

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
B. ORIGINAL JURISDICTION

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

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

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

(2) *What the Petition Must Contain.* The petition must be notarized and must state whether the petitioner believes that the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing relevant authorities must accompany each petition. All petitions must comply with the requirements of Code § 8.01-655. Where a petition for a writ of habeas corpus is filed by counsel, counsel shall attach as an exhibit a single copy of the complete record of the proceedings that resulted in the detention the petition challenges.

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

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

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

(iii) *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

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

(5) 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 grounds of defense as in an action at law. The answer shall state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities shall accompany each responsive pleading. In any case in which the respondent states an opinion that the taking of evidence is not necessary for the proper disposition of a petition for a writ of habeas corpus, the respondent shall attach as an exhibit (1) a single copy of the complete record of the proceedings that resulted in the detention the petition challenges, provided that such record has not previously been provided by counsel for petitioner and (2) copies of any other document on which the respondent relies to assert that the taking of evidence is not necessary.

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

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

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

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

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

(2) Service of Petitions.

(i) Generally. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent. Except in cases brought

by prisoners acting pro se, service of process must be accomplished in accordance with Chapter 8 of Title 8.01.

(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." When 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 respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities should accompany each responsive pleading.

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

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

(c) *When this Court May Act on a Petition.* This Court may act on any petition for a writ of habeas corpus, mandamus, or prohibition before a responsive pleading is filed.

This Court may by order shorten the period within which a responsive pleading must be filed.

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

(e) *Amendment of Petition.* If the statute of limitations has not expired, a petitioner may move – at any time before a ruling is rendered on the merits of the petition as initially filed – for leave of this Court to substitute an amended petition. This amendment can include additional claims not presented in the petition as initially filed. Any such motion shall attach a copy of the proposed amended petition.

Last amended by Order dated January 31, 2018; effective April 1, 2018.