

## PART ONE

### Rule 1:1. Finality of Judgments, Orders and Decrees

(a) *Expiration of ~~Court's~~ Court's Jurisdiction.* — All final judgments, orders, and decrees, irrespective of terms of court, remain under the control of the trial court and may be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer. ~~But notwithstanding the finality of the judgment, in a criminal case the trial court may postpone execution of the sentence in order to give the accused an opportunity to apply for a writ of error and supersedeas; such postponement, however, will not extend the time limits hereinafter prescribed for applying for a writ of error.~~ The date of entry of any final judgment, order, or decree is the date it is signed by the judge either on paper or by electronic means in accord with Rule 1:17.

(b) *General Rule: Orders Deemed Final.* — Unless otherwise provided by rule or statute, a judgment, order, or decree is final if it disposes of the entire matter before the court, including all claim(s) and all cause(s) of action against all parties, gives all the relief contemplated, and leaves nothing to be done by the court except the ministerial execution of the court's judgment, order, or decree.

(c) *Demurrers.* — An order sustaining a demurrer or sustaining a demurrer with prejudice or without leave to amend is sufficient to dispose of the claim(s) or cause(s) of action subject to the demurrer, even if the order does not expressly dismiss the claim(s) or cause(s) of action at issue. An order sustaining a demurrer and granting leave to file an amended pleading by a specific time is sufficient to dispose of the claim(s) or cause(s) of action subject to the demurrer, if the amended pleading is not filed within the specific time provided, even if the order does not expressly dismiss the claim(s) or cause(s) of action at issue.

(d) *Pleas in Bar and Motions for Summary Judgment.* — An order sustaining a plea in bar or sustaining a plea in bar with prejudice or without leave to amend is sufficient to dispose of a claim(s) or cause(s) of action subject to the plea in bar, as is an order granting a motion for summary judgment, even if the order does not expressly dismiss the claim(s) or cause(s) of action at issue or enter judgment for the moving party.

(e) *Motions to Strike.* — In a civil case, an order which merely grants a motion to strike, without expressly entering summary judgment or partial summary judgment or dismissing the claim(s) or cause(s) of action at issue, is insufficient to dispose of the claim(s) or cause(s) of action at issue.

### Rule 1:1A. Recovery of Appellate ~~Attorney's~~ Attorney Fees in Circuit Court

(a) Notwithstanding any provision of Rule 1:1, in any civil action ~~in which an appeal lies from the circuit court to the Supreme Court and a petition for appeal is denied by the Supreme Court (and, if a petition for rehearing has been filed pursuant to Rule 5:20, such petition has been denied),~~ appealed to an appellate court that results in a final appellate judgment favorable to an appellee, a prevailing appellee who has recovered ~~attorneys'~~ attorney fees, costs or both in the circuit court pursuant to a contract, statute or other applicable law may make application in the circuit court in which judgment was entered for ~~attorneys'~~ attorney fees, costs or both incurred on

appeal. The application must be filed within thirty (30) days after ~~denial of the petition for appeal or of any petition for rehearing, whichever is later,~~ the entry of a final appellate judgment and may be made in the same case from which the appeal was taken, which case will be reinstated on the circuit court docket upon the filing of the application. The appellee is not required to file a separate suit or action to recover the fees and costs incurred on appeal, and the circuit court has continuing jurisdiction of the case for the purpose of adjudicating the application. The circuit court's order granting or refusing the application, in whole or in part, is a final order for purposes of Rule 1:1. - The phrase "final appellate judgment" as used in this rule means the issuance of the mandate by the appellate court or, in cases in which no mandate issues, the final judgment or order of the appellate court disposing of the matter.

b) Nothing in this Rule restricts or prohibits the exercise of any other right or remedy for the recovery of ~~attorneys'~~ attorney fees or costs, by separate suit or action, or otherwise.

### **Rule 1:1B. Jurisdictional Transfer During Appeal of Final or Partial Final Judgment in Circuit Court**

(a) *Jurisdiction After Notice of Appeal.* — ~~When a final judgment entered in a civil or criminal case under Rule 1:1(b) or a partial final judgment under Rule 1:2 is appealed from a circuit court to the Court of Appeals or, when allowed by statute, directly to the Supreme Court or to the Court of Appeals—whether by right, by petition, or as a partial final judgment pursuant to Rule 1:2—, the following principles govern the exercise of jurisdiction by the circuit and appellate court:~~

(1) *Effect of Notice.* —Immediately upon the filing of a notice of appeal the appellate court acquires jurisdiction over the case. After the filing of the notice of appeal, however, the circuit court retains concurrent jurisdiction for the purposes specified in this Rule, including acting upon any of the matters set forth in subparts (a)(3)(A)-(H) of this Rule.

(2) *Notice of Appeal Within 21 Days.* —If a notice of appeal has been filed prior to the expiration of the 21-day period prescribed by Rule 1:1, the circuit court retains plenary, concurrent jurisdiction over the case until the expiration of that period.

(A) If the circuit court vacates the final judgment during this 21-day period, a notice of appeal filed prior to the vacatur order is thereby rendered moot and of no effect. The clerk of the circuit court must forward a copy of the vacatur order to the appropriate appellate court and -- if an appeal has been docketed in the matter -- upon receipt of the circuit court's vacatur order the appellate court must issue an order dismissing the appeal as moot.

(B) Following a circuit court's vacatur order, a new notice of appeal from the entry of any subsequent final judgment must be timely filed. No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated. The fact that a prior notice of appeal has been rendered moot by a vacatur order, and that any docketed appeal thereon has been dismissed, has no effect upon proceedings pursuant to a notice of appeal filed after the entry of a subsequent final judgment by the circuit court.

(3) *Notice of Appeal Filed After 21 Days.* —If a notice of appeal has been filed after the expiration of the 21-day period prescribed by Rule 1:1, the circuit court retains limited, concurrent jurisdiction during the pendency of the appeal solely for the purposes of:

(A) addressing motions to grant post-conviction bail during the pendency of an appeal in criminal cases;

(B) addressing motions to stay the judgment pending appeal;

(C) addressing motions in civil cases relating to the amount or form of an appeal or suspending bond pursuant to Code § 8.01-676.1;

(D) correcting clerical mistakes in a final judgment in accordance with Code § 8.01-428(B), but only with leave of the appellate court;

(E) exercising its authority under Code § 19.2-306 to revoke suspended criminal sentences and to pronounce judgment for violations of any terms of suspension, conditions of probation, either or both;

(F) addressing motions to enforce a final judgment, including, but not limited to, the exercise of the court's contempt powers;

(G) appointing appellate counsel for indigent criminal defendants; or

(H) taking any other action authorized by statute or Rule of Court to be undertaken notwithstanding the expiration of the 21-day period prescribed by Rule 1:1, which actions include, but are not limited to, those authorized by Code §§ 8.01-392 to -394, 8.01-428, 8.01-623, 8.01-654(A)(2), 8.01-677, 19.2-303, 20-107.3 (K), 20-108, and 20-109 and Rules 1:1A, 5:10(b), 5:11, 5A:7(b), and 5A:8, so long as the party requesting the action complies with the applicable time limitation in the statute or Rule authorizing such action.

(4) *Correcting Clerical Mistakes Before the Filing of a Notice of Appeal.*— Before a notice of appeal has been filed, the circuit court has plenary authority to correct clerical mistakes in a final judgment during the 21-day period prescribed by Rule 1:1. After the expiration of that 21-day period, and before a notice of appeal has been filed, a circuit court has authority pursuant to Code § 8.01-428(B) to correct clerical mistakes in a final judgment.

(b) *Motion to Dismiss in the Appellate Court.* —At any time after a notice of appeal has been filed and after the expiration of the 21-day period prescribed by Rule 1:1, any party to an appeal may file a motion in the appellate court to dismiss the appeal. The motion may assert that the appeal has become moot or cannot proceed for some other sufficient reason. The failure to file such a motion, however, does not preclude a party from making such arguments in its appellate briefs. The appellate court may decide the motion based upon the existing record or, in its discretion, issue a temporary remand of the matter to the circuit court for the purpose of making findings of fact regarding factual issues relevant to the motion.

(c) *Motion in Appellate Court for Appointment of Counsel.* —At any time after a notice of appeal has been filed and after the expiration of the 21-day period prescribed by Rule 1:1, a party legally entitled to appointed counsel may file a motion in the appropriate appellate court for the appointment of appellate counsel. The appellate court may act upon the motion or may, in its discretion, refer the motion to the circuit court for appointment.

## **Rule 1:2. Appeal From Partial Final Judgment in Multi-Party Cases**

(a) *When Available.* — When claims for relief are presented in a civil action against multiple parties -- whether in a complaint, counterclaim, cross-claim, or third-party claim -- the trial court may enter final judgment as to one or more but fewer than all of the parties only by entering an order expressly labeled "Partial Final Judgment" which contains express findings that (i) the interests of such parties, and the grounds on which judgment is entered as to them, are separate and distinct from those raised by the issues in the claims against remaining parties, and (ii) the results of any appeal from the partial final judgment cannot affect decision of the claims against the remaining parties, and (iii) decision of the claims remaining in the trial court cannot affect the disposition of claims against the parties subject to the Partial Final Judgment if those parties are later restored to the case by reversal of the Partial Final Judgment on appeal.

(b) *Time to Appeal.* — Entry of an order of Partial Final Judgment as provided in subparagraph (a) of this Rule commences the period for filing a notice of appeal from such Partial Final Judgment under Rule ~~5A:6~~~~5:9~~ and a petition for appeal under Rule ~~5:17~~, subject to the provisions of Rule 1:1 and these Rules.

(c) *Refusal of Partial Final Judgment.* — No appeal will lie from a refusal by the trial court to enter a Partial Final Judgment under this Rule.

(d) *Other Dispositions Adjudicating Claims Against Fewer than All Parties.* — In the absence of the entry of a Partial Final Judgment order as provided in subparagraph (a) of this Rule, any order which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties in the action is not a final judgment.

## PART FIVE

### A. GENERAL

\* \* \*

#### Rule 5:3. Convening of Court - When En Banc - When in Division.

(a) This Court will sit en banc or in divisions.

(b) Whenever four or more of the Justices are convened, this Court is deemed to be sitting en banc and vested with all of the powers of this Court. Whenever three of the Justices are convened, this Court is deemed to be sitting as a division, and vested with all of the powers of a division of this Court.

(c) If the Justices composing any division differ as to the judgment to be rendered in any case, or if, within ~~ten~~10 days after the decision is rendered by the division any Justice of such division files in the office of the clerk of this Court a certificate that, in the opinion of the Justice, such decision is in conflict with a prior decision of this Court or of one of the divisions thereof, or if this Court so determines, the case will be reheard and decided by this Court sitting en banc.

#### Rule 5:4. Motions and Responses; Orders.

##### (a) Motions and Responses. —

~~(a) Motions and Responses.~~—(1) Motions. All motions, except motions for the qualification of attorneys at law to practice in this Court, must be in writing and filed with the clerk of this Court, as provided for in Rule 5:1B. All motions must 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 in which all parties are represented by counsel—~~—~~ except motions to dismiss petitions for ~~a writ~~writs of habeas corpus, mandamus and prohibition—~~—~~ the statement by the movant must 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 10 days after such motion is filed to file with such clerk a response to such motion, but this Court may act before the 10 days expire, if necessary. Once such a response is filed, no further pleadings in support of or in opposition to a motion may be filed without leave of Court.

(3) Oral Argument. No motion will be argued orally except by leave of this Court.

(b) Orders.— Promptly after this Court has entered an order, the clerk of this Court must send a copy of the order to all counsel.

\* \* \*

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

(a) *Filing Deadlines.* — The times prescribed for filing ~~the~~a notice of appeal (Rules 5:9(a), 5:14(a), 5:21(a)(3), and 5:21(b)(2)), a petition for ~~appeal (Rules 5:17(a) and 5:21(a)(6)), a petition for~~ review pursuant to Code § 8.01-626 (Rule 5:17A) and a petition for rehearing (Rules 5:20 and 5:37), are mandatory. A single extension not to exceed ~~thirty~~30 days may be granted if at least two Justices of the Supreme Court of Virginia concur in a finding that an extension for papers to be filed is warranted by a showing of good cause sufficient to excuse the delay.

(a1) Filing Deadlines for Petitions for Appeal. — The times prescribed for filing a petition for appeal (Rules 5:17(a) and 5:21(a)(6)) are mandatory; provided, however, that an extension may be granted, in the discretion of the Supreme Court, in order to attain the ends of justice.

(b) *Post-Trial Proceedings Below and Their Effect on the Notice of Appeal.* — The time period for filing ~~the~~a notice of appeal ~~and the~~or a petition for appeal where permitted by law 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 or other tribunal, pursuant to Rule 1:1 or a timely petition for rehearing is filed in the Court of Appeals. In any such case, the time for filing ~~the~~a notice of appeal and ~~the~~a petition for appeal is computed from the date of final judgment entered following such modification, vacation, or suspension, or from the date the Court of Appeals refuses a timely petition for rehearing or enters final judgment following the granting of such a petition.

(c) *How to File in a Timely Manner.* — Filing must be accomplished electronically as provided in Rule 5:1B. For any party exempt from the e-filing requirements under Rule 5:1B(b), any document required to be filed with the clerk of this Court is deemed to be timely filed if (1) it is 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 of this Court 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 or clerk of the State Corporation Commission.

(d) *Inmate Filing.* — A paper filed by an individual confined in an institution, including a prison, jail, or the Virginia Center for Behavioral Rehabilitation, is timely filed if deposited in the institution's internal mail system on or before the last day for filing. Timely filing of a paper by an individual confined in such 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.

(e) *Extensions Generally.* — Except as provided in paragraph (a) of this Rule, a motion for an extension of time is timely if filed either within the original filing deadline or within any extension period specified by the governing rule. Filing the motion within the original filing deadline or within the specified extension period does not toll the original filing deadline or further extend the period of extension.

