

RULES OF THE SUPREME COURT OF VIRGINIA
PART ONE
RULES APPLICABLE TO ALL PROCEEDINGS

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

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

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

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

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Rule 1:4. General Provisions as to Pleadings.

(a) Counsel tendering a pleading gives his assurance as an officer of the court that it is filed in good faith and not for delay.

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(e) An allegation of fact in a pleading that is not denied by the adverse party’s pleading, when the adverse party is required by these Rules to file such pleading, is deemed to be admitted. A denial must fairly respond to the substance of the allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest. An allegation in a pleading that the party does not know whether a fact exists will be treated as a denial that the fact exists.

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Rule 1:5. Counsel and Parties Appearing Without Counsel.

(a) (1) When used in these Rules, the word “counsel” includes a partnership, a professional corporation or an association of members of the Virginia State Bar practicing under a firm name.

(2) When such firm name is signed to a pleading, notice, or brief, the name of at least one individual member or associate of such firm must be signed to it. ~~Papers filed electronically~~ Any such pleading, notice, or brief may be signed electronically or by inclusion of a digital image of the signature, ~~as provided in Rule 1:17. Signatures to briefs and petitions for rehearing~~

~~may be printed or typed and need not be in handwriting.~~ The electronic signature accompanying the document when filed constitutes that person’s signature on the document for purposes of Code § 8.01-271.1.

(3) Service on one member or associate of such firm constitutes service on the firm. Service is not required to be made on foreign attorneys.

(b) “Counsel of record” includes a counsel or party who has signed a pleading in the case or who has notified the other parties and the clerk in writing that he or she appears in the case, or has endorsed a draft order of the court as provided in Rule 1:13.

(c) As required by Code § 8.01-271.1, a party who is not represented by an attorney – including a person confined in a state or local correctional facility proceeding pro se – must sign every pleading, motion, or other paper that he or she serves or files, and must state his or her address. Any such pleading, notice, or paper may be signed electronically or by inclusion of a digital image of the signature. The electronic signature accompanying the document when filed constitutes that person’s signature on the document for purposes of Code § 8.01-271.1.

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Rule 1:24. Requirements for Court Payment Agreements for the Collection of Fines and Costs.

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(d) *Conditions of a payment agreement.* — All the fines and costs that a defendant owes for all cases in any single court may be incorporated into one payment agreement, unless otherwise ordered by the court in specific cases. A payment agreement must include only those outstanding fines and costs for which the limitations period set forth in § 19.2-341 has not run.

In determining the length of time to pay under a deferred, modified deferred, or installment payment agreement and the amount of the payments, a court must take into account the defendant’s financial resources and obligations, including any fines and costs the defendant owes in other courts. In assessing the defendant’s ability to pay, the court must use a written financial statement, on a form developed by the Executive Secretary of the Supreme Court, setting forth the defendant’s financial resources and obligations or conduct an oral examination of the defendant to determine his financial resources and obligations. In the case of a defendant otherwise eligible to enter a payment plan under this rule, any resources exempted by subsection (h) may not be considered when determining the payment amount or the length of time to pay under any deferred, modified deferred, or installment payment agreement.

No court may require a defendant to make a down payment upon entering a deferred, modified deferred, or installment payment agreement, other than a subsequent payment agreement, in which case the court may require a down payment pursuant to subsection (g). Nothing in this rule prevents a defendant from voluntarily making a down payment upon entering any payment agreement.

Where available, the court may provide community service work as an option to defray fines and costs, especially when the defendant is indigent or otherwise unable to make meaningful

payments. Any portion of the community service completed should be credited to the defendant's obligations. Community service may not be credited against any amount owed as restitution, the interest which has accrued on restitution, and any collection fee required.

At any time during the duration of a payment agreement, the defendant may request a modification of the agreement in writing, on a form provided by the Executive Secretary of the Supreme Court, and the court may grant such modification based on a good faith showing of need.

(e) *Timeliness of payments.* — Any payment which is received within 10 days of the date due is considered timely paid.

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(h) Exemptions. — Any defendant owing fines and costs whose sole financial resource is a Social Security benefit or Supplemental Security Income is exempt from making any payments toward such fines and costs at least until such time that the defendant has a resource other than a Social Security benefit or Supplemental Security Income. If the defendant informs the court that his sole financial resource is a Social Security benefit or Supplemental Security Income, the case may not be referred to collections under § 19.2-349.

