

## A GUIDE TO SELF-REPRESENTATION IN THE COURT OF APPEALS OF VIRGINIA

This guide is intended to assist non-lawyers in navigating the process of filing and proceeding with an appeal in the Court of Appeals of Virginia. It explains what can be appealed, how to start the process, and the relevant ground rules.

Each person in a case, even one who is not a lawyer, is required to follow the [Rules of the Supreme Court of Virginia](#). This guide is based upon those rules but is not—and should not be considered—legal advice. While the guide will provide an overview of the appellate process and additional resources through which to find information, parties are encouraged to [seek the advice of an attorney](#) to answer individual or specific questions about their case.

We hope this guide helps make the appellate process more accessible for those representing themselves in court. Keep in mind that appeals are full of legal technicalities, rules, and requirements. Even an overview as broad as this one will include legal terms that may be unfamiliar, and terms that seem familiar or commonplace often will have legal meanings that differ from their everyday meanings. Many words are defined and explained in the [glossary at the end of this guide](#).

For additional information, you can visit [Wex](#), an online legal dictionary and encyclopedia, [ABA Virginia Free Legal Answers](#), or any of the sites and resources listed in the [Guide to Virginia Legal Information Resources](#).

Although the availability of online information is convenient, public law libraries offer a host of information and resources as well. Most Virginia law libraries offer computers, Internet access, and printing services. Many of these libraries have copies of legal dictionaries, the Virginia state code (containing the statutes or laws in Virginia and also referred to as the “Code of Virginia”), legal encyclopedias, and more. A [list](#) of Virginia law libraries and their addresses, phone numbers, and websites are provided at the end of this guide. For more information about a particular library’s resources, call or visit in person, or visit their website.

The clerk’s office may also provide information that can be helpful in the handling of your case, but court staff cannot provide legal advice. Court of Appeals staff may:

- Provide information about lawyer referral services and lawyer advice lines.
- Provide locations for all court-approved forms and written instructions.
- Provide docketed case information.
- Provide locations for court-approved definitions of commonly used terms.

Court of Appeals staff may **not** do any of the following:

- Provide legal advice.
- Recommend a specific course of action.
- Perform legal research for litigants.
- Interpret how the law would apply to a specific situation.
- Predict the outcome of a particular strategy or action.
- Compute deadlines specified by statute or court rules.
- Assist in completing any forms.

#### Contact and Operational Information

Clerk of the Court  
Court of Appeals of Virginia  
109 North Eighth Street  
Richmond, VA 23219-2321  
Phone: (804) 786-5651  
Hours of Operation  
Monday through Friday: 8:15 a.m. - 4:45 p.m.

#### Electronic Filing in the Court of Appeals

The Court of Appeals of Virginia permits the filing of electronic pleadings in all cases. The Court of Appeals also permits the filing of electronic records in all cases. The pleadings and records are filed by uploading these documents into [VIRGINIA APPELLATE COURTS ELECTRONIC SYSTEM \(VACES\)](#), under the Rules of the Supreme Court of Virginia.

Register to submit pleadings electronically (eFiling): [REGISTRATION FOR ATTORNEYS, FIRMS OR PRO SE LITIGANTS.](#)

## COURT OF APPEALS OF VIRGINIA: AN OVERVIEW

In Virginia, the Court of Appeals is known as an intermediary court because it is the court in the “middle” between the circuit courts and the Supreme Court of Virginia. The Court of Appeals reviews a circuit court’s final decision in a process known as “appellate review.” Most decisions from the Court of Appeals can then be appealed to the Supreme Court of Virginia.

While the Court of Appeals has the power of appellate review, it cannot choose cases to review on its own. Its appellate review powers are triggered only when one of the parties in the case files a [Notice of Appeal](#) in the circuit court. The Notice of Appeal begins the appellate process.

Typically, once a party seeks review by filing a Notice of Appeal, a panel of three judges on the Court of Appeals will decide the case. In contrast to the process in the circuit court, the Court of Appeals only corrects errors that the circuit court made in a case as opposed to considering the case anew (“de novo”). In general, the Court of Appeals only considers issues that the circuit court actually ruled on.

Once the three-judge panel of the Court of Appeals rules on the appeal, the decision then binds the lower court that originally heard the case. Based on that ruling, the lower court may have to re-hear the case in accordance with the appellate decision. But if the losing party is unhappy with the decision, there is still the option to file a petition for rehearing in the Court of Appeals or to appeal to the Supreme Court of Virginia.

The chart on the next page provides a visual overview of the process for appealing to the Court of Appeals of Virginia. This guide will cover:

- [What You Can and Cannot Appeal](#)
- [Process for Filing an Appeal](#)
- [Briefing](#)
- [Oral Argument](#)
- [The Decision and What Happens Next](#)
- [Checklist for the Appellate Process](#)
- [Glossary](#)
- [List of Virginia Public Law Libraries](#)

## PHASE 1: FILING AN APPEAL\*

See Rule 5A:6-5A:10A

Final judgment entered in the circuit court

***Final judgment:*** A final judgment disposes of the entire action.

File notice of appeal in circuit court w/ filing fee. See [Rule 5A:6](#)

**Within 30 days of final judgment.**

File transcript or written statement of facts in circuit court. See [Rule 5A:8](#).

**Within 60 days of final judgment.**

Clerk of circuit court transmits record. See [Rules 5A:10](#) and [5A:10A](#).

**Within 90 days of final judgment.**

## PHASE 2: FILING BRIEFS

See Rule 5A:19-5A:22

Appellant files preliminary statement of assignments of error. See [Rule 5A:19\(b\)\(1\)](#).

**Within 15 days of the record being filed with the Court of Appeals.**

Appellee files preliminary assignments of cross-error, if any. See [Rule 5A:19\(b\)\(1\)](#).

