

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
C. PROCEDURE FOR FILING AN APPEAL FROM A TRIAL COURT

Rule 5:13. Record on Appeal: Preparation and Transmission.

(a) *Preparation.* The clerk of the trial court, disciplinary board, or commission in which the proceeding originated 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 paper included in the record and the page on which it begins;

(iii) each paper 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) *Transmission.* The clerk of the trial court shall retain the record for ~~21 days~~ 90 days after the notice of appeal has been filed with him pursuant to Rule 5:9. 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 5:11(g), the clerk of the trial court shall retain the record for 5 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.

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

Last amended by Order dated March 24, 2017; effective July 1, 2017.

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~~ 90 days 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, or the specific existing case law that should be overturned, extended, modified, or reversed. 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.

(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, 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 and to counsel for the appellee or any pro se appellee who has filed a Brief in Opposition or otherwise appeared in the appeal.

Last amended by Order dated March 24, 2017; effective July 1, 2017.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
F. SPECIAL RULES

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

(a) Appeals from the State Corporation Commission. -

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

(2) **Party to the Commission Proceeding.** For the purposes of paragraph (a), the Commission, the Attorney General, the applicant or petitioner, and every person who made an appearance in person or by counsel in a capacity other than as a witness at any hearing in any proceeding before the Commission shall be the parties to such proceeding. Any party who is aggrieved by any final order, judgment, or finding of the Commission, or part thereof, is entitled to an appeal to this Court upon perfecting the appeal as provided by paragraph (a). Upon the request of any party, the clerk of the Commission shall prepare and certify a list of all parties (including their addresses and the names and addresses of their counsel) to a proceeding before the Commission. Service upon a party represented by counsel shall be made upon his counsel.

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

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

(5) **Contents of Record.** The record on appeal from the Commission shall consist of all notices of appeal, any application or petition, all orders entered in the case by the Commission, the opinions, the transcript of any testimony received, and all exhibits accepted or rejected, together with such other material as may be certified

by the clerk of the Commission to be a part of the record. The record shall conform as nearly as practicable to the requirements of Rule 5:10.

(6) Petition for Appeal. Only a party who has filed a notice of appeal in compliance with paragraph (a)(3) of this Rule may file a petition for appeal. A party filing a notice of appeal shall file a petition for appeal, accompanied by the prescribed filing fee, in the office of the clerk of this Court within ~~4 months~~ 120 days after entry of the final order, judgment or finding by the Commission and, prior to the filing of the petition shall mail or deliver a copy to every other party to the Commission proceeding. Except as provided herein, the provisions of Rule 5:17 do not apply to a petition filed pursuant to this subparagraph. The petition for appeal shall identify the order appealed from and the date of the order, contain assignments of error, and include the certificate required by Rule 5:17(i). Oral argument on the petition shall not be allowed nor will a brief in opposition be received. If the petition prays for a suspension of the effective date of the order appealed from, it shall contain an assignment of error regarding the effective date of the order appealed from and such statements of the facts and argument as shall be necessary for an understanding of this assignment of error. In that event, a brief in opposition will be received. The brief in opposition must be filed within 15 days of the filing of the petition for appeal, may be no longer than 10 pages or 1,750 words, and may only address the assignment of error regarding the effective date of the order appealed from. Oral argument on the assignment of error regarding the effective date of the order appealed from may be granted.

(7) Assignments of Error. The assignments of error shall be listed under a heading entitled "Assignments of Error." The assignments of error shall clearly and concisely and without extraneous argument identify the specific errors in the rulings below upon which the party intends to rely. A clear and exact reference to the pages of the transcript, written statement of facts, or record where the alleged error has been preserved shall be included with each assignment of error. Only errors so assigned will be noticed by this Court and no error not so assigned will be considered as grounds for reversal of the decision below. No ruling by the Commission will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice. An assignment of error which merely states that the judgment is contrary to the law and the evidence is not sufficient.

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

(9) Notice of Participation in an Appeal. Within 21 days after an appeal from a Commission order has been docketed as provided in subparagraph (8), any party to the Commission proceeding who did not file a notice of appeal may file a notice of

participation with the clerk of this Court. The notice shall identify whether the party seeks to be an appellant or appellee. If there is more than one appellant, the notice of participation as an appellant must identify the specific appellant(s) with which the participating appellant will align. Participating parties shall follow the briefing schedule and requirements of subparagraph 10, except that a participating party may not raise any additional assignments of error or cross-error. The notice of participation as appellant or appellee shall be mailed or delivered to every other party to the Commission proceeding.

Every party who has not filed a notice of appeal or notice of participation, or having filed a notice of appeal does not file a petition as provided herein, shall not be a party to the appeal and no further papers shall be served on such party. Notwithstanding the foregoing provision, a necessary party who does not file a notice of appeal, petition or notice of participation shall be deemed an appellee. The Commission need not file a notice of participation and shall be deemed an appellee.

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

(11) Withdrawal or Settlement of Pending Appeal. A party who filed a notice of and petition for appeal may withdraw his appeal. Notice of withdrawal or settlement shall conform to Rule 5:38. Settlement or withdrawal of an appeal terminates that appellant's appeal and any participating party aligned with that appellant shall be deemed to have withdrawn its participation in the settled or withdrawn appeal.

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

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

(2) Perfecting the Appeal.

(i) Provisions for Appeals from the Virginia State Bar Disciplinary Board. No appeal shall be allowed under this paragraph unless the Respondent files a notice of appeal and assignments of error with the clerk of the Disciplinary System within 30 days after the Memorandum Order is served on the attorney by certified mail, return receipt requested, at the attorney's last address on record for membership purposes with the Virginia State Bar. At the same time the

Respondent files a notice of appeal and assignments of error, a copy of the notice of appeal and assignments of error must be sent to the counsel for the Bar and the Attorney General of Virginia. The Respondent is responsible for filing a transcript in compliance with Rule 5:11. The date of the Memorandum Order shall be the date from which the time limits contained in Rule 5:11 shall run. This action within the time prescribed is mandatory. Upon timely compliance with these rules, the Clerk of the Supreme Court shall docket the appeal as provided in Rule 5:23.

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

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

(4) Time for Filing Briefs and Appendix. The parties shall designate the contents of the appendix pursuant to the requirements of Rule 5:32 and the Respondent shall be responsible for filing the appendix pursuant to that Rule. The Respondent shall file the opening brief in the office of the clerk of this Court within 40 days after the date the record is filed. The opening brief shall contain assignments of error and references to the pages of the appendix, transcript, written statement, or record where each assignment of error was preserved. The brief of the appellee shall be filed in the office of the clerk of this Court within 25 days after the filing of the Respondent's opening brief. The Respondent may file a reply brief within 14 days after the filing of the appellee's brief. All briefs and the appendix shall conform to the provisions of Rules 5:26 through 5:32.

(5) Stay Pending Appeal. The Respondent may file a motion with the clerk of this Court requesting a stay pending appeal of an order suspending or revoking the Respondent's license. The Respondent must file four copies of the motion for stay along with a copy of the order imposing the suspension or revocation and a copy of the Respondent's notice of appeal, which must contain the date stamp of the clerk showing the date the notice of appeal was filed. Any order of Admonition or Public Reprimand shall be automatically stayed prior to or during the pendency of an appeal of the order.

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

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