

26 (5) cases to be reheard; and
27

28 (6) any other cases required by statute to be given precedence.
29

30 This Court may, however, for good cause shown or for reasons appearing
31 sufficient to the Court, give preference to other cases.
32

33 **Rule 5:24. Security for Appeal.**
34

35 (a) All security for appeal required under Code § 8.01-676.1 shall
36 substantially conform to the forms set forth in the Appendix to this Part
37 Five.
38

39 (b) No appeal shall be dismissed because of a defect in any bond or
40 irrevocable letter of credit unless an appellee, within 21 days after the

1 issuance of the certificate pursuant to Rule 5:23, files with the clerk of this
2 Court a statement in writing of the defects in the bond or irrevocable letter
3 of credit, and unless the appellant fails to correct such defects, if any, within
4 21 days after such statement is filed. If the appellant fails to correct such
5 defects within such period of 21 days, an appellee may move that the
6 appeal be dismissed and it shall be dismissed unless the appellant satisfies
7 this Court that the bond or irrevocable letter of credit, either as originally
8 given or as amended, has been filed in the required form.

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

11
12
13 No ruling of the trial court, disciplinary board, or commission before
14 which the case was initially tried will be considered as a basis for reversal
15 unless the objection was stated together with the grounds therefor at the
16 time of the ruling, except for good cause shown or to enable this Court to
17 attain the ends of justice. A mere statement that the judgment or award is
18 contrary to the law and the evidence is not sufficient to preserve the issue
19 for appellate review.

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

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

26
27 (b) Length. Except by permission of a Justice of this Court, neither
28 the opening brief of appellant, nor the brief of appellee, nor a brief amicus
29 curiae shall exceed 50 pages or 8,750 words. No reply brief shall exceed
30 15 pages or 2,625 words. The page or word limits under this Rule do not
31 include appendices, the cover page, table of contents, table of authorities,
32 and certificate. There shall be no exception to these limits except by
33 permission of this Court on motion for extension of the limits.

34
35 (c) Filing Time. In cases where a petition for appeal has been granted
36 by this Court, briefs shall be filed subject to the provisions of Rule 5:1(d), as
37 follows:

1 (1) The appellant shall file the opening brief in the office of the
2 clerk of this Court within 40 days after the date of the certificate of
3 appeal issued by the clerk of this Court pursuant to Rule 5:23.
4

5 (2) The brief of appellee shall be filed in the office of the clerk of
6 this Court within 25 days after filing of the opening brief.
7

8 (3) The appellant may file a reply brief in the office of the clerk
9 of this Court within 14 days after filing of the brief of appellee.
10

11 (d) Extension of Time. Upon motion and with permission of a Justice
12 of this Court, the time for filing any brief in this Court may be altered.
13

14 (e) Copies. One electronic version, in Adobe Acrobat Portable
15 Document Format (PDF) format, must be filed with the clerk of this Court
16 and served on opposing counsel, unless excused by this Court for good
17 cause shown. The electronic version may be filed on CD-ROM or emailed
18 to scvbrieffs@courts.state.va.us. In addition, twelve copies of each brief
19 (including a brief amicus curiae) shall be filed in the office of the clerk of
20 this Court and three copies shall be mailed or delivered to opposing
21 counsel on or before the day on which the brief is filed. Three copies of a
22 brief amicus curiae shall be mailed or delivered to counsel for all parties
23 and to any other counsel amicus curiae. All briefs shall contain a certificate
24 evidencing such mailing or delivery and the method of transmission to the
25 clerk for filing.
26

27 (f) Reference to Parties. In their briefs, counsel should avoid
28 reference to parties by such designations as "appellant" and "appellee."
29 Clarity is promoted by the use of the names of the parties or descriptive
30 terms such as "the employee," "the injured person," "the driver," "the wife,"
31 or the designations used in the lower court or commission.
32

33 (g) Arguments Made by Reference. Attempts to incorporate
34 arguments made below by reference to pleadings, motions, memorandum,
35 or other filings are prohibited.
36

37 (h) Signature and Certificate. All briefs shall contain the signature,
38 which need not be in handwriting, of at least one counsel of record,
39 counsel's Virginia State Bar number, address, telephone number, facsimile
40 number (if any), and email address (if any), and a certificate that there has

1 been compliance with this Rule. If a word count is used, the certificate must
2 also state the number of words (headings, footnotes, and quotations count
3 towards the word limitation; the cover page, table of contents, table of
4 authorities, and certificate do not count towards the word count).