**Within 10 days of appellant filing preliminary assignments of error.**

Appellant files opening brief w/ assignments of error. See [Rule 5A:19\(a\)/\(b\)\(2\)](#) and [Rule 5A:20](#).

**Within 40 days after the date of the filing of the record with the Court of Appeals.**

Appellee files brief w/ any cross-assignments of error. See [Rule 5A:19\(a\)/\(b\)\(3\)](#) and [Rule 5A:21](#).

Appellant may file reply brief.\*\* See [Rule 5A:19\(a\)/\(b\)\(4\)](#) and [Rule 5A:22](#).

**Within 30 days of appellant filing opening brief.**

**Within 14 days of appellee filing brief.**

## PHASE 3: ORAL ARGUMENT, DECISION, AND REHEARING See Rule 5A:28-35

- For oral argument, parties will receive at least 15 days' notice. See [Rule 5A:28\(a\)](#).
- Oral argument limited to 15 minutes (per side) in length. See [Rule 5A:28\(b\)](#).
- Notice of decision will be promptly sent to parties once the case is decided. See [Rule 5A:29](#).
- Following the decision, a party may move for the Court of Appeals to rehear the case. See [Rule 5A:33](#), [Rule 5A:34](#), and [Rule 5A:35](#).

\*This overview provides only a high-level map of the general steps involved in a "typical" appeal of right. Look at Part Five A of the Rules of the Supreme Court for more information about these steps and how they do (or do not) apply to you.

\*\*If appellant addresses appellee's cross-error, appellee may file a reply brief in support of cross-error within 14 days of appellant filing the reply brief. See [Rule 5A:19\(a\)/\(b\)\(5\)](#) and [Rule 5A:22](#).

## WHAT YOU CAN AND CANNOT APPEAL

You can appeal any final judgment from a circuit court to the Court of Appeals of Virginia. That is, if you are unsuccessful before the circuit court, you may then appeal a final decision from that court to the Court of Appeals of Virginia. You may also directly appeal decisions from the Virginia Workers' Compensation Commission. See [Code § 17.1-405](#). If you are appealing a decision from a general district court, or a decision from a Virginia agency, such as the Board of Zoning Appeals, or the outcome of an employee grievance hearing, you must first appeal those decisions to the circuit court.

Certain cases need to be appealed directly to the Supreme Court of Virginia, including appeals from the State Corporation Commission, the Judicial Inquiry and Review Commission, attorney disciplinary proceedings, and petitions for a writ of habeas corpus. See [Code § 17.1-406\(B\)](#). Any actual innocence claim based on biological testing also must go directly to the Supreme Court.

**What is a final judgment?** A final judgment or decision is one that disposes of the entire action. A final judgment could include a ruling on a motion to dismiss, or a motion for summary judgment, if the circuit court's ruling had the effect of dismissing or denying every claim in the case. On the other hand, a circuit court's ruling on motions related to discovery, scheduling, or any interim order, is not final and cannot be appealed until the end of the case. There is a very limited exception to this rule for "interlocutory appeals," as explained in [Code §§ 8.01-267.8, 8.01-675.5, and 19.2-398](#).

To preserve issues for appeal in Virginia, think **TSC**: Ensure objections are timely, specific, and clearly stated in the circuit court. Be aware of the exceptions to this rule, but understand that they are rarely applied. This approach will help ensure that the Court of Appeals can review the issues that you wish to raise on appeal.

### MISTAKES TO AVOID: MAKE SURE THE ISSUE IS PRESERVED

To appeal an issue, you must first ensure that it is preserved in the circuit court. Preserving an issue requires you to clearly state your objections when the circuit court makes the decision. Simply stating that the decision goes against the law and the evidence is not enough to preserve the issue. The Court of Appeals generally will not consider an argument that you raise for the first time on appeal.

There are two common exceptions that may allow you to raise the argument for the first time on appeal—the “good cause exception” and the “ends of justice exception.” If you did not have the opportunity to raise the objection during trial, or there is a serious injustice that needs correction, then those exceptions might apply. Finally, even if the issue was not raised in the circuit court, you can always appeal whether the circuit court or Court of Appeals has subject matter jurisdiction.

To make sure your appeal complies with this preservation rule, you need to check that the record in the circuit court shows you raised the issue before or during the relevant proceeding. The record may include a motion or other paper that you filed with the circuit court where you raised the issue that you now appeal, or a transcript showing that you raised the issue orally at a hearing. If your case does not have a transcript of the hearing, you may have preserved the issue in a written statement of facts in lieu of a transcript, if signed by the circuit court judge.

It is essential to make a timely and specific objection at the circuit court level. This means that you must clearly state the grounds for your objection at the time the ruling is made so the trial judge is aware of the particular point being contested and has an opportunity to address it. The Rules and prior cases from the Court of Appeals are particularly important in this context. They say that no ruling of the circuit court will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling. This rule aims to allow the circuit court to correct any error, thereby avoiding the necessity of mistrials and reversals.

## KEY RULES AND CASES

**[Rule 5A:18](#)**: This rule defines what issues are considered “preserved” during trial for later appeal.

**[Rules 1:1\(b\)](#) and [1:1B](#)**: These rules describe and discuss final orders and partial final orders.

Cases about how specific to make your argument for the appellate court to consider it preserved: [Townsend v. Commonwealth, 270 Va. 325, 332 \(2005\)](#); [Lash v. County of Henrico, 14 Va. App. 926, 929 \(1992\) \(en banc\)](#)

Cases about the “ends of justice” exception: [Gheorghiu v. Commonwealth, 280 Va. 678, 689-90 \(2010\)](#); [Commonwealth v. Bass, 292 Va. 19, 28-32 \(2016\)](#)

Case discussing whether a party has preserved an issue for appeal even if they have no opportunity to object to a ruling or order at the time it is made: [Jacks v. Commonwealth, 74 Va. App. 783, 792 \(2022\) \(en banc\)](#).