Courts must include in their payment plan policies developed under Code §§ 19.2-354 and 19.2-354.1 that when the court is informed that a defendant receives a Social Security benefit or Supplemental Security Income, no payment toward fines and costs may be taken from such exempt resource.

Rule 1:25. Specialty Dockets.

(a) *Definition of and Criteria for Specialty Dockets.* —

(1) When used in this Rule, the term “specialty dockets” refers to specialized court dockets within the existing structure of Virginia's circuit and district court system offering judicial monitoring of intensive treatment, supervision, and remediation integral to case disposition.

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(b) *Types of Specialty Dockets.* — The Supreme Court of Virginia currently recognizes only the following three types of specialty dockets: (i) ~~drug treatment recovery~~ court dockets as provided for in the ~~Drug Treatment Recovery~~ Court Act, § 18.2-254.1, (ii) veterans dockets, and (iii) behavioral health dockets as provided for in the Behavioral Health Docket Act, § 18.2-254.3. ~~Drug treatment Recovery~~ court dockets offer judicial monitoring of intensive treatment and strict supervision in drug and drug-related cases. ~~The dispositions in the family drug treatment court dockets established in juvenile and domestic relations district courts may include family and household members as defined in Virginia Code § 16.1-228.~~ Veterans dockets offer eligible defendants who are veterans of the armed services with substance dependency or mental illness a specialized criminal specialty docket that is coordinated with specialized services for veterans. Behavioral health dockets offer defendants with diagnosed behavioral or mental health disorders judicially supervised, community-based treatment plans, which a team of court staff and mental health professionals design and implement.

* * *

(e) *Oversight Structure.* — By order, the Chief Justice of the Supreme Court may establish a Specialty Docket Advisory Committee and appoint its members. The Chief Justice may also establish separate committees for each of the approved types of specialty dockets. The members of the Veterans Docket Advisory Committee, the Behavioral Health Docket Advisory Committee, and the committee for any other type of specialty docket recognized in the future by the Supreme Court will be chosen by the Chief Justice. The ~~State Drug Treatment Recovery~~ Court Advisory Committee established ~~pursuant to~~ under Virginia Code § 18.2-254.1 constitutes the ~~Drug Treatment Recovery~~ Court Docket Advisory Committee.

(f) *Operating Standards.* — The Specialty Docket Advisory Committee, in consultation with the committees created ~~pursuant to~~ under subsection (e), will establish the training and operating standards for local specialty dockets.

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PART FOUR
PRETRIAL PROCEDURES, DEPOSITIONS AND PRODUCTION AT TRIAL

Rule 4:7A. Audio-Visual Depositions.

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(f) *Submission to the Witness; Changes; Signing.* — ~~The A stenographic deposition transcript prepared for an audio-visual deposition is subject to the~~ provisions of Rule 4:5(e), ~~but Rule 4:5(e) does not apply to the audio-visual recording itself do not apply to an audio-visual deposition.~~ The other provisions of Rule 4:5 apply to the extent practicable.

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PART FIVE
THE SUPREME COURT
A. GENERAL

Rule 5:1B. Electronic Filing.

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(f) *Signatures.* — All documents filed pursuant to Part Five of these Rules must be signed by counsel for the filing party, or personally signed if the party is proceeding pro se. Documents ~~that are filed electronically~~ may be digitally signed using an electronic signature. ~~Otherwise, documents must contain a handwritten signature.~~

PART FIVE
THE SUPREME COURT
G. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5:26. General Requirements for All Briefs.

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

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

* * *

(4) If the reply brief of the appellant addresses cross-error, the appellee may file a reply brief in support of cross-error in the office of the clerk of this Court within 14 days after the filing of the reply brief of appellant.

* * *

Rule 5:29. Requirements for Reply Brief and Reply Brief in Support of Cross-Error.

(a) The reply brief, if any, must comply with the requirements of Rules 5:6 and 5:26 and must contain only argument in reply to contentions made in the brief of appellee. No reply brief is necessary if the contentions have been adequately answered in the opening brief of appellant.