5
6 (i) Any party who fails to file a brief in compliance with these Rules or
7 otherwise fails to file a required brief will not be heard orally, except for
8 good cause shown.

9
10 **Rule 5:27. Requirements for Opening Brief of Appellant.**

11
12
13 The opening brief of the appellant shall comply with the requirements
14 of Rules 5:6 and 5:26, and must contain the following:

15
16 (a) A table of contents and table of authorities with cases
17 alphabetically arranged. Citations of all authorities shall include the year
18 thereof.

19
20 (b) A statement of the case containing the material proceedings
21 below and the facts, with references to the appendix.

22
23 (c) The assignments of error, with a clear and exact reference to the
24 pages of the appendix where the alleged error has been preserved.

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

32
33 (e) A short conclusion stating the precise relief sought.

34
35 **Rule 5:28. Requirements for Brief of Appellee.**

36
37 The brief of appellee shall comply with Rules 5:6 and 5:26, and must
38 contain the following:

1 (a) A table of contents and table of authorities with cases
2 alphabetically arranged. Citations of all authorities shall include the year
3 thereof.
4

5 (b) A statement of the case if the appellee disagrees with the
6 statement presented by the appellant. In an appeal of right to this Court
7 from an order disciplining, suspending, or disbaring an attorney-at-law, the
8 Virginia State Bar may include assignments of cross-error. In such cases,
9 no cross-error not then assigned will be noticed by this Court.
10

11 (c) A statement of the facts necessary to correct or amplify the
12 statement in the brief of appellant with appropriate references to the pages
13 of the appendix. Any quotation from the record should be brief. The
14 testimony of individual witnesses should not be summarized seriatim
15 unless the facts are in dispute and such a summary is necessary to support
16 the appellee's version of the facts.
17

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

25 (e) With respect to the assignments of cross-error, if any:
26

27 (1) A statement of the assignment of cross-error, with a clear
28 and exact reference to the pages of the appendix where the alleged
29 cross-error has been preserved.
30

31 (2) The standard of review, the argument, and the authorities
32 relating to each assignment of cross-error. With respect to each such
33 assignment of cross-error, the standard of review, the argument –
34 including principles of law, and the authorities shall be stated in one
35 place and not scattered through the brief.
36

37 (3) A statement of the precise relief sought.
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Rule 5:29. Requirements for Reply Brief.

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

Rule 5:30. Briefs Amicus Curiae.

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

(b) Who May File a Brief Amicus Curiae Without Leave of Court.

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

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

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

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

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

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

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

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

7 (a) What Covers Must Be Used on Papers Filed with this Court. To
8 facilitate identification, documents shall bear covers colored as follows:
9

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

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18 (b) No appeal shall be dismissed for failure to comply with the
19 provisions of this Rule.
20

21 **Rule 5:32. Appendix.**
22
23
24

25 (a) Responsibility of the Appellant.
26

27 (1) Contents of the Appendix. The appellant must prepare and
28 file an appendix. The appendix shall contain:
29

30 (i) the initial pleading (as finally amended), unless other
31 versions are necessary to consider the assignments of
32 error;
33

34 (ii) final judgments of all tribunals that have considered
35 the case, including the judgment appealed from, and any
36 opinion relating to such judgments;
37

38 (iii) testimony and other incidents of the case germane to
39 the assignments of error;
40

1 (iv) exhibits necessary for an understanding of the case
2 that can reasonably be reproduced;

3
4 (v) the granted assignments of error and cross-error;

5
6 (vi) other parts of the record to which the parties wish to
7 direct this Court's attention; and

8
9 (vii) a table of contents as described in paragraph (d)
10 below.

11
12 (2) Assumptions and Excluded Material. It will be assumed that
13 the appendix contains everything germane to the granted
14 assignments of error and, if any, assignments of cross-error.
15 Memoranda of law in the trial court should not be included in the
16 appendix unless they have independent relevance. Parts of the
17 record may be relied on by this Court or the parties even though not
18 included in the appendix.

19
20 (3) Time to File; Number of Copies.