## PROCESS FOR FILING AN APPEAL

### Introduction

To start the appeal process, you must file a notice of appeal with the **circuit court clerk** within 30 days of when the circuit court enters the final order. There is a \$50 filing fee in the Court of Appeals unless you qualify as indigent. You probably qualify as indigent if you are receiving state or federal assistance or meet the criteria in this [chart](#). If you do not know, please call the clerk's office for help. You must also file transcripts and other documents in the circuit court within 60 days of when the circuit court enters the order you are appealing. There are rules that strictly govern the issues you can raise on appeal, and your appeal brief must meet specific criteria for clarity and detail.

### Filing a Notice of Appeal

Generally, if you want to contest a judgment or an order, you must file a notice of appeal with the clerk of the circuit court in the county or city where the judgment or order was entered. You **MUST** first file a notice of appeal in the circuit court, and then file a courtesy copy of the notice of appeal in the Court of Appeals.

### Steps to Begin an Appeal

**Step One:** File a notice of appeal in the circuit court.

- You need to fill out a [notice of appeal form](#), which appears after [Rule 5A:6](#) and is available [online](#).
- The notice of appeal must be filed in the **circuit court** *within 30 days* after the entry of the final judgment or other appealable order.
- If the appeal depends on what happened at a hearing in the circuit court, make sure to state (or check the box) that a transcript or written statement in lieu of a transcript will be filed. See [Rule 5A:6\(b\)](#) (“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.”).
- How does the 30-day period work?
  - Ex. If my final order was entered on April 1, day 1 of the 30-day time limit is April 2 and the 30 days period expires on May 1.
    - But what if the final day falls on a weekend or holiday?
      - Under [Code § 1-210\(B\)](#), the filing deadline moves to the next business day.
- Include a [certificate of service](#) as required by [Rule 5A:6\(d\)](#) with the notice of appeal.

**Step Two:** Pay the filing fee.

- You must also file a courtesy copy of the notice of appeal in the Court of Appeals.

- The Court of Appeals collects a \$50 filing fee for each case payable by check or money order to the Clerk of the Court of Appeals. See [Code § 17.1-418\(1\)](#).
- The fee must be received by the clerk **within 10 days** of when the Court of Appeals gets your notice of appeal.
- **NOTE:** The filing fee may be waived if you submit a [qualifying affidavit of indigence](#) along with your notice of appeal, or if the circuit court has made a finding of indigency. Failure to timely pay the fee will result in dismissal of the appeal.

**Step Three:** Make sure you have a record for the Court of Appeals to review.

- The record on appeal includes the original papers and exhibits filed in the circuit court, each order entered by the circuit court, any opinion or memorandum decision from the judge in the circuit court, and a transcript of any relevant hearings or written statement about what happened in a hearing if there is no transcript.
- The appellant (person filing the appeal) must make sure that a transcript or written statement in lieu of a transcript is filed in the circuit court **no later than 60 days** after the circuit court enters the order being appealed. See [Rule 5A:8](#).
- The circuit court will then transmit the record to the Court of Appeals. The Court of Appeals only considers materials in the record sent by the circuit court. You should NOT submit exhibits to the Court of Appeals.
- The clerk's office will send you a notice of when it has received the circuit court's record.

**Step Four:** Designate Assignments of Error

- Assignments of error determine what the Court of Appeals may review on appeal. You must specifically state why the circuit court's ruling was wrong. These are the same assignments of error you will put in your brief.
- You must file a preliminary statement of the assignments of error within **15 days** after the clerk's office of the Court of Appeals receives the circuit court record. See [Rule 5A:19](#). The clerk's office will send you a notice of when it has received the circuit court's record.

**Step Five :** File Your Opening Brief

- You must file your opening brief no later than 40 days after the Court of Appeals receives the record.
- The brief must identify assignments of error which limit what the Court of Appeals may review on appeal. You must specifically state why the circuit court's ruling was wrong.

- If you are defending an appeal, you must file your appellee brief not later than 30 days after the appellant files their opening brief or after the record is received, whichever is later.
- Reply briefs must be filed no later than 14 days after the appellee brief.
- If the appellee assigns a cross-error in the appeal, and the appellant's reply brief addresses that cross-error, the appellee may file a brief in support of the cross-error with 14 days of the appellant's reply brief. See [Rule 5A:19](#).

[Click here for a flowchart showing relevant deadlines](#)

## MISTAKES TO AVOID IN FILING AN APPEAL

***Failing to File a Notice of Appeal on Time:*** You must file your notice of appeal with the circuit court, and send a copy to the opposing party, no later than 30 days after the circuit court signs the final order in your case. *See* [Rule 5A:6](#).

- Unless the circuit court suspends or pauses its final order within 21 days of entering it, the 30 days start running when the circuit court signs the order. *See* [Rule 5A:3\(a\)](#), [5A:6\(a\)](#).
- A motion to reconsider must be filed in the circuit court within 21 days of the final order. *See* [Rule 1:1\(a\)](#).
- The 30-day period to file your notice of appeal continues to run even if you file a motion to reconsider the circuit court’s judgment, unless the circuit court vacates or suspends the final order, **so do not miss the 30-day deadline to file a notice of appeal.**

***Failing to File an Appeal Bond if Required: Only in a civil appeal.*** You must file an appeal bond of \$500 unless the circuit court finds you cannot afford to pay that amount. *See* [Code § 8.01-676.1](#). If so, you must file it in the circuit court when you file your notice of appeal. Failure to do so may result in dismissal of your appeal. *See* [Rule 5A:6\(a\)](#).

***Failing to Make a Sufficient Record:*** The Court of Appeals can decide only the issues you raise based on the record of the circuit court proceedings below, and based on the items in that record.

