

Tuesday 1st March, 2011.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective May 2, 2011.

Amend Part Five, The Supreme Court, to read as follows:

**PART FIVE
THE SUPREME COURT**

A. GENERAL.

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

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

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B. ORIGINAL JURISDICTION.

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

Prohibition.

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

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

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

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(7) Length. Except by permission of a Justice of this Court, no petition, including the accompanying memorandum of law, or a response thereto, including its accompanying memorandum of law, shall exceed the longer of 50 printed pages or 8,750 words. This page or word limit does not include appendices, exhibits, cover page, table of contents, table of authorities, and certificate.

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

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

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

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Rule 5:7B. Petition for a Writ of Actual Innocence.

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(c) *Contents of the Petition.* Each petition for a writ of actual innocence shall be filed on a form provided by this Court and shall be verified under oath. The petition must state categorically and with specificity: (i) the offense or offenses for which petitioner was convicted, including all previous records, applications, petitions, and appeals relating to these convictions, and their dispositions; (ii) that the petitioner is actually innocent of the crime or crimes for which he was convicted; (iii) an exact description of the human biological evidence and the scientific testing supporting the allegation of innocence, attaching a copy of the test results; (iv) that the human biological evidence was not known or available to the petitioner or his attorney at trial, or if it was known, why it was not subject to scientific testing; (v) the earliest date the test results described in the petition became known to the petitioner or any attorney of record; (vi) that the petitioner or his attorney has filed the petition within 60 days of obtaining the test results; (vii) an explanation of the reason or reasons the evidence will prove that no rational trier of fact could have found the petitioner guilty beyond a reasonable doubt of the offense or offenses for which the petitioner was convicted; and (viii) if the conviction became final in the circuit court after June 30, 1996, that the evidence was not available for testing under Code § 9.1-1104.

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C. PROCEDURE FOR FILING AN APPEAL FROM A TRIAL COURT.

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Rule 5:13. Record on Appeal: Preparation and Transmission.

(a) *Preparation.* The clerk of the trial court, disciplinary board, or commission in which the proceeding originated shall 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.

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E. PERFECTING THE APPEAL.

Rule 5:17. Petition for Appeal.

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

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

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

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

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Rule 5:18. Brief in Opposition.

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(b) *Form and Content.* The brief in opposition shall conform in all respects to the content requirements for the brief of appellee in Rule 5:28. However, the brief in opposition need not be bound or have a blue cover. Except by leave of a Justice of this Court, the brief shall not exceed the longer of 25 pages or 4,375 words. If the brief exceeds 10 pages or 1,750 words, it shall contain a table of contents and table of authorities with cases alphabetically arranged.

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Rule 5:19. Reply Brief.

(a) When a brief in opposition to the petition for appeal has been filed, the appellant may, within 7 days thereafter, in lieu of oral argument, file with the clerk of this Court a reply brief not to exceed the longer of 15 pages or 2,625 words in length. Seven copies shall be filed.

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Rule 5:20. Petition for Rehearing After Refusal of Petition for Appeal or Disposition of an Original Jurisdiction Petition.

(a) *Petition for Appeal.* When a petition for appeal is either refused or dismissed, the clerk of this Court shall mail a copy of the order denying the appeal to counsel for the appellant and counsel for the appellee. Counsel for the appellant may, within 14 days after the date of this order, file in the office of the clerk of this Court a petition for rehearing. Oral argument on the petition for rehearing will not be allowed. No responsive brief shall be filed unless requested by this Court. The clerk of this Court shall notify counsel for the appellant and counsel for the appellee of the action taken by this Court on the petition for rehearing.

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(d) *Length and Number of Copies.* The petition for rehearing shall not exceed the longer of 15 pages or 2,625 words in length. The petition shall state that a copy has been mailed or delivered to counsel for the appellee. Ten copies shall be filed.

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Rule 5:20A. Denial of Appeal; Petition for Rehearing.

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(b) The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 14-point font or larger, must be double-spaced, must comply with Rule 5:6, and must not exceed the longer

of 10 pages or a word count of 1,750 words. The petition must include a certificate of service to counsel for the appellee and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by scvpfr@courts.state.va.us. If the petition does not meet the requirements of this rule as to format, the clerk shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Supreme Court result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

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F. SPECIAL RULES.

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

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(e) *Requirements for Briefs.*

(1) Brief of Appellant. The appellant shall file the

opening brief, which shall not exceed the longer of 100 pages or 17,500 words, in the office of the clerk of this Court within 60 days after the Filing Date.

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

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

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

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G. PROCEDURE FOLLOWING PERFECTION OF APPEAL.

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Rule 5:26. General Requirements for All Briefs.

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(b) *Length.* Except by permission of a Justice of this Court, neither the opening brief of appellant, nor the brief of appellee, nor a brief amicus curiae shall exceed the longer of 50 pages or 8,750 words. No reply brief shall exceed the longer of 15 pages or

2,625 words. The page or word limits under this Rule do not include appendices, the cover page, table of contents, table of authorities, and certificate. There shall be no exception to these limits except by permission of this Court on motion for extension of the limits.

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Rule 5:32. Appendix.

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(b) Responsibility of All Parties.

