

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 10th *day of* April, 2015.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective July 1, 2015.

Amend Rule 5:10 to read as follows:

Rule 5:10. Record on Appeal: Contents.

(a) *Contents.* -- The following constitute the record on appeal from the trial court:

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

* * *

Add Rule 5:13A to read as follows:

Rule 5:13A. Digital Appellate Record: Preparation and Transmission.

(a) *Preparation.* -- For courts that utilize the Case Imaging System developed by the Office of the Executive Secretary, a Digital Appellate Record may be created instead of a paper record, with substantially the same content as its paper counterpart. The clerk of the court in which the proceeding originated shall be responsible for preparing the digital record, if the clerk chooses to transmit a digital record in place of the paper version.

(b) *Form of Record.* -- The digital record shall comply with the Digital Appellate Record Standards posted on the Supreme Court of Virginia intranet.

(c) *Exhibits.* -- Original exhibits should be imaged and retained by the clerk of the trial court. The omission of any exhibit that cannot be scanned or imaged must be noted in a descriptive list of exhibits. On motion or sua sponte, this Court may order the trial court to transmit any retained exhibit.

(d) *Transmission.* -- The clerk of the trial court shall transmit the record to the clerk of this Court, in a manner prescribed by the Digital Appellate Record Standards, using the Digital Records System created for this purpose. The same timing and dismissal rules apply to transmissions of digital records as apply to their paper counterparts in Rule 5:13.

(e) *Disposition of Record.* -- When the mandate is issued by this Court, the clerk of this Court shall return all tangible items, if any, to the clerk of the trial court in which the proceeding originated. The digital record will not be returned. If necessary, the record shall be re-sent by that clerk upon the request of the clerk of this Court.

(f) *Public Record.* -- The publicly available digital record shall be the digital document prepared by the trial court clerk with all information that is sealed or protected from public disclosure by law redacted or excluded.

Amend Rule 5:15 to read as follows:

Rule 5:15. Record on Appeal from Court of Appeals or Certification for Review.

(a) *Generally.* -- In cases on appeal from the Court of Appeals and those certified for review, the record in this Court shall consist of the record as filed in the office of the clerk of the Court of Appeals and, in addition, all other documents relating to the case which have been filed in the office of the clerk of the Court of Appeals, including any opinion or memorandum decision in cases decided by the Court of Appeals. Pursuant to Rule 5:13 or Rule 5:13A, the clerk of the Court of Appeals shall transmit all such documents to the clerk of this Court within 10 days after the filing of the notice of appeal to this Court or the issuance of the certification for review. The clerk of the Court of Appeals shall certify that the documents so transmitted constitute the record in the Court of Appeals.

* * *

Amend Rule 5A:7 to read as follows:

Rule 5A:7. Record on Appeal: Contents.

(a) *Contents.* -- The following constitute the record on appeal from the trial court:

(1) the documents and exhibits filed or lodged in the office of the clerk of the trial court, including any report of a commissioner in chancery and the accompanying depositions

and other papers;

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

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

(4) each order entered by the trial court;

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

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

(7) the transcript of any proceeding or a written statement of facts, testimony, and other incidents of the case when made a part of the record as provided in Rule 5A:8, or the official videotape recording of any proceeding in those circuit courts authorized by the Supreme Court to use videotape recordings. This Court may require that any videotape proceedings be transcribed, in whole or in part, and made a part of the record as provided in Rule 5A:8, except that the transcript shall be filed within 60 days after the entry of the order requiring such transcript; and

(8) the notice of appeal.

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

Amend Rule 5A:10 to read as follows:

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

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

(b) *Form of the Record.* --

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

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

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

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

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

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

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

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

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

(c) *Abbreviated Record.* -- When the assignments of error presented by an appeal can be determined without examination of all the pleadings, facts, testimony, and other incidents of the case, all counsel with the approval of the trial court may prepare for submission an abbreviated record, stating how the assignments of error in the case arose and were decided, and setting forth only so

much of the pleadings, facts, testimony, and other incidents of the case as are essential to a determination of the issues on appeal. Such abbreviated record shall be signed by all counsel and the trial judge and filed in the office of the clerk of the trial court. It will be assumed that the abbreviated record contains everything germane to the assignments of error. The Court of Appeals may, however, consider other parts of the record to enable this Court to attain the ends of justice.

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

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

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

Add Rule 5A:10A to read as follows:

Rule 5A:10A. Digital Appellate Record: Preparation and Transmission.

(a) *Preparation.* -- For courts that utilize the Case Imaging System developed by the Office of the Executive Secretary, a Digital Appellate Record may be created instead of a paper record, with substantially the same content as its paper counterpart. The clerk of the court in which the proceeding originated shall be responsible for preparing the digital record, if the clerk chooses to transmit a digital record in place of the paper version.

(b) *Form of Record.* -- The digital record shall comply with the Digital Appellate Record Standards posted on the Court of Appeals of Virginia intranet.

(c) *Exhibits.* -- Original exhibits should be scanned or imaged and retained by the clerk of the trial court. The omission of any exhibit that cannot be scanned or imaged must be noted in a descriptive list of exhibits. On motion or sua sponte, this Court may order the trial court to transmit any retained exhibit.

(d) *Transmission.* -- The clerk of the trial court shall

transmit the record to the clerk of this Court in the manner prescribed by the Digital Appellate Record Standards, using the Digital Records System created for this purpose. The same timing and dismissal rules apply to transmissions of digital records as apply to their paper counterparts in Rule 5A:10.

(e) *Disposition of Record.* -- When the mandate is issued by this Court, the clerk of this Court shall return all tangible items, if any, to the clerk of the trial court in which the proceeding originated. The digital record will not be returned. If necessary, the record shall be re-sent by that clerk upon the request of the clerk of this Court.

(f) *Public Record.* -- The publicly available digital record shall be the digital document prepared by the trial court clerk with all information that is sealed or protected from public disclosure by law redacted or excluded.

A Copy,

Teste:

Octav L. Hamilton

Clerk