

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

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

(a) *Penalties; Show Cause; Dismissal.* This Court may dismiss an appeal or impose such other penalty as it deems appropriate for non-compliance with these Rules. Except as provided in Rule 5:17(c)(1)(i) and (iii), regarding assignments of error, prior to the dismissal of an appeal for any defect in the filings related to formatting, curable failure to comply with other requirements, or the failure to meet non-mandatory filing deadlines, this Court may issue a show cause order to counsel or a party not represented by an attorney, prescribing a time in which to cure such defect or to otherwise show cause why the appeal should not be dismissed or other penalty imposed.

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

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

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

Rule 5:17. Petition for Appeal.

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

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

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

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

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

(1) Assignments of Error. Under a heading entitled “Assignments of Error,” the petition shall list, clearly and concisely and without extraneous argument, the specific errors in the rulings below upon which the party intends to rely. An exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken shall be included with each assignment of error but is not part of the assignment of error.

(i) Effect of Failure to Assign Error ~~or Use Separate Heading~~. Only assignments of error assigned in the petition for appeal will be noticed by this Court. If the petition for appeal does not contain assignments of error, ~~or if the assignments of error are not set forth under a separate heading as provided in subparagraph (c)(1) of this Rule,~~ the petition shall be dismissed.

(ii) Nature of Assignments of Error in Appeals from the Court of Appeals. When appeal is taken from a judgment of the Court of Appeals, only assignments of error relating to assignments of error presented in, and to actions taken by, the Court of Appeals may be included in the petition for appeal to this Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) *Oral Argument.*

(1) *Right to Oral Argument.* The appellant shall be entitled to state orally, in person or by telephone conference call, to a panel of this Court the reasons why the petition for appeal should be granted. The appellee shall not be entitled to oral argument, whether in person or by telephone conference call. Any lawyer not

licensed in Virginia who seeks to appear pro hac vice to present oral argument to the Court must comply with the requirements of Rule 1A:4.

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

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

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

Last amended by Order dated May 16, 2014; effective immediately.

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

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

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

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

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

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

Rule 5A:12. Petition for Appeal.

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

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

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

(1) Assignments of Error. ~~The provisions of Rule 5A:18 shall apply to limit those assignments of error which this Court will rule upon on appeal.~~ Under a heading entitled "Assignments of Error," the petition shall list, clearly and concisely and without extraneous argument, the specific errors in the rulings below upon which the party intends to rely. An exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken shall be included with each assignment of error but is not part of the assignment of error.

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

(ii) Insufficient Assignments of Error. An assignment of error which does not address the findings or rulings in the trial court or other tribunal from which an appeal is taken, or which merely states that the judgment or award is contrary to the law and the evidence, is not sufficient. If the assignments of error are insufficient ~~or otherwise fail to comply with the requirements of this Rule~~, the petition for appeal shall be dismissed.

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

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

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

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

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

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

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

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

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

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

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

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

(h) *Procedure for an Anders appeal.* If counsel for appellant finds his client's appeal to be without merit, he must comply with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *Akbar v. Commonwealth*, 7 Va. App. 611, 376 S.E.2d 545 (1989).

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

Last amended by Order dated May 16, 2014; effective immediately.