(1) Determining the Contents of the Appendix. The parties are encouraged to agree on the contents of the appendix. Within 15 days after the date of the certificate of the clerk of this Court issued pursuant to Rule 5:23, counsel for appellant shall 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 on appeal to be included in the appendix. In the absence of an agreement, the appellant must, within 15 days after the date of the certificate of appeal issued by the clerk of this Court pursuant to Rule 5:23, file with the clerk of this Court and serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix. The appellee may, within 15 days after receiving the designation, file with the clerk of this Court and serve on the appellant a designation of additional parts of the record the appellee deems germane. The appellant must include the parts designated by the appellee in the appendix, together with any additional parts the appellant considers germane. The parties must not engage in an unnecessary designation of parts of the record, because the entire record is

available to the Court.

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H. DECISION, COSTS, AND MANDATE.

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Rule 5:37. Petition for Rehearing After Consideration by the Full Court.

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(c) *Requirements for Pro Se Prisoners or By Leave of Court.*
Unless the rehearing is abandoned, 20 copies of a petition for rehearing not to exceed the longer of 10 pages or 1,750 words in length shall be thereafter filed in the office of the clerk of this Court and 3 copies delivered or mailed to opposing counsel within 30 days after the date of the order of this Court deciding the case.

(d) *Requirements for All Others.*

(1) Except for petitions filed by pro se prisoners, or with leave of this Court, the petition for rehearing shall be filed as an Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail addressed to scvpfr@courts.state.va.us and will be timely filed if received by the clerk's office on or before 11:59 p.m. within 30 days after the date of the order or opinion of this Court deciding the case. The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 14-point font or larger, must be double-spaced, and must not exceed the longer of 10 pages or 1,750 words. The petition must include a certificate of service to opposing counsel and the certificate shall specify the

manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by scvpfr@courts.state.va.us. If the petition does not meet the requirements of this rule as to format, the clerk shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at this Court result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of this Court on the next business day all documentation which exists demonstrating the attempt to email the petition, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

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(f) *When a Rehearing is Granted.* When a rehearing is granted, the case will be placed on the privileged docket for oral argument. The petitioner may not file any brief in addition to the petition for rehearing. The respondent may file electronically, in compliance with paragraph (d) of this Rule, a brief in reply that shall not exceed the longer of 15 pages in length or 2,625 words within 21 days after the date of the order granting the rehearing. The respondent will be heard orally whether or not respondent files a brief in reply. The case will be called at the next session of the Court after the expiration of the 21 days unless counsel agree that it be called at a session of the Court commencing at an earlier time and the Court permits the case to be called at an

earlier time.

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L. APPEALS RELATING TO QUARANTINE OR ISOLATION ORDERS.

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

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

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

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Amend Part Five A, The Court of Appeals, to read as follows:

**PART FIVE A
THE COURT OF APPEALS**

A. GENERAL.

* * *

Rule 5A:3. Filing Deadlines; Post Trial Proceedings Below; Timely Filing by Mail; Inmate Filing; Extension of Time.

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(d) *How to File by Mail in a Timely Manner.* Any document required to be filed with the clerk of this Court shall 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.

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B. ORIGINAL JURISDICTION.

Rule 5A:5. Original Proceedings.

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(b) *Petition for a Writ of Actual Innocence.*

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(2) Form and Contents of Petition. The petition must be filed using Form 12 in the Appendix of Forms following Part 5A and must include all allegations and documents required by subsections A and B of Code § 19.2-327.11. Under Code § 19.2-327.11(B) "relevant documents" shall include, but not be limited to, any felony conviction and sentencing orders being challenged, any appellate dispositions on direct review or any habeas corpus orders (issued by any federal or state court), and any prior petitions filed under Code §§ 19.2-327.10 et seq. in the Court of Appeals or under Code §§ 19.2-327.2 et seq. in the Supreme Court.

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

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

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

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E. PROCEDURE ON PETITION FOR APPEAL IN CRIMINAL CASES AND TRAFFIC INFRACTIONS.

Rule 5A:12. Petition for Appeal.

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

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(7) Contact Information. The signature of at least one counsel, counsel's name, Virginia State Bar number, mailing address, telephone number, facsimile number (if any), and email address (if any).

(8) Certificate. A certificate stating the date of mailing or delivery of the petition to opposing counsel and whether or not the appellant desires to state orally the reasons why the petition for appeal should be granted.

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H. REHEARING.

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

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Rule 5A:35. Procedure for Rehearing.

(a) *Rehearing by a Panel.* When rehearing by a panel is granted on petition of a party, the clerk of the Court of Appeals shall notify all counsel promptly. No brief in addition to the petition may be

filed by petitioner. Respondent may file in the office of the clerk seven copies of an answering brief, which shall not exceed 5,300 words in length, within 21 days following the date of the order of this Court granting a rehearing. Three copies of the respondent's answering brief shall be mailed or delivered to opposing counsel on or before the date the answering brief is filed. Respondent may be heard orally whether or not an answering brief is filed. The case will be placed on the docket for oral argument. When practicable, such a rehearing will be heard by the same panel that rendered the final decision in the case.

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A Copy,

Teste:

Clerk