

**Last amended by Order dated March 1, 2011; effective May 2, 2011.**

## **PART FIVE A**

### **THE COURT OF APPEALS**

#### **A. General.**

##### **Rule 5A:1. Scope, Citation, Applicability and General Provisions.**

- (a) *Scope of Rules.* Part Five A governs all proceedings in the Court of Appeals of Virginia.
- (b) *Citation.* These Rules may be cited generally as the “Rules of the Court of Appeals of Virginia” and specifically as “Rule 5A:\_\_\_\_.”
- (c) *Definitions.*
- (1) "clerk of the trial court" means clerk of the trial court from which an appeal is taken to the Court of Appeals, and shall include a deputy clerk and the clerk of the Virginia Workers' Compensation Commission when the context requires;
  - (2) "clerk of the Court of Appeals" includes a deputy clerk;
  - (3) "counsel" has the definition given in Rule 1:5 for Counsel of Record and in this Part Five A includes a party not represented by counsel and any attorney appointed as a guardian ad litem;
  - (4) "counsel for appellant" means one of the attorneys representing each appellant represented by an attorney, and each appellant not represented by an attorney;
  - (5) "counsel for appellee" means one of the attorneys representing each appellee represented by an attorney, and each appellee not represented by an attorney and shall include a guardian ad litem, unless the guardian ad litem is the appellant;
  - (6) "opposing counsel" means, depending on the context, "counsel for the appellant" or "counsel for the appellee";
  - (7) "judge" means judge of the trial court, unless the context otherwise requires, or if he be not available, any judge authorized to act under Rule 5A:9;
  - (8) "judgment" includes an order or decree from which an appeal is taken;
  - (9) "File with the clerk" or "files with the clerk" or "filed with the clerk" means deliver to the clerk specified a paper, a copy of which has been mailed or delivered to opposing counsel, and appended to which is either acceptance of service or a certificate showing the date of mailing or delivery. "File in the office of the clerk" or "files in the office of the clerk" or "filed in the office of the clerk" means, on the other hand, deliver a paper to the clerk specified;
  - (10) "trial court" means the circuit court from which an appeal is taken to the Court of Appeals;
  - (11) the "date of entry" of any final judgment or other appealable order or decree shall be the date the judgment, order, or decree is signed by the judge.
- (d) *Service.* Unless service or notice is otherwise specified in a given Rule, any paper or object filed with this Court must have included within it or appended to it a certificate of service or acceptance of service showing that a copy has been transmitted to all counsel and showing the date and manner of transmittal. If a word count limitation is required, the certificate must also state 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).

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

(f) *Citing Unpublished Judicial Dispositions.* The citation of judicial opinions, orders, judgments, or other written dispositions that are not officially reported, whether designated as “unpublished,” “not for publication,” “non precedential,” or the like, is permitted as informative, but shall not be received as binding authority. If the cited disposition is not available in a publicly accessible electronic database, a copy of that disposition must be filed with the brief or other paper in which it is cited.

## **Rule 5A:2. Motions and Responses; Orders.**

### *(a) Motions and Responses.*

(1) **Motions.** All motions shall be in writing and filed with the clerk of this Court. All motions shall contain a statement by the movant that the other parties to the appeal have been informed of the intended filing of the motion. For all motions in cases when all parties are represented by counsel – except motions to dismiss petitions for a writ of habeas corpus – the statement by the movant shall also indicate whether the other parties consent to the granting of the motion, or intend to file responses in opposition.

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

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

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

(b) *Motion for Review of Pre-trial Bail Orders in Criminal Cases.* When a circuit court has granted or denied pre-trial bail or set a bond or terms of recognizance or revoked bail, either party may move this Court to review the order. With the motion for review, the party seeking review shall submit copies of: (1) the warrant(s) or indictment(s) in the case; (2) the order granting, denying, or setting bond; and (3) a transcript of the bond hearing or a stipulation between counsel stating the evidence introduced at the bond hearing and the ruling of the circuit court. An order setting or denying bail or setting terms of a bond or recognizance shall be reviewable for abuse of discretion.

(c) *Motion for Review of Post-trial Bail Pending Appeal Orders in Criminal Cases.* When a notice of appeal has been filed in a criminal case, an appellant other than the Commonwealth may move this Court to review the trial court’s order denying bail pending appeal or setting an excessive bail pending appeal. With the motion for review, the appellant shall submit copies of: (1) the sentencing order entered by the trial court; (2) a pre-sentence report when available; (3) the trial court’s decision setting or denying bail; and (4) a transcript of the bail hearing or a stipulation between counsel stating the evidence introduced at the bail hearing and the reason the trial court gave for the bail decision. An order setting or denying bail pending appeal in a criminal case shall be

reviewable for abuse of discretion. If this Court overrules a trial court decision denying bail pending appeal, this Court shall set the amount of the bail pending appeal or remand the matter to the trial court with directions to set bail pending appeal.

(d) *Orders*. Promptly after this Court has entered an order, the clerk of this Court shall send a copy of the order to all counsel.

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

(a) *Filing Deadlines and Extensions*. The times prescribed for filing the notice of appeal (Rules 5A:6 and 5A:11), a petition for appeal (Rule 5A:12), and a petition for rehearing (Rule 5A:33) and a request for rehearing en banc (Rule 5A:34) are mandatory. Except for the petition for appeal which is addressed in Rule 5A:12(a) and Code § 17.1-408, a single extension not to exceed thirty days may be granted if at least three judges of the Court of Appeals concur in a finding that an extension for papers to be filed is warranted upon a showing of good cause sufficient to excuse the delay. The time period for filing the notice of appeal is not extended by the filing of a motion for a new trial, a petition for rehearing, or a like pleading unless the final judgment is modified, vacated, or suspended by the trial court pursuant to Rule 1:1, in which case the time for filing shall be computed from the date of the final judgment entered following such modification, vacation, or suspension.

(b) *Extensions Generally*. Except as provided in paragraph (a) of this Rule, the times prescribed in these Rules for filing papers, except transcripts (Rule 5A:8(a)), may be extended by a judge of the court in which the papers are to be filed upon a showing of good cause sufficient to excuse the delay.

(c) *Motions for Extension*. A motion for extension of time is timely if filed:

- (1) within the original filing deadline; or
- (2) within the specified extension period – see Rules 5A:3(a) and 5A:12(a); or
- (3) within any specific deadline governing motions to extend – see Rules 5A:8(a), 5A:13(a), 5A:14, 5A:19(b), and 5A:19(c).

Filing a motion for extension does not toll the applicable deadline or further extend the period of extension.

