

Notice of Proposed Rulemaking -- Request for Comments

TO: The BAR OF VIRGINIA

**FROM: Advisory Committee on Rules of Court
Judicial Council of Virginia**

Comments are invited on the following Rules revision proposal, tentatively approved by the Advisory Committee at its September 2010 meeting.

BACKGROUND: In the plenary revisions to the wording of the Part Five appellate Rules of Court in Virginia, effective July 1, 2010, the general provision relating to "assignment of error" in Rule 5:17 was significantly restated to provide more clear and direct indication of the desired specificity in stating such assignments, and to alert the bar that collection of assignments of error under a separate heading is required.

The present proposal would conform provisions of Rule 5:21 -- dealing with appeals from Corporation Commission actions -- to provide a similar alert. A minor revision is also recommended to bring the text of Rule 5:21 into conformity with the wording of the preservation of error principles in revised Rule 5:25 also made effective in July of 2010.

No substantive change is involved. Specifically, Rule 5:21 already contains a requirement that assignments of error contain a "clear and exact reference" to the portions of the record where error has been preserved. The revised language implements that same obligation, and makes the statement of this obligation parallel to Rule 5:17.

PROPOSED REVISION (underlined language would be added)

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

(a) *Appeals from the State Corporation Commission.*

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(9) **Assignments of Error.** Within 10 days after the issuance by the clerk of this Court of the certificate pursuant to Rule 5:23, each party appellant shall file assignments of error in the office of the clerk of this Court and mail a copy thereof to every other party to the appeal. Under a heading entitled "Assignments of Error" shall be listed, clearly and concisely and without extraneous argument, the specific errors in the rulings below upon which the party intends to rely. A clear and exact reference to the pages of the transcript, written statement of facts, or record where the alleged error has been preserved shall be included with each assignment of error. Only errors so assigned will be noticed by this Court and no error not so assigned will be considered as grounds for reversal of the decision below. ~~Error will not be sustained to any~~ No ruling by the Commission will be considered as a basis for reversal unless the an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice. An assignment of error which merely states that the judgment is contrary to the law and the evidence is not sufficient.

Comments on this proposal should be sent by April 1, 2011 to:

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