(b) The reply brief in support of cross-error, if any, must comply with the requirements of Rules 5:6 and 5:26 and must contain only argument in reply to contentions made in the reply brief of appellant that relate to cross-error. No reply brief in support of cross-error is necessary if the contentions have been adequately answered in the brief of appellee. No reply brief in support of cross-error is permitted if the appellant has not filed a reply brief.

PART FIVE A
THE COURT OF APPEALS
A. GENERAL

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

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

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

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PART FIVE A
THE COURT OF APPEALS
C. PROCEDURE FOR FILING AN APPEAL FROM THE TRIAL COURT

Rule 5A:10. Record on Appeal: Preparation and Transmission.

(a) *Preparation.* – The clerk of the trial court must prepare the record as soon as possible after notice of appeal is filed. In the event of multiple appeals in the same case, or in cases tried together, only one record need be prepared and transmitted.

(b) *Form of the Record.* –

(1) The record must be compiled in the following order:

(i) a front cover setting forth the name of the court and the short style of the case;

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

(iii) each document constituting a part of the record in chronological order; and

(iv) the certificate of the clerk of the trial court that the foregoing constitutes the true and complete record, except omitted exhibits as hereinafter provided.

(2) Each page of the record must be numbered at the bottom.

(3) Transcripts, depositions, and reports of commissioners may be included in separate volumes identified by the clerk of the trial court if referred to in the table of contents and at the appropriate place in the record.

(4) Exhibits, other than those filed with pleadings, may be included in a separate volume or envelope certified by the clerk of the trial court, except that any exhibit that cannot be conveniently placed in a volume or envelope must be identified by a tag. Each such volume or envelope must include, on its cover or inside, a descriptive list of exhibits contained therein. Reference must be made to exhibits in the table of contents and at the appropriate place in the record referred to in paragraph (b)(1) of this Rule. The clerk of the trial court must not transmit the following types of exhibits, unless requested to do so by the clerk of this Court: 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. The omission of any such exhibit must be noted on the descriptive list of exhibits. Upon motion by counsel, this Court may order the trial court to transmit any of these prohibited exhibits.

(5) Any transcript or statement of facts that the clerk of the trial court deems not a part of the record because of untimely filing must be certified as such and transmitted with the record.

~~(c) *Abbreviated Record.*—When the assignments of error presented by an appeal can be determined without examination of all the pleadings, facts, testimony, and other incidents of the case, all counsel with the approval of the trial court may prepare for submission an abbreviated record, stating how the assignments of error in the case arose and were decided, and setting forth~~

~~only so much of the pleadings, facts, testimony, and other incidents of the case as are essential to a determination of the issues on appeal. Such abbreviated record must be signed by all counsel and the trial judge and filed in the office of the clerk of the trial court. It will be assumed that the abbreviated record contains everything germane to the assignments of error. This Court may, however, consider other parts of the record to enable this Court to attain the ends of justice.~~

~~(d)~~ (c) *Transmission.* – The clerk of the trial court must retain the record for 21 days after the notice of appeal has been filed with that court pursuant to Rule 5A:6. If the notice of appeal states that a transcript or statement will thereafter be filed, the clerk of the trial court must retain the record for 21 days after the filing in that clerk’s office of such transcript or statement or, if objection is made to the transcript or statement pursuant to Rule 5A:8 (d), the clerk of the trial court must retain the record for five days after the objection is acted upon by the trial judge. The clerk of the trial court must then forthwith transmit the record to the clerk of this Court; provided, however, that, notwithstanding that the foregoing periods of retention may not have expired, the clerk of the trial court must transmit the record sooner if requested in writing by counsel for all parties to the appeal and must, whether or not so requested, transmit the record in time for delivery to the clerk of this Court within three months after entry of the judgment appealed from. The failure of the clerk of the trial court to transmit the record as herein provided will not be a ground for dismissal of the appeal by this Court.

~~(e)~~ (d) *Notice of Filing.* – The clerk of this Court must promptly notify all counsel of the date on which the record is filed in the office of the clerk of this Court. In criminal cases in which the Commonwealth is the named appellee, such notification will be sent to the attorney for the Commonwealth who prosecuted the case and also to the Office of the Attorney General at oagcriminallitigation@oag.state.va.us.

~~(f)~~ (e) *Disposition of Record.* – When the mandate is issued by this Court, the clerk of this Court must return the record to the clerk of the trial court. The record must be returned by that clerk upon the request of the clerk of this Court.