- The record includes all the documents filed with and accepted by the circuit court, evidence admitted at trial, and arguments recorded in a transcript of the trial. *See* [Rule 5A:7](#). You may not send items to the Court of Appeals that were not part of the record in the circuit court. Any documents must have been filed in the circuit court, whether or not admitted at trial. The clerk of the circuit court will transmit the record to the Court of Appeals. *See* [Rule 5A:10](#).
- If there was a court reporter for the hearings, you can order a transcript, and that transcript will become part of the record only if you file it with the circuit court within 60 days of the final judgment (you must also notify your opponent within 10 days of filing a transcript). *See* [Rules 5A:8\(a\) and \(b\)](#).
- If there was no court reporter, or if you do not want to pay for a transcript, you can file a *Written Statement in Lieu of a Transcript*, but there are strict rules that you must follow. *See* [Rule 5A:8\(c\)](#).
- You may ask for an extension of time to file your transcript but you must do so within 90 days of entry of final judgment. *See* [Rule 5A:8\(a\)](#).

***Failing to Follow the Rules:*** Even as a non-lawyer, failing to follow these rules or failing to fix errors when the Court of Appeals directs you to may lead to your appeal being dismissed. For more information, *see* [Rules 5A:1A\(a\)](#), [5A:4\(c\)](#).

## BRIEFING

A brief is a document in which a party provides the legal arguments to support their position. Your brief is very important—it is the primary document that the Court of Appeals will use to evaluate the case. If you fail to file a brief, the Court of Appeals will not be able to consider your legal arguments, and your appeal may be dismissed.

Generally, a brief contains the following: your assignments of error, a statement of the relevant facts, an analysis of the issues in the case and why they should be decided in your favor, a conclusion saying how the Court of Appeals should rule in the case, and a request for the Court of Appeals to take a certain action (such as overturning a conviction or ordering a new trial).

Your brief should lay out your legal arguments in support of your position in a clear and concise manner and should be properly formatted. Your brief should not personally attack the opposing party, the opposing party’s attorney, the judge or court staff who made the decision below.

**Make sure to carefully read the [Rules](#) and ensure your brief complies with them. Usually, the Court of Appeals will give you a second chance to fix errors in your brief, but a failure to follow the rules can result in your appeal being dismissed. If you need an extension of time to file your brief, you must file a motion with the Court of Appeals within 10 days of when the original deadline expired and give a good reason for the requested extension.**

Formatting Requirements: Briefs must be on pages that are 8.5 x 11 inches in size, regardless of whether they are printed or electronic. The text of a brief must be double-spaced (except for quotations greater than 49 words, which can be single spaced), font size 14 point or larger, and in one of the fonts in [the font list on the Supreme Court of Virginia’s website](#). See [Rule 5A:4\(a\)](#). Margins must be at least one inch on all four sides of each page. An opening brief or appellee brief can be up to 50 pages or 12,300 words, whichever is longer. A reply brief can be up to 20 pages or 3,500 words, whichever is longer. You may exceed the page or word count only if the Court of Appeals gives you permission to do so. See [Rule 5A:19\(a\)](#).

Generally, there are three types of briefs that can be filed in a case: opening briefs, appellee briefs, and reply briefs. There are major differences between the three.

## OPENING BRIEFS

The appellant (the party bringing the appeal) must file the opening brief ([example here](#)). An opening brief must be filed **within 40 days of the day that the Court of Appeals receives the record from the clerk of the circuit court.** [Rule 5A:19\(b\)\(2\)](#). The Court of Appeals will notify you of the date the record is filed either by email or U.S. mail. The appellant is responsible for determining the filing date of the opening brief.

### **An opening brief must contain:**

- A table of contents, which outlines the sections of the brief.
- A table of authorities, which includes all cases, statutes, and secondary sources referenced in the brief. The cases must be in alphabetical order.
- A brief statement of the nature of the case and of the relevant proceedings in the circuit court, leaving out anything that does not relate to the assignments of error.
- A numbered list of the assignments of error, under a heading entitled “Assignments of Error.” Next to each error, you must cite an exact spot in the record where that assignment of error is preserved (usually by reference to the record number)—these are called **preservation citations**.
  - **This is very important. You must list all the errors you think were made in the proceedings below AND cite to where your objections were preserved; the Court of Appeals will not consider any errors that were not listed or preserved in the circuit court.**
- A statement of facts.
- The standard of review (the legal standard the Court of Appeals should use).
- The arguments related to each assignment of error.
- A short conclusion, indicating the relief you want the Court of Appeals to grant to you.
- Your signature at the bottom.
- A certificate of service, stating (1) that the brief was served on opposing counsel, (2) whether you would like to waive oral argument, and (3) the total number of words in the brief (including headings, footnotes, and quotations, but not including the cover page, table of contents, table of authorities, signature blocks, and certificate). The certificate must be dated.

## KEY RULE AND OPENING BRIEF TEMPLATE

**Rule 5A:20:** This rule specifies what must be included in the opening brief to appeal a decision. In essence, it provides requirements that ensure appeals are clear, focused on specific legal issues, and properly documented with references to the trial record.

To help you meet this rule’s requirements, you can use [this model](#).

## MISTAKES TO AVOID IN THE OPENING BRIEF

### ***Failure to Name the Specific Rulings You Challenge:***

When you file your opening brief, you must briefly state what rulings of the circuit court you are challenging, and why the circuit court’s ruling was wrong – these are called **assignments of error**.

- If your opening brief fails to include any assignments of error, your appeal may be dismissed. [Rule 5A:20\(c\)\(1\)](#).
- If your assignments of error do not address an error by the circuit court, your appeal may be dismissed. [Rule 5A:20\(c\)\(2\)](#)

### ***Failure to Show Where You Preserved the Issues in the Circuit Court:***

- You must cite to the record to show where your assignments of error were preserved during the proceedings below. If you do not, the Court of Appeals may not consider the assignment of error.
- If you are raising the argument for the first time on appeal because the issue was not preserved, you must argue either that the “ends of justice” or “good cause” exception applies or the Court of Appeals cannot consider the issue. [Rule 5A:18](#).