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

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

## **Rule 5A:4. Forms of Briefs and Other Papers.**

(a) *Paper Size, Line Spacing, Font, and Margins.* Briefs, appendices, motions, petitions, and other papers may be printed by any process that yields a clear black image on white paper and must be on pages 8-1/2 x 11 inch paper. All printed matter for briefs, motions, petitions, and other papers must be in at least 12-point font; appendices must be in at least 12-point font. Text shall not be reduced, and must be double-spaced except for headings, assignments of error, quotations, and footnotes. Margins must be at least one inch on all four sides of each page. The use of condensed or multi-page transcripts is prohibited.

(b) *Binding and Cover.* All briefs, appendices, petitions for rehearing, and petitions for rehearing en banc shall be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco fasteners, and the like are not acceptable. The style of the case (with the name of the appellant stated first) and the record number of the case and 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 submitting the paper shall be placed on the front cover.

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

(d) *Certificate of Compliance with Word Count Limitation.* Any brief, motion, petition, or other paper that has a word count limitation in these Rules must include a certificate by the attorney, or unrepresented party, that the document complies with the applicable word count limitation. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the document. The certificate must state the number of words the document contains, excluding those parts specifically exempted by these Rules.

## **B. Original Jurisdiction.**

### **Rule 5A:5. Original Proceedings.**

(a) *Original Jurisdiction Proceedings Other Than Actual Innocence Petitions.* With the exception of petitions for the issuance of writs of actual innocence under paragraph (b) of this Rule, all proceedings before the Court of Appeals pursuant to its original jurisdiction shall be conducted in accordance with the procedure prescribed by Rule 5:7 of the Rules of the Supreme Court.

(b) *Petition for a Writ of Actual Innocence.*

(1) *Scope.* Any person convicted of a felony upon a plea of not guilty may file in this Court a petition under Code § 19.2-327.10 et seq. seeking a writ of actual innocence based on nonbiological evidence.

(2) *Form and Contents of Petition.* The petition must be filed using Form 12 in the Appendix of Forms following Part 5A and must include all allegations and documents required by subsections A and B of Code § 19.2-327.11. Under Code § ~~19.2-327.11(B)~~ 19.2-327.11(B) “relevant documents” shall include, but not be limited to, any felony conviction and sentencing orders being challenged, any appellate dispositions on direct review or any habeas corpus orders (issued by any federal or state court), and any prior petitions filed under Code § 19.2-327.10 et seq. in the Court of Appeals or under Code § 19.2-327.2 et seq. in the Supreme Court.

(3) All pleadings shall name as the petitioner the person convicted of a felony who is seeking relief. The pleadings shall identify the Commonwealth, represented by the Attorney General, as the respondent.

(4) Filing Fee. The petition must be accompanied by either (i) a \$50.00 check or money order for the filing fee required by statute, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee. An affidavit seeking in forma pauperis status shall list all assets and liabilities of petitioner, including the current balance of any inmate account maintained by correctional facility.

(5) Appointment of Counsel. If this Court does not summarily dismiss the petition, this Court shall appoint counsel for any indigent petitioner who requests the appointment of counsel and satisfies the indigency criteria of Code § 19.2-159. In this Court's discretion, counsel may be appointed at an earlier stage of the proceeding at the petitioner's request upon a showing of requisite indigency. All requests for the appointment of counsel shall be made on the form provided by this Court.

(6) Service of Petition and Return of Service. Prior to filing a petition, the petitioner shall serve the petition, along with all attachments, on the Attorney General and on the Commonwealth's Attorney for the jurisdiction where the conviction occurred. When represented by counsel, the petitioner shall file with the petition either (i) a duly executed return of service in the form of a verification that a copy of the petition and all attachments have been served, or (ii) an acceptance of service signed by either or both of the parties to be served, or (iii) a combination of the two. When unrepresented by counsel, the petitioner shall file with the petition a certificate that a copy of the petition and all attachments have been sent, by certified mail, to the Attorney General and the Commonwealth's Attorney for the jurisdiction where the conviction occurred.

(7) Response. If the Court of Appeals does not summarily dismiss the petition, this Court will provide written notice to all parties directing the Commonwealth, within 60 days after receipt of such notice, to file a response to the petition pursuant to Code § 19.2-327.11(C). For good cause shown, the 60-day deadline may be extended by this Court. The Commonwealth's response may include any information pertinent to the petitioner's guilt, including proffers of evidence outside the trial court record and evidence previously suppressed at trial.

(8) Reply. The petitioner may file a reply to the Commonwealth's response only if directed to do so by this Court.

(9) Copies. An original and four copies of the petition, the Commonwealth's response, and the petitioner's reply, if any, shall be filed with this Court. Attachments shall be included with the original petition, response, or reply, but not with any copies of the same.

(10) Evidentiary Hearing. The Court of Appeals may order the circuit court that entered the conviction to conduct an evidentiary hearing and to certify factual findings pursuant to Code § 19.2-327.12. Such findings, however, shall be limited to the specific questions addressed by the Court of Appeals in its certification order. In the circuit court, the petitioner and the Commonwealth shall be afforded an opportunity to present evidence and to examine witnesses on matters relevant to the certified questions.

(11) Oral Argument. Unless otherwise directed by this Court, oral argument shall only be allowed on the final decision whether to grant or deny the writ under Code § 19.2-327.13.

(12) Appeal. The petitioner or the Commonwealth may petition for appeal to the Supreme Court from any adverse final decision issued by the Court of Appeals under Code § 19.2-327.13 to issue or deny a writ of actual innocence. Such an appeal shall be initiated by the filing of a notice of appeal pursuant to Rule 5:14.

## **C. Procedure for Filing an Appeal From the Trial Court.**

### **Rule 5A:6. Notice of Appeal.**

(a) *Filing Deadline; Where to File.* No appeal shall be allowed unless, within 30 days after entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court under Rule 5A:3(a), counsel files with the clerk of the trial court a notice of appeal, and at the same time mails or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the court announces a decision or ruling – but before the entry of such judgment or order – is treated as filed on the date of and after the entry. A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file in the trial court an appeal bond in compliance with Code § 8.01-676.1.

(b) *Content.* The notice of appeal shall contain a statement whether any transcript or statement of facts, testimony, and other incidents of the case will be filed.

(c) *Filing Fee.* A copy of the notice of appeal shall be filed in the office of the clerk of the Court of Appeals and, except as otherwise provided by law, must be accompanied by a check or money order in the amount of \$50 payable to the “Clerk of the Court of Appeals” for the filing fee required by statute. The fee shall be due at the time the notice of appeal is presented. The clerk of the Court of Appeals may file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within ten days of the date the notice of appeal is filed. If the fee is not received within such time, the appeal shall be dismissed.