PART FIVE A
THE COURT OF APPEALS
E. PROCEDURE ON PETITION FOR APPEAL IN DISCRETIONARY APPEALS

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

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

* * *

(f) *The Record.* —

(1) When referencing any item in the record, the petition must cite the record-page number (e.g., “R. 1”) if the record has been transmitted in whole or in part to this Court. No petition will be dismissed for failure to comply with the citation provisions of this rule; however, the clerk of this Court may require that a document be redone in compliance with the citation requirements.

(2) A petition for appeal seeking interlocutory review under Code § 8.01-675.5 must be

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

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

(gh) *Oral Argument.* — No oral argument will be permitted on a petition except, consistent with Code § 17.1-407(D) and Code § 19.2-403, the Commonwealth is entitled to state orally before a panel of the Court the reasons why its petition for appeal should be granted for petitions filed pursuant to Code § 19.2-398.

Rule 5A:13. Brief in Opposition.

(a) *Filing Time.* — A brief in opposition to granting the petition may be filed with the clerk of this Court by the respondent within:

* * *

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

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

(2) *Table of Contents and Table of Authorities.* If the brief exceeds 3,500 words, it must contain a table of contents and table of authorities with cases alphabetically arranged.

(3) Citations to the Record. When referencing any item in the record, the brief in opposition must cite the record-page number (e.g., “R. 1”) if the record has been transmitted in whole or in part to this Court. No brief in opposition will be stricken for failure to comply with the citation provisions of this rule; however, the clerk of this Court may require that the brief be redone in compliance with the citation requirements.

(c) *Expedited Review.* — When it clearly appears that a discretionary appeal ought to be granted without further delay, an appeal may be granted before the filing of the brief in opposition.

PART FIVE A THE COURT OF APPEALS

F. PROCEDURE FOLLOWING PERFECTION OF APPEAL

Rule 5A:19. General Requirements for All Briefs.

(a) *Length.* — Except by permission of a judge of this Court, neither the opening brief of appellant, nor the brief of appellee may exceed the longer of 50 pages or 12,300 words. No reply

brief may exceed the longer of 20 pages or 3,500 words. Briefs of amici curiae must comply with the word limits that apply to briefs of the party being supported. Page and word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, signature blocks, or certificate. There will be no exception to these limits except by permission of this Court on motion for extension of the limits.

(b) *Filing Time: Appeal as a Matter of Right.* — In cases when appeal lies as a matter of right to this Court, except as otherwise provided by statute or order of this Court, briefs must be filed as follows:

(1) Prior to filing briefs in an appeal of right, the appellant must file a preliminary statement of the assignments of error in the office of the clerk of this Court within 15 days of the filing of the record in such office. The appellee must file any additional preliminary assignments of cross-error in the office of the clerk of this Court within 10 days after the filing of the appellant’s preliminary statement of assignments of error. see Rules 5A:25(a)(1) and 5A:25(d). In cases in which a designation of appendix is filed, the preliminary statement of the assignments of error or additional preliminary assignments of cross-error may be contained in the designation of appendix filed in accordance with Rule 5A:25(d).

(2) The appellant must file the opening brief in the office of the clerk of this Court within 40 days after the date of the filing of the record in such office.

~~(2)~~(3) The brief of appellee and the brief of the guardian ad litem must be filed in the office of the clerk of this Court within 30 days after filing of the opening brief, or within 30 days after the filing of the record in this Court, whichever is later. The filing time for the brief of appellee in an Anders appeal is governed by Rule 5A:20(i).

~~(3)~~(4) The appellant may file a reply brief in the office of the clerk of this Court within 14 days after filing of the brief of appellee or guardian ad litem.

(5) If the reply brief of the appellant addresses cross-error, the appellee may file a reply brief in support of cross-error in the office of the clerk of this Court within 14 days after the filing of the reply brief of appellant.

~~(4)~~(6) Motions for extensions to these briefing deadlines must be filed no later than 10 days after the expiration of the deadline.

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

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

* * *

(5) In cases where a petition has been granted, the appellant must include any granted assignments of error and cross-error in a designation filed under Rules 5A:19(b)(1) and 5A:25(d).

