

## **VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday, the 18th day of June, 2025.*

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect are hereby amended, effective August 17, 2025.

Amend Rules 3:8, 4:7, 5:5, 5:30, 5:38, 5A:3, 5A:23, and 5A:36 as follows:

### **Rule 3:8. Answers, Pleas, Demurrers and Motions.**

(a) *Response Requirement.* — A defendant must file pleadings in response within 21 days after service of the summons and complaint upon that defendant, or if service of the summons has been timely waived on request under Code § 8.01-286.1, within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the Commonwealth. Pleadings in response under this Rule—other than an answer—are limited to the following, and are deemed responsive only to the specific count or counts addressed therein: a demurrer, plea, motion to dismiss, motion for a bill of particulars, motion craving oyer, and a written motion asserting any preliminary defense permitted under Code § 8.01-276. If a defendant files no other pleading in response than the answer, it must be filed within the applicable 21-day, 60-day, or 90-day period specified in this Rule. An answer must respond to the paragraphs of the complaint. A general denial of the entire complaint or plea of the general issue is not permitted.

(a1) *Limitation on Serial Pleading.* — After filing any pleading or pleadings as an initial response to a complaint or amended complaint, a defendant may not, without leave of court for good cause shown, file a demurrer, plea, or motion described in subsection (a) except as provided under subsection (b) of this rule or under another rule of court or statute that expressly allows such a pleading or motion to be filed at any other time without leave of court.

(b) *Response After Demurrer, Plea or Motion.* — When the court has entered its order overruling all motions, demurrers and other pleas filed by a defendant as a responsive pleading, such defendant must, unless the defendant has already done so, file an answer within 21 days after the entry of such order, or within such other time as the court may prescribe. If the court grants a motion craving oyer, unless the defendant has already filed an answer or another responsive pleading, the defendant must file an answer or another responsive pleading within 21 days after plaintiff files the document(s) for which oyer was granted, or within such other time as the court may prescribe. If the court overrules a motion objecting to personal jurisdiction or defective process filed as a defendant's sole initial responsive pleading, then the defendant must file an answer or another responsive pleading within 21 days after entry of the court's order overruling the motion, or within such other time as the court may prescribe.

**Rule 4:7. Use of Depositions in Court Proceedings.**

(a) *Use of Depositions.* — At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

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(7) In any action, the fact that a deposition has not been offered in evidence prior to an interlocutory decree or order does not prevent its thereafter being so offered except as to matters ruled upon in such interlocutory decree or order; provided, however, that such deposition may be read as to matters ruled upon in such an interlocutory decree or order if the principles applicable to after- discovered evidence would permit its introduction.

Substitution of parties does not affect the right to use depositions previously taken; and when there are pending in the same court several actions or suits between the same parties, depending upon the same facts, or involving the same matter of controversy, in whole or in part, a deposition taken in one of such actions or suits, upon notice to the same party or parties, may be read in all, so far as it is applicable and relevant to the issue; and, when an action in any court of the United States or of this or any other state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the one action may be used in the other as if originally taken therefor.

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

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(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) *Filings by incarcerated individuals.* —

(1) *Timeliness.* — 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 (i) 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, (ii) an official postmark dated on or before the last day for filing, or (iii) 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.

(2) *Extension of time for lack of notice.* — Notwithstanding Rule 5:5(a), if an individual confined in an institution did not receive a copy of the final order until after the appellate filing deadline expired because the lower tribunal either (i) mailed the final order to the wrong address or (ii) mailed it 30 days or more after entry, the individual may move for an extension of the filing deadline. The motion must be accompanied by a copy of the lower tribunal envelope displaying the postmark, a copy of the notice of appeal the individual filed in the lower tribunal after receiving the final order, and either (i) an official copy of the institution’s mail records or (ii) a notarized statement signed by an official of the institution showing the date the individual received the order. The motion must be filed no later than 30 days after the individual received the order. In evaluating the motion, the Court may consider record information showing a failure to timely mail the final order and other information that may be supplied by the lower tribunal.

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#### **Rule 5:30. Briefs Amicus Curiae.**

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(e) *What a Brief Amicus Curiae Must Contain.* —

(1) A brief amicus curiae must comply with the rules applicable to the brief or filing of the party supported. If a person or entity is filing an amicus brief in support of neither party, the brief amicus curiae must comply with the rules applicable to the appellant or petitioner. The cover must identify the party or parties supported, if any.

(2) Unless the amicus curiae is one listed in subparagraph (b) of this Rule, an amicus brief must include a statement that indicates whether:

(i) a party’s counsel authored the brief in whole or in part;

(ii) a party or a party’s counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, that identifies each such person.

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#### **Rule 5:38. Mediation, Settlement or Withdrawal of Pending Appeal.**

(a) Upon joint motion of the parties in a civil case, the Court may extend the filing deadlines under Rule 5:17(a), Rule 5:18(a), or Rule 5:26(c) to enable the parties to pursue mediation. An order granting such a time extension will specify new filing deadlines or a deadline for the parties to file a joint progress report.

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

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

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(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) *Filings by incarcerated individuals.* —

(1) *Timeliness.* — 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 (i) 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, (ii) an official postmark dated on or before the last day for filing, or (iii) 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.

(2) *Extension of time for lack of notice.* — Notwithstanding Rule 5A:3(a), if an individual confined in an institution did not receive a copy of the final order until after the appellate filing deadline expired because the lower tribunal either (i) mailed the final order to the wrong address or (ii) mailed it 30 days or more after entry, the individual may move for an extension of the filing deadline. The motion must be accompanied by a copy of the lower tribunal envelope displaying the postmark, a copy of the notice of appeal the individual filed in the lower tribunal after receiving the final order, and either (i) an official copy of the institution's mail records or (ii) a notarized statement signed by an official of the institution showing the date the individual received the order. The motion must be filed no later than 30 days after the individual received the order. In evaluating the motion, the Court may consider record information showing a failure to timely mail the final order and other information that may be supplied by the lower tribunal.

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

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(d) *When a Brief Amicus Curiae Must Be Filed.* — A brief amicus curiae is timely if filed no

later than 7 days after the principal brief or filing of the party supported. An amicus brief in support of neither party is timely if filed no later than 7 days after the opening brief or petition. Except by the Court's permission, an amicus curiae may not file a reply brief.

(e) *What a Brief Amicus Curiae Must Contain.* —

(1) A brief amicus curiae must comply with the rules applicable to the brief or filing of the party supported. If a person or entity is filing an amicus brief in support of neither party, the brief amicus curiae must comply with the rules applicable to the appellant or petitioner. The cover must identify the party or parties supported, if any.

(2) Unless the amicus curiae is one listed in subparagraph (b) of this Rule, an amicus brief must include a statement that indicates whether:

(i) a party's counsel authored the brief in whole or in part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, that identifies each such person.

(f) *This Court's Authority to Request a Brief Amicus Curiae.* — Notwithstanding the provisions of this Rule, this Court may request that a brief amicus curiae be filed at any time.

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

(a) Upon joint motion of the parties in a civil case, the Court may extend the filing deadlines under Rules 5A:19(b), 5A:19(c) and 5A:25(d) to enable the parties to pursue mediation. An order granting such a time extension will specify new filing deadlines or a deadline for the parties to file a joint progress report.

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

A Copy,

Teste:

  
Clerk