(d) *Certificate.* The appellant shall include with the notice of appeal a certificate stating:

(1) the names and addresses 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, facsimile number (if any), and e-mail address (if any) of any party not represented by counsel; and

(2) that a copy of the notice of appeal has been mailed or delivered to all opposing counsel; and

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

(4) that in the event a transcript is to be filed a copy of the transcript has been ordered from the court reporter who reported the case.

(e) *Separate Cases.* Whenever two or more cases were tried together in the trial court, one notice of appeal and one record may be used to bring all of such cases before this Court even though such cases were not consolidated by formal order.

(f) *Special Provision for Cases Involving a Guardian Ad Litem.* No appeal shall be dismissed because the notice of appeal fails to identify a guardian ad litem or to provide notice to a guardian ad

litem. Upon motion for good cause shown or by sua sponte order of this Court, the notice of appeal may be amended to identify the guardian ad litem and to provide notice to such guardian.

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

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

- (1) the original papers 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) the original draft or a copy of 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.

### **Rule 5A:8. Record on Appeal: Transcript or Written Statement.**

(a) *Transcript.* The transcript of any proceeding is a part of the record when it is filed in the office of the clerk of the trial court within 60 days after entry of the final judgment. This deadline may be extended by a Judge of the Court of Appeals only upon a written motion filed within 90 days after the entry of final judgment. Timely motions will be granted only upon a showing of good cause to excuse the delay.

(b) *Notice of Filing Transcript.*

- (1) Time for Filing. Within 10 days after the transcript is filed or, if the transcript is filed prior to the filing of the notice of appeal, within 10 days after the notice of appeal is filed, counsel for appellant shall:
  - (i) give written notice to all other counsel of the date on which the transcript was filed, and
  - (ii) file a copy of the notice with the clerk of the trial court.

There shall be appended to the notice either a certificate of counsel for appellant that a copy of the notice has been mailed to all other counsel or an acceptance of service of such notice by all other counsel.

(2) **Multiple Transcripts.** When multiple transcripts are filed, the 10-day period for filing the notice required by this Rule shall be calculated from the date on which the last transcript is filed or from the date on which the notice of appeal is filed, whichever is later. The notice of filing transcripts shall identify all transcripts filed and the date upon which the last transcript was filed.

(3) **Notice of No Further Transcripts.** If the notice of appeal states that no additional transcripts will be filed and identifies the transcripts that have been filed, if any, then no additional written notice of filing transcripts is required and the notice of appeal will serve as the notice of filing transcripts for purposes of Rule 5A:8(b).

(4) **Effect of Non-compliance.**

(i) Any failure to file the notice required by this Rule that materially prejudices an appellee will result in the affected transcripts being stricken from the record on appeal. For purposes of this Rule, material prejudice includes preventing the appellee from raising legitimate objections to the contents of the transcript or misleading the appellee about the contents of the record. The appellee shall have the burden of establishing such prejudice in the brief in opposition or, if no brief in opposition is filed, in a written statement filed with the clerk of this Court within twenty-one days after the record is received by the clerk.

(ii) When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues, any assignments of error affected by such omission shall not be considered.

(c) *Written Statement in Lieu of Transcript.* A written statement of facts, testimony, and other incidents of the case becomes a part of the record when:

(1) within 55 days after entry of judgment a copy of such statement is filed in the office of the clerk of the trial court. A copy must be mailed or delivered to opposing counsel on the same day that it is filed in the office of the clerk of the trial court, accompanied by notice that such statement will be presented to the trial judge no earlier than 15 days nor later than 20 days after such filing; and

(2) the statement is signed by the trial judge and filed in the office of the clerk of the trial court. The judge may sign the statement forthwith upon its presentation to him if it is signed by counsel for all parties, but if objection is made to the accuracy or completeness of the statement, it shall be signed in accordance with paragraph (d) of this Rule.

The term “other incidents of the case” in this subsection includes motions, proffers, objections, and rulings of the trial court regarding any issue that a party intends to assign as error or otherwise address on appeal.

(d) *Objections.* Any party may object to a transcript or written statement on the ground that it is erroneous or incomplete. Notice of such objection specifying the errors alleged or deficiencies asserted shall be filed with the clerk of the trial court within 15 days after the date the notice of filing the transcript (paragraph (b) of this Rule) or within 15 days after the date the notice of filing the written statement (paragraph (c) of this Rule) is filed in the office of the clerk of the trial court or, if the transcript or written statement is filed before the notice of appeal is filed, within 10 days after the notice of appeal has been filed with the clerk of the trial court. The clerk shall give prompt notice of



the filing of such objections to the trial judge. Within 10 days after the notice of objection is filed with the clerk of the trial court, the judge shall:

- (1) overrule the objection; or
- (2) make any corrections that the trial judge deems necessary; or
- (3) include any accurate additions to make the record complete; or
- (4) certify the manner in which the record is incomplete; and
- (5) sign the transcript or written statement.

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

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

### **Rule 5A:9. Judge Authorized to Act.**

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

### **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 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) *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 ~~or commission in which the proceeding originated~~. The record shall be returned by that clerk upon the request of the clerk of this Court.

## **D. Procedure for Filing an Appeal From the Workers' Compensation Commission.**

### **Rule 5A:11. Special Rule Applicable to Appeals From the Virginia Workers' Compensation Commission.**

(a) *Non-Application of Other Rules.* Rules 5A:6 through 5A:10 do not apply to appeals from the Virginia Workers' Compensation Commission except as otherwise specified in this Part Five A.

(b) *Notice of Appeal.* No appeal from an order of the Commission shall be allowed unless, within 30 days after entry of the order appealed from, or within 30 days after receipt of notice by priority mail with delivery confirmation or equivalent mailing option of the order appealed from, counsel files with the clerk of the Virginia Workers' Compensation Commission a notice of appeal which shall state the names and addresses 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, facsimile number (if any), and e-mail address (if any) of any party not represented by counsel, and whether the appellant challenges the sufficiency of the evidence to support the findings of the Commission. A copy of the notice of appeal also shall be filed in the office of the clerk of this Court, and except as otherwise provided by law, must be accompanied by a check or money order in the amount of \$50 payable to the "Clerk of the Court of Appeals," for the filing fee required by statute. The fee shall be due at the time the notice of appeal is presented. The clerk of this Court may file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within ten days of the date the notice of appeal is filed. If the fee is not received within such time, the appeal shall be dismissed.

(c) *Record on Appeal.* The record on appeal from the Commission shall consist of the originals or copies of the notice of appeal, the employer's first report, medical reports, applications for hearings, the transcript of any hearing, depositions, interrogatories and answer to interrogatories, and opinions of a commissioner or deputy commissioner and opinions of the Commission, together with such other material as may be certified by the clerk of the Commission and shall conform as nearly as practicable to the requirements of Rule 5A:10 (b), provided, that, unless it is stated in the notice of appeal that the appellant challenges the sufficiency of the evidence to support the findings of the Commission, the clerk of the Commission need not prepare or certify the transcript of any hearing.