21
22 (i) Generally. The appellant must file 20 copies of the
23 appendix with the appellant's brief, and must serve two copies
24 on counsel for each party separately represented. This Court
25 may by order require the filing or service of a different number.

26
27 (ii) Special Rule for Electronic Filing of the Appendix. In
28 lieu of the 20 tangible copies required by paragraph (a)(3)(i) of
29 this Rule, the appellant may file 10 tangible copies of the
30 appendix and 10 electronic copies of the appendix as an Adobe
31 Acrobat Portable Document Format (PDF) document on CD-
32 ROMs. If the appellant files 10 electronic copies with this
33 Court, then it must also serve one electronic copy on counsel
34 for each party separately represented in addition to the one
35 tangible copy required by paragraph (a)(3)(i) of this Rule.

36
37 (b) Responsibility of All Parties.

38
39 (1) Determining the Contents of the Appendix. The parties are
40 encouraged to agree on the contents of the appendix. Within 15 days

1 after the date of the certificate of the clerk of this Court issued
2 pursuant to Rule 5:23, counsel for appellant shall file in the office of
3 the clerk of this Court a written statement signed by all counsel
4 setting forth an agreed designation of the parts of the record on
5 appeal to be included in the appendix. In the absence of an
6 agreement, the appellant must, within 15 days after the date of the
7 certificate of appeal issued by the clerk of this Court pursuant to Rule
8 5:23, file with the clerk of this Court and serve on the appellee a
9 designation of the parts of the record the appellant intends to include
10 in the appendix. The appellee may, within 15 days after receiving the
11 designation, file with the clerk of this Court and serve on the appellant
12 a designation of additional parts of the record the appellee deems
13 germane. The appellant must include the parts designated by the
14 appellee in the appendix. The parties must not engage in an
15 unnecessary designation of parts of the record, because the entire
16 record is available to the Court.

17
18 (2) Sealed Materials in the Appendix. Appendices filed with this
19 Court are a matter of public record. If counsel concludes it is
20 necessary to include sealed material in the appendix, then, in order to
21 maintain the confidentiality of the materials, counsel must designate
22 the sealed material for inclusion in a supplemental appendix to be
23 filed separately from the regular appendix, and must file a specific
24 motion asking this Court to seal the supplemental appendix within the
25 time stated for the designation of the appendix in paragraph (b)(1) of
26 this Rule.

27
28 (3) Costs of Appendix. Unless the parties agree otherwise, the
29 appellant must initially pay the cost of the appendix, but if the
30 appellant in good faith considers that parts of the record designated
31 by the appellee for inclusion are unnecessary for the determination of
32 the assignments of error, the appellant initially preparing the appendix
33 may so advise the clerk of this Court and the appellee, and the
34 appellee who designated the challenged material shall advance the
35 cost of including such parts. The cost of producing the appendix shall
36 be taxed as costs in the case, but if any party shall cause
37 unnecessary material to be included in the appendix this Court sua
38 sponte or upon motion may impose the cost of including such parts
39 upon that party.
40

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

8
9 (d) Table of Contents and Form of Presentation. The appendix must
10 begin with a table of contents identifying the page at which each part
11 begins. When the testimony of witnesses is included, the name of each
12 witness who is testifying must be in the table of contents with a page
13 number at which each portion of the testimony begins (direct, cross,
14 redirect, etc.). Parts of the record should be in the appendix in
15 chronological order. Omissions in the text of papers or of the transcript
16 must be indicated by asterisks. The index for exhibits should include a
17 description of the exhibit sufficient to inform this Court of its nature rather
18 than merely an exhibit number.

19
20 (e) Effect of Non-Compliance with this Rule. An appeal will not be
21 dismissed for failure to file an appendix in compliance with this Rule. If an
22 appendix is not filed within the time prescribed, or on its face fails to comply
23 with this Rule, this Court may direct the filing of a proper appendix within a
24 specific time and may require a non-complying attorney or unrepresented
25 party to advance all or part of the cost of printing the appendix. This Court
26 may dismiss an appeal for non-compliance with an order entered under this
27 paragraph.

28
29 **Rule 5:33. Oral Argument.**

30
31 (a) Notice. Whenever an appeal lies as a matter of right or a petition
32 for appeal has been granted, the clerk of this Court, except in extraordinary
33 circumstances, shall give at least 15 days notice to counsel of the date,
34 approximate time, and location for oral argument.