### ***Failure to State the Standard of Review:***

You must tell the Court of Appeals what legal standard applies to determine if the circuit court made a mistake.

### ***Failure to Adequately Develop an Argument:***

If you fail to adequately explain your position on an issue, the Court of Appeals may treat that issue as waived. Likewise, if you fail to cite relevant cases or statutes as support for your argument, the Court of Appeals may treat that issue as waived.

***Failure to Ask the Court to Take Action:*** The Court of Appeals will only take action on issues that you raise. If you want relief, you must ask for it.

***Failure to File on Time:*** You must file the opening brief within 40 days of the day that the Court of Appeals receives the record from the clerk of the circuit court.

## APPELLEE BRIEFS

The appellee brief is filed by the appellee (the party who is responding to the appeal, in response to the opening brief). An appellee does not have to file an appellee brief. Any appellee's brief must be filed **within 30 days after the appellant filed the opening brief, or within 30 days after the circuit court record is received in the Court of Appeals, whichever is later.** [Rule 5A:19.](#)

### **An appellee brief must contain:**

- A table of contents, which outlines the sections of the brief.
- A table of authorities, which includes all cases, statutes, and secondary sources referenced in the brief. The cases must be in alphabetical order.
- Your own statement of the case, if you disagree with the statement provided by the opening brief.
- Any additional assignments of error that you wish to present aside from those in the opening brief, and corresponding preservation citations.
- Your own statement of the facts, if necessary to correct or amplify the one provided by the opening brief.
- The standard of review (the legal standard the Court of Appeals should use).
- The arguments related to each assignment of error, including any new assignments of error you present in your brief.
- A short conclusion, indicating the relief you want the Court of Appeals to grant you.
- Your signature at the bottom.
- A certificate of service, stating (1) that the brief was served on opposing counsel, (2) whether you would like to waive oral argument, and (3) the total number of words in the brief (including headings, footnotes, and quotations, but not including the cover page, table of contents, table of authorities, signature blocks, and certificate). The certificate must be dated.

### KEY RULE AND TEMPLATE

**[Rule 5A:21:](#)** This rule specifies what must be included in the appellee brief.

To help you meet this rule's requirements, you can use [this template.](#)

## REPLY BRIEFS

A reply brief is filed by the appellant in response to the appellee brief. You do not have to file a reply if you do not want to, but if you do, it must be filed **within 14 days of receiving the appellee brief**.

A reply brief must contain:

- Arguments in reply to the arguments presented in the appellee brief.
- A certificate of service, stating (1) that the brief was served on opposing counsel, (2) whether you would like to waive oral argument, and (3) the total number of words in the brief (including headings, footnotes, and quotations, but not including the cover page, table of contents, table of authorities, signature blocks, and certificate). The certificate must be dated.

### KEY RULE

**Rule 5A:22**: This rule specifies what must be included in the reply brief.

## ORAL ARGUMENT

After you have filed your brief(s), you may have the opportunity to orally present your argument in front of three judges on the Court of Appeals. Oral argument is usually limited to 15 minutes per side. See [Rule 5A:28\(B\)](#).

If you are the appellant, or the one appealing the case from the lower court, you will go first. You may decide to save some of your 15 minutes for a “rebuttal” argument. A rebuttal is the “last word” from the appellant, and it is a response to the appellee’s arguments. Your rebuttal time is subtracted from your total 15-minute argument time. If you are the appellant, a judge will ask you at the beginning of your oral argument if you would like to “reserve time for a rebuttal.” Parties often reserve rebuttal time ranging from 3 to 8 minutes.

Oral argument is not required for your case to be considered on appeal. If you would like to waive or decline oral argument, you may choose to do so. See [Rule 5A:28\(E\)](#). Even if you request oral argument, sometimes the Court of Appeals will decide that oral argument is not appropriate under its rules and simply issue a decision in the case. If you would like to listen to the recording of your oral argument, you can do so here: [Court of Appeals Oral Arguments \(vacourts.gov\)](http://vacourts.gov).

### I. What Should I Do to Prepare for Oral Argument?

You will generally receive a scheduling notice by email between 15 to 30 days before the date the Court of Appeals has scheduled your case for oral argument. See [Rule 5A:28\(A\)](#). If you do not have email, you will receive the notice by U.S. mail. This notice will have all the information you need prior to oral argument—such as the exact date, approximate time, and location of your oral argument. You should familiarize yourself with this scheduling notice.

Aside from understanding the logistics of oral argument, you should prepare for your argument by studying the facts and the law surrounding your case.

### II. What Should I Expect the Day of Oral Argument?

Upon arrival, you will be required to go through a security check and present a valid photo ID to security personnel. Some courts allow cellphones and laptops in the courtroom; you must check the specific location’s rules before you arrive to find out what is allowed. Please ensure that you arrive early enough to enter through security and find your courtroom.

After security, you will enter your assigned courtroom and sit until your case is called. Everyone in the courtroom, unless physically unable to do so, must rise when the judges enter and remain standing until a judge invites everyone to be seated. Similarly, when oral argument ends or the judges take a break, everyone

stands until the judges leave the courtroom. The security personnel in the courtroom will signal to everyone when to stand.

When your case is called, you will approach the front of the courtroom where you will stand at a podium for your oral argument. Typically, when facing the judges, the appellant sits at the table on the right, and the appellee sits at the table on the left. There will be a timer at the podium that will help you to keep track of your time. Usually people say, “May it please the Court,” and then introduce themselves before starting their argument.

### MISTAKES TO AVOID IN ORAL ARGUMENT

***Failure to Read the Scheduling Notice:*** The scheduling notice will include detailed information about oral argument. If you still have questions, please reach out to the clerk’s office.