(d) *Transmission of Record.* The record shall, as soon as it is certified by the clerk of the Commission, be transmitted by him to the clerk of this Court. It shall be so transmitted within 30 days after filing of the notice of appeal.

(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 this Court.

(f) *Separate Cases.* Whenever two or more cases were tried together in the Virginia Workers' Compensation Commission, one notice of appeal and one record may be used to bring all such cases before this Court even though such cases were not consolidated by formal order.

(g) *Record Returned to Commission.* When the mandate is issued by this Court, the clerk of this Court shall return the record to the clerk of the Commission. The clerk of the Commission shall return the record upon request of the clerk of this Court.

## **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 pages 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, it 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.

(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.

### **Rule 5A:13. Brief in Opposition.**

(a) *Filing Time.* A brief in opposition to granting the appeal may be filed with the clerk of this Court by the appellee within 21 days after the petition for appeal is served on counsel for the appellee. Within the same time he shall mail or deliver a copy to counsel for appellant. Four copies shall be filed. Motions for an extension to this briefing deadline shall be filed no later than 10 days after the expiration of the deadline.

(b) *Form and Content.* The brief in opposition shall conform in all respects to the requirements of the brief of appellee (Rule 5A:21).

(1) Length. Except by leave of a Judge of this Court, the brief shall not exceed 8,800 words.

(2) Table of Contents and Table of Authorities. If the brief exceeds 3,500 words, it shall contain a table of contents and table of authorities with cases alphabetically arranged.

(3) Criminal or Traffic Cases. In a criminal or traffic case, a brief may be filed by the Commonwealth's attorney, city, county, or town attorney, as the case may be.

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

### **Rule 5A:14. Reply Brief.**

When a brief in opposition to the petition for appeal has been filed, the appellant may, within 14 days thereafter, in lieu of oral argument, file with the clerk of this Court a reply brief not to exceed 5,300 words in length. Four copies shall be filed. Motions for an extension to this briefing deadline shall be filed no later than 10 days after the expiration of the deadline.

### **Rule 5A:15. Denial of Petition for Appeal; Petition for Rehearing.**

(a) *Denial by a Single Judge.* When a petition for appeal is denied by a Judge of this Court pursuant to Code § 17.1-407(C), the clerk of this Court shall send a copy of the order denying the petition to counsel for the appellant and counsel for the appellee. Pro se prisoners and those with leave of this Court to proceed under this Rule may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D). The demand shall be filed in writing. Four copies must

be filed with the clerk of this Court within fourteen days after the date of the order by which the petition was denied. The demand, which shall include a statement identifying how the one-judge order is in error, shall not exceed 350 words. Oral argument shall not be permitted on consideration of a petition by a three-judge panel unless oral argument was requested in the petition for appeal pursuant to Rule 5A:12(c). A petitioner who has previously requested oral argument may waive oral argument by so stating in the demand for review. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this Rule must follow the provisions of Rule 5A:15A(a) when filing a demand for three-judge review pursuant to Code § 17.1-407(D).

(b) *Denial by a Three-Judge Panel.* When a petition for appeal is denied by a three-judge panel, the clerk of this Court shall send a copy of the order or memorandum opinion denying the appeal to counsel for the appellant and counsel for the appellee. Pro se prisoners and those with leave of this Court to proceed under this Rule may, within 14 days after the date of this notice, file a petition for rehearing in writing in the office of the clerk of this Court unless the denial was by a three-Judge panel after its consideration of a petition denied by a Judge of this Court pursuant to Code § 17.1-407. The petition for rehearing shall not exceed 5,300 words in length. The petition shall state that a copy has been mailed or delivered to counsel for the appellee. Four copies shall be filed. Oral argument on the petition for rehearing will not be allowed. The petition for rehearing shall be referred to the panel of this Court that considered the petition for appeal. No responsive brief shall be filed unless requested by this Court. The clerk of this Court shall notify counsel for the appellant and counsel for the appellee of the action taken by this Court on the petition for rehearing. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this Rule must follow the provisions of Rule 5A:15A(b) when filing a petition for a rehearing of an order of a three-judge panel denying a petition for appeal.

### **Rule 5A:15A. Denial of Petition for Appeal; Petition for Rehearing Filed by Electronic Means.**

(a) *Proceedings After Denial of Petition by Single Judge.*

(1) When a petition for appeal is denied by a Judge of this Court pursuant to Code § 17.1-407(C), the clerk of this Court shall send a copy of the order denying the petition to counsel for the appellant and counsel for the appellee. The appellant may demand consideration of the petition by three-judge panel pursuant to Code § 17.1-407(D). Demands for three-judge review filed by pro se prisoners or by those with leave of this Court to proceed under Rule 5A:15(a) shall be filed in accordance with the provisions of Rule 5A:15(a).

(2) Except for demands for three-judge review filed by pro se prisoners or by those with leave of this Court to proceed under Rule 5A:15(a), the demand shall be filed as a single Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail addressed to [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us) and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

(3) The demand, which shall include a statement identifying how the one-judge order is in error, must be formatted to print on a page 8 1/2 x 11 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 350 words. The demand must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall be included in the certificate of service. The demand must also include a certificate of compliance with the word count limit. The demand will be

considered filed on the date and time that it is received by cavpfr@courts.state.va.us. If the demand does not meet the requirements of this rule as to format, the clerk of this Court shall so notify counsel and provide a specific amount of time for a corrected copy of the demand to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed demand for three-judge review, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the demand by e-mail, any delivery failure notice received in response to the attempt, and a copy of the demand for three-judge review.

(4) The e-mail message to which the demand is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a demand for three-judge review is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the demand, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the demand. The message shall also state whether a copy of the demand has been served by e-mail or another means on opposing counsel and the date of such service. If the demand has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the demand for three-judge review in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel seeking the rehearing.

(5) Oral argument shall not be permitted on consideration of a petition by a three-judge panel unless oral argument was requested in the petition for appeal pursuant to Rule 5A:12(c). An appellant who has previously requested oral argument may waive oral argument by so stating in the demand for review.

*(b) Proceedings After Denial of Petition by Three-Judge Panel.*

(1) When a petition for appeal is denied by a three-judge panel, the clerk of this Court shall send a copy of the order or memorandum opinion denying the appeal to counsel for the appellant and counsel for the appellee. Counsel for the appellant may file a petition for rehearing in the office of the clerk of this Court unless the denial was by a three-judge panel after its consideration of a petition denied by a Judge of this Court pursuant to Code § 17.1-407. Petitions for rehearing filed by pro se prisoners or by those with leave of court to proceed under Rule 5A:15(b) shall be in accordance with the provisions of Rule 5A:15(b).