## Rule 5:6. Forms of Briefs and Other Papers.

### (a) *Paper Size Document Formatting, Line Spacing, Font, and Margins.*

(1) *Application.* Electronic filing requirements, and exemptions therefrom, are specified in Rule 5:1B. Provisions of this Rule 5:6 apply to electronically filed documents, and to paper documents filed by persons exempted from e-filing requirements under Rule 5:1B(b).

(2) *General Rules.* Briefs, appendices, motions, petitions, and other documents must be formatted to appear on an 8  $\frac{1}{2}$  by 11-inch page with a clear black image on a white background.- Margins must be at least one inch on all four sides of each page.

(3) *Specific Rules for Motions, Petitions, and Briefs.* Except by leave of Court, all motions, petitions, and briefs, including footnotes, must use one of the font styles listed on the Court's website in at least 14-point type and must be ~~printed~~formatted to print on only one side of the page. Text may not be reduced and must be double spaced except for headings, assignments of error, quotations that exceed 49 words, and footnotes, which must be single spaced. Page numbers are required and may appear in either the top or bottom margin, but no text, including footnotes, is permitted in the one-inch margins.- Page or word limits for motions, petitions, and briefs do not include the cover page, table of contents, table of authorities, signature blocks, or certificate.

(4) *Specific Rules for the Appendix.* The appendix may be printed using both sides of the page.- Any transcript, including a deposition transcript, that is made a part of the appendix must be in 12-point type or larger.- Any transcript contained in the appendix that fails to conform to the 12-point type requirement may be returned to counsel, and counsel will be required to promptly comply with this requirement in accordance with the instruction of this Court.- The use of condensed or multi-page transcripts is prohibited.- Page numbers are required and may appear in either the top or bottom margin.

(b) *Cover Contents; Printing.* — The style of the case (with the name of the appellant stated first) and the record number of the case must be stated on the front cover of all briefs and appendices and, in addition, the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address of counsel submitting the brief must be placed on the front cover of all briefs. For parties exempted from electronic filing requirements under Rule 5:1B(b), all documents to be filed must be printed with black text on 8  $\frac{1}{2}$  x 11 inch white paper.- All briefs and appendices filed in paper form must be bound on the left margin in such a manner as to produce a flat, smooth binding.- The covers of documents filed in paper form must comply with the color requirements of Rule 5:31.

(c) *Effect of Non-compliance.* — No appeal will be dismissed for failure to comply with the provisions of this Rule; the clerk of this Court may, however, require that a document be redone in compliance with this Rule. Failure to comply after notice of noncompliance, however, may result in the dismissal of the case.

\* \* \*

## B. ORIGINAL JURISDICTION

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

(a) *Petition for Writ of Habeas Corpus.* — An application to this Court for a writ of habeas corpus under its original jurisdiction must be by petition filed in the office of the clerk of this Court, as provided for in Rule 5:1B.

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

(2) What the Petition Must Contain. The petition must be notarized and must state whether the petitioner believes that the taking of evidence is necessary for the proper disposition of the petition. - A memorandum of law citing relevant authorities must accompany each petition. - All petitions must comply with the requirements of Code § 8.01-655. Where a petition for a writ of habeas corpus is filed by counsel, counsel must file as an exhibit a single copy of the complete record of the proceedings that resulted in the detention the petition challenges. The record must comply with the form and content requirements of Rule 5:7(a)(5), and counsel may seek leave to provide less than the complete record as provided for in Rule 5:7(a)(6).

(3) Service of Petitions; Service of Papers after Initial Process. Except as provided herein, service of process must be accomplished in accordance with Chapter 8 of Title 8.01. Service of all papers filed after the petition must be accomplished in accordance with Rule 1:12.

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

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

(iii) Prisoners Pro Se. In cases brought by prisoners pro se, a copy of the petition must be forwarded to the respondent by first class mail, and the application must contain a certificate at the end stating as follows:

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
I mailed a copy of the foregoing application to the respondent(s),  
\_\_\_\_\_, by first class mail.

\_\_\_\_\_  
Petitioner

(4) When to Respond to a Petition; Reply. No responsive pleading to a petition filed by a prisoner acting pro se is required except as ordered by this Court. - For all other petitions, a responsive pleading must be filed with the clerk of this Court within ~~forty~~<sup>40</sup> days after service of the petition. The deadline for counsel for the petitioner to file a reply to a responsive pleading is 30 days from the date the responsive pleading is due.

(5) Contents of the Response. In one responsive pleading, the respondent may move to dismiss on any appropriate ground, including the failure to state facts upon which relief should be granted, and, in the alternative, may set forth grounds of defense as in an action at law. The answer must state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. - A memorandum of law citing the relevant authorities must accompany each responsive pleading. In any case in which the respondent states an opinion that the taking of evidence is not necessary for the proper disposition of a petition for a writ of habeas corpus, the respondent must file as separate exhibits:

(i) a single copy of the complete record of the proceedings that resulted in the detention the petition challenges, provided that such complete record has not previously been provided by counsel for petitioner. When criminal proceedings resulted in the challenged detention, the record of those proceedings must include:

(1) a copy of the documents and exhibits filed or lodged in the office of the clerk of the trial court;

(2) a copy of each instruction marked "given" or "refused" and initialed by the judge;

(3) a copy of each exhibit offered in evidence, whether admitted or not, except for 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;

(4) a copy of each order entered by the trial court;

(5) a copy of any opinion or memorandum decision rendered by the judge of the trial court;

(6) a copy of any transcript that was filed with the circuit court, or a copy of any videotape recording of any proceeding in those circuit courts authorized by this Court to use videotape recordings.

(7) These records must be compiled as follows:

(a) with a table of contents listing each paper included in the record and the page on which it begins;

(b) each paper constituting a part of the record in chronological order;

(c) each page of the record must be numbered at the bottom; and

(d) transcripts and exhibits may be included in separate volumes or envelopes identified by the table of contents, except that any exhibit that cannot be conveniently placed in a volume or envelope must be identified by a tag. Each such volume or envelope must include, on its cover or inside, a descriptive list of exhibits contained therein.

(ii) copies of any other document on which the respondent relies to assert that the taking of evidence is not necessary.

(6) Leave to respond without providing a complete record. In any case in which the respondent states an opinion that the complete record of the proceedings that resulted in the detention the petition challenges is not necessary for the proper disposition of the petition, the respondent may move for leave to provide less than all of the record. Such leave must be sought no later than 14 days prior to the filing of a responsive pleading. In any case where leave is granted, the Court may direct the respondent to provide any additional portion of the record at any time.

(7) Length. Except by permission of a Justice of this Court, no petition, including the accompanying memorandum of law, or a response thereto, including its accompanying memorandum of law, may exceed the longer of 50 pages or 8,750 words. No reply filed to a responsive pleading may exceed the longer of 10 pages or 1,750 words. Page and word limits do not include appendices, exhibits, cover page, table of contents, table of authorities, signature blocks, ~~and or~~ certificate.

(8) Number of Copies. For prisoners filing pro se and other petitioners exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of a petition and any other document need be filed.

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

(b) *Petitions for Writs of Mandamus and Prohibition.* — An application for a writ of mandamus or a writ of prohibition under the original jurisdiction of this Court must be by petition filed in the office of the clerk of this Court, as provided for in Rule 5:1B.

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

(2) Service of Petitions; Service of Papers after Initial Process.

(i) Generally. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent. Except in cases brought by prisoners acting pro se, service of process must be accomplished in accordance with Chapter 8 of Title 8.01. Service of all papers filed after the petition must be served in accordance with Rule 1:12.

(ii) Prisoners Pro Se. In cases brought by prisoners pro se, a copy of the petition must be forwarded to the respondent by first class mail, and the application must contain a certificate at the end stating as follows:

I hereby certify that on the \_\_\_ day of \_\_\_, 20\_\_\_, I mailed a copy of the foregoing application to the respondent(s), \_\_\_\_\_, by first class mail.

\_\_\_\_\_  
Petitioner

(3) Limitations for Petitions for Mandamus. A petition for writ of mandamus filed by or on behalf of a person confined in a state correctional facility must be brought within one year after the cause of action accrues.

(4) Petitions for Mandamus or Prohibition Against a Judge. A petition for writ of mandamus or writ of prohibition against a judge must not bear the name of the judge but must be entitled, “In re, Petitioner.” When the Attorney General determines, with the concurrence of the judge, that it is impracticable or unnecessary for the Attorney General to represent the judge, the judge may be represented pro forma by counsel for the party opposing the relief, who must appear in the name of the party and not that of the judge. Or, in the alternative, the Attorney General may provide for the appointment of special counsel to represent the judge, in accordance with the provisions of Code §§ 2.2-507 or 2.2-510.

(5) When to Respond to a Petition; Reply. No responsive pleading is required for a petition filed by a prisoner acting pro se except as ordered by this Court. For all other petitions, a responsive pleading must be filed with the clerk of this Court within 21 days after service of the petition or the filing thereof, whichever date is later. The deadline for counsel for the petitioner or a pro se petitioner to file a reply to a responsive pleading is 14 days from the date the responsive pleading is due.

(6) Contents of the Response. In one responsive pleading, the respondent may move to dismiss on any appropriate ground, including the failure to state facts upon which relief should be granted, and, in the alternative, may set forth an answer as in an action at law. The answer must state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities should accompany each responsive pleading.

(7) Length. Except by permission of a Justice of this Court, no petition, including the accompanying memorandum of law, or a response thereto, including its accompanying memorandum of law, may exceed the longer of 50 printed pages or 8,750 words. No reply filed to a responsive pleading may exceed the longer of 10 printed pages or 1,750 words. This page or word limit does not include appendices, exhibits, cover page, table of contents, table of authorities, signature blocks, or certificate.

(8) Number of Copies. For prisoners filing pro se and other petitioners exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of a petition and any other document need be filed.

(c) *When this Court May Act on a Petition.* — This Court may act on any petition for a writ of habeas corpus, mandamus, or prohibition before a responsive pleading or reply of the petitioner is filed. - This Court may by order shorten the period within which a responsive pleading must or reply may be filed.

(d) *Further Proceedings on Petitions.* — Further proceedings will be in accordance with the orders of this Court or a Justice thereof to whom this Court may delegate authority to determine all procedural matters. - If this Court or the designated Justice determines that evidence is desirable, (1) depositions may be taken according to a schedule agreed upon by counsel and filed in the office of the clerk of this Court or, in the absence of agreement, according to a schedule determined by this Court or the designated Justice, or (2) the Court may order the circuit court in which the judicial proceeding resulting in petitioner’s detention occurred to conduct an evidentiary hearing. - Such hearings will be limited in subject matter to the issues enumerated in

the order.- The circuit court must conduct such a hearing within 90 days after the order has been received and must report its findings of fact to this Court within 60 days after the conclusion of the hearing. The Court may extend these deadlines upon a motion filed by either party and supported by good cause. Any objection to the report must be filed in this Court within 30 days after the report is filed.

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

(f) *Filing Fee.* — The petition must be accompanied by either (i) the filing fee required by statute, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee.- For mandamus petitions filed by pro se inmates, the Court may require the petitioner to provide a certified copy of the petitioner’s inmate trust account for the preceding 12 months.

**Rule 5:7A. ~~Petitions for Writs of Habeas Corpus in Cases in Which the Sentence of Death Has Been Imposed~~ *Reserved.***

~~In cases in which the sentence of death has been imposed:~~

~~(a) *Petition for the Writ.*— A petition for a writ of habeas corpus must be filed as provided for in Rule 5:1B in the office of the clerk of this Court within 60 days after the earliest of: (i) the denial by the Supreme Court of the United States of a petition for a writ of certiorari to the judgment of this Court on direct appeal, (ii) an order of the Supreme Court of the United States affirming imposition of the sentence of death in a case in which that Court granted a writ of certiorari to review the judgment of this Court on direct appeal, or (iii) the expiration of the period for filing a petition for a writ of certiorari in the Supreme Court of the United States without such a petition being filed.~~

~~(b) *Contents of Petition for Writ.*— Each petition for a writ of habeas corpus must be verified and must include an enumerated list of the grounds asserted for relief together with all supporting facts upon which the petitioner relies. The petition must contain citation to the relevant legal authorities and an enumeration of all previous petitions and their disposition. The petition must state whether, in the opinion of the petitioner, the taking of evidence is necessary for the proper disposition of the petition. The petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof upon the Attorney General of Virginia or by an acceptance of service signed by the Attorney General or an Assistant Attorney General.~~

~~(c) *Response.*— Within 30 days after service of the petition, the Attorney General must file with the clerk of this Court a responsive pleading, which may include a motion to dismiss. The response should include citation to the relevant legal authorities and must state whether, in the opinion of the Attorney General, the taking of evidence is necessary for the proper disposition of the petition.~~

~~(d) *Reply.*—Within 20 days after the Attorney General's responsive pleading is filed pursuant to subparagraph (c), the petitioner may file a reply.~~

~~(e) *Motions.*—Upon the filing of any motion other than a motion to dismiss included in a responsive pleading filed pursuant to subparagraph (c) of this Rule, or upon the filing of an objection pursuant to Code § 8.01-654(C)(3), the opposing party may file a response within ten days of the filing of the motion or objection, or within such time as this Court may order.~~

~~(f) *Length.*—Except by permission of a justice of this Court, no petition for a writ of habeas corpus or a response thereto may exceed the longer of 100 pages or 17,500 words, and no reply to a response may exceed the longer of 50 pages or 8,750 words. Page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. All petitions, responses, replies, motions, and other papers filed pursuant to this Rule must conform to the provisions of Rule 5:6(a). If counsel wishes to file a petition or response in excess of the page or word limit prescribed in this paragraph, a motion to exceed the page or word limit must be filed with the clerk of this Court at least 10 days before the due date for the petition or response. If the motion is denied, or if no timely motion to exceed the page or word limit is filed, any pages in the petition or response that exceed the page or word limit, except the signature and certificate of service, will be stricken and not considered by this Court.~~

~~(g) *Further Proceedings by Order of this Court.*—Further proceedings will be conducted in accordance with the orders of this Court. If it is determined that an evidentiary hearing is necessary for the proper disposition of the petition, this Court will enter an order directing the circuit court that entered the judgment imposing the sentence of death to conduct such a hearing in accordance with the provisions of Code § 8.01-654(C)(1), (2), and (3).~~

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

~~(i) *Filing Fee.*—If the petitioner is not represented by court-appointed counsel, the petition must be accompanied by the filing fee required by statute, or (ii) an in forma pauperis affidavit demonstrating that the petitioner cannot afford the filing fee.~~

\* \* \*

## C. PROCEDURE FOR FILING ~~AN~~ ANA DIRECT APPEAL ~~FROM A TRIAL COURT~~

### Rule 5:8. Applicability

~~—This~~ Except as provided in Rule 5:21, this Section C applies only to cases where direct appeal to this Court ~~from a trial court~~ is authorized by law.