***Failure to Show Respect to the Judges and Other Party:*** Always be respectful of the other party, the judges, and others in the courthouse. Refer to a judge as “Your Honor” or “Judge [last name],” and do not interrupt a judge. Stop your argument when your time ends unless the presiding judge tells you that you have more time.

***Failure to Answer the Judge’s Questions:*** An oral argument is like a conversation. Answer questions directly, then explain your answer. Come prepared to talk about the law because the judges will already be familiar with the facts.

## THE DECISION AND WHAT HAPPENS NEXT

Once the Court of Appeals has decided your case, the clerk's office will notify you of the decision via email. See [Rule 5A:29](#) ("Promptly after this Court has decided a case, the clerk of this Court must transmit a copy of the decision to all counsel of record"). If you do not have email, the decision will be mailed to you.

If the Court of Appeals issues an opinion in your case, and it is published, you can view the opinion on the Court's website, [here](#). If the Court issued an unpublished opinion for your case, you may view the opinion [here](#).

Much like appealing the decision of the lower court, you can appeal the decision of the Court of Appeals by filing:

- (1) A petition for rehearing before the same three-judge panel (filed within 14 days of the panel's decision or order). See Rules [5A:33](#); [5A:34](#); [5A:35](#).
- (2) A petition for rehearing en banc before the full Court of Appeals (filed within 14 days of the panel's decision or order). See Rules [5A:33](#); [5A:34](#); [5A:35](#).
- (3) A Notice of Appeal with the Supreme Court of Virginia (filed within 30 days of the Court of Appeals' decision or order). See [Rule 5:14](#).

## CHECKLIST

### Prior to Appeal

- Determine whether the ruling you are challenging is appealable to the Court of Appeals.
- Make sure you have preserved your issue for appellate review.
- If you have not preserved your issue, prepare to show that the Court of Appeals should review your issue under the “good cause” or “ends of justice” exceptions.
- Research the legal issues in your appeal. Remember, public law libraries are at your disposal!

### File Appeal

- File a notice of appeal in the circuit court that decided the case you are appealing ([Rule 5A:6](#)).
  - Due within 30 days after entry of the final judgment or other appealable order.
  - Attach certificate of service.
- Pay filing fee (\$50) unless you qualify for indigence.
  - Due within 10 days of the Court of Appeals’ receipt of the notice of appeal.
- Review the record and make sure it has everything you need.
  - Transcripts or written statement of facts must be filed in the circuit court no later than 60 days after entry of the final judgment ([Rule 5A:8](#)).

### File Briefing

- File opening brief if you are appellant ([Rule 5A:20](#)).
  - Due within 40 days of filing the record ([Rule 5A:19](#)).
  - **Make sure you include assignments of error** and where they are preserved in the record. ([Rule 5A:20](#))
- File appellee brief if you are appellee ([Rule 5A:21](#)).
  - Due within 30 days after the opening brief is filed, or within 30 days after the filing of the record, whichever is later.
- File reply brief if you are appellant ([Rule 5A:22](#)).
  - Due within 14 days of filing the appellee brief.
- Comply with formatting requirements.
  - Follow rules for font type and size requirements.
  - Include table of contents, table of authorities, statement of the nature of the case, list of assignments of error, preservation citations, statement of facts, standards of review, arguments, and conclusion.
  - Attach certificates of service.
- If you need more time, ask for an extension of time no later than 10 days after the original deadline expired.

**Prepare for, and Attend, Oral Argument**

- Prepare to present a 15-minute argument of your case to a panel of three judges unless you have waived oral argument in your brief.
- Familiarize yourself with the scheduling notice to determine when and where your oral argument will be.
- Find your assigned courtroom.
- Wait for your case to be called.
- If you are the appellant, determine how much time to reserve for rebuttal.
- Answer the judges' questions.
- Show respect in the courtroom.

## GLOSSARY OF TERMS

### **Appeal / Appellate Process**

The legal process where a person asks a higher court, like the Court of Appeals of Virginia, to review a circuit court or administrative agency's decision on a matter. The purpose of an appeal is to find any mistakes in the original decision and determine if they are serious enough for the appellate court to modify or overturn the judgment. To initiate an appeal, you must file a notice of appeal with a certificate of service within the specified timeframe.

### **Appeal Bond**

An appeal bond must be paid when a notice of appeal is filed in a civil case. It costs \$500 unless the circuit court finds you cannot afford that amount. If you want to stop the judgment of the circuit court from taking effect during your appeal, you also have to file a suspension bond. See [Code § 8.01-676.1](#). Bond forms can be found [here](#).

### **Affirm**

To confirm or validate a decision or judgment made by a trial or circuit court. This happens when an appellate court agrees with and upholds the previous court's decision without changing it.

### **Appellant**

The person appealing a decision. This person is dissatisfied with the decision made by the circuit court. They are asking the Court of Appeals to review the decision and potentially modify or reverse it. Regardless of whether you were the plaintiff or the defendant in the circuit court, in the Court of Appeals you are called the appellant if you are the one who is appealing.

### **Appellate Court**

A court that reviews an appeal from a case that has been decided by a lower court. Virginia has two appellate courts: (1) the Court of Appeals of Virginia, the "intermediary" court between the circuit court and the Supreme Court of Virginia, and (2) the Supreme Court of Virginia, the highest court in Virginia.

### **Appellate Jurisdiction**

Jurisdiction is the power of a court to hear a case. Appellate jurisdiction refers to the power of an appellate court to hear a case. Only certain cases in Virginia can be appealed to the Court of Appeals of Virginia, including final decisions of a circuit court in civil cases and criminal cases, and final decisions of the Virginia Workers' Compensation Commission. See [Code §§ 17.1-405](#) and [-406](#) for a more complete explanation of the jurisdiction of the Court of Appeals of Virginia.