(2) Except for petitions for rehearing filed by pro se prisoners or by those with leave of this Court to proceed under Rule 5A:15(b), the petition shall be filed as a single PDF document attached to an email addressed to cavpfr@courts.state.va.us and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the order by which the petition was denied.

(3) The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 5,300 words. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall be included in the certificate of service. The petition must also include a certificate of compliance with the word count limit. Petitions filed by e-mail will be considered filed on the date and time that it is received by cavpfr@courts.state.va.us. If the petition does not meet the requirements of this rule as to format,



the clerk of this Court shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

(4) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel seeking the rehearing.

(5) Oral argument on the petition for rehearing will not be allowed. The petition for rehearing shall be referred to the panel of this Court that considered the petition for appeal. No responsive brief shall be filed unless requested by this Court. The clerk of this Court shall notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

## **F. Procedure Following Perfection of Appeal.**

### **Rule 5A:16. Perfection of Appeal; Docketing.**

(a) *Appeals as a Matter of Right.* In cases when an appeal lies as a matter of right to the Court of Appeals, such appeal shall be perfected by the timely filing of a notice of appeal pursuant to Rule 5A:6. Such case shall be considered mature for purposes of further proceedings from the date the record is filed in the office of the clerk of the Court of Appeals. A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file in the trial court an appeal bond in compliance with Code § 8.01-676.1.

(b) *Grant of Petition for Appeal.* Promptly after a petition for appeal has been granted by the Court of Appeals, the clerk of the Court of Appeals shall certify this action to the trial court and all counsel. Such case shall be considered mature for purposes of further proceedings from the date of such certificate.

(c) *Docketing.* Cases shall be placed on the docket in the order in which they mature, provided that precedence shall be given to the following cases:

- (1) criminal cases;
- (2) cases from the Virginia Workers' Compensation Commission;

- (3) cases involving termination of parental rights;
- (4) cases of original jurisdiction;
- (5) cases to be reheard; and
- (6) any other cases required by statute to be given precedence.

The Court of Appeals may, however, for good cause shown or for reasons appearing sufficient to the Court, give preference to other cases.

### **Rule 5A:17. Security for Appeal.**

(a) *Form for Security.* All security for appeal required under Code § 8.01-676.1 shall substantially conform to the forms set forth in the Appendix to this Part Five A.

(b) *Security for Appeal; Defects.* Whenever an appellant files an appeal bond or irrevocable letter of credit, he shall contemporaneously give notice in writing of said filing to counsel for appellee. No appeal shall be dismissed because of defect in any bond or irrevocable letter of credit unless an appellee, within 21 days after the giving of such notice, files with the clerk of the Court of Appeals a statement in writing of the defects in the bond or irrevocable letter of credit, and unless the appellant fails to correct such defects, if any, within 21 days after such statement is filed. If the appellant fails to correct such defects within 21 days, an appellee may move that the appeal be dismissed and it shall be dismissed unless the appellant satisfies the Court of Appeals that the bond or irrevocable letter of credit, either as originally given or as amended, has been filed as required by law.

### **Rule 5A:18. Preservation of Issues for Appellate Review.**

No ruling of the trial court or the Virginia Workers' Compensation 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 the Court of Appeals to attain the ends of justice. A mere statement that the judgment or award is contrary to the law and the evidence is not sufficient to preserve the issue for appellate review.

### **Rule 5A:19. General Requirements for All Briefs.**

(a) *Length.* Except by permission of a Judge of this Court, neither the opening brief of appellant, nor the brief of appellee, nor a brief amicus curiae shall exceed 12,300 words. No reply brief shall exceed 3,500 words. Word limits under this Rule do not include appendices, or the cover page, table of contents, table of authorities, and certificate. There shall be no exception to these limits except by permission of this Court on motion for extension of the limits.

(b) *Filing Time: Appeal as a Matter of Right.* In cases when appeal lies as a matter of right to the Court of Appeals, briefs shall be filed as follows:

(1) The appellant shall file the opening brief in the office of the clerk of the Court of Appeals within 40 days after the date of the filing of the record in such office.

(2) The brief of appellee and the brief of the guardian ad litem shall be filed in the office of the clerk of the Court of Appeals within 25 days after filing of the opening brief.

(3) The appellant may file a reply brief in the office of the clerk of the Court of Appeals within 14 days after filing of the brief of appellee or guardian ad litem.

(4) Motions for extensions to these briefing deadlines shall be filed no later than 10 days after the expiration of the deadline.

(c) *Filing Time: Grant of Petition for Appeal.* In cases when a petition for appeal has been granted by the Court of Appeals, briefs shall be filed as follows:

(1) The appellant shall file the opening brief in the office of the clerk of the Court of Appeals within 40 days after the date of the certificate of appeal issued by the clerk of the Court of Appeals pursuant to Rule 5A:16(b).

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

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

(4) Motions for extensions to these briefing deadlines shall be filed no later than 10 days after the expiration of the deadline.

(d) *Participation by Guardian Ad Litem.* If a guardian ad litem joins with either appellant or appellee, the guardian ad litem must notify the Clerk's Office, in writing, which side it joins. Thereafter, the guardian ad litem may rely on the brief of that party and is entitled to oral argument under Rule 5A:26.

(e) *Arguments Made by Reference.* Attempts to incorporate arguments made below by reference to pleadings, motions, memorandum, or other filings are prohibited.

(f) *Copies.* Seven copies of each brief shall be filed and one copy shall be mailed or delivered to opposing counsel on or before the date of filing.

## **Rule 5A:20. Requirements for Opening Brief of Appellant.**

The opening brief of appellant shall contain:

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

(b) A brief statement of the nature of the case and of the material proceedings in the trial court, which shall omit references to any paper filed or action taken that does not relate to the assignments of error.

(c) A statement of the assignments of error with a clear and exact reference to the page(s) of the transcript, written statement, record, or appendix where each assignment of error was preserved in the trial court.

(d) A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the transcript, written statement, record, or appendix. Any quotation from the record should be brief. When the facts are in dispute, the brief 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.

(e) The standard of review and the argument (including principles of law and authorities) relating to each assignment of error. When the assignment of error was not preserved in the trial court,

counsel shall state why the good cause and/or ends of justice exceptions to Rule 5A:18 are applicable. 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 brief. At the option of counsel, the argument may be preceded by a short summary.

(f) A short conclusion stating the precise relief sought.

(g) The signature (which need not be in handwriting) of at least one counsel and counsel's Virginia State Bar number, address, telephone number, facsimile number (if any), and email address (if any).