(d) *Participation by Guardian Ad Litem.* — If a guardian ad litem joins with either appellant or appellee, the guardian ad litem must notify the clerk of this Court, in writing, which side it joins. Thereafter, the guardian ad litem may rely on the brief of that party and is entitled to oral

argument under Rule 5A:26.

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

The opening brief of appellant must contain:

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

* * *

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

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

* * *

(4) Assignments of error listed in the opening brief of appellant are binding on the appellant for substantive purposes, unless the Court has granted a motion to amend.

(d) A clear and concise statement of the facts that relate to the assignments of error, with references to the pages of the record or appendix. Any quotation from the record should be brief. When the facts are in dispute, the brief must so state. The testimony of individual witnesses should not be summarized seriatim unless the facts are in dispute and such a summary is necessary to support the appellant’s version of the facts.

* * *

Rule 5A:21. Requirements for Brief of Appellee or Guardian Ad Litem.

The brief of appellee or the brief of the guardian ad litem must contain:

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

* * *

(e) With respect to the assignments of cross-error, if any:

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

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

(3) Additional assignments of error listed in the brief of appellee or the brief of the guardian ad litem are binding on that party for substantive purposes, unless the Court has granted a motion to amend.

(f) A statement of the precise relief sought.

* * *

Rule 5A:22. Requirements for Reply Brief and Reply Brief in Support of Cross-Error.

(a) The reply brief, if any, must contain argument in reply to contentions made in the brief of appellee. No reply brief is necessary if the contentions have been adequately answered in the opening brief of appellant. ~~The reply brief must contain a certificate (which need not be signed in handwriting) stating (1) that it was served on opposing counsel and (2) whether counsel desires to waive oral argument.~~

(b) The reply brief in support of cross-error, if any, must contain only argument in reply to contentions made in the reply brief of appellant that relate to cross-error. No reply brief in support of cross-error is necessary if the contentions have been adequately answered in the brief of appellee. No reply brief in support of cross-error is permitted if the appellant has not filed a reply brief.

(c) A reply brief must contain a certificate (which need not be signed in handwriting) stating (1) that it was served on opposing counsel and (2) whether counsel desires to waive oral argument. The certificate must also state the number of words (headings, footnotes, and quotations are included in the page and word limit; the cover page, table of contents, table of authorities, signature blocks, and certificate are not included in the page or word limit).

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

(a) *When Appendix Is Required.* —

(1) *Electronic Record.* Except as provided in Rule 5A:25(a)(3), no appendix is required in cases where the clerk of the trial court or other tribunal has filed the record electronically. In cases where no appendix is required, parties must still file with the clerk of this Court a statement of the assignments of error on the schedule specified in Rule 5A:25(d) below.

(2) *Paper record.* Unless otherwise ordered by the Court, an appendix must be filed in cases where the clerk of the trial court or other tribunal has filed a paper record.

(3) *Videotaped proceedings.* An appendix must be filed in cases where the electronic record filed by the clerk of the trial court includes the official videotape recording of a court proceeding, unless:

(A) the transcript is not needed to resolve any preliminary or subsequent assignment of error; or

(B) a party submits a written statement of facts in accordance with Rule 5A:8(c) in lieu of a transcript of the videotaped proceeding.

(4) *Pro se appellants*. No appendix is required of a pro se appellant who is incarcerated.

(5) *Filing time*. When an appendix is required, it must be filed by the appellant no later than the time of filing the opening brief.

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

(c) *Contents*. — An appendix must include:

(1) the basic initial pleading (as finally amended);

(2) the judgment appealed from, and any memorandum or opinion relating thereto;

(3) any testimony and other incidents of the case germane to the preliminary or any subsequent assignments of error;

(4) the title (but not the caption) of each paper contained in the appendix, and its filing date;

(5) the names of witnesses printed at the beginning of excerpts from their testimony and at the top of each page thereof; and

(6) exhibits necessary for an understanding of the case that can reasonably be reproduced. A party is not required to transcribe an exhibit that consists of an audio or video recording.