35
36 (b) Length. Except as otherwise directed by this Court, argument for a
37 party shall not exceed 15 minutes in length. Such time may be apportioned
38 among counsel for the same side at their discretion.

39

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

5 (d) Amicus Curiae. No oral argument by amicus curiae is permitted
6 except by leave of this Court. Leave may be granted upon the joint written
7 request of amicus curiae and the party whose position amicus curiae
8 supports. The request shall specify the amount of its allotted time the
9 supported party is willing to yield to amicus curiae.
10

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12
13 (e) Waiver. During oral argument, it shall not be necessary for any
14 party to expressly reserve any argument made on brief, and the failure to
15 raise any such argument shall not constitute a waiver. Any party may,
16 without waiving the arguments made on brief, waive oral argument.
17

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

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

20
21
22 Promptly after this Court has decided a case, the clerk of this Court
23 shall send a copy of the decision to all counsel of record and to the court or
24 commission from which the appeal proceeded.
25

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

27
28 (a) To Whom Allowed. Except as otherwise provided by law, if an
29 appeal is dismissed, costs shall be taxed against the appellant unless
30 otherwise agreed by the parties or ordered by this Court; if a judgment is
31 affirmed, costs shall be taxed against the appellant unless otherwise
32 ordered; if a judgment is reversed, costs shall be taxed against the
33 appellee unless otherwise ordered; if a judgment is affirmed in part or
34 reversed in part, or is vacated, costs shall be allowed as ordered by this
35 Court.
36

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

1
2 (c) Taxable Costs. Costs, including the filing fee and costs incurred in
3 the printing or producing of necessary copies of briefs, appendices, and
4 petitions for rehearing, shall be taxable in this Court.

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

11
12 (e) Award. The clerk of this Court shall prepare and certify an
13 itemized statement of costs taxed in this Court for insertion in the mandate,
14 but the issuance of the mandate shall not be delayed for taxation of costs.
15 If the mandate has been issued before final determination of costs, the
16 statement, or any amendment thereof, shall be added to the mandate on
17 request by the clerk of this Court to the clerk of the tribunal in which the
18 case originated.

19
20 **Rule 5:36. Mandate.**

21
22 (a) Time. When there can be no further proceedings in this Court, the
23 clerk of this Court shall forward its mandate promptly to the clerk of the
24 circuit court or commission in which the case originated and to the clerk of
25 the Court of Appeals if the case has been heard by that court.

26
27 (b) Opinions. If the judgment or order is supported by an opinion, a
28 certified copy of the opinion shall accompany the mandate.

29
30 **Rule 5:37. Petition for Rehearing After Consideration by the Full**
31 **Court.**

32
33 (a) Scope. This Rule does not apply to the refusal or dismissal of a
34 petition for appeal, or the refusal or dismissal of an original jurisdiction
35 petition. See Rules 5:20 and 5:20A.

36
37 (b) Notice of Intent. A party intending to apply for a rehearing shall file
38 written notice with the clerk of this Court within 10 days after the date of the
39 order or opinion of this Court deciding the case. If such notice is given, the
40 clerk of this Court shall withhold certification of the mandate until time for

1 filing the petition for rehearing has expired and, if the petition is filed, until it
2 is disposed of.

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

10
11
12 (d) Requirements for All Others.

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

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

17 (e) Grounds for Granting. No petition for rehearing shall be granted
18 unless one of the Justices who decided the case adversely to the applicant
19 determines that there is good cause for such rehearing. The proceedings
20 upon such rehearing shall be in accordance with Code § 8.01-675.2. No
21 oral argument will be permitted on applications for rehearing.
22

23 (f) When a Rehearing is Granted. When a rehearing is granted, the
24 case will be placed on the privileged docket for oral argument. The
25 petitioner may not file any brief in addition to the petition for rehearing. The
26 respondent may file electronically, in compliance with paragraph (d) of this
27 Rule, a brief in reply that shall not exceed 15 pages in length or 2,625
28 words within 21 days after the date of the order granting the rehearing. The
29 respondent will be heard orally whether or not respondent files a brief in
30 reply. The case will be called at the next session of the Court after the
31 expiration of the 21 days unless counsel agree that it be called at a session
32 of the Court commencing at an earlier time and the Court permits the case
33 to be called at an earlier time.
34
35
36