(h) A certificate (which need not be signed in handwriting) stating (1) that Rule 5A:19(f) has been complied with, and (2) whether counsel desires to waive oral argument. The certificate must also state 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). Additionally, any party may waive oral argument without leave of this Court by written notification to the clerk of this Court within 21 days after the date on which the appellee's brief is due to be filed or has been filed.

### **Rule 5A:21. Requirements for Brief of Appellee or Guardian Ad Litem.**

The brief of appellee or the brief of the guardian ad litem shall contain:

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

(b) A statement of the case if the appellee disagrees with the statement presented by the appellant and a statement of any additional assignments of error the appellee wishes to present with a clear and exact reference to the page(s) of the transcript, written statement, record, or appendix where each additional assignment of error was preserved in the trial court.

(c) A statement of the facts necessary to correct or amplify the statement in the brief of appellant with appropriate references to the pages of the transcript, written statement, record, or appendix. 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 appellee's version of the facts.

(d) The standard of review and the argument (including principles of law and authorities) relating to each assignment of error. For any additional assignment of error by appellee which was not preserved in the trial court, counsel shall state why the good cause and/or ends of justice exceptions to Rule 5A:18 are applicable. 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 brief. At the option of counsel, the argument may be preceded by a short summary.

(e) A statement of the precise relief sought, if any.

(f) The signature (which need not be in handwriting) of at least one counsel and counsel's Virginia State Bar number, address, telephone number, facsimile number (if any), and email address (if any).

(g) A certificate (which need not be signed in handwriting) stating (1) that Rule 5A:19(f) has been complied with, and (2) whether counsel desires to waive oral argument. The certificate must also state 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). Additionally, any party may waive oral argument without leave of this Court by written notification to the clerk of this Court within 21 days after the date on which the appellee's brief is due to be filed or has been filed.

### **Rule 5A:22. Requirements for Reply Brief.**

The reply brief, if any, shall contain 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. The reply brief shall contain a certificate (which need not be signed in handwriting) that Rule 5A:19(f) has been complied with. The certificate must also state 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).

### **Rule 5A:23. Briefs Amicus Curiae.**

(a) A brief amicus curiae may be filed at the petition, perfected appeal and rehearing stages of the appellate proceedings:

(1) on behalf of the United States or the Commonwealth of Virginia without the prior consent of this Court or counsel; and

(2) by any other person if it is accompanied by the written consent of all counsel; and

(3) otherwise only on motion (which may be accompanied by the proposed brief) and the consent of this Court.

(b) 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.

(c) A brief amicus curiae shall comply with the rules applicable to the brief of the party supported.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, the Court of Appeals may request that a brief amicus curiae be filed at any time.

### **Rule 5A:24. Covers of Documents.**

(a) To facilitate identification, documents shall bear covers colored as follows:

<b>Document</b>	<b>Color of Cover</b>
Appendix	Red
Brief of the Appellant	White
Brief of the Appellee	Blue
Brief of Guardian Ad Litem (if separate from appellant and appellee)	Brown
Reply Brief of the Appellant	Green

Brief Amicus Curiae	Gray
Petition for Rehearing	Yellow
Petition for Rehearing En Banc	Yellow

(b) No appeal shall be dismissed for failure to comply with the provisions of this rule; however, the clerk of the Court of Appeals may require that a document be redone in compliance with this Rule.

## **Rule 5A:25. Appendix.**

(a) *When Required.* An appendix shall be filed by the appellant in all cases no later than the time of filing his opening brief.

(b) *Filing.* If the combined lengths of the appendix and the opening brief of the appellant do not exceed the limitation prescribed in Rule 5A:19, the appendix may be filed as an addendum to the opening brief and within the same cover. If the combined lengths of the appendix and the opening brief exceed the limitation prescribed in Rule 5A:19, the appellant shall file the appendix as a separate volume. The number of copies filed and mailed to opposing counsel shall conform to Rule 5A:19(f).

(c) *Contents.* An appendix shall include:

- (1) the basic initial pleading (as finally amended);
- (2) the judgment appealed from, and any memorandum or opinion relating thereto;
- (3) any testimony and other incidents of the case germane to the assignments of error;
- (4) the title (but not the caption) of each paper contained in the appendix, and its filing date;
- (5) the names of witnesses printed at the beginning of excerpts from their testimony and at the top of each page thereof; and
- (6) exhibits necessary for an understanding of the case that can reasonably be reproduced.

(d) *Determination of Contents.* Within ten days after the filing of the record with the Court of Appeals or, in a case in which a petition for appeal has been granted, within ten days after the date of the certificate of appeal issued by the clerk of the Court of Appeals, counsel for appellant shall file in the office of the clerk of the Court of Appeals a written statement signed by all counsel setting forth an agreed designation of the parts of the record to be included in the appendix. In the absence of such an agreement, counsel for appellant shall file with the clerk of the Court of Appeals a statement of the assignments of error and a designation of the contents to be included in the appendix within fifteen days after the filing of the record or, in a case in which a petition for appeal has been granted, within fifteen days after the date of the certificate of appeal; not more than ten days after this designation is filed, counsel for appellee shall file with the clerk of the Court of Appeals a designation of any additional contents to be included in the appendix. The appellant shall include in the appendix the parts thus designated, together with any additional parts he considers germane.

(e) *Table of Contents; Form of Presentation.* At the beginning of the appendix there shall be a table of contents, which shall include the name of each witness whose testimony is included in the appendix and the page number of the appendix at which each portion of the testimony of the witness begins. Thereafter, the parts of the record to be reproduced shall be set out in chronological order. When matter contained in the transcript of proceedings is set out in the appendix, the page of the

transcript or of the record at which such matter may be found shall be indicated in brackets immediately before the matter which is set out. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial matters (such as captions, subscriptions and acknowledgements) shall be omitted. A question and its answer may be contained in a single paragraph.

(f) *Costs*. Unless counsel otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issue presented, he may so advise the appellee, and the appellee shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case.

(g) *Penalty*. Nothing shall be included in the appendix that is not germane to an assignment of error. As examples, no pleadings (other than the basic initial pleading as finally amended) shall be included unless an assignment of error is presented relating to it, and then only the portion thereof to which the assignment relates; and testimony relating solely to the amount of damages shall not be included unless error is assigned relating to the amount of damages. If parts of the record are included in the appendix unnecessarily at the direction of a party, this Court may impose the cost of producing such parts on that party.

(h) *Assumptions*. It will be assumed that the appendix contains everything germane to the assignments of error. The Court of Appeals may, however, consider other parts of the record.