## Rule 5:9. Notice of Appeal.

(a) *Filing Deadline; Where to File.* — No appeal will be allowed unless, within 30 days after the entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court pursuant to Rule 5:5(a), counsel for the appellant 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.

*Appeals from the Circuit Court.* — Pursuant to Rule 1:1B, if a circuit court vacates a final judgment, a notice of appeal filed prior to the vacatur order is moot and of no effect. — A new notice of appeal challenging the entry of any subsequent final judgment must be timely filed. — No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated.

(b) *Content.* — The notice of appeal must contain a statement whether any transcript or statement of facts, testimony and other incidents of the case will be filed. In the event a transcript is to be filed, the notice of appeal must certify that a copy of the transcript has been ordered from the court reporter who reported the case or is otherwise already in the possession of appellant, or was previously filed in the proceedings.

(c) *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.

(d) *Special Provision for Cases Involving a Guardian Ad Litem.* — No appeal will 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.

\* \* \*

## E. PERFECTING THE APPEAL

### Rule 5:17. Petition for Appeal.

(a) *When the Petition Must be Filed.* — Unless otherwise provided by rule or statute, in every case in which the appellate jurisdiction of this Court is invoked, a petition for appeal must be filed with the clerk of this Court, as provided for in Rule 5:1B, within the following time periods:

(1) in ~~the case of~~ an appeal direct from a trial court, not more than 90 days after entry of the order appealed from; ~~or~~

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

However, an extension may be granted, in the discretion of this Court, in order to attain the ends of justice.

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

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

(1) **Assignments of Error.** Under a heading entitled “Assignments of Error,” the petition must list, clearly and concisely and without extraneous argument, the specific errors in the rulings below        or the issue(s) on which the tribunal or court appealed from failed to rule        upon which the party intends to rely, or the specific existing case law that should be overturned, extended, modified, or reversed. An exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken must be included with each assignment of error. If the error relates to failure of the tribunal or count below to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the record where the issue was preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

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

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

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

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

~~(2) **Required Statements When the Appeal is from the Court of Appeals.** When appeal is taken from a judgment of the Court of Appeals in a case in which judgment is~~

~~made final under Code § 17.1-410, the petition for appeal must contain a statement setting forth in what respect the decision of the Court of Appeals involves the following:~~

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

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

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

(43) 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 should omit references to any paper filed or action taken that does not relate to the assignments of error.

(54) 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 must 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.

(65) Authorities and Argument. With respect to each assignment of error, the standard of review and the argument—    including principles of law and the authorities—    must 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.

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

(d) *Filing Fee Required With the Petition.*     —When it is filed, the petition for appeal must be accompanied by the filing fee required by statute, unless the appellant is represented by court-appointed counsel or the appellant files an in forma pauperis affidavit demonstrating that he cannot afford the filing fee. The clerk of this Court may file a petition for appeal that is not accompanied by such fee if the fee is received by the clerk within 10 days of the date the petition for appeal is filed. - If the fee is not received within such time, the petition for appeal will be dismissed.

(e) *Number of Copies to File.*     —For prisoners filing pro se and other petitioners exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of the petition need be filed.

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

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

(h) *Procedure for an Anders appeal.*     —If counsel for appellant finds appellant's appeal to be without merit, counsel must comply with the requirements of *Anders v. California*, 386 U.S.

738 (1967), and *Brown v. Warden of Virginia State Penitentiary*, 238 Va. 551, [385 S.E.2d 587](#) (1989).- In compliance therewith, counsel is required to file (1) a petition for appeal which refers to anything in the record which might arguably support the appeal and which demonstrates to this Court counsel's conscientious examination of the merits of the appeal; (2) a motion for leave to withdraw as counsel; and (3) a motion for an extension of time to allow the appellant to file a supplemental petition for appeal.- The petition for appeal and the motion for leave to withdraw as counsel should specifically cite to *Anders*.- All three pleadings must be served on opposing counsel and upon the client and must contain a certificate providing evidence of such service. This Court will rule upon the motion for extension of time upon its receipt, but will not rule on the motion to withdraw until this Court considers the case in its entirety, including any supplemental petition for appeal that may be filed.

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

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

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

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

(4) in a criminal, sexually violent predator, termination of parental rights, or habeas corpus appeal, a statement whether counsel for defendant has been appointed or privately retained; and

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

When filed through VACES, a petition for appeal need not contain a separate certificate as long as the information contained in this subsection (i) is provided through the electronic filing process.

(j) *Oral Argument.*     

(1) Right to Oral Argument. The appellant is entitled to state orally, in person or by telephone conference call, to a panel of this Court the reasons why the petition for appeal should be granted.- The appellee is not entitled to oral argument, whether in person or by telephone conference call.- Any lawyer not licensed in Virginia who seeks to appear pro hac vice to present oral argument to the Court must comply with the requirements of Rule 1A:4.

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

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

(4) Notice of Oral Argument. If the appellant has requested oral argument, notice of the date and time of such argument will be provided to counsel for the appellant or to any pro se appellant and to counsel for the appellee or any pro se appellee who has filed a Brief in Opposition or otherwise appeared in the appeal.

#### **Rule 5:17A. Petition for Review Pursuant to Code § 8.01-626; ~~Injunctions.~~**

(a) Time for Filing. — In every case in which the jurisdiction of this Court is invoked pursuant to Code § 8.01-626, a petition for review must be filed with the clerk of this Court, as provided for in Rule 5:1B, within 15 days of the order of ~~(i) an order of a circuit court that grants an injunction, refuses an injunction, or dissolves or refuses to enlarge an existing injunction; or~~

~~(ii) an order of~~ the Court of Appeals deciding a petition for review ~~filed in that court pursuant to Code § 8.01-626.~~

(b) Copy to Opposing Counsel. — At the time the petition for review is filed, a copy of the petition must be served by email on counsel for the respondent, unless ~~said~~such counsel does not have, or does not provide, an email address—in which case a copy may be served by any method authorized under Rule 1:12.

(c) Length and What the Petition for Review Must Contain. —

(i) Except by permission of a Justice of this Court, a petition for review may not exceed the longer of ~~15~~20 pages or ~~3,500~~2,625 words. The petition for review must otherwise comply with the requirements for a petition for appeal in Rule 5:17(c).

(ii) The petition must be accompanied by a copy of the pertinent portions of the record of the lower tribunal(s), including the relevant portions of any transcripts filed in the circuit court and the order(s) entered by the lower tribunal(s) respecting the injunction (hereafter "the record"). ~~The~~ copy of the record constitutes part of the petition for the purpose of paragraph (b), but does not count against the petition size limit.

(iii) The petition for review must contain a certificate:

(1) providing the names of all petitioners and respondents; the name, Virginia State Bar number, mailing address, telephone number, facsimile number (if any), and e-mail address of counsel for each party; and the mailing address, telephone number, facsimile number (if any), and e-mail address of any party not represented by counsel;

(2) certifying that a copy of the petition has been served on all opposing counsel and all parties not represented by counsel, and specifying the date and manner of service.

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

(4) certifying that the copy of the record being filed is an accurate copy of the record of the lower tribunal(s) and contains everything therefrom necessary for a review of the petition.

(d) *Number of Copies to File.* — For prisoners filing pro se and other petitioners exempted from the electronic filing requirements under Rule 5:1B(b), only one paper copy of the petition need be filed.

(e) *Filing Fee.* — The petition must be accompanied by the filing fee required by statute, unless the appellant files an in forma pauperis affidavit demonstrating that he cannot afford the filing fee. The clerk of this Court ~~will~~ may file a petition for review that is not accompanied by such fee, but if the fee is not received by the clerk within 510 days ~~of the date the petition for review is filed. If the fee is not received within such time,~~ the petition for review will be dismissed.

(f) *Scope and Review.* —

(i) a petition for review may be considered by this Court whether the lower court's order, or that part of the order dealing with the injunction, is temporary or permanent. If review is sought from a final order that deals with injunctive relief and other issues, a petition for review must address only that part of the final order that actually addresses injunctive relief. All other issues are governed by the normal rules and timetables that apply to appeals. If both a petition for review under Code § 8.01-626 and an appeal under § 8.01-670 are filed to challenge the same final order, the clerk of this Court will assign separate record numbers to the two proceedings.

(ii) a petition for review ~~may be considered by a single Justice of this Court, or by a panel of~~ will be assigned by the Clerk to a three-Justice panel of the Court. If a single Justice issues an order on such a petition as provided in Code § 8.01-626, that order will become a judgment of the Court upon the concurrence of at least three Justices.

(g) *Responsive Pleading.* — A respondent may file a response to a petition for review within seven days of the date of service ~~of same~~, unless the Court specifies a shorter time frame. The response may not exceed the greater of ~~12-20~~ pages or ~~3,500~~ 2,100 words. ~~For the purpose of this rule, a petition for review is considered served 3 days from the date on which it was mailed, or one day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent. Notwithstanding the foregoing, t~~ The Court may act on a petition for review without awaiting a response, but ; however, absent exceptional circumstances, the Court will not grant a petition for review without affording the respondent an opportunity to file a responsive pleading. - The response must be filed in compliance with Rule 5:1B. - If the respondent is exempt from electronic filing under Rule 5:1B(b), then one paper copy of the responsive pleading is to be filed.

(h) *Rehearing.* — The provisions of Rules 5:20 and 5:37 do not apply to proceedings under Code § 8.01-626.

\* \* \*

**Rule 5:20. Petition for Rehearing After Refusal of Petition for Appeal, Refusal of Assignments of Cross-Error, or Disposition of an Original Jurisdiction Petition.**

(a) *Scope.* — This Rule governs requests for rehearing of the refusal or dismissal of a petition for appeal filed pursuant to Rule 5:17, the refusal of one or more assignments of cross-error, or the disposition of an original jurisdiction petition filed pursuant to Rule 5:7, Rule 5:7A, or Rule 5:7B.

(b) *Time to File.* —

(1) *Petition for Rehearing After Refusal or Dismissal of Petition for Appeal.* —

When a petition for appeal is either refused or dismissed, in whole or in part, the clerk of this Court will send a copy of the order denying the appeal, in whole or in part, to counsel for the appellant and counsel for the appellee. Counsel for the appellant may, within 14 days after the date of such order, file in the office of the clerk of this Court a petition for rehearing. If the petition for appeal is granted but one or more assignments of cross-error are refused, counsel for the appellee may, within 14 days after the date of that order, file in the office of the clerk of this Court a petition for rehearing.

(2) *Petition for Rehearing after Disposition of Original Jurisdiction Petition.* —

When a petition filed pursuant to this Court's original jurisdiction (habeas corpus, mandamus, prohibition, or actual innocence) is decided, the clerk of this Court will mail a copy of the order to counsel for the petitioner and counsel for the respondent. Counsel for either party may, within 30 days after the date of this order, file in the office of the clerk of this Court a petition for rehearing.

—(c) *Filing Requirements.* — Except for petitions for rehearing filed by pro se prisoners or with leave of this Court, a petition for rehearing must be filed electronically, as provided for in Rule 5:1B.

(1) *Requirements for Electronic Filing.* — The petition for rehearing must be formatted in compliance with the requirements of Rule 5:6(a) and must not exceed the greater of 10 pages or a word count of 1,750 words. The petition must include a certificate of service to opposing counsel and the certificate must specify the manner of service and the date of service, which must be via email unless opposing counsel does not have, or does not provide, an email address. The petition must also include a certificate of compliance with the word count limit.

(2) *Requirements When Paper Filing is Allowed.* — The petition for rehearing may not exceed the greater of 10 pages or 1,750 words in length and must be formatted in compliance with the requirements of Rule 5:6(a). — The petition for rehearing must state that a copy has been mailed or delivered to counsel for the appellee.

(d) *Oral Argument and Responsive Brief.* — Oral argument on the petition for rehearing will not be allowed. No responsive brief may be filed unless requested by this Court.

(e) *Incorporation of Facts or Arguments; Restating Assignments of Error.* — Attempts to incorporate facts or arguments from the petition for appeal or original jurisdiction petition are prohibited. — The petition for rehearing, however, need not restate any assignment of error.

(f) *Notification of Action on the Petition.* — The clerk of this Court will notify counsel for all parties of the action taken by this Court on the petition for rehearing via e-mail, if e-mail addresses have been provided, or via U.S. Mail to any counsel or party who has not provided an email address.

(g) *Attorney's Attorney Fees.* — Upon denial of a petition for appeal and any petition for

rehearing, any appellee who has received ~~attorney's~~attorney fees and costs in the circuit court may make application in the circuit court for additional fees and costs incurred on appeal pursuant to Rule 1:1A.

## F. SPECIAL RULES

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

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

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

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

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

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

(5) ~~—~~ Contents of Record. The record on appeal from the Commission consists of all notices of appeal, any application or petition, all orders entered in the case by the Commission, the opinions, the transcript of any testimony received, and all exhibits accepted or rejected, together with such other material as may be certified by the clerk of the Commission to be a part of the record. ~~-~~ The record must conform as nearly as practicable to the requirements of Rule 5:10.