(d) *Determination of Contents of Appendix and Exchange of Preliminary Assignments of Error*. — Within 15 days after the filing of the record with this Court or, in a case in which a petition for appeal has been granted, within 15 days after the date of the certificate of appeal issued by the clerk of this Court, counsel for appellant must file in the office of the clerk of this Court a written statement signed by all counsel setting forth an agreed designation of the parts of the record to be included in the appendix. In an appeal of right, the agreement must include a statement of preliminary assignments of error and any preliminary assignments of cross-error; in a granted appeal, the agreed statement must include all granted assignments of error and cross-error. In the absence of such an agreement, in an appeal of right, counsel for appellant must file with the clerk of this Court a preliminary statement of the assignments of error and a designation of the contents to be included in the appendix within 15 days after the filing of the record ~~or~~. In the absence of such agreement, in a case in which a petition for appeal has been granted, counsel for the appellant must file a designation of the contents to be included in the appendix along with a list of all the granted assignments of error and cross-error within 15 days after the date of the certificate of appeal. ~~;~~ ~~not~~. Not more than 10 days after ~~this~~ the appellant's designation is filed, counsel for appellee must file with the clerk of this Court a designation of any additional contents to be included in the appendix and, in appeals of right, a preliminary statement of any additional assignments of error the appellee wishes to present. The appellant must include in the appendix the parts thus designated, together with any additional parts the appellant considers

germane. If a party designates a court proceeding or any portion of a court proceeding recorded only by videotape, the appendix must include a written transcript of the proceeding, or of the portion so designated, prepared by a court reporter. In appeals of right, the “preliminary statement of the assignments of error” and “the preliminary statement of any additional assignments of error the appellee wishes to present” referenced in this Rule are non-binding, and are intended to assist the parties in designating the contents of the appendix and narrowing the issues in controversy. Rules 5A:20 and 5A:21 govern the requirements for assignments of error and assignments of cross-error in briefs.

(e) *Table of Contents; Form of Presentation.* — At the beginning of the appendix there must be a table of contents, which must include the name of each witness whose testimony is included in the appendix and the page number of the appendix at which each portion of the testimony of the witness begins. Thereafter, the parts of the record to be reproduced must be set out in chronological order. When matter contained in the transcript of proceedings is set out in the appendix, the page of the transcript or of the record at which such matter may be found must be indicated in brackets immediately before the matter which is set out. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial matters (such as captions, subscriptions and acknowledgements) should be omitted. A question and its answer may be contained in a single paragraph.

(f) *Costs.* — Unless counsel otherwise agree, the cost of producing the appendix must initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issue presented, he may so advise the appellee, and the appellee must advance the cost of including such parts. The cost of producing the appendix will be taxed as costs in the case. To the extent a preliminary statement of assignments or additional assignments made in accordance with this Rule is so misleading or incomplete that the opposing party must supplement the appendix, the opposing party may seek leave and file a supplemental appendix to be filed no later than the date the party’s next brief is due. The opposing party may seek costs associated with the misleading or incomplete designation and any required supplementation.

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PART FIVE A APPENDIX OF FORMS

Form 10. Petition for a Writ of Actual Innocence Based on Nonbiological Evidence.

PETITION FOR A WRIT OF ACTUAL INNOCENCE BASED ON
NONBIOLOGICAL EVIDENCE

THE COURT OF APPEALS OF VIRGINIA

_____ Record No. _____

(FULL NAME OF PETITIONER AND
PRISONER NO., IF APPLICABLE)

(TO BE SUPPLIED BY THE CLERK
OF THE COURT OF APPEALS)

v.

Commonwealth of Virginia
(RESPONDENT)

* * *

16. Exemption from filing fee. Check box below if claiming in forma pauperis status and seeking to file this petition without payment of fees.

I claim *in forma pauperis* status and I request that this Court accept this petition without the payment of filing fees. I affirm under oath that I am eligible for *in forma pauperis* status. My assets amount to \$_____ (which sum includes my institutional inmate account which has a balance of \$_____), and my liabilities amount to \$_____.

17. Request for counsel. Check box below if claiming eligibility for court-appointed counsel and requesting appointment of counsel.

I am requesting that the Court appoint counsel to represent me in this action. I affirm under oath that I am unable to pay for an attorney to represent me in this action, as set forth in item No. ~~17~~ 16 above.

Based on the above, I petition this Court pursuant to the provisions of Chapter 19.3 of Title 19.2 of the Code of Virginia for a Writ of Actual Innocence Based on Nonbiological Evidence.

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