#### **Rule 5A:26. Effect of Noncompliance With Rules Regarding Briefs.**

If an appellant fails to file a brief in compliance with these Rules, the Court of Appeals may dismiss the appeal. If an appellee fails to file a brief in compliance with these Rules, the Court of Appeals may disregard any additional assignments of error raised by the appellee. If one party has complied with the Rules governing briefs, but the other has not, the party in default will not be heard orally if the case proceeds to oral argument, except for good cause shown.

#### **Rule 5A:27. Summary Disposition.**

In cases in which appeal lies as a matter of right, if all the Judges of the panel of the Court of Appeals to which a pending appeal has been referred conclude from a review of the record and the briefs of the parties that the appeal is without merit, the panel shall forthwith affirm the judgment of the trial court or commission.

#### **Rule 5A:28. Oral Argument.**

(a) *Notice*. Whenever appeal lies as a matter of right or a petition for appeal has been granted, oral argument shall be permitted except in those cases disposed of pursuant to Rule 5A:27. The Clerk of the Court of Appeals, except in extraordinary circumstances, shall give at least 15 days notice to counsel of the date, approximate time, and location for oral argument.

(b) *Length*. Except as otherwise directed by the Court of Appeals, argument for a party shall not exceed 15 minutes in length. Such time may be apportioned among counsel for the same side at their discretion, except that only one counsel may present the opening argument for the appellant. If a guardian ad litem joins with either appellant or appellee, the guardian ad litem shall share the time for

oral argument with the party. If a guardian ad litem requests additional time to argue, the guardian ad litem must state that application in its brief, subject to approval of this Court.

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

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

(e) *Waiver*. During oral argument, it shall not be necessary for any party to expressly reserve any argument made on brief, and the failure to raise any such argument shall not constitute a waiver. Any party may, without waiving the arguments made on brief, waive oral argument. See Rules 5A:20(h) and 5A:21(g).

## **G. Decision, Costs, and Mandate.**

### **Rule 5A:29. Notice of Decision.**

Promptly after the Court of Appeals has decided a case, the clerk of the Court of Appeals shall send a copy of the decision to all counsel of record and to the court or commission from which the appeal proceeded.

### **Rule 5A:30. Costs and Notarized Bill of Costs.**

(a) *To Whom Allowed*. Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court of Appeals; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs shall be allowed as ordered by the Court of Appeals.

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

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

(d) *Award*. The clerk of this Court shall prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate on request by the clerk of this Court to the clerk of the trial court or the clerk of the Virginia Workers' Compensation Commission.

### **Rule 5A:31. Mandate.**



(a) *Time*. When there can be no further proceedings in the Court of Appeals or in the Supreme Court with respect to a decision of the Court of Appeals, the clerk of the Court of Appeals shall forward its mandate promptly to the clerk of the court or commission from which the appeal proceeded.

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

## **H. Rehearing.**

### **Rule 5A:32. Scope.**

The provisions of Rules 5A:33 through 5A:35 do not apply to the denial of a petition for appeal.

### **Rule 5A:33. Rehearing - On Motion of a Party After Final Disposition of a Case.**

(a) *Requirements for Pro Se Prisoners and By Leave of Court*. Pro se prisoners and those with leave of Court to proceed under this paragraph of the Rule desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case shall within 14 days following such decision or order, file seven copies of a petition for rehearing with the clerk of the Court of Appeals. The petition for rehearing shall not exceed 5,300 words in length. All petitioners other than pro se prisoners and those with leave of Court to proceed under this paragraph of the Rule must follow the provisions of paragraph (b) of this Rule when filing a petition for rehearing.

(b) *Requirements for All Others*. Any party, other than pro se prisoners or those with leave of Court to proceed under paragraph (a) of this Rule, desiring a rehearing of a decision or order of the Court of Appeals finally disposing of a case shall, within 14 days following such decision, file a petition for rehearing with the clerk of the Court of Appeals.

(1) The petition shall be filed as a single Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail addressed to [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us) and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the decision or order sought to be reheard.

(2) The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 5,300 words. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing counsel shall be by electronic means and such address shall be included in the certificate of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us). If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of this Court on the next business day all documentation which

exists demonstrating the attempt to file e-mail the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

(3) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition for rehearing.

(c) *Response*. No response to a petition for rehearing will be received unless requested by the Court of Appeals.

(d) *No Oral Argument*. No oral argument on the petition will be permitted.

(e) *Grounds*. No petition for rehearing will be granted unless one of the Judges who decided the case adversely to the petitioner determines that there is good cause for such rehearing. The clerk of the Court of Appeals shall notify counsel for the appellant and counsel for the appellee of the action taken by the Court of Appeals on the petition for rehearing via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

#### **Rule 5A:34. Rehearing En Banc After Final Disposition of a Case.**

(a) *Who May File*. Any party wishing to raise any issue decided by a panel of this Court must file a petition for rehearing en banc pursuant to this Rule.

(b) *Requirements for Pro Se Prisoners and By Leave of Court*. A pro se prisoner or a party who has leave of Court to proceed under this paragraph of the Rule aggrieved by a decision of a panel of this Court may file a petition for rehearing en banc within 14 days after the date of the order sought to be reheard. Twelve copies of any such petition shall be filed with the clerk of the Court of Appeals. The petition for rehearing en banc shall not exceed 5,300 words in length. All petitioners other than pro se prisoners and those with leave of this Court to proceed under this paragraph of the Rule must follow the provisions of paragraph (c) of this Rule when filing a petition for rehearing en banc.

(c) *Requirements for All Others*.

(1) Except for petitions for rehearing en banc filed by pro se prisoners or by those with leave of Court to proceed under paragraph (b) of this Rule, the petition shall be filed as a single Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail addressed to [cavpfr@courts.state.va.us](mailto:cavpfr@courts.state.va.us) and will be timely filed if received by the clerk's office at or before 11:59 p.m. on the fourteenth day after the date of the decision or order sought to be reheard.

(2) The petition must be formatted to print on a page 8 1/2 x 12 inches, must be in 12-point font or larger, must be double-spaced, and must not exceed 5,300 words. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. If opposing counsel has an e-mail address, service on opposing

counsel shall be by electronic means and such address shall be included in the certificate of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by cavpfr@courts.state.va.us. If the petition does not meet the requirements of this rule as to format, the clerk of the Court of Appeals shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Court of Appeals result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

(3) The e-mail message to which the petition is attached shall recite in the subject line the style of the case and the Court of Appeals record number. The body of the e-mail message shall contain a paragraph stating that a petition for rehearing en banc is being filed, the style of the case, the Court of Appeals record number, the name and Virginia State Bar number of counsel filing the petition, as well as the law firm name, mailing address, telephone number, facsimile number (if any), and e-mail address (if any) of counsel filing the petition. The message shall also state whether a copy of the petition has been served by e-mail or another means on opposing counsel and the date of such service. If the petition has been served on opposing counsel by e-mail, the e-mail address for opposing counsel shall also be included. Upon receipt of the petition for rehearing in the e-mail box of the clerk's office, an acknowledgment will be forwarded by e-mail to counsel filing the petition.