37 **I. Settlement or Withdrawal.**

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

1 When a case has been settled or the appeal withdrawn at any time
2 after the notice of appeal has been filed, it shall be the duty of counsel to
3 notify the clerk of this Court by filing a written notice that the case has been
4 settled or the appeal withdrawn. If counsel certifies that the terms of the
5 settlement or withdrawal require further proceedings in the trial court, a
6 single Justice may approve entry of an order of remand.
7

8 **J. Supreme Court of the United States.**
9

10 **Rule 5:39. Delay in Issuing Mandate Upon Appeal or Petition to**
11 **Supreme Court of the United States.**
12

13 If a party intends to file an appeal with the Supreme Court of the
14 United States or seek a writ of certiorari from that court, this Court may,
15 upon motion filed within 15 days after the date of the order of this Court
16 deciding the case, and upon compliance with such conditions as this Court
17 may impose, defer the issuance of its mandate until proceedings in the
18 Supreme Court of the United States have been terminated. Thereupon, the
19 mandate shall issue forthwith.
20

21 **K. Certification of Questions of Law.**
22

23 **Rule 5:40. Certification Procedures.**
24

25 (a) Power to Answer. This Court may in its discretion answer
26 questions of law certified to it by the Supreme Court of the United States, a
27 United States court of appeals for any circuit, a United States district court,
28 or the highest appellate court of any state, territory, or the District of
29 Columbia. Such answer may be furnished, when requested by the
30 certifying court, if a question of Virginia law is determinative in any
31 proceeding pending before the certifying court and it appears there is no
32 controlling precedent on point in the decisions of this Court or the Court of
33 Appeals of Virginia.
34

35 (b) Method of Invoking. This Rule may be invoked only by an order of
36 one of the courts referred to in paragraph (a) of this Rule. No party litigant
37 in the foregoing courts may file a petition or motion for certification in this
38 Court.
39
40

1 (c) Contents of Certification Order. A certification order shall set forth:
2

3 (1) the nature of the controversy in which the question arises;
4

5 (2) the question of law to be answered;
6

7 (3) a statement of all facts relevant to the question certified;
8

9 (4) the names of each of the parties involved;
10

11 (5) the name, Virginia State Bar number, mailing address,
12 telephone number (including any applicable extension), facsimile
13 number (if any), and e-mail address (if any) of counsel for each of the
14 parties involved;
15

16 (6) a brief statement explaining how the certified question of law
17 is determinative of the proceeding in the certifying court; and
18

19 (7) a brief statement setting forth relevant decisions, if any, of
20 this Court and the Court of Appeals of Virginia and the reasons why
21 such decisions are not controlling.
22

23 (d) Preparation of Certification Order. The certification order shall be
24 prepared by the certifying court, signed by the presiding justice or judge,
25 and forwarded to this Court by the clerk of the certifying court under its
26 official seal. This Court may require the original or copies of all or of any
27 portion of the record before the certifying court to be filed, if, in the opinion
28 of this Court, the record or portion thereof may be necessary in answering
29 the certified question. This Court may in its discretion restate any question
30 of law certified or may request from the certifying court additional
31 clarification with respect to any question certified or with respect to any
32 facts.
33

34 (e) Notification of Acceptance or Rejection. This Court, in its
35 discretion, may decide whether to answer any certified question of law.
36 This Court will notify the certifying court and counsel for the parties of its
37 decision to accept or to reject any certified question of law. A notice
38 accepting a question will include a briefing schedule and, if this Court
39 permits oral argument, a tentative date and the length of time allowed for
40 such argument.

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(f) Revocation of Acceptance. This Court, in its discretion, may revoke its decision to answer a certified question of law at any time. This Court will notify the certifying court and counsel for the parties of any such action.

(g) Costs of Certification. Fees and costs shall be the same as in civil appeals docketed in this Court and shall be paid as ordered by the certifying court in its order of certification.

(h) Briefs. The form, length, and time for submission of briefs shall comply with Rules 5:26 through 5:32 mutatis mutandis.

(i) Opinion. A written opinion of this Court stating the law governing each question certified will be rendered as soon as practicable after the submission of briefs and after any oral argument. The opinion will be sent by the clerk under the seal of this Court to the certifying court and to counsel for the parties and shall, if this Court so directs, be published in the Virginia Reports.