### **Appellate Review**

An appellate court's examination of the circuit court's decision on appeal.

### **Appellee**

The person against whom the appeal is filed. The appellee responds to the appellant's opening brief. The appellee typically wants the appellate court to uphold the decision made by the circuit court. Regardless of whether you were the plaintiff or the defendant in the circuit court, in the Court of Appeals you are called the appellee if you are responding to an appeal filed by your opposition.

### **Appellee Brief**

A written document filed by the appellee in appellate court proceedings. It presents the appellee's arguments and responses to the appellant's claims and assignments of error—this responsive brief aims to persuade the Court of Appeals to affirm the lower court's decision or dismiss the appeal.

### **Assignment of Error**

A statement made by the appellant identifying specific legal mistakes they believe the lower court made. These errors form the basis of the appeal and are presented to the appellate court to argue for a change or reversal of the lower court's decision. Each assignment of error typically addresses a particular issue or legal point that the appellant believes affected the outcome of the case. Assignments of error are followed by "preservation citations," which indicate the exact spots in the record (by reference to the record page number) where that assignment of error is preserved.

### **Bind**

A "binding" decision is one that must be followed by lower courts in the same jurisdiction. When the Court of Appeals renders a decision, the circuit court must follow that decision and apply the legal rules in that decision in future cases.

### **Case**

A civil or criminal proceeding in any court. A "case" is another word for a "lawsuit," or an "action."

### **Certificate of Service**

A document filed with a court by a party to a case stating that a copy of a filed document (e.g., motion, brief, or notice) has been properly served on all other parties involved. It includes the date, method of service (e.g., U.S. mail, hand delivery), and the names of the parties served. This ensures that all parties are notified of court filings and comply with procedural rules. The form can be found [here](#).

### **Circuit Court Clerk**

The circuit court clerk is a state employee who performs various administrative tasks for criminal and civil cases that are filed in the circuit court for their

jurisdiction. This person will receive the notice of appeal and transcript and will prepare the record to be transmitted to the Court of Appeals.

### **Citation**

A reference to a legal authority such as a case that has been reported (or published) by the Court of Appeals, a statute, the state or federal constitution, or a Rule of the Supreme Court of Virginia. A citation may also refer to a page in the transcript or record. Citations to the record are primarily used in briefs to support a party's statement of the facts of the case; citations to legal resources are used to support the legal arguments that support a party's position.

### **Cross-Error**

Refers to an assignment of error by an appellee. If an appellee is dissatisfied with a decision the lower court made, they can assign error and have that decision reviewed on appeal. An appellee who wishes to assign cross-error should do so in their appellee brief. The same preservation rules apply to assignments of cross-error as assignments of error.

### **En banc**

Refers to a situation where all the judges of the Court of Appeals participate in a hearing and review the case together, instead of using a smaller panel of three judges. This typically occurs in appellate courts when a case involves a particularly important or complex issue, or when the Court of Appeals wants to review a prior decision made by a smaller panel of judges.

### **Final Judgment**

Refers to the final decision by the circuit court. This decision resolves all the issues presented to the circuit court or administrative agency.

### **Intermediary Court**

Typically refers to the appellate court that is in the "middle" of the trial court and the highest court of that state. In Virginia, the Court of Appeals is the "intermediary" court that reviews decisions that are appealed from the circuit court and whose decisions parties may appeal to the Supreme Court of Virginia.

### **Legal advice**

Professional opinion or guidance about a legal course of action, or which explains an area of law or how the law would apply to one's case. Parties may not seek legal advice from clerks of the court or other court staff.

### **Lower Court**

The court where a case starts—usually the "circuit court" or the "trial court."

### **Motion**

A formal written request a party files with a court, asking a court to make a specific ruling, take a particular action, or provide an exception to the Rules. For example, a party may file a motion asking the Court of Appeals to extend the time for filing the opening brief. Motions must be filed in accordance with procedural rules. After a motion is filed, the opposing party has ten days to respond to it.

### **Notice of Appeal**

A formal document filed with the circuit court by a party (appellant) filing an appeal. It notifies the appellate court and other parties involved that the appellant intends to appeal the lower court's decision. The notice of appeal must be filed in the circuit court within a specific time after the circuit court's decision, and a copy must also be filed in the Court of Appeals.

### **Opening Brief**

A written document filed by the appellant summarizing the facts of the case, outlining the issues on appeal, and presenting legal arguments supported by citations to relevant laws and court decisions, explaining why a judgment should be modified or reversed.

### **Opinion**

A written explanation of the Court of Appeals' decision. It explains how the law applies to the facts of a case and provides the reasoning for either affirming or reversing the lower court's decision.

### **Oral Argument**

A type of court hearing where parties in a case present their arguments orally before judges. During oral arguments, attorneys for both sides, or pro se litigants, summarize their positions, clarify points from their written briefs, and respond to questions from the judges. Oral arguments usually occur after all written briefs have been submitted.

### **Order**

A document setting out a court's decision. The Court of Appeals issues orders when it grants motions, decides an issue, or resolves a case. Orders are often shorter than opinions.

### **Panel**

A convening of a sub-set of appellate judges who are selected to hear and consider a particular case. In the Court of Appeals of Virginia, appeals are typically heard and considered by panels of three judges.

**Parties**

The parties to a case are the individuals who form each side of the legal dispute. In the Court of Appeals, the parties include the appellant, who appeals from the decision of the lower court, and the appellee, who responds to the argument of the appellant.

**Pleadings**

Documents filed in court including petitions, complaints, objections, answers, responses, notices, statements of interest, motions, and briefs.

**Preservation Citations**

References to the exact spots in the record where an assignment of error is preserved.

**Pro Se Litigant**

A party who represents themselves in court proceedings without the assistance of an attorney. Pro se litigants are responsible for performing all of the functions of a lawyer, including filing documents, making arguments, and adhering to procedural rules.