(d) *Proceedings After Petition for Rehearing.* No answer to a petition for a rehearing en banc will be received unless requested by the Court of Appeals. A rehearing en banc on motion of the Court of Appeals shall be ordered no later than 20 days after the date of rendition of the order to be reheard. The clerk of the Court of Appeals shall promptly notify counsel for both parties of the action taken by this Court on the petition for rehearing en banc via e-mail, if e-mail addresses for both counsel have been provided, or via U.S. Mail to any counsel or party who has not provided an e-mail address.

## **Rule 5A:35. Procedure for Rehearing.**

(a) *Rehearing by a Panel.* When rehearing by a panel is granted on petition of a party, the clerk of the Court of Appeals shall notify all counsel promptly. No brief in addition to the petition may be filed by petitioner. Respondent may file in the office of the clerk seven copies of an answering brief, which shall not exceed 5,300 words in length, within 21 days following the date of the order of this Court granting a rehearing. Three copies of the respondent's answering brief shall be mailed or delivered to opposing counsel on or before the date the answering brief is filed. Respondent may be heard orally whether or not an answering brief is filed. ~~and~~ The case will be placed on the docket for oral argument. When practicable, such a rehearing will be heard by the same panel that rendered the final decision in the case.

(b) *Rehearing En Banc.* When all or part of a petition for rehearing en banc is granted, the clerk of this Court shall notify all counsel promptly. The mandate entered is stayed as to all issues decided by the panel pending the decision of the Court en banc. The appeal is reinstated on the docket of the Court for oral argument only as to issues granted. Briefing and oral argument shall proceed in the same order as before the three judge panel. The Court of Appeals may require any party to whom rehearing en banc has been granted to file 20 copies of an appendix, prepared in conformity with the

provisions of Rule 5A:25, with the clerk of the Court within such time as the Court of Appeals shall specify.

(1) **Issues Considered Upon Rehearing En Banc.** Only issues raised in the petition for rehearing en banc and granted for rehearing or included in the grant by the Court on its own motion are available for briefing, argument, and review by the en banc Court. The Court may grant a petition in whole or in part. Any issue decided by a panel of this Court not subject to a petition for rehearing en banc remains undisturbed by an en banc decision.

(2) **Appellant's Opening Brief Upon Rehearing En Banc.** The party who was the appellant before the panel of this Court shall file in the office of the clerk 20 copies of a brief, which shall not exceed 12,300 words in length. Such brief shall be filed within 21 days following the date of the order of this Court granting rehearing en banc, and shall be accompanied by a certificate that three copies were mailed or delivered to opposing counsel on or before the date of filing. The brief shall bear a white cover.

(3) **Appellee's Answering Brief Upon Rehearing En Banc.** The party who was the appellee before the panel of this Court may file in the office of the clerk 20 copies of an answering brief not to exceed 12,300 words in length, within 14 days after the opening brief has been filed. Three copies of appellee's answering brief shall be mailed or delivered to opposing counsel on or before the date the answering brief is filed. The brief shall bear a blue cover. Appellee may be heard orally whether or not the answering brief is filed.

(4) **Appellant's Reply Brief Upon Rehearing En Banc.** The party who was the appellant before the panel may file in the office of the clerk a reply brief, not to exceed 3,500 words, within 14 days after the answering brief has been filed. Twenty copies of the reply brief shall be filed. Three copies of such brief shall be mailed or delivered to opposing counsel on or before the date the answering brief is filed. The brief shall bear a green cover.

## **I. Settlement, Withdrawal, and Mediation.**

### **Rule 5A:36. Settlement or Withdrawal of Pending Appeal.**

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

### **Rule 5A:37. Appellate Settlement Conference in the Court of Appeals.**

(a) *Settlement Conference.* Upon motion or sua sponte, this Court may order counsel, and clients in appropriate cases, to participate in a settlement conference. An informal motion requesting a settlement conference may be filed at any time while the matter is on appeal and should state briefly why a settlement conference would be useful. The motion shall state whether all parties concur. If a party objects, that party shall file within 7 days a short response explaining the grounds for the objection. All motions and responses may be in letter format addressed to the clerk of this Court. If this Court orders a settlement conference, it will ordinarily be held by telephone conference call and, in the discretion of the settlement judge, may be held in person at a convenient location.

(b) *Settlement Judge.* A senior or retired appellate judge will conduct all settlement conferences at no cost to the litigants.

(c) *Excluded Cases.* No settlement conference shall be conducted in appeals of criminal judgments or orders terminating parental rights or in any other case arising under this Court's original jurisdiction.

(d) *Conferences.* Prior to participating in a settlement conference, all counsel shall consult with their respective clients about settlement options and ask for express authority to settle within any parameters acceptable to the client. The settlement judge may conduct more than one conference if, in his discretion, he deems it advisable. During a conference, the settlement judge may consult ex parte with counsel, or with counsel and that counsel's client, but shall not consult ex parte with any represented client without counsel's agreement.

(e) *Conference Orders.* A settlement conference, if ordered in a case, shall not automatically affect any time deadline otherwise applicable. The settlement judge, however, may direct the clerk of court to enter orders tolling any non-mandatory time deadline before or after the deadline has passed. If any party advises the settlement judge that all or part of an appeal has been settled, the settlement judge shall direct the parties to prepare and sign a settlement agreement setting forth all agreed-upon terms. Upon receiving a copy of the settlement agreement, the settlement judge shall thereafter direct the clerk of court to enter an order dismissing with prejudice all or part of the appeal subject to the agreement.

(f) *Confidentiality.* The provisions of the settlement agreement shall not be considered confidential except to the extent the agreement specifically requires it. No confidentiality provision, however, shall prejudice any party's ability to seek judicial enforcement of a settlement agreement. In any case in which a settlement conference does not result in a settlement agreement, no statement made during a settlement conference or in motions requesting a settlement conference or responses to such motions shall be disclosed by the settlement judge, the parties, or counsel to any (i) appellate judge who may be called upon to decide the merits of the appeal or any related appeal, or (ii) lower court judge who may be called upon to decide the merits of the case if remanded or the merits of any related case.

(g) *Cross-Appeals and Related Appeals.* Appeals and cross-appeals will ordinarily be addressed in a single settlement conference. At the discretion of the settlement judge, related appeals may be consolidated for settlement conference purposes.

\* \* \*

A Copy,

Teste:

Clerk