(6) Petition for Appeal.

(~~e~~i) Only a party who has filed a notice of appeal in compliance with paragraph (a)(3) of this Rule may file a petition for appeal. ~~-~~ A party filing a notice of appeal

may file a petition for appeal, accompanied by the prescribed filing fee, in the office of the clerk of this Court, as provided for in Rule 5:1B, within 120 days after entry of the final order, judgment or finding by the Commission and, prior to the filing of the petition must send a copy to every other party to the Commission proceeding.

(bii) Except as provided herein, the provisions of Rule 5:17 do not apply to a petition filed pursuant to this subparagraph. The petition for appeal must identify the order appealed from and the date of the order, contain assignments of error, and include the certificate required by Rule 5:17(i) (when filed through VACES, a petition for appeal need not contain a separate certificate as long as the information contained in subsection (i) is provided through the electronic filing process).

(eiii) Oral argument on the petition will not be allowed nor will a brief in opposition be received. If the petition prays for a suspension of the effective date of the order appealed from, it must contain an assignment of error regarding the effective date of the order appealed from and such statements of the facts and argument as may be necessary for an understanding of this assignment of error. In that event, a brief in opposition will be received. - The brief in opposition must be filed, as provided for in Rule 5:1B, within 15 days of the filing of the petition for appeal, may be no longer than 10 pages or 1,750 words, and may only address the assignment of error regarding the effective date of the order appealed from. - Oral argument on the assignment of error regarding the effective date of the order appealed from may be granted.

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

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

(9) Notice of Participation in an Appeal. Within 21 days after an appeal from a Commission order has been docketed as provided in subparagraph (8), any party to the Commission proceeding who did not file a notice of appeal may file a notice of participation with the clerk of this Court. The notice must identify whether the party seeks to be an appellant or appellee. If there is more than one appellant, the notice of participation as an appellant must identify the specific appellant(s) with which the participating appellant will align. Participating parties must follow the briefing schedule

and requirements of subparagraph 10, except that a participating party may not raise any additional assignments of error or cross-error. The notice of participation as appellant or appellee must be mailed or delivered to every other party to the Commission proceeding.

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

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

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

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

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

(2) Perfecting the Appeal.

(i) Provisions for Appeals from the Virginia State Bar Disciplinary Board. No appeal will be allowed under this paragraph unless the Respondent files a notice of appeal and assignments of error with the clerk of the Disciplinary System within 30 days after the Memorandum Order is served on the attorney by certified mail, return receipt requested, at the attorney's last address on record for membership purposes with the Virginia State Bar.- At the same time the Respondent files a notice of appeal and assignments of error, a copy of the notice of appeal and assignments of error must be sent to the counsel for the Bar and the Attorney General of Virginia.- The Respondent is responsible for filing a transcript in compliance with Rule 5:11. The date of the Memorandum Order is the date from which the time limits contained in Rule 5:11 will run.- This action within the time prescribed is mandatory.- Upon timely compliance with these rules, the Clerk of the Supreme Court will docket the appeal as provided in Rule 5:23.

(ii) Provisions for Appeals from a Three-Judge Circuit Court.- No appeal will be allowed under this paragraph unless the Respondent files a notice of appeal and assignments of error with the clerk of the three-judge circuit court within 30 days after the entry of the final judgment and, at the same time, serves a copy of the notice of appeal and assignments of error on counsel for the Bar and the Attorney General of Virginia by any method authorized under Rule 1:12.- The Respondent is responsible for filing a transcript in compliance with Rule 5:11. The date of the judgment is the date from which the time limits contained in Rule 5:11 will run. This action within the time prescribed is mandatory.- Upon timely compliance with these rules, the Clerk of the Supreme Court will docket the appeal as provided in Rule 5:23.

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

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

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

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

(c) *Judicial Inquiry and Review Commission Proceedings.* — Procedure in the Supreme Court following proceedings before the Judicial Inquiry and Review Commission will be as ordered or directed by the Court.

~~Rule 5:22. Special Rule for Appeals in Death Penalty Cases.~~ Reserved.

~~(a) *Notice of Receipt of Record.*— Upon receipt of a record pursuant to § 17.1-313(B), the clerk of this Court must notify in writing counsel for the accused in the circuit court (who is deemed to be counsel for the appellant), the Attorney General (who is deemed to be counsel for the appellee), and the Director of the Department of Corrections of the date of its receipt. The date of the receipt of the record is the Filing Date and the case thereupon stands matured as if an appeal had been awarded to review the conviction and the sentence of death.~~

~~(b) *Stay of Sentence of Death.*— Upon the Filing Date, the notice issued by the clerk of this Court is deemed to be the certificate of the clerk of this Court pursuant to Rule 5:23 that an appeal has been awarded, and the enforcement of the sentence of death is thereby stayed pending the final determination of the case by this Court.~~

~~(c) *Filing of Assignments of Error and of the Appendix.*— Within 30 days after the Filing Date, counsel for the appellant must file with the clerk of this Court, as provided for in Rule 5:1B, assignments of error upon which the appellant intends to rely for reversal of the conviction or review of the sentence of death. Counsel for the appellant must accompany the assignments of error with a designation of the parts of the record relevant to the review and to the assignments of error. Not more than 10 days after such assignments of error and designation are filed, counsel for the appellee may file with the clerk of this Court a designation of the additional parts of the record that he wishes included as germane to the review or to any assignments of error. Counsel for the appellant must include in the appendix the parts so designated. The provisions of Rules 5:31 and 5:32 (except Rule 5:32(b)(1) and (b)(3)) apply to the appendix.~~

~~(d) *Assigning Error to the Sentence of Death.*— With respect to the sentence of death, it is a sufficient assignment of error to state that the sentence was imposed under the influence of passion, prejudice, or other arbitrary factor or that the sentence is excessive or disproportionate to the penalty imposed in similar cases.~~

~~(e) *Requirements for Briefs.*— All briefs and the appendix must be filed in compliance with Rule 5:1B.~~

~~(1) **Brief of Appellant and Appendix.**— The appellant must file the opening brief, which may not exceed the longer of 100 pages or 17,500 words, and the appendix, in the office of the clerk of this Court within 60 days after the Filing Date.~~

~~(2) **Brief of the Appellee.**— The appellee must file its brief, which may not exceed the longer of 100 pages or 17,500 words, in the office of the clerk of this Court within 120 days after the Filing Date.~~

~~(3) **Reply Brief of the Appellant.**— The appellant must file the reply brief, which may not exceed the longer of 50 pages or 8,750 words, in the office of the clerk of this Court within 140 days after the Filing Date.~~

~~The page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. There will be no exception to these limits except by permission of this Court on motion for extension of the limits.~~

~~(f) *Compliance with Rules for Perfected Appeals.* Except to the extent that a conflict with this Rule may arise, in which case this Rule will then be controlling, further proceedings in the case must conform to the Rules relating to cases in which an appeal has been perfected.~~

~~(g) *Varying Procedure to Attain the Ends of Justice.* This Court may, on motion in a particular case, vary the procedure prescribed by this Rule in order to attain the ends of justice and the purpose of § 17.1 313.~~

## G. PROCEDURE FOLLOWING PERFECTION OF APPEAL

### Rule 5:23. Perfection of Appeal; Docketing.

(a) *Grant of Petition for Appeal.* — Promptly after a petition for appeal has been granted, the clerk of this Court must certify this action to counsel for the appellant, counsel for the appellee, and the tribunal from which the appeal is taken. The case is considered mature for purposes of further proceedings from the date of such certificate.

(b) *Docketing.* — Cases are placed on the docket when they mature. Precedence is given to the following cases:

~~(1) review of sentences of death;~~

~~(2)~~ 1 criminal cases;

~~(3)~~ 2 cases from the State Corporation Commission;

~~(4)~~ 3 cases of original jurisdiction;

~~(5)~~ 4 cases to be reheard; and

~~(6)~~ 5 any other cases required by statute to be given precedence.

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

\* \* \*

### Rule 5:25. Preservation of Issues for Appellate Review.

No ruling of the trial court, disciplinary board, ~~or~~ commission, or other tribunal before which the case was initially heard will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice. 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 5:26. General Requirements for All Briefs.**

(a) *Applicability.* — This Rule, along with Rule 5:6, sets forth the general requirements for all briefs filed in this Court. ~~Rule 5:22 sets forth the special rule for appeals in death penalty cases.~~ All briefs and the appendix must be filed in compliance with the requirements of Rule 5:1B.

(b) *Length.* — Except by permission of a Justice of this Court, neither the opening brief of appellant, nor the brief of appellee, nor ~~a~~ the brief of an amicus curiae may exceed the longer of 50 pages or 8,750 words. No reply brief may exceed the longer of 15 pages or 2,625 words. Briefs of amici curiae must comply with the page limits that apply to briefs of the party being supported. The page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, signature blocks, or ~~and~~ certificate. There will be no exception to these limits except by permission of this Court on motion for extension of the limits.

(c) *Filing Time.* — In cases in which a petition for appeal has been granted by this Court, briefs must be filed subject to the provisions of Rule 5:1(d), as follows:

(1) The appellant must file the opening brief and appendix in the office of the clerk of this Court within 40 days after the date of the certificate of appeal issued by the clerk of this Court pursuant to Rule 5:23.

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

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

(d) *Extension of Time.* — Upon motion and with permission of a Justice of this Court, the time for filing any brief in this Court may be altered.

(e) *Reference to Parties.* — In their briefs, counsel should avoid reference to parties by such designations as “appellant” and “appellee.” Clarity is promoted by the use of the names of the parties or descriptive terms such as “the employee,” “the injured person,” “the driver,” “the wife,” or the designations used in the lower court or commission.

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

(g) *Signature and Certificate.* — All briefs must contain the signature, which need not be in handwriting, of at least one counsel of record, counsel’s Virginia State Bar number, address, telephone number, facsimile number (if any), and email address, and a certificate that there has been compliance with this Rule. If a word count is used, 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, signature blocks, and certificate do not count towards the word count).

(h) *Failure to File Complying Brief.* — Any party who fails to file a brief in compliance with these Rules or otherwise fails to file a required brief may be subject to sanctions deemed reasonable by the Court, including, but not limited to, forfeiture of oral argument.

\* \* \*

## H. DECISION, COSTS, AND MANDATE

\* \* \*

### Rule 5:35. ~~Attorney's~~ Attorney Fees, Costs, and Notarized Bill of Costs.

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

(b) ~~*Attorney's Fees.* — (1) Refusal or Dismissal of Petition for Appeal. Upon refusal or dismissal of a petition for appeal and any petition for rehearing, any~~ *Attorney Fees.* — (1) *Fee Recovery by Prevailing Appellee.* A prevailing ~~an~~ appellee who ~~has was~~ received ~~attorney's~~ awarded attorney fees and costs in the circuit court may make application in the circuit court for additional fees and costs incurred on appeal pursuant to Rule 1:1A.

(2) *Attorney Fees in Domestic Relations and Other Family-Law Proceedings Where Authorized by Statute.*

(A) ~~*Attorney Fees in Domestic Relations and Family Law Proceedings Where Authorized by Statute.* (1)~~ In any case in which attorney fees are recoverable under Title 16.1, Title 20, or Title 63.2, a party may request an award of fees incurred in the appeal of the case by including a prayer for such recovery in the Opening Brief or the Reply Brief of Appellant, or in the Brief of Appellee.

(B) Upon the making of a request for attorney fees as set forth in (b) (1) above, and unless otherwise provided by the terms of a contract or stipulation between the parties, the Supreme Court may award to a party who has made such request, all of their attorney fees, or any part thereof, or remand the issue as directed in the mandate order for a determination thereof. Such fees may include the fees incurred by such party in pursuing fees as awarded in the circuit court.

(C) In determining whether to make such an award, the Supreme Court is not limited to a consideration of whether a party's position on an issue was frivolous or lacked substantial merit but may consider all the equities of the case.

(D) Where the appellate mandate remands the issue to the circuit court for an award of reasonable attorney fees, in determining the reasonableness of such an award the circuit court may consider all relevant factors, including but not limited to, the extent to which the party was a prevailing party on the issues, the nature of the issues involved, the time and labor involved, the financial resources of the parties, and the fee customarily charged in the locality for similar legal services.

(c) *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, are taxable in this Court. Costs incurred in the preparation of transcripts may be taxable in this Court. See Code § 17.1-128.

(d) *Notarized Bill of Costs.* — Counsel for a party who desires costs to be taxed must itemize them in a notarized bill of costs, which must be filed with the clerk of this Court, as provided for in Rule 5:1B, 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.

(e) *Award.* — The clerk of this Court must prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate will not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, will be added to the mandate on request by the clerk of this Court to the clerk of the tribunal in which the case originated.

\* \* \*

## L. APPEALS RELATING TO QUARANTINE OR ISOLATION ORDERS

### Rule 5:41. Appeal of Orders Relating to Quarantine or Isolation of Persons.

~~A.~~(a) *Quarantine Related Code Provisions.* — In proceedings involving circuit court orders of quarantine of a person or persons pursuant to Article 3.02 of Chapter 2 of Title 32.1 of the Code of Virginia, the provisions of Code § 32.1-48.010 apply with respect to appealability of such orders, the effect of an appeal upon any order of quarantine, availability of expedited review, stay of quarantine orders, and representation by counsel.

~~B.~~(b) *Isolation Order Code Provisions.* — In proceedings involving circuit court orders of isolation of a person or persons pursuant to Article 3.02 of Chapter 2 of Title 32.1 of the Code of Virginia, the provisions of Code § 32.1-48.013 apply with respect to appealability of such orders, the effect of an appeal upon any order of isolation, availability of expedited review, stay of isolation orders, and representation by counsel.

~~C.~~(c) *Transmission of Record.* — In all appeals under this rule, the clerk of the ~~court from which an appeal is taken~~ Court of Appeals must transmit the record to the Clerk of the Supreme Court immediately upon the filing of the notice of appeal.

~~D.~~(d) *Expedited Procedures.* — Unless otherwise ordered by the ~~Supreme~~ Court, after the filing of the petition for appeal under this Rule, 48 hours should be allowed for the filing of the brief in opposition. However, the ~~Supreme~~ Court may employ the expedited review provision in Rule 5:18(c). The ~~Supreme~~ Court will act upon the petition within 72 hours of its filing. Should the ~~Supreme~~ Court grant a writ, the ~~Supreme~~ Court may, in its discretion, permit oral argument within 48 hours of granting the writ. The ~~Supreme~~ Court will issue an order within 24 hours of the argument or of its review of the case without oral argument. The ~~Supreme~~ Court has the authority to alter these time frames in any case.

~~E.~~(e) *Oral Argument.* — The Court must hold any oral argument in appeals under this rule in a manner so as to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, and the general public. To this end, the Court may take measures including, but not limited to, ordering any oral argument to be held by telephone or video conference or ordering those present to take appropriate precautions,

including wearing personal protective equipment. If necessary, the Court may dispense with oral argument.

**APPENDIX OF FORMS.**

\* \* \*

**Form 10. Irrevocable Letters of Credit.**

(Name and Address of Bank)

\_\_\_\_\_, 20\_\_\_\_

U.S. \$ \_\_\_\_\_

On all communications please refer to (No. of Letter of Credit)

(Name and address of appellee(s))

Dear \_\_\_\_\_:

We hereby establish our Irrevocable Letter of Credit No. \_\_\_\_\_ in your favor, for the account of (name and address of appellant(s)), and hereby undertake to honor your draft at sight on us, not exceeding in the aggregate U.S. \$- (amount in words) . A draft drawn under this letter of credit must be marked “Drawn under (Name of Bank) Letter of Credit No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_.” Funds under this letter of credit will be available to you in a single drawing by presentation of your sight draft drawn on us, accompanied by:

(For Costs Alone)

1. The original of this letter of credit.
2. Your verified statement that (appellant(s)) (has)(have) failed to pay all damages, costs and fees assessed against (him)(her)(them)(it) in the Supreme Court of Virginia in the case of \_\_\_\_\_
3. A certified copy of an order or itemized statement of costs from the Supreme Court assessing such damages, costs and fees against (appellant(s)).

(For Suspension Alone)

1. The original of this letter of credit.
2. Your verified statement that (appellant(s)) (has)(have) failed to perform and satisfy the judgment rendered against (him)(her)(them)(it) on \_\_\_\_\_ by the Circuit Court of \_\_\_\_\_ in the case of \_\_\_\_\_, and (has)(have) failed to pay all actual damages incurred in consequence of the suspension of judgment.

3. A copy of the trial court judgment order, attested by its clerk.

4. A copy of an order of the Supreme Court of Virginia, attested by its clerk, affirming ~~said~~the judgment or refusing, dismissing or allowing withdrawal of the appeal of ~~said~~the judgment, or certification by the clerk of the Supreme Court that the appeal of ~~said~~the judgment was not prosecuted timely.

5. A copy of an order, if any, of the Supreme Court or trial court, attested by the clerk, assessing actual damages in consequence of the suspension of judgment.

(For Costs and Suspension)

1. The original of this letter of credit.

2. Your verified statement that       (appellant(s))       (has)(have) failed to perform and satisfy the judgment rendered against (him)(her)(them)(it) on \_\_\_\_\_ by the Circuit Court of \_\_\_\_\_ in the case of \_\_\_\_\_, and (has)(have) failed to pay all damages, costs and fees assessed against (him)(her)(them)(it) in the Supreme Court of Virginia, and all actual damages incurred in consequence of the suspension of judgment.

3. A copy of the trial court judgment order, attested by its clerk.

4. A copy of an order of the Supreme Court, attested by its clerk, affirming ~~said~~the judgment or refusing, dismissing or allowing withdrawal of the appeal of ~~said~~the judgment, or certification by the clerk of the Supreme Court that the appeal of ~~said~~the judgment was not prosecuted timely.

5. A copy of an order, if any, of the Supreme Court, attested by its clerk, assessing damages, costs and fees against       (appellant(s))      .

6. A copy of an order, if any, of the Supreme Court or trial court, attested by the clerk, assessing actual damages in consequence of the suspension of judgment.

This letter of credit is valid until \_\_\_\_ p.m. local time \_\_\_\_\_, 20 \_\_\_\_, and a draft drawn hereunder, if accompanied by documents as specified above, will be honored if presented to (Presentation Address of Bank) on or before that date. However, this letter of credit automatically will be renewed for successive one (1) year periods from the initial expiration date or any renewal period expiration date hereunder, unless at least sixty (60) days prior to any such expiration date (Name of Bank) notifies you that it has elected not to renew this letter of credit for such additional one (1) year period. The notice required hereunder will be deemed to have been given when received by you.

In the event that (Name of Bank) elects not to renew this letter of credit as required above, the full amount of this letter of credit is payable to the Clerk of the Circuit Court of \_\_\_\_\_ upon presentation of your verified statement that:

1. A final order of the Supreme Court of Virginia has not been entered in the case of \_\_\_\_\_ (or, where there has been suspension of judgment, a final order has not been entered by the Supreme Court or trial court assessing actual damages in consequence of the suspension).

2. Thirty (30) days have elapsed since notice of non-renewal was given and appellant(s) (has)(have) not filed acceptable substitute security.

In the event of non-renewal, within fifteen (15) days after payment to the clerk under the previous paragraph, the appellant(s) or someone for (him)(her)(them)(it) must file with ~~said the~~ clerk of the trial court an appeal bond in substantial conformance with the appropriate form in the Appendix to Part Five A of the Rules of the Supreme Court of Virginia. The bond must be in the penalty of the amount paid to ~~said the~~ clerk under this letter of credit, and ~~said the~~ funds are in lieu of surety, but in no event will we have any liability or responsibility for failure of the appellant(s) (or someone acting on (appellant's) (appellants') behalf) to file such bond.

Partial drawings are not permitted under this letter of credit.

Except as otherwise expressly stated hereinabove, this letter of credit is subject to the ~~Uniform Customs and Practice for Documentary Credits as most recently published by the~~ International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590) and, to the extent consistent with ISP98 and the express provisions above, the provisions of Title 8.5A of the Code of Virginia governing letters of credit.

Very truly yours,

\_\_\_\_\_ Bank  
By \_\_\_\_\_  
Authorized Signature

\* \* \*

## PART FIVE A

### A. GENERAL

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

(a) *Scope of Rules.* — Part Five A governs all proceedings in the Court of Appeals of Virginia (“this Court”).

(b) *Citation.* — These Rules may be cited generally as the “Rules of the Court of Appeals of Virginia” and specifically as “Rule 5A:\_\_\_.”

(c) *Filings; Copies; Signatures; Service.* —

(1) *Filings.* Except as otherwise provided, all documents to be filed in this Court must be filed electronically, in Portable Document Format (PDF), with the clerk of this Court and electronically served on opposing counsel. - Pro se litigants may file by non-electronic means. Others may file by non-electronic means only by leave of Court. - Electronic pleadings must be filed through the Virginia Appellate Courts Electronic System (VACES) in the manner prescribed by the Guidelines and User’s Manual. - All electronic filings are governed by Rule 1:17.

(2) *Copies.* No paper copies are to be filed for any electronically filed documents. For paper filings, only the original document is required.

(3) *Signatures.* All documents filed pursuant to Part Five A of these Rules must be signed by counsel for the filing party, or personally signed if the party is proceeding pro se. Electronically filed documents may be signed digitally. Paper filings must contain a handwritten signature.

(4) *Service.* Unless service or notice is otherwise specified in a given Rule, any document 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 page or word count limitation is required limit applies, the certificate must also state the number of pages or words ~~(headings, - Headings,~~ footnotes, and quotations count towards are included in the page and word limitation limit; the cover page, table of contents, table of authorities, signature blocks, and certificate ~~de~~ are not count towards included in the page or word count limit.

(d) *Definitions.*

— (1) “clerk of the trial court” means clerk of the trial court from which an appeal is taken to this Court, and includes a deputy clerk and the clerk of the Virginia Workers’ Compensation Commission when the context requires;

(2) “clerk of this Court” 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 includes 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~~ that judge is 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 document, a copy of which has been electronically transmitted, mailed, or delivered to opposing counsel, and appended to which is either acceptance of service or a certificate indicating the date and manner of such transmission. “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 document to the clerk specified;

(10) “trial court” means the circuit court from which an appeal is taken to this Court;

(11) the “date of entry” of any final judgment or other appealable order or decree is the date the judgment, order, or decree is signed by the judge.

(e) *Notice of Change of Address and Other Contact Information.* — If an attorney or a party pro se has a change in mailing address, telephone number, facsimile number, or e-mail address any time after the filing of the notice of appeal, that individual 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 will 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:1A. Penalties for Non-compliance; Show Cause; Dismissal.**

(a) *Penalties; Show Cause; Dismissal.* — This Court may dismiss an appeal or impose such other penalty as it deems appropriate for non-compliance with these Rules. Except as provided in Rule 5A:12(c)(1)(i) and(ii) and Rule 5A:20(c) regarding assignments of error, before dismissing an appeal for any defect in the filings related to formatting, curable failure to comply with other requirements, or the failure to meet non-mandatory filing deadlines, this Court may issue a show cause order to counsel or a party not represented by an attorney, prescribing a time in which to cure such defect or to otherwise show cause why the appeal should not be dismissed or other penalty imposed.

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

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

(a) *Motions and Responses.* — (1) *Motions.* All motions must be in writing and filed with the clerk of this Court. - All motions must 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~~—in original jurisdiction proceedings—the statement by the movant must 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 10 days after such motion is filed to file with such clerk a response to such motion, but this Court may act before the 10 days expire, if necessary.

(3) *Oral Argument.* No motion will 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 must 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 is 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 must 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 is reviewable for abuse of discretion. - If this Court overrules a trial court decision denying bail pending appeal, this Court will 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 must 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) *Certain Filing Deadlines and Extensions.* — The times prescribed for filing ~~the~~a notice of appeal (Rules 5A:6 and 5A:11), a petition for appeal (Rule 5A:12), ~~and a petition for review~~ (Rule 5A:12A), 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 30 days,~~ except that an extension of the time to file a notice of appeal, a petition for rehearing, and a petition for rehearing en banc may

be granted ~~if at least three judges~~ in the discretion of this Court ~~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~~ in order to attain the ends of justice. 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 is 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. Filing a motion for extension does not toll the applicable deadline.

(c) *Filing Deadlines for 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 see Rules 5A:8(a), 5A:13(a), 5A:14, 5A:19(b), and 5A:19(c); or~~
- (2) if a rule does not provide a specific deadline governing motions to extend, within 30 days after the filing deadline from which an extension is sought.

~~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.* — A document filed with the clerk of this Court by a litigant permitted to file non-electronically under Rule 5A:1(c) will be deemed to be timely filed if (1) it is 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 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.~~ A paper filed by an individual confined in an institution, including a prison, jail, or the Virginia Center for Behavioral Rehabilitation, is timely filed if deposited in the institution's internal mail system on or before the last day for filing. Timely filing of a paper by an individual confined in such 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 documents may be printed or produced on screen by any process that yields a clear black image on a white background and, when printed, must be on pages 8-~~1/2~~<sup>1/2</sup> x 11-inch paper. ~~All briefs, appendices,~~ Except by leave of Court, all motions, petitions, and ~~other documents~~ briefs, including footnotes, must use one of the font styles listed on the Court's website, must be in at least ~~12~~<sup>14</sup>-point font, and must be printed on only one side of the page. Text may not be reduced, and must be double-spaced except for headings, assignments of error, quotations that exceed 49 words, 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 filed by a litigant permitted to file non-electronically under Rule 5A:1(c) must 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 front cover of all petitions for appeal, briefs, appendices, petitions for rehearing, and petitions for rehearing en banc must contain the style of the case (with the name of the petitioner/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 email address of counsel submitting the document.

(c) *Effect of Non-compliance.* — No appeal will 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. However, failure to comply after notice of non-compliance may result in the dismissal of the case.

(d) *Certificate of Compliance with Word Count* ~~Limitation~~ Limit. — Any brief, motion, petition, or other document that has a word count ~~limitation~~ limit in these Rules must include a certificate by the attorney, or unrepresented party, that the document complies with the applicable word count ~~limitation~~ limit. 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.

\* \* \*

### **C. PROCEDURE FOR FILING AN APPEAL FROM THE TRIAL COURT**

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

(a) *Filing Deadline; Where to File.* — ~~No~~ Except as otherwise provided by statute, no appeal will 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 transmits, mails, or delivers a copy of such notice to all opposing counsel. A notice of appeal filed after the

trial 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 this Court must simultaneously file in the trial court an appeal bond ~~in compliance with~~ if required by Code § 8.01-676.1.

(a1) Appeals from the Circuit Court. — Pursuant to Rule 1:1B, if a circuit court vacates a final judgment, a notice of appeal filed prior to the vacatur order is moot and of no effect. - A new notice of appeal challenging the entry of any subsequent final judgment must be timely filed. - No new notice of appeal is required, however, for a prior final judgment that was merely suspended or modified, but not vacated.

(a2) Appeal of Certified Questions and Petitions for Review. — A notice of appeal is not required for a petition for appeal of a certified question under Code § 8.01-675.5(A), an interlocutory appeal under Code § 8.01-267.8 of the Multiple Claimant Litigation Act, or a petition for review under Code § 8.01-626, including a petition allowed by Code § 8.01-675.5(B).

(b) *Content.* — The notice of appeal must 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 must be filed in the office of the clerk of this Court and, except as otherwise provided by law, must be accompanied by the \$50 filing fee required by statute. The fee is due at the time the notice of appeal is presented. The clerk of this Court may will file any notice of appeal that is not accompanied by such fee if the fee is received by the clerk within 10 days of the date the notice of appeal is filed. If the fee is not received within such time, the appeal will be dismissed.

(d) *Certificate.* — The appellant must 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 transmitted, mailed, or delivered to all opposing counsel; and

(3) in a criminal case, (i) a statement whether counsel for defendant has been appointed or privately retained; and (ii) a statement that the notice of appeal, in addition to being sent to opposing counsel, has been sent by e-mail to noticesofappeal@oag.state.va.us or, if the appellant does not have access to email, mailed to Notices of Appeal, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219; 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 or is otherwise already in the possession of appellant, or was previously filed in the proceedings.

(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 will 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.

(g) Notice of Appearance by the Commonwealth in Criminal Cases — Within 14 days of the filing of a notice of appeal in a criminal case, the Attorney General, or the attorney for the Commonwealth who prosecuted the underlying criminal case, acting pursuant to Code § 2.2-511 and with the consent of the Attorney General, must file a notice of appearance identifying the attorney(s) representing the Commonwealth in the appeal.- The notice of appearance must identify 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 who is to represent the Commonwealth in the appeal.- If the notice is being filed by the attorney for the Commonwealth who prosecuted the underlying criminal case, it must include a certification that the Attorney General has consented to the representation.- A copy of the notice of appearance must be served on counsel for the appellant.

**Form**

**NOTICE OF APPEAL FROM TRIAL COURT  
(Rule 5A:6)**

VIRGINIA: IN THE CIRCUIT COURT OF \_\_\_\_\_

(The style of the case in the Circuit Court.)

**NOTICE OF APPEAL**

\_\_\_\_\_ ,

(name(s) of party(ies))

(plaintiff, defendant or other designation in trial court)

\_\_\_\_\_ hereby appeals to the Court of Appeals of  
Virginia from the

\_\_\_\_\_   
(final judgment or other appealable order or decree)

of this Court entered on \_\_\_\_\_.  
(date)

[If applicable] A transcript or statement of facts, testimony, and other incidents of the case will be filed.

**CERTIFICATE**

The undersigned certifies as follows:

(1) The name(s) and address(es) of appellant(s) are:

(2) The name(s), address(es), email address(es), and telephone number(s) of counsel for appellant(s) are:

(3) The name(s) and address(es) of appellee(s) are:

(4) The name(s), address(es), email address(es), and telephone number(s) of counsel for appellee(s) are:

(5) [If applicable] Counsel for appellant has ordered from the court reporter who reported the case the transcript for filing as required by Rule 5A:8(a).

(6) [If applicable] \_\_\_\_\_ , \_\_\_\_\_

(name of party) (appellant)

\_\_\_\_\_, is not represented by counsel. \_\_\_\_\_  
(appellee) (his) (her)

address and telephone number are:

(7) [In criminal cases only] Counsel for defendant has been \_\_\_\_\_

\_\_\_\_\_  
(appointed) (privately retained)

(8) A copy of this Notice of Appeal has been mailed, emailed, or delivered to all opposing counsel [and/or to unrepresented parties, if applicable] and to the Clerk of the Court of Appeals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(9) [In criminal cases only] A copy of this Notice of Appeal has been [sent by email to [noticesofappeal@oag.state.va.us](mailto:noticesofappeal@oag.state.va.us)] [(if the appellant does not have access to email) mailed to Office of the Attorney General, attn.: Notices of Appeal, 202 North Ninth Street, Richmond, Virginia 23219] this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature of counsel or unrepresented party)

\* \* \*

### **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 no later than 60 days after entry of the final judgment. This deadline may be extended by a judge of this Court 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 must:

- (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 must 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 is 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 must 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 has 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~~<sup>21</sup> 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 will 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~~<sup>60</sup> 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 must 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 must 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 must 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 must:

(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, constitutes certification that the procedural requirements of this Rule have been satisfied.

(e) Criminal cases. — In criminal cases in which the Attorney General under Rule 5A:6(g) has designated an assistant Attorney General to handle the appeal, the appellant must contemporaneously serve a copy of all notices required by this Rule on such assistant Attorney General, as well as on the Commonwealth’s Attorney who handled the case in the trial court.

\* \* \*

## **E. PROCEDURE ON PETITION FOR APPEAL IN ~~CRIMINAL CASES AND TRAFFIC INFRINGEMENTS~~ DISCRETIONARY APPEALS**

### **Rule 5A:12. Petition for Appeal and Other Petitions for Discretionary Review.**

(a) *When the Petition Must be Filed.* — When an appeal to this Court does not lie as a matter of right, a petition for appeal, application for an appeal, or other authorized pleading seeking discretionary review (hereafter “petition”), as appropriate, must be filed with the clerk of this Court ~~not more than:~~

(1) not more than 10 days after entry of the trial court’s order in cases governed by Code § 8.01-267.8;

(2) not more than 15 days after entry of the trial court’s certification in cases governed by Code § 8.01-675.5(A);

(3) not more than 14 days after the filing of the notice of filing of transcripts in cases governed by Code §§ 19.2-398 (A) and (E);

(4) not more than 40 days after the filing of the record with this Court. ~~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.~~ in cases governed by Code §§ 19.2-398 (B) and (C); and

(5) for any other discretionary appeal, within the time prescribed by the statute authorizing the appeal to the Court of Appeals.

A petition for review under Code § 8.01-626, including a petition allowed by Code § 8.01-675.5(B), is governed by Rule 5A:12A.

(b) *Copy to Opposing Counsel.* — At the time the petition ~~for appeal~~ is filed, a copy of the petition must be transmitted, mailed, or emailed delivered to the Commonwealth’s attorney or the city, county, or town attorney, as the case may be to all opposing counsel of record.

(c) *What the Petition Must Contain.* — A petition ~~for appeal~~ under this Rule must contain the following:

(1) Assignments of Error. Under a heading entitled “Assignments of Error,” the petition must list, clearly and concisely and without extraneous argument, the specific errors in the rulings below—    —or the issue(s) on which the tribunal or court appealed from failed to rule—    —upon which the party intends to rely. An exact reference to the page(s) of the transcript, written statement of facts, or record where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken must be included with each assignment of error but is not part of the assignment of error. If the error relates to failure of the tribunal or court below to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the transcript, written statement of facts, or record where the issue was alleged error has been preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).

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

(ii) Insufficient Assignments of Error. An assignment of error which does not address the findings, rulings, or failures to rule on issues 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, the petition ~~for appeal~~ will be dismissed.

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

(2) Table of Contents and Table of Authorities. A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities must 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 should 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 must 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—    —must 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) *Length.* — Except by leave of a judge of this Court, a petition ~~must~~ may not exceed ~~12,300~~ the longer of 35 pages or 7,500 words. The page and word ~~limit does~~ limits do not include the cover page, table of contents, table of authorities, ~~and signature blocks, or~~ certificate.

(e) Filing Fee. — The petition for appeal must be accompanied by the \$50 filing fee required by statute. The clerk of this Court may file a petition for appeal that is not accompanied by such fee if the fee is received by the clerk within 10 days of the date the petition for appeal is filed. If the fee is not received within such time, the petition for appeal will be dismissed.

(ef) 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 this Court even though the cases were not consolidated below by formal order.

(fg) 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 No oral argument will be permitted on a petition except, consistent with Code § 17.1-407(D) and Code § 19.2-403, the Commonwealth is entitled to state orally, in person or by telephone conference call, to before a panel of this the Court the reasons the why its 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. for petitions filed pursuant to Code § 19.2-398.

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

**Rule 5A:12A. Specific Procedures for Petitions for Review Pursuant to Code § 8.01-626 and Code § 8.01-675.5(B).**

(a) Time for Filing. — In every case in which the jurisdiction of this Court is invoked pursuant to Code § 8.01-626, including petitions for review under Code § 8.01-675.5(B), a petition for review must be filed with the clerk of this Court no later than 15 days after the order of the circuit court from which review is sought.

(b) Copy to Opposing Counsel. — At the time the petition for review is filed, a copy of the petition must be served on counsel for the respondent. At the same time the petition is served, a copy of the petition must also be emailed to counsel for the respondent (unless counsel has not provided an email address).- With the agreement of the parties, the petition may be served on counsel for the respondent solely by email.

(c) Length and What the Petition for Review Must Contain. — (i) Except by permission of a judge of this Court, a petition for review may not exceed the longer of 20 pages or 3,500 words. The petition for review must otherwise comply with the requirements for a petition for appeal in Rule 5A:12(c).

(ii) The petition must be accompanied by a copy of the pertinent portions of the record of the circuit court, including the relevant portions of any transcripts filed in the circuit court and the order(s) entered by the court (hereafter “the record”).- The copy of the record constitutes part of the petition for the purpose of paragraph (b), but is not included in the page or word limit.

(iii) The petition for review must contain a certificate:

(1) providing the names of all petitioners and respondents; the name, Virginia State Bar number, mailing address, telephone number, 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;

(2) certifying that a copy of the petition has been served on all opposing counsel and all parties not represented by counsel, and specifying the date and manner of service;:

(3) certifying the number of words (headings, footnotes, and quotations are included in the page and word limit; the cover page, table of contents, table of authorities, signature blocks, and certificate are not included in the page and word limits); and

(4) certifying that the copy of the record being filed is an accurate copy of the record of the circuit court and contains everything necessary for a review of the petition.

(d) Filing Fee. — The petition must be accompanied by the \$50 filing fee required by statute. The clerk of this Court will file a petition for review that is not accompanied by such fee, but if the fee is not received by the clerk within 10 days, the petition for review will be dismissed.

(e) Scope and Review. — (i) a petition for review may be considered by this Court whether the circuit court’s order, or that part of the order addressing the injunction, is temporary or permanent. If review is sought from a final order that addresses injunctive relief and other issues, a petition for review must address only that part of the final order that actually addresses injunctive relief. All other issues are governed by the normal rules and timetables that apply to appeals. If both a petition for review under Code § 8.01-626 and an appeal under § 8.01-675.3

are filed to challenge the same final order, the clerk of this Court will assign separate record numbers to the two proceedings.

(ii) The clerk will assign the petition to a three-judge panel of the Court of Appeals.

(f) Responsive Pleading. — A respondent may file a response to a petition for review within 7 days of the date of service of same, unless this Court specifies a shorter time frame. The response may not exceed the longer of 20 pages or 3,500 words. The Court may act on a petition for review without awaiting a response, but absent exceptional circumstances, the Court will not grant a petition for review without affording the respondent an opportunity to file a responsive pleading.

(g) Rehearing and Further Review. — The provisions of Rules 5A:15, and 5A:33 through 5A:35 do not apply to proceedings under Code § 8.01-626.

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

(a) Filing Time. — A brief in opposition to granting the ~~appeal~~petition 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.~~respondent within:

(1) 7 days after the petition is served on counsel for the respondent in cases governed by Code § 8.01-267.8;

(2) 7 days after the petition is served on counsel for the respondent in cases governed by Code § 8.01-675.5(A);

(3) 14 days after the petition is filed in cases governed by Code §§ 19.2-398(A) and (E);

(4) 21 days after the petition is served in cases governed by Code §§ 19.2-398(B) and (C); and

(5) for any other discretionary appeal, any brief in opposition is due within the longer of 21 days or the time prescribed for such a response by the statute authorizing the appeal to the Court of Appeals.

A brief in opposition or other response to a petition for review under Code § 8.01-626, including a petition allowed by Code § 8.01-675.5(B), is governed by Rule 5A:12A.

Within the same time the ~~appellee~~respondent must transmit, mail, or deliver a copy of the brief in opposition to counsel for appellant. Motions for an extension to this briefing deadline must be filed no later than 10 days after the expiration of the deadline. - For the purpose of Rule 5A:13(a)(3) & (5), a petition is considered served three days from the date on which it was mailed, or one day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent.

(b) Form and Content. — ~~The~~Except as provided herein, the brief in opposition must conform in all respects to the requirements of the brief of ~~appellee~~respondent (Rule 5A:21).

(1) Length. Except by leave of a judge of this Court, the brief must not exceed ~~8,800 words.~~the longer of 35 pages or 7,500 words. The page and word limits do not include the cover page, table of contents, table of authorities, signature blocks, or certificate.

(2) Table of Contents and Table of Authorities. If the brief exceeds 3,500 words, it must 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 discretionary 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 Reserved.**

~~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. Motions for an extension to this briefing deadline must 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 must transmit a copy of the order denying the petition to all counsel of record. An appellant may demand consideration of the petition by a three judge panel pursuant to Code § 17.1-407(D). The demand must be filed with the clerk of this Court within 14 days after the date of the order by which the petition was denied. The demand, which must include a statement identifying how the one judge order is in error, must not exceed 350 words. Oral argument is not 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(e). An appellant who has previously requested oral argument may waive oral argument by so stating in the demand for review.~~

~~(b) Denial by a Three Judge Panel.— When a petition for appeal is denied by a three judge panel, the clerk of this Court must transmit a copy of the order denying the appeal to all counsel of record. Within~~ Except for petitions filed by the Commonwealth pursuant to Code § 19.2-398 related to pretrial matters for which no rehearing is permitted, the appellant, within 14 days after the date of the order, ~~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.~~ The petition for rehearing may not exceed the longer of 25 pages or 5,300 words ~~in length~~. The petition must state that it has been transmitted, mailed, or delivered to counsel for the appellee respondent. Oral argument on the petition for rehearing will not be allowed. The petition for rehearing will be referred to the panel of this Court that considered the original petition ~~for appeal~~. No responsive brief may be filed unless requested by this Court. The clerk of this Court will notify all counsel of the action taken by this Court on the petition for rehearing.

## 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 this Court, such appeal is perfected by the timely filing of a notice of appeal pursuant to Rule 5A:6. Such case will be considered mature for purposes of further proceedings from the date the record is filed in the office of the clerk of this Court. A party filing a notice of an appeal of right to this Court must simultaneously file in the trial court an appeal bond ~~in compliance with~~ if required by Code § 8.01-676.1.

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

(c) *Docketing.* — Cases are placed on the docket in the order in which they mature; provided that ~~precedence must~~ cases will be given ~~to the following cases:~~ precedence as required by statute. (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.~~

This Court may, however, for good cause shown or for reasons appearing sufficient to this 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 must 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 must contemporaneously give notice in writing ~~of said filing~~ to counsel for appellee. The time for initially filing the appeal bond or letter of credit prescribed by Code § 8.01-676.1(A) and (B) is not jurisdictional under Code § 8.01-676.1(P). No appeal will be dismissed because of a defect in any appeal bond or irrevocable letter of credit unless an appellee, within 21 days after the giving of such notice, files with the clerk of this Court 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 will be dismissed unless the appellant satisfies this Court that the bond or irrevocable letter of credit, either as originally given or as amended, has been filed as required by law.

\* \* \*

### **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 may exceed the longer of 50 pages or 12,300 words. No reply brief may exceed the longer of 20 pages or 3,500 words. Briefs of amici curiae must comply with the word limits that apply to briefs of the party being supported. ~~Word~~Page and word limits under this Rule do not include appendices, ~~or~~ the cover page, table of contents, table of authorities, ~~and~~signature blocks, or certificate. There will 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 this Court, except as otherwise provided by statute or order of this Court, briefs must be filed as follows:

(1) The appellant must file the opening brief in the office of the clerk of this Court 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 must be filed in the office of the clerk of this Court within ~~25~~30 days after filing of the opening brief.

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

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

(c) *Filing Time: Grant of ~~Petition for~~Discretionary Appeal.* — In cases when a ~~petition for~~discretionary appeal has been granted by this Court, briefs must be filed as follows:

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

(2) The brief of appellee must be filed in the office of the clerk of this Court within ~~25~~30 days after filing of the opening brief.

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

(4) -Motions for extensions to these briefing deadlines must 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 of this Court, 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.

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

The opening brief of appellant must contain:

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

(b) A brief statement of the nature of the case and of the material proceedings in the trial court, which should 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~~ Under a heading entitled “Assignments of Error,” the brief must list, clearly and concisely and without extraneous argument, the specific errors in the rulings below—or the issue(s) on which the tribunal or court appealed from failed to rule—upon which the party intends to rely, or the specific existing case law that should be overturned, extended, modified or reversed. An exact reference to the page(s) of the transcript, written statement of facts, record, or appendix where ~~each assignment of the~~ alleged error was has been preserved in the trial court ~~or other tribunal from which the appeal is taken must be included with each assignment of error but is not part of the assignment of error. If the error relates to failure of the tribunal or court below to rule on any issue, error must be assigned to such failure to rule, providing an exact reference to the page(s) of the transcript, written statement of facts, record, or appendix where the alleged error has been preserved in the tribunal below, and specifying the opportunity that was provided to the tribunal or court to rule on the issue(s).~~

(1) Effect of Failure to Assign Error. Only assignments of error listed in the brief will be noticed by this Court. - If the brief does not contain assignments of error, the appeal will be dismissed.

(2) Insufficient Assignments of Error. An assignment of error that does not address the findings, rulings, or failures to rule on issues 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, the appeal will be dismissed.

(3) Effect of Failure to Use Separate Heading or Include Preservation Reference. If the brief contains assignments of error, but the assignments of error are not set forth under a separate heading as provided in subparagraph (c) of this Rule, a rule to show cause will issue pursuant to Rule 5A:1A. - If there is a deficiency in the reference to the page(s) of the transcript, written statement of facts, record, or appendix where the alleged error has been preserved in the trial court or other tribunal from which the appeal is taken—including, with respect to error assigned to failure of such tribunal to rule on an issue, an exact reference to the page(s) where the issue was preserved in such tribunal, specifying the opportunity that was provided to the tribunal to rule on the issue(s)—a rule to show cause will issue pursuant to Rule 5A:1A.

(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 must 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 must 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 — must 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.

(h) A certificate (which need not be signed in handwriting) stating (1) that Rule 5A:19(f) has been complied with it was served on opposing counsel, and (2) whether counsel desires to waive oral argument. The certificate must also state the number of words (headings, footnotes, and quotations count towards are included in the page and word limitation limits; the cover page, table of contents, table of authorities, signature blocks, and certificate do are not count towards included in the page and word count limits).- 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.

(i) Procedure for an Anders appeal. — If counsel for appellant finds the client's appeal to be without merit, counsel must comply with the requirements of Anders v. California, 386 U.S. 738 (1967), and Akbar v. Commonwealth, 7 Va. App. 611 (1989). In such an appeal, counsel must file (1) an opening brief that refers to anything in the record that might arguably support the appeal and that demonstrates 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 brief. The opening brief and the motion for leave to withdraw as counsel should specifically cite Anders. All three pleadings must be served on opposing counsel and upon the client and must contain a certificate providing evidence of such service. This Court will rule upon the motion for extension of time upon its receipt, but will not rule on the motion to withdraw as counsel until this Court considers the case in its entirety, including any supplemental briefing that may be 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 must contain:

(a) A table of contents and table of authorities with cases alphabetically arranged. Citations of all authorities must 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 must 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—must 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) With respect to the assignments of cross-error, if any:

(1) A statement of the assignment of cross-error, with a clear and exact reference to the pages of the transcript, written statement of facts, record, or appendix where the alleged cross-error has been preserved.

(2) The standard of review, the argument, and the authorities relating to each assignment of cross-error. With respect to each such assignment of cross-error, the standard of review and the argument—including principles of law and the authorities—must be stated in one place and not scattered through the brief.

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

(fg) 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.

(gh) A certificate (which need not be signed in handwriting) stating (1) that ~~Rule 5A:19(f) has been complied with, it was served on opposing counsel~~ and (2) whether counsel desires to waive oral argument. The certificate must also state the number of words (headings, footnotes, and quotations ~~count towards~~ are included in the page and word ~~limitation~~ limits; the cover page, table of contents, table of authorities, signature blocks, and certificate ~~do~~ are not ~~count towards~~ included in the page and word ~~count~~ limits). 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, must 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 must contain a certificate (which need not be signed in handwriting) ~~that Rule 5A:19(f) has been complied with~~ stating (1) that it was served on opposing counsel and (2) whether counsel desires to waive oral argument.

The certificate must also state the number of words (headings, footnotes, and quotations ~~count towards~~ are included in the page and word ~~limitation~~ limit; the cover page, table of contents, table of authorities, signature blocks, and certificate ~~do~~ are not ~~count towards~~ included in the page or word ~~count~~ limit).

#### **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, and in proceedings invoking this Court's original jurisdiction:

(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 must comply with the rules applicable to the brief of the party supported.

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

\* \* \*

### **Rule 5A:25. Appendix and Designations of Assignments of Error.**

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

(1) *Electronic Record.* No appendix is required in cases where the clerk of the trial court or other tribunal has filed the record electronically. In cases where no appendix is required, parties must still file with the clerk of this Court a statement of the assignments of error on the schedule specified in Rule 5A:25(d) below.

(2) *Paper record.* Unless otherwise ordered by the Court, an appendix must be filed in cases where the clerk of the trial court or other tribunal has filed a paper record. Where an appendix is required, it must be filed by the appellant no later than the time of filing the opening brief.

(b) Filing. — This Court may by order require the filing or service of a paper copy of the appendix and may, sua sponte or on motion, enter an order dispensing with the appendix and permitting an appeal to proceed on the original record with any copies of the record, or relevant parts, that this Court may order the parties to file.

(c) Contents. — An appendix must include:

- (1) ~~the~~ 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 *of Appendix and Exchange of Assignments of Error.* — Within ~~10~~15 days after the filing of the record with this Court or, in a case in which a petition for appeal has been granted, within ~~10~~15 days after the date of the certificate of appeal issued by the clerk of this Court, counsel for appellant must file in the office of the clerk of this Court 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 must file with the clerk of this Court a statement of the assignments of error and a designation of the contents to be included in the appendix within 15 days after the filing of the record or, in a case in which a petition for appeal has been granted, within 15 days after the date of the certificate of appeal; not more than 10 days after this designation is filed, counsel for appellee must file with the clerk of this Court a designation of any additional contents to be included in the appendix and, in appeals of right, a statement of any additional assignments of error the appellee wishes to present. - The appellant must include in the appendix the parts thus designated, together with any additional parts the appellant considers germane.

(e) *Table of Contents; Form of Presentation.* — At the beginning of the appendix there must be a table of contents, which must 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 must 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 must 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) should 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 must 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 must advance the cost of including such parts. - The cost of producing the appendix will be taxed as costs in the case.

(g) *Penalty.* — Nothing should 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) should 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 should 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. - This Court may, however, consider other parts of the record.

(i) *Sealed Materials in the Appendix.* — Appendices filed with this Court are a matter of public record. - If counsel concludes it is necessary to include sealed material in the appendix, then, in order to maintain the confidentiality of the materials, counsel must designate the sealed material for inclusion in a sealed supplemental appendix to be filed separately from the regular appendix. - A sealed volume of the appendix must be filed in the manner prescribed by the VACES Guidelines and User's Manual. - The Guidelines are located on this Court's website at <https://eapps.courts.state.va.us/help/robo/vaces/index.htm#t=VACES.htm>.

### **ADVISORY NOTE**

As of January 1, 2022, fewer than ten circuit courts did not routinely file electronic records. Some circuit courts that regularly file electronic records do not do so in certain cases. Counsel should consult the clerk’s office of the circuit court from which the appeal is taken to determine if an electronic record will be filed.

\* \* \*

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

~~In cases in which appeal lies as a matter of right, if all the judges of the panel of this Court 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 may forthwith affirm the judgment of the trial court or commission.~~

The Court of Appeals may dispense with oral argument in any matter if the panel to which the matter is assigned has examined the briefs and record and unanimously agrees that oral argument is unnecessary because (a) the appeal is wholly without merit or (b) the dispositive issue or issues have been authoritatively decided, and the appellant has not argued that the case law should be overturned, extended, modified, or reversed.

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

(a) Notice. — Whenever appeal lies as a matter of right or a ~~petition for~~ discretionary appeal has been granted, oral argument will be permitted except in those cases disposed of pursuant to Rule 5A:27. The Clerk of this Court, except in extraordinary circumstances, must 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 this Court, argument for a party may 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 will 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 this Court 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 must specify the amount of its allotted time the supported party is willing to yield to amicus curiae.

(e) Waiver. — During oral argument, it is not necessary for any party to expressly reserve any argument made on brief, and the failure to raise any such argument does 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~~h).

## G. DECISION, COSTS, AND MANDATE

\* \* \*

### 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 will be taxed against the appellant unless otherwise agreed by the parties or ordered by this Court; if a judgment is affirmed, costs will be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs will be taxed against the appellee unless otherwise ordered; if a judgment is affirmed in part or reversed in part, or is vacated, costs will be allowed as ordered by this Court.

(b) *Attorney Fees.* — (1) In any case ~~where attorney fees are recoverable under Title 16.1 or Title 20 relating to affirmance or annulment of a marriage, divorce, custody, spousal or child support or the control or disposition of a juvenile and other domestic relations cases arising under Title 16.1 or Title 20, or involving adoption under Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2, in which a party has a statutory, contractual or other basis to request attorney fees,~~ the party may request an award of attorney fees incurred in the appeal of the case by making ~~said request in the Opening Brief of Appellant, the Reply Brief of the Appellant, or in the Brief of Appellee~~ the request in an appellant's, petitioner's, appellee's, or respondent's brief.

(2) Upon the making of a request for attorney fees as set forth in (b)(1) above, and unless otherwise provided by the terms of a contract or stipulation between the parties, this Court may award to a party who has made such request, all of their attorney fees, or any part thereof, or remand the issue to the circuit court as directed in the mandate order for a determination thereof. Such fees may include the fees incurred by such party in pursuing fees as awarded in the circuit court.

(3) In determining whether to make such an award, this Court will not be limited to a consideration of whether a party's position on an issue was frivolous or lacked substantial merit but may consider all the equities of the case.

(4) Where the appellate mandate remands the issue to the circuit court for an award of reasonable attorney fees, in determining the reasonableness of such an award the circuit court should consider all relevant factors, including but not limited to, the extent to which the party was a prevailing party on the issues, the nature of the issues involved, the time and labor involved, the financial resources of the parties, and the fee customarily charged in the locality for similar legal services.

(c) *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, are taxable in this Court. Costs incurred in the preparation of transcripts may be taxable in this Court. - *See*, Code § 17.1-128.

(d) *Notarized Bill of Costs.* — Counsel for a party who desires costs to be taxed must itemize them in a notarized bill of costs, which must 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.

(e) *Award.* — The clerk of this Court must prepare and certify an itemized statement of costs taxed in this Court for insertion in the mandate, but the issuance of the mandate will not be delayed for taxation of costs. If the mandate has been issued before final determination of costs, the statement, or any amendment thereof, must 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.

\* \* \*

## H. REHEARING

### Rule 5A:32. Scope.

The provisions of Rules 5A:33 through 5A:35 do not apply to the denial or dismissal of a petition ~~for appeal~~ in a discretionary appeal, a petition for review under Rule 5A:12A, or decisions in pretrial appeals by the Commonwealth under Code § 19.2-398, for which no rehearing is permitted.

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

(a) *Petition for Rehearing.* — Any party seeking a rehearing of a decision or order of this Court finally disposing of a case must, within 14 days following such decision or order, file a petition for rehearing with the clerk of this Court. - The petition for rehearing may not exceed the longer of 25 pages or 5,300 words ~~in length~~.

(b) ~~Response.~~ *Response.* — No response to a petition for rehearing will be received unless requested by this Court.

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

(d) *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 this Court must notify all counsel of record of the action taken by this Court on the petition for rehearing.

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

(a) *Petition for Rehearing en Banc.* — The Court may grant rehearing en banc as provided in Code § 17.1-402(D). - Any party seeking a rehearing by the full Court of a decision or order of a panel of this Court finally disposing of a case must, within 14 days following such decision or order, file a petition for rehearing en banc with the clerk of this Court. The petition for rehearing en banc may not exceed the longer of 25 pages or 5,300 words ~~in length~~.

(b) *Proceedings After Petition for Rehearing.* — No answer to a petition for a rehearing en banc will be received unless requested by this Court. - The clerk of this Court must promptly

notify all counsel of record of the action taken by this Court on the petition for rehearing en banc.

(c) *On the Court's Order.* — A rehearing en banc on motion of this Court must be ordered no later than 20 days after the date of rendition of the order to be reheard. The clerk of this Court must promptly notify all counsel of record of the action taken by this Court on this Court's motion.

### **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 this Court must notify all counsel. - No brief in addition to the petition may be filed by petitioner. - Respondent may file in the office of the clerk an answering brief, which may not exceed the longer of 25 pages or 5,300 words in length, within 21 days following the date of the order of this Court granting a rehearing. - The respondent's answering brief must be transmitted, 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. - 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 must notify all counsel. - The mandate ~~entered~~ is stayed as to all issues decided by the panel pending the decision of this Court en banc. - The appeal is reinstated on the docket of this Court for oral argument only as to issues granted. - Briefing and oral argument will proceed in the same order as before the three-judge panel.

(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 this Court on its own motion are available for briefing, argument, and review by the en banc Court. - This 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 must file in the office of the clerk a brief, which may not exceed the longer of 50 pages or 12,300 words in length. Such brief must be filed within 21 days following the date of the order of this Court granting rehearing en banc, and must be accompanied by a certificate indicating that the brief was transmitted, mailed, or delivered to opposing counsel on or before the date of filing.

(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 the answering brief not to exceed the longer of 50 pages or 12,300 words in length, within 14 days after the opening brief has been filed. The appellee's answering brief must be transmitted, mailed, or delivered to opposing counsel on or before the date the answering brief is filed. 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 the longer of 20 pages or 3,500 words, within 14 days after the answering brief has been filed. The appellant must transmit, mail, or deliver a copy of the reply brief to opposing counsel on or before the date the answering brief is filed.

## I. SETTLEMENT AND WITHDRAWAL

\* \* \*

### 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 must state whether all parties concur. - If a party objects, that party must 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 will 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 must 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 must not consult ex parte with any represented client without counsel's agreement.

(e) *Conference Orders.* — A settlement conference, if ordered in a case, will not automatically affect any time deadline otherwise applicable. - The settlement judge, however, may direct the clerk of this 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 will 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 must thereafter direct the clerk of this 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 will not be considered confidential except to the extent the agreement specifically requires it. - No confidentiality provision, however, will 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 may 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.

## L. APPEALS RELATING TO QUARANTINE OR ISOLATION ORDERS

### **Rule 5A:38. ~~Petition for Review Pursuant to Code § 8.01-626; Injunctions~~ Appeal of Orders Relating to Quarantine or Isolation of Persons.**

(a) Quarantine Related Code Provisions.—In proceedings involving circuit court orders of quarantine of a person or persons pursuant to Article 3.02 of Chapter 2 of Title 32.1 of the Code of Virginia, the provisions of Code § 32.1-48.010 apply with respect to appealability of such orders, the effect of an appeal upon any order of quarantine, availability of expedited review, stay of quarantine orders, and representation by counsel.

(b) Isolation Order Code Provisions.—In proceedings involving circuit court orders of isolation of a person or persons pursuant to Article 3.02 of Chapter 2 of Title 32.1 of the Code of Virginia, the provisions of Code § 32.1-48.013 apply with respect to appealability of such orders, the effect of an appeal upon any order of isolation, availability of expedited review, stay of isolation orders, and representation by counsel.

(c) Transmission of Record.—In all appeals under this rule, the clerk of the court from which an appeal is taken must transmit the record to the clerk of this Court immediately upon the filing of the notice of appeal.

(d) Expedited Procedures.—Unless otherwise ordered by the Court, after the filing of the opening brief under this Rule, 48 hours should be allowed for the filing of the brief of the appellee. The Court will issue an order within 24 hours of the argument or of its review of the case without oral argument. The Court has the authority to alter these time frames in any case.

(e) Oral Argument.—The Court will hold any oral argument in appeals under this rule in a manner so as to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, and the general public. To this end, the Court may take measures including, but not limited to, ordering any oral argument to be held by telephone or video conference or ordering those present to take appropriate precautions, including wearing personal protective equipment.

~~(a) Time for Filing.~~ In every case in which the jurisdiction of this Court is invoked pursuant to Code § 8.01-626, a petition for review must be filed with the clerk of this Court within 15 days of an order of a circuit court that grants an injunction, refuses an injunction, or dissolves or refuses to enlarge an existing injunction.

~~(b) Copy to Opposing Counsel.~~ At the time the petition for review is filed, a copy of the petition must be served on counsel for the respondent. At the same time that the petition is served, a copy of the petition must also be emailed to counsel for the respondent, unless said counsel does not have, or does not provide, an email address. With the agreement of the parties, the petition may be served on counsel for the respondent solely by email.

~~(c) *Length and What the Petition for Review Must Contain.*—(i) Except by permission of a judge of this Court, a petition for review may not exceed 2,625 words. The petition for review must otherwise comply with the requirements for a petition for appeal in Rule 5A:12(e).~~

~~(ii) The petition must be accompanied by a copy of the pertinent portions of the record of the circuit court, including the relevant portions of any transcripts filed in the circuit court and the order(s) entered by the court respecting the injunction (hereafter “the record”). The copy of the record constitutes part of the petition for the purpose of paragraph (b), but does not count against the petition word limit.~~

~~(iii) The petition for review must contain a certificate:~~

~~providing the names of all petitioners and respondents; the name, Virginia State Bar number, mailing address, telephone number, facsimile number (if any), and e-mail address of counsel for each party; and the mailing address, telephone number, facsimile number (if any), and e-mail address of any party not represented by counsel;~~

~~certifying that a copy of the petition has been served on all opposing counsel and all parties not represented by counsel, and specifying the date and manner of service.~~

~~certifying 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);~~

~~certifying that the copy of the record being filed is an accurate copy of the record of the circuit court and contains everything therefrom necessary for a review of the petition.~~

~~(d) *Filing Fee.* The petition must be accompanied by the \$50 filing fee required by statute. The clerk of this Court may file a petition for review that is not accompanied by such fee if the fee is received by the clerk within 5 days of the date the petition for review is filed. If the fee is not received within such time, the petition for review will be dismissed.~~

~~(e) *Scope and Review.*—(i) a petition for review may be considered by this Court whether the circuit court’s order, or that part of the order addressing the injunction, is temporary or permanent. If review is sought from a final order that addresses injunctive relief and other issues, a petition for review must address only that part of the final order that actually addresses injunctive relief. All other issues are governed by the normal rules and timetables that apply to appeals. If both a petition for review under Code § 8.01-626 and an appeal under § 8.01-675.3 are filed to challenge the same final order, the clerk of this Court will assign separate record numbers to the two proceedings.~~

~~(ii) a petition for review may be considered by a single judge of this Court, or by a three-judge panel.~~

~~(f) *Responsive Pleading.*—A respondent may file a response to a petition for review within 7 days of the date of service of same, unless this Court specifies a shorter time frame. For the purpose of this Rule, a petition for review is considered served 3 days from the date on which it was mailed, or 1 day from the date on which the petition was faxed, emailed, or sent by commercial delivery service, to counsel for the respondent. Notwithstanding the foregoing, this Court may act on a petition for review without awaiting a response; however, absent exceptional circumstances, this Court will not grant a petition for review without affording the respondent an opportunity to file a responsive pleading.~~

~~(g) *Rehearing and Further Review.* The provisions of Rules 5A:15, and 5A:33 through 5A:35 do not apply to proceedings under Code § 8.01-626.~~

APPENDIX OF FORMS.

\*\*\*

Form 9. Irrevocable Letters of Credit.

(Name and Address of Bank)

\_\_\_\_\_, 20\_\_\_\_

U.S. \$\_\_\_\_\_

On all communications please refer to (No. of Letter of Credit)

(Name and address of appellee(s))

Dear \_\_\_\_\_:

We hereby establish our Irrevocable Letter of Credit No. \_\_\_\_\_ in your favor, for the account of (name and address of appellant(s)), and hereby undertake to honor your draft at sight on us, not exceeding in the aggregate U.S. \$—\$ (amount in words). A draft drawn under this letter of credit must be marked "Drawn under (Name of Bank) Letter of Credit No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_." Funds under this letter of credit will be available to you in a single drawing by presentation of your sight draft drawn on us, accompanied by:

(For Costs Alone)

1. The original of this letter of credit.
2. Your verified statement that  (appellant(s))  (has)(have) failed to pay all damages, costs and fees assessed against (him)(her)(them)(it) in the Court of Appeals of Virginia  (and in the ~~ease of~~ Supreme Court of Virginia, if it takes cognizance of the claim), in the case of \_\_\_\_\_
3. A certified copy of an order or itemized statement of costs from the Court of Appeals  (or the Supreme Court, if it takes cognizance of the claim)  assessing such damages, costs and fees against  (appellant(s)) .

(For Suspension Alone)

1. The original of this letter of credit.
2. Your verified statement that  (appellant(s))  (has)(have) failed to perform and satisfy the judgment rendered against (him)(her)(them)(it) on \_\_\_\_\_

\_\_\_\_\_ by the Circuit Court of \_\_\_\_\_ in the case of \_\_\_\_\_, and (has)(have) failed to pay all actual damages incurred in consequence of the suspension of judgment.

3. A copy of the trial court judgment order, attested by its clerk.
4. A copy of an order of the Court of Appeals of Virginia (or the Supreme Court of Virginia, if it takes cognizance of the claim), attested by its clerk, affirming ~~said~~the judgment or refusing, dismissing or allowing withdrawal of the appeal of ~~said~~the judgment, or certification by the clerk ~~of the Court of Appeals~~ that the appeal of ~~said~~the judgment was not prosecuted timely.
5. A copy of an order, if any, of the Court of Appeals (or the Supreme Court, if it takes cognizance of the claim) or trial court, attested by the clerk, assessing actual damages in consequence of the suspension of judgment.

(For Costs and Suspension)

1. The original of this letter of credit.
2. Your verified statement that  (appellant(s))  (has)(have) failed to perform and satisfy the judgment rendered against (him)(her)(them)(it) on \_\_\_\_\_ by the Circuit Court of \_\_\_\_\_ in the case of \_\_\_\_\_, and (has)(have) failed to pay all damages, costs and fees assessed against (him)(her)(them)(it) in the Court of Appeals of Virginia (or the Supreme Court of Virginia, if it takes cognizance of the claim), and all actual damages incurred in consequence of the suspension of judgment.
3. A copy of the trial court judgment order, attested by its clerk.
4. A copy of an order of the Court of Appeals (or the Supreme Court, if it takes cognizance of the claim), attested by its clerk, affirming ~~said~~the judgment or refusing, dismissing or allowing withdrawal of the appeal of ~~said~~the judgment, or certification by the clerk of the Court of Appeals that the appeal of ~~said~~the judgment was not prosecuted timely.
5. A copy of an order, if any, of the Court of Appeals (or the Supreme Court, if it takes cognizance of the claim), attested by its clerk, assessing damages, costs and fees against (appellant(s)) .
6. A copy of an order, if any, of the Court of Appeals (or the Supreme Court, if it takes cognizance of the claim) or trial court, attested by the clerk, assessing actual damages in consequence of the suspension of judgment.

This letter of credit is valid until \_\_\_\_\_ p.m. local time \_\_\_\_\_, 20\_\_\_\_, and a draft drawn hereunder, if accompanied by documents as specified above, will be honored if presented to (Presentation Address of Bank) on or before that date. However, this letter of credit automatically will be renewed for successive one (1) year periods from the initial expiration date

or any renewal period expiration date hereunder, unless at least sixty (60) days prior to any such expiration date (Name of Bank) notifies you that it has elected not to renew this letter of credit for such additional one (1) year period. The notice required hereunder will be deemed to have been given when received by you.

In the event that (Name of Bank) elects not to renew this letter of credit as required above, the full amount of this letter of credit ~~shall be~~is payable to the Clerk of the Circuit Court of \_\_\_\_\_ upon presentation of your verified statement that:

1. A final order of the Court of Appeals of Virginia (or the Supreme Court, if it takes cognizance of the claim), has not been entered in the case of \_\_\_\_\_ (or, where there has been suspension of judgment, a final order has not been entered by the Court of Appeals, Supreme Court, or trial court assessing actual damages in consequence of the suspension).
2. Thirty (30) days have elapsed since notice of non-renewal was given and appellant(s) (has)(have) not filed acceptable substitute security.

In the event of non-renewal, within fifteen (15) days after payment to the clerk under the previous paragraph, the appellant(s) or someone for (him)(her)(them)(it) must file with ~~said the~~ clerk of the trial court an appeal bond in substantial conformance with the appropriate form in the Appendix to Part Five A of the Rules of the Supreme Court of Virginia. The bond must be in the penalty of the amount paid to ~~said the~~ clerk under this letter of credit, and ~~said the~~ funds are in lieu of surety, but in no event will we have any liability or responsibility for failure of the appellant(s) (or someone acting on (appellant's) (appellants') behalf) to file such bond.

Partial drawings are not permitted under this letter of credit.

Except as otherwise expressly stated hereinabove, this letter of credit is subject to the ~~Uniform Customs and Practice for Documentary Credits as most recently published by the~~ International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590) and, to the extent consistent with ISP98 and the express provisions above, the provisions of Title 8.5A of the Code of Virginia governing letters of credit.

Very truly yours,

\_\_\_\_\_  
By \_\_\_\_\_ Bank  
Authorized Signature

\* \* \*