**Record on Appeal**

The complete collection of all of the documents that make up the official file of a court case. It includes all the papers filed with the circuit court, court orders, transcripts, and admitted exhibits. The Court of Appeals will only consider the record on appeal and the law. The record documents the case's history and is essential for appellate review and presenting legal arguments.

**Reply Brief**

A written document filed by the appellant in response to the appellee's brief. The reply brief allows the appellant to address arguments made in the appellee's brief and to respond to any new issues or arguments raised by the appellee.

**Reverse**

When an appellate court changes the decision of a lower court.

**Rule**

To "rule" on a matter is to make a decision.

**Service**

The formal delivery of legal documents to a party involved in a lawsuit. In civil appeals, service ensures that all parties are notified of actions taken in the case and have an opportunity to respond. Service must comply with specific rules and procedures to be considered valid, which often include personal delivery, U.S. mail, or electronic methods, depending on the court's requirements.

### **Standard of Review**

The legal standard an appellate court uses to review a case on appeal. It determines how much deference the appellate court will show to the lower court's decision.

### **Statement of Facts**

If your case does not have a transcript of a hearing that was important, you must get a written statement of facts about what happened at that hearing and get it signed by the judge. [Rule 5A:8](#) explains what to do.

### **Stay**

A court order that temporarily halts the enforcement or execution of a court judgment or other court order. In the context of an appeal, a stay can prevent the lower court's judgment from being executed while the appellate court reviews the case.

### **Trial Court**

The "lower" court that hears the case first. Only after a decision has been rendered by a trial court will a party be able to file an appeal. In Virginia, this is known as the "circuit court."

### **Transcript**

A complete written record of everything said during court proceedings, including hearings, trials, and oral arguments. Transcripts contain word-for-word statements by judges, attorneys, witnesses, and parties involved. Transcripts are created by court reporters and are used to review court proceedings, prepare legal arguments, and file appeals.

LIST OF PUBLIC LAW LIBRARIES IN VIRGINIA

<p><b><u>Alexandria Law Library</u></b> 520 King Street, Room LL34 Alexandria, Virginia 22314 (703) 746-4077</p>	<p><b><u>Danville Public Law Library</u></b> 511 Patton Street, First Floor Danville, Virginia 24541 (434) 799-5118</p>	<p><b><u>Lynchburg Public Law Library</u></b> 900 Church Street Lynchburg, Virginia 24504 (434) 455-3820</p>	<p><b><u>Roanoke Law Library</u></b> 706 S. Jefferson Street, SE – 2nd floor Roanoke VA 24016 (540) 853-2268</p>
<p><b><u>Arlington Law Library</u></b> 1425 North Courthouse Road, Suite 1700 Arlington, VA 22201 (703) 228-7005</p>	<p><b><u>Fairfax Public Law Library</u></b> Fairfax County Courthouse 4110 Chain Bridge Road, Suite 115 Fairfax, Virginia 22030 (703) 246-2170</p>	<p><b><u>Newport News Public Law Library</u></b> 2501 Washington Avenue Newport News, Va. 23607 (757) 926-8678</p>	<p><b><u>Rockingham-Harrisonburg Public Law Library</u></b> 174 S Main Street Harrisonburg, Virginia 22801 (540) 434-4475</p>
<p><b><u>Bristol Law Library</u></b> City Hall 497 Cumberland Street Bristol, Virginia 24201</p>	<p><b><u>Fauquier County Law Library</u></b> 11 Winchester Street Warrenton, VA 20186 (540) 422-8500</p>	<p><b><u>Norfolk Law Library</u></b> City of Norfolk Courthouse, 2nd Floor 150 St. Paul's Blvd. Norfolk, Virginia 23510 (757) 622-2910</p>	<p><b><u>Wahab Public Law Library</u></b> Court Support Bldg., 10B 2425 Nimmo Parkway Virginia Beach, Virginia 23456-9062 (757) 385-4419</p>
<p><b><u>Central Rappahannock Law Library</u></b> 1201 Caroline Street Fredericksburg, Virginia 22401 (540) 372-1144 ext. 7234</p>	<p><b><u>George Wythe Law Library</u></b> 4207 Victoria Blvd, 2nd Floor Hampton, Virginia 23669 (757) 727-1312</p>	<p><b><u>Portsmouth Public Law Library</u></b> 601 Court Street Portsmouth, Virginia 23704 (757) 393-8501</p>	<p><b><u>Washington County Public Law Library</u></b> 205 Oak Hill Street Abingdon, VA 24210 (276) 676-6233</p>
<p><b><u>Chesapeake Law Library</u></b> 298 Cedar Road, 2nd Floor Chesapeake, Virginia 23322 (757) 410-7153</p>	<p><b><u>Henrico Law Library</u></b> 1901 Starling Drive Henrico, Virginia 23229 (804) 501-1910, ext. 5</p>	<p><b><u>Prince William Public Law Library</u></b> 9311 Lee Avenue 3rd Floor, Room 304 Manassas, Virginia 20110 (703) 792-6262</p>	
<p><b><u>Chesterfield County Public Law Library</u></b> 7051 Lucy Corr Blvd. Chesterfield, VA 23832 (804) 748-1774</p>	<p><b><u>Loudoun County Public Law Library</u></b> 18 East Market Street Leesburg, Virginia 20176 (703) 777-0695</p>	<p><b><u>Richmond Public Law Library</u></b> 101 E. Franklin Street Richmond, VA 23219 (804) 646-6500</p>	

The Virginia State Law Library at the Supreme Court of Virginia is also available to litigants who have a case pending in the Court of Appeals. The library is at 100 N. 9<sup>th</sup> Street, Richmond, VA 23219. To contact the library, please email [LawLibrary@vacourts.gov](mailto:LawLibrary@vacourts.gov) or call 804-786-2075.