

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
A. GENERAL

Rule 5:4. Motions and Responses; Orders.

(a) *Motions and Responses.* —

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

(2) Responses. Opposing counsel may have 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) Number of Copies. An original and three copies of all motions or responses must be filed.

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

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

ADVISORY NOTE

This rule is not intended to limit the scope of motions that may be filed in the Supreme Court. Such motions may be filed in any pending or contemplated appeal, and may request from the Court any form of relief that is available to the movant. The practitioner should consult individual rules relating to the filing of motions in particular matters; for example, Rule 5:12 (trial judge authorized to act on matters pertaining to record); Rule 5:30(a)(3) (motion for leave to file brief amicus curiae). Rehearings are not within the scope of this rule, but are governed by Rules 5:20, 5:20A, and 5:37.

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

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

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

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

(2) What the Petition Must Contain. The petition must be notarized and must state whether the petitioner believes that the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing relevant authorities must accompany each petition. All petitions must comply with the requirements of Code § [8.01-655](#). Where a petition for a writ of habeas corpus is filed by counsel, counsel shall attach as an exhibit a single copy of the complete record of the proceedings that resulted in the detention the petition challenges. The record shall 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 shall 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 shall be made on the respondent and shall also be made on or accepted by the Attorney General or an Assistant Attorney General. A petition must be accompanied by a return of service executed by the appropriate officer evidencing service of a copy thereof on the respondent or by an acceptance of service signed by the respondent.

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

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

Petitioner

(4) When to Respond to a Petition; Reply. No responsive pleading to a petition filed by a prisoner acting pro se shall be required except as ordered by this Court. For all other petitions, a responsive pleading must be filed with the clerk of this Court within forty days after service of the petition. The deadline for counsel for the petitioner to file a reply to a responsive pleading shall be 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 shall state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities shall accompany each responsive pleading. In any case in which the respondent states an opinion that the taking of evidence is not necessary for the proper disposition of a petition for a writ of habeas corpus, the respondent shall attach as ~~an exhibit~~ (1) 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 shall 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 shall 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 shall 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 shall be identified by a tag. Each such volume or envelope shall include, on its cover or inside, a descriptive list of exhibits contained therein.

~~and~~ (2) (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 shall 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)~~ (8) Length. Except by permission of a Justice of this Court, no petition, including the accompanying memorandum of law, or a response thereto, including its accompanying memorandum of law, shall exceed the longer of 50 printed pages or 8,750 words. No reply filed to a responsive pleading shall exceed the longer of 10 printed pages or 1,750 words. Page and word limits do not include appendices, exhibits, cover page, table of contents, table of authorities, and certificate.

~~(7)~~ (8) Number of Copies. Four copies of the petition, responsive pleading, memoranda of law, reply of the petitioner, and motions shall be filed in the office of the clerk of this Court. Prisoners filing pro se shall only be required to file three copies.

~~(8)~~ (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 shall prepare the requested transcripts and transmit it forthwith upon request without the necessity of an order.

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

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

(2) Service of Petitions; 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 shall be served in accordance with Rule 1:12.

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

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

Petitioner

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

(4) Petitions for Mandamus or Prohibition Against a Judge. A petition for writ of mandamus or writ of prohibition against a judge shall not bear the name of the judge but shall be entitled, "In re, Petitioner." When the Attorney General determines, with the concurrence of the judge, that it is impracticable or unnecessary for the Attorney General

to represent the judge, the judge may be represented pro forma by counsel for the party opposing the relief, who shall appear in the name of the party and not that of the judge. Or, in the alternative, the Attorney General may provide for the appointment of special counsel to represent the judge, in accordance with the provisions of Code §§ [2.2-507](#) or [2.2-510](#).

(5) When to Respond to a Petition; Reply. No responsive pleading shall be required for a petition filed by a prisoner acting pro se except as ordered by this Court. For all other petitions, a responsive pleading must be filed with the clerk of this Court within 21 days after service of the petition or the filing thereof, whichever date is later. The deadline for counsel for the petitioner or a pro se petitioner to file a reply to a responsive pleading shall be 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 shall state whether, in the opinion of the respondent, the taking of evidence is necessary for the proper disposition of the petition. A memorandum of law citing the relevant authorities should accompany each responsive pleading.

(7) Length. Except by permission of a Justice of this Court, no petition, including the accompanying memorandum of law, or a response thereto, including its accompanying memorandum of law, shall exceed the longer of 50 printed pages or 8,750 words. No reply filed to a responsive pleading shall 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, and certificate.

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

(c) *When this Court May Act on a Petition.* — This Court may act on any petition for a writ of habeas corpus, mandamus, or prohibition before a responsive pleading 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 shall be in accordance with the orders of this Court or a Justice thereof to whom this Court may delegate authority to determine all procedural matters. If this Court or the designated Justice determines that evidence is desirable, (1) depositions shall 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 shall be limited in subject matter to the issues enumerated in the order. The circuit court shall conduct such a hearing within 90 days after the order has been received and shall report its findings of fact to this Court within 60 days after the conclusion of the hearing. 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 shall attach a copy of the proposed amended petition.

Last amended by Order dated April 26, 2019; effective July 1, 2019.

RULES OF SUPREME COURT OF VIRGINIA
PART FIVE
THE SUPREME COURT
E. PERFECTING 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 within 15 days 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 shall be served on counsel for the respondent. At the same time that the petition is served, a copy of the petition shall 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 Justice of this Court, a petition for review shall not exceed the longer of 15 pages or 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 shall 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 shall constitute part of the petition for the purpose of paragraph (b), but shall not count against the petition size limit.
- (iii) The petition for review shall 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, 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.* — Four copies of the petition, including the record of the lower tribunal(s), shall be filed. Only one copy of the record of the lower tribunal(s) need be filed if, upon filing the petition, counsel for the petitioner also files an electronic copy of the said record as an Adobe Acrobat Portable Document Format (PDF) document on a CD-ROM.

(e) *Filing Fee.* — The petition must be accompanied by a check or money order payable to the clerk of this Court for the amount 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 shall 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 shall be 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 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 shall not exceed the greater of 12 pages or 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 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, the Court may act on a petition for review without awaiting a response; however, absent exceptional circumstances, the Court shall not grant

a petition for review without affording the respondent an opportunity to file a responsive pleading.

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

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RULES OF SUPREME COURT OF VIRGINIA
PART FIVE A
THE COURT OF APPEALS
A. GENERAL

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 x 11 inch paper. All briefs, appendices, motions, petitions, and other documents must be in at least 12-point font. Text shall not be reduced, and must be double-spaced except for headings, assignments of error, quotations, and footnotes. Margins must be at least one inch on all four sides of each page. The use of condensed or multi-page transcripts is prohibited.

(b) *Binding and Cover.* — All briefs, appendices, petitions for rehearing, and petitions for rehearing en banc shall be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco fasteners, and the like are not acceptable. ~~The style of the case (with the name of the appellant stated first) and the record number of the case and the name, Virginia State Bar number, mailing address, telephone number (including any applicable extension), facsimile number (if any), and e-mail address of counsel submitting the paper shall be placed on the front cover.~~ The front cover of all petitions for appeal, briefs, appendices, petitions for rehearing, and petitions for rehearing en banc shall 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 shall be dismissed for failure to comply with the provisions of this Rule; however, the clerk of this Court may require that a document be redone in compliance with this Rule. However, failure to comply after notice of noncompliance may result in the dismissal of